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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 07.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 39/9/HDB/2018
NAME OF THE COMPANY	Ind-Bharat Power Gencom Ltd.
NAME OF THE PETITIONER(S)	Gandhar Oil Refinery(India) Ltd
NAME OF THE RESPONDENT(S)	Ind-Bharat Power Gencom Ltd. Thermal Power Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
P. Srinivas	Advocate	9849032347 Ssrinivas@gnfic.com	Srinivas
N. Vinesh Rai	Advocate	9391033606	N. Vinesh

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
YOGESH GAGIA	Advocate		
DVAS Ran Prasad	"	9460234074	Prasad

ORDER

Orders pronounced in CP (IB) No, 39/9/HDB/2018 vide separate orders. Petition is admitted .

IA 371/2018 is also taken up today and orders pronounced vide separate orders. IA 371/2018 is dismissed vide separate orders.


Member (J)

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

CP (IB) No. 39/9/HDB/2018
U/s 9 of IBC, 2016
R/w I & B (AAA) Rules, 2016

In the matter of

M/s Gandhar Oil Refinery (India) Limited
DLH Park, 18th Floor, S.V. Road
Goregaon(West)
Mumbai City - 400062

...Petitioner /
Operational Creditor

VERSUS

M/s Ind-Barath Thermal Power Limited
Plot No. 30a, Road No.1, Film Nagar
Jubilee Hills, Hyderabad - 500003

... Respondent /
Corporate Debtor

Order pronounced on 07.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Operational Creditor: Shri C.V. Mohan Reddy, Senior
Advocate along with Shri N.
Vinesh Raj, Shri P. Srinivas and
Dhruv Raj, Advocates

For the Corporate Debtor: Shri Yogesh Jagia along with
Shri D.V.A.S. Ravi Prasad,
Advocates

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

Heard on: 13.02.2018, 07.03.2018, 20.03.2018, 04.04.2018,
12.04.2018, 17.04.2018, 24.04.2018, 04.05.2018 &
15.06.2018

ORDER

1. Operational Creditor filed the Petition under Section 9 of Insolvency and Bankruptcy Code, 2016, Read with Rule-6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Petitioner / Operational Creditor filed Form-5. Details in Form-5 in brief, that Corporate Debtor owed a total sum of Rs. 30,94,22,203/- out of which Principal amount is Rs. 24,82,60,270/- and interest portion is Rs. 6,11,61,933/.
2. Brief facts averred in the Petition are:-
 - (1) M/s Gandhar Oil Refinery (India) Limited is Petitioner/Operational Creditor. M/s Ind-Barath Thermal Power Limited is Respondent/Corporate Debtor. It is the case of Petitioner/Operational Creditor that Corporate Debtor placed order for supply of Indonesian Steam Non Coking Coal with Operational Creditor with two purchase orders dated 25.04.2015 and 20.05.2015. Copies of Purchase orders are marked as Annexure-D.
 - (2) It is the case of Petitioner that basing on the Purchase orders, the petitioner and the Corporate Debtor entered into two High Seas Sales (HSS) Agreements dated 26.06.2015 and 12.08.2015 respectively. Copies of HSS agreements are shown as Annexure-E.
 - (3) It is the case of Petitioner that it has supplied and delivered the coal to the Corporate Debtor as per purchase orders shown as Annexures D.
 - (4) It is alleged, delivery of coal has been recorded and verified via Port Discharge Reports for both the consignments and that the Corporate Debtor never

raised any objection or demur to the product delivered by the Operational Creditor in respect of price and quality.

