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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 05.10.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.172/2018 in CP(IB) No.157/7/HDB/2018
NAME OF THE COMPANY	Reliance Cellulose Products Ltd
NAME OF THE PETITIONER(S)	3F Industries Ltd
NAME OF THE RESPONDENT(S)	Reliance Cellulose Products Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
B.Randhavan Reddy	Adv	9010988188	M. M. Raju

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed in IA No.172/2018 vide separate order.

List the main CP for hearing on 24.10.2018.



Member(Judl)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 172/2018
In
CP(IB) No. 157/07/HDB/2018

In the matter of

M/s. Meliora Asset Reconstruction Company Limited
Registered Office at 106, Bharat Towers,
5th Lane Dwaraka Nagar,
Visakhapatnam- 530016
And corporate office at 503. May Fair Garden,
Road No.12, Banjara Hills,
Hyderabad- 500 034.

... Applicant/
Proposed Respondent No.2

AND

1. M/s. 3F Industries Ltd
Registered Office at Post Box No.15,
Tanuka Road Tadepalligudem
West Godavari District,
Andhra Pradesh- 534 101
Hyderabad Office at 1st Floor,
6-3-569/2, Rockdale,
Somajiguda,
Hyderabad- 500 082.

...Respondent/
Operational Creditor

2. M/s. Reliance Cellulose Products Limited,
3-E, Surya Towers, 105, S.P Road,
Secunderabad.

...Respondent /
Corporate Debtor

Order pronounced on 05th October, 2018

Coram

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For Applicant: Mr. T.Nagender Advocate.

For Respondent: Mr. B.Chandrasen Reddy, Advocate.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)



ORDER

1. This application is filed on behalf of applicant which is Meliora Asset Reconstruction Company Limited to implead it as Respondent.2 in CP (IB) No. 157/7/HDB/2018, which is filed under section 7 of Insolvency and Bankruptcy Code, 2016.
2. Averments in Brief are:
 - a. Applicant avers that the Company petition was filed by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016 in order to initiate CIRP Process against the corporate debtor.
 - b. It is averred that corporate debtor has not made payments to its creditors for a long period of time in clearing the dues of the applicant and has disregarded directions given to it by the DRT and the Hon'ble High Court.
 - c. The applicant filed the present company application to implead the applicant as Respondent.2 .The applicant'S contention is that the corporate debtor owed certain dues to the tune of Rs.52 crores to Andhra Bank and on a pari-passu basis, more than Rs.25 crores to M/s. Kotak Mahindra Bank Ltd. The applicant by virtue of an assignment deed dt.30.03.2017 has stepped into the shoes of Andhra Bank and has become the assignee with respect to all the rights, interest and benefits, including the security interest in respect of the claim against the corporate debtor.
 - d. It is averred that by way of Assignment Agreement, the Applicant intimated said facts to Hon'ble DRT-II and Tribunal issued a sale notice dated 16.03.2018 fixing the sale on 27.04.2018. The corporate debtor challenged the same but the Hon'ble DRT-II did not grant any stay in its favour and accordingly by virtue of orders dated 26.04.2018 the secured property was sold to highest

bidder in the auction held on 27.04.2018 i.e SLS Properties for Rs.37,10,00,000/-. The said bidder has already paid Rs. 9,27,50,000/- and supposed to pay Rs. 27,82,50,000/- within 15 days. The total dues of Corporate debtor is more than Rs.52 crores to Andhra Bank and on a pari-passu basis, more than Rs.25 crores to M/s. Kotak Mahindra Bank Ltd. Being a secured creditor the highest bid amount offered for Rs. 37,10,00,000/- itself is not sufficient to satisfy the debt of the corporate debtor.

3. Averments in the counter filed by financial creditor in brief:
 - a. It is averred that the application filed by the applicant herein is not in the format as prescribed by the NCLT Rules, 2016. The applicant's contention appears to be that the corporate debtor owed certain dues to the tune of Rs.52 crores to Andhra Bank and on a pari-passu basis, more than Rs.25 crores to M/s. Kotak Mahindra Bank Ltd. The applicant by virtue of an assignment deed dt.30.03.2017 has stepped into the shoes of Andhra Bank and has become the assignee with respect to all the rights, interest and benefits, including the security interest in respect of the claim against the corporate debtor.
 - b. It is averred that the applicant made unsubstantial allegations that the financial creditor has sought to conceal material facts and has filed the present petition under section 7 of the code with an oblique intent to deprive the applicant who has apparently obtained favourable orders from the DRT-Hyderabad.
 - c. It is averred that the present application is misconceived, made without an application of mind and is not maintainable in law. It is averred that the financial creditor has filed the petition in order to initiate CIRP against the corporate debtor with respect to inter

corporate loan of Rs. 2. 5 crores advanced by it, which was not repaid by the corporate debtor.