- (5) The Petitioner raised respective invoices dated 26.06.2015 and 12.08.2015 totalling for Rs. 25,87,95,291/- which was duly accepted and acknowledged by Corporate Debtor. Copies of invoices are shown as Annexure-F.
- (6) It is the case of Petitioner that Corporate Debtor paid a sum of Rs. 1 crore on 22.04.2016 through RTGS / NFT which was adjusted against the invoice dated 26.06.2015 as a part- payment.
- (7) It is alleged, Corporate Debtor raised debit note for Rs. 5,35,021/- against invoice dated 26.06.2015 and that Petitioner had given credit to the debit note and the balance for the invoice dated 26.06.2015 was Rs. 14,36,44,099/- and the amount due under the Invoice dated 12.08.2015 was Rs. 10,46,16,171/-. It is alleged Corporate Debtor failed to pay the amount due under the two invoices.
- (8) It is alleged Petitioner received e-mail from the Corporate Debtor dated 21.07.2016 confirming the ledger as at Rs. 25,09,70,156/-, shown as Annexure -G.
- (9) It is alleged Corporate Debtor committed default in paying the outstanding amount in spite of numerous reminders. Thus, it is the case of Petitioner that amount due towards Principal was Rs. 24,82,60,270/- and towards interest was Rs. 6,11,61,933/- Computation Statement is shown as Annexure - H.
- (10) It is also alleged Petitioner filed bank statement and also filed Demand Notice shown as Annexure-J and


reply to the Demand Notice issued by the Corporate Debtor is shown as Annexure-K. The Port discharge report is shown as Annexure-L.

3. The Corporate Debtor appeared through Counsel. The Corporate Debtor filed reply. Averments in the reply in brief:-

- (1) That earlier Petitioner filed CP (IB) No. 17/9/HDB/2018 which was permitted to be withdrawn by order dated 18.01.2018 but with a liberty to file fresh petition. It is averred there is variation over the outstanding amount said to have been due by the Corporate Debtor to the Petitioner.
- (2) It is alleged Petitioner has failed to comply Section 9 (3) (c) of IBC. It is also alleged there is no default by Corporate Debtor. The Petitioner has not filed Board Resolution for filing instant Petition.
- (3) It is alleged Petitioner has concealed wilfully the fact of dispute raised by the Corporate Debtor by issuing the notice dated 27.09.2017 which was prior to the service of demand Notice issued by the Petitioner. It is stated that Petitioner issued Demand Notice only after Corporate Debtor issued notice of dispute prior to the demand notice. The copy of dispute is shown as Annexure R-2.
- (4) It is alleged during the year 2015, Petitioner approached the Corporate Debtor with an offer to supply Indonesian steam non-coking coal of 4,200 Kcal/Kg GAR (Gross as received). The Corporate Debtor accepted the offer basing on the assurance given regarding quality.
- (5) It is alleged Corporate Debtor placed Purchase Orders with details such as total moisture content, gross

calorific value which are to be maintained as per Purchase Orders which were accepted by Petitioner.

- (6) It is alleged that Petitioner has not adhered to the specifications and coal supplied was of sub-standard in quality and debit notes were raised.
 - (7) It is alleged as Petitioner continued to supply sub-standard coal, the Corporate Debtor dis-continued the orders. Thus, Corporate Debtor mainly contend the Petitioner supplied sub-standard coal and Corporate Debtor further allege by using sub-standard coal, the machinery got affected and Corporate Debtor incurred huge amount for rectification. Secondly, Company could not meet the requirement of power supply and as a result, Company incurred additional costs and finally Company was closed in June 2017 and further alleged an amount of Rs. 8.5 crores would be required for over-hauling the machinery. It is alleged Corporate Debtor reserved right to proceed against the Petitioner for the damage caused to the machinery as a result of supplying sub-standard coal. Thus, Corporate Debtor contended, Petition is liable to be dismissed.
- (4) The Petitioner / Operational Creditor filed rejoinder. Operational Creditor had given para-wise remarks to the reply filed on behalf of Corporate Debtor.
- (1) It is stated in the rejoinder that the amount of Rs. 30,94,22,203/- comprises Principal and interest. It is further stated the outstanding balance of Rs. 25,09,70,156/- was admitted by Corporate Debtor through e-mail which is filed in the main petition at page No. 32-34.