- d. It is averred that the financial creditor claim is in no way connected to the applicant and it is not possible for the financial creditor to have knowledge about each and every litigation of which the corporate debtor is a party, especially when the applicant itself has admitted that the corporate debtor is a company involved in litigation which has a history of not repaying its creditors. It is averred that the question of impleading or serving notices to parties unconnected with the Financial Creditor's claim does not arise at all.
 - e. It is averred that the applicant has no locus-standii to seek impleadment in order to file a counter of any sort with respect to the claim of the financial creditor.
 - f. It is averred that the applicant itself is also a financial creditor and if the application is admitted, the applicant will also be entitled to be a part of the COC, subject to the resolution professional finding merit in its claims. It is averred that the applicant admits that the highest bid amount received for disposal of its secured assets is Rs. 37.1 crores which is not even enough to satisfy its own claims. The interests of a secured creditors are well protected by the code, as such it would be in the interest of the applicant to be part of the CIRP, and satisfy its claims in full through the procedure set out by the code through a revival of the corporate debtor.
4. Averment in brief by Respondent 2/corporate debtor are
- a. That the respondent has filed a counter claim against Andhra Bank and Meliora ARC. The claim is pending adjudication as no reply is filed by the proposed respondent. It is averred that the IA's mentioned in the impleading petition stating that various conditional orders



are not complied with are irrelevant for the purpose of this petition.


- b. It is averred that the sale conducted by the proposed Applicant on 27.04.2018 is highly illegal. The sale is under challenge before Hon'ble DRT. At this stage the proposed respondent claiming to be an ostensible secured creditor has filed the present impleading petition.
 - c. It is averred that the proposed respondent is in illegal possession of this respondent's properties for a long time and it has not handed over the properties to this respondent inspite of this respondent asking for the same. This respondent already filed a counter claim against the original lender bank. At present the applicant continues to remain in illegal possession of the company's property and has illegally handed over the same under an illegal sale to an ostensible auction purchaser. This respondent has claim for compensation and damages from the proposed respondent and their officers. Assuming and not accepting that the applicant is a secured creditor, if at all the Tribunal appoint the IRP and the applicant will be a party to the committee of creditors and it has no locus standi to be impleaded as respondent in the present proceedings.
5. Heard the Counsels for Applicant as well Counsels for Respondents. The Counsels for Applicant would contended that Applicant being the Financial Creditor is a proper and necessary party to the petition is filed Under Section 7 of I&B Code against Corporate Debtor. The contention of Learned Counsel is that Applicant already initiated proceedings against Corporate Debtor before DRT-II & in pursuance of order of DRT-II secured property was sold and part of sale consideration was already received.
 6. The contention of Learned Counsel is that the interests of Applicant is very much involved in the proceedings before this Tribunal. The counsel contended that the applicant to be



impleaded as second respondent. On the other hand Counsel for Financial Creditor the 1st Respondent here in strongly opposed the application on the grounds the applicant being Financial Creditor and more so, Secured Creditor can be the part of COC & can participate in the Resolution Process in case petition is admitted against corporate debtor. There is no need to implead applicant in the main petition. The interests of applicant is well protected by the Code being a Secured Creditor. Therefore applicant can't be impleaded. The counsel for corporate debtor would contend that corporate debtor is challenging the sale in DRT-II & also made a counter claim.

7. Applicant admittedly initiated proceedings against corporate debtor before DRT-II. The property of corporate debtor was sold in pursuance of sale notice.
8. Proceedings before the Tribunal started under provisions of I&B Code at the instance of a Financial Creditor. The applicant can become member of COC if petition is admitted . The Applicant can participate in CIR Process. The interests of applicants is also protected by I&B Code.
9. Hon'ble NCLAT is held as follows:

Hon'ble NCLAT held in Company Appeal (AT) (Insolvency) No. 246 of 2018 dated 31.07.2018 between Axis Bank Limited vs Lotus Three Development Limited " Initiation of 'Corporate Insolvency Resolution Process' under section 7 or 9 or 10 of the I&B Code is not an adversary litigation. It is not a recovery proceedings nor can be treated to be a suit or case pending for decision on merit". Hon'ble NCLAT further held that " No other person has a right to be heard at the stage of admission of the application under section 7 and 9 of the I&B Code including the 'Shareholders' or the 'Personal guarantor' etc. Therefore applicant is not necessary and proper party.



10. In the proceedings initiated under section 7 of I&B Code 3rd party is not a proper and necessary party. Therefore the applicant has no Locus Standi to implead in this. Applicant as proper and necessary party to the proceedings. Therefore application deserves to be dismissed.
11. In the result application is dismissed.


5/10/15
RATAKONDA MURALI
MEMBER (JUDICIAL)