- (2) The amount of Rs.24,82,60,270/- is arrived at after adjusting the payments made by the Corporate Debtor. It is stated bank statement has been filed and thereby Petitioner complied provisions of Section 9 (3) (c) of IBC. It is also stated Petitioner/ Operational Creditor has filed Board Resolution dated 16.10.2017, marked as Annexure-C at page 17-18 of the Company Petition. It is stated Petitioner has given reply to the notice of dispute dated 27.09.2017. The reply is dated 13.10.2017. The said reply is marked as Annexure P-1 to the rejoinder.
- (3) It is stated Corporate Debtor never raised any dispute regarding quality delivered in the alleged notice of dispute dated 27.09.2017. Thus, Petitioner prays that Petition be admitted and CIRP to be started against the Corporate Debtor Company.
- (5) I have heard Counsel appearing for the Petitioner / Operational Creditor and the Counsel for the Corporate Debtor. Counsel for Operational Creditor filed written submissions and Counsel for Corporate Debtor also filed his written statements.
- (6) Petitioner is Operational Creditor. The undisputed fact is that Petitioner had agreed to supply coal to the Corporate Debtor. The Corporate Debtor issued Purchase orders. Petitioner relied on purchase orders marked as Annexure-D at page No 19-25. Purchase orders are dated 25.04.2015 and 20.05.2015 from Corporate Debtor for supply of 55,000 MT +/- 10% of quantity of coal under each POs.
- (7) It is also an undisputed fact, basing on the Purchase orders, the Petitioner/Operational Creditor and Corporate Debtor entered into High Seas Sales Agreement (HSS).
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Petitioner / Operational Creditor relied on High Seas Sales Agreement which are marked as Annexure-E shown at page No. 26-29 to the Petition.

- (8) I have gone through the High Sea Sales Agreement dated 25.06.2016 & 12.08.2015. The Petitioner is the "Seller" and Corporate Debtor is "Buyer". The delivery of the consignment was at Tuticorin Port.
- (9) It is not in dispute that Petitioner/ Operational Creditor has supplied coal as per the Purchase Orders. The only dispute raised by the Corporate Debtor at its end that the coal supplied was of inferior quality. It is the case of Corporate Debtor that coal supplied was not according to the specifications stated in the purchase orders. It is also the contention of the Corporate Debtor that the quantity supplied is also not in accordance with the Purchase orders. Thus, dispute is raised by the Corporate Debtor in reply to the Petitioner as to the quality and quantity of the coal supplied. Further, it is also the case of Corporate Debtor that there was damage to the Plant as a result of using inferior quality of coal.
- (10) On the other hand, the contention of the Operational creditor that Corporate Debtor never raised dispute at any point of time after delivery of consignment that the coal is of inferior Quality and not according to the standards and that the quantity was also not according to the order.
- (11) The contention of the Learned Counsel for Operational Creditor, had it been true that Operational Creditor supplied inferior quality of coal, then the immediate reaction is to communicate to the Operational Creditor or at least to have rejected the consignment. Counsel would contend, instead of raising any dispute if at all coal is of sub-standard quality, the Corporate Debtor on the other


hand accepted the consignment and utilised the coal. It is the contention of the Counsel for Operational Creditor that coal was supplied and consignment was delivered to the Corporate Debtor in the year 2015. At no point of time, Corporate Debtor raised any objection regarding quality till the notice was sent on 27.09.2017 which was issued just 6 days after pronouncement of judgement by Hon'ble Apex Court in Mobilox Innovations Private Limited Vs Kirusa Software Private Limited. According to the case of Corporate Debtor that it had issued a notice to Operational Creditor on 27.09.2017, a copy of the notice was relied on by Corporate Debtor marked as Annexure R-2. Admittedly, this notice was issued after a long gap of acceptance of delivery of consignment and utilising the same. It can be easily said the notice was issued just to get over any action to be initiated by the Operational Creditor. In fact a reply was given to this notice by the Operational Creditor which is shown as Annexure-A to the rejoinder. It is dated 13.10.2017. In the reply, the Operational Creditor has clearly stated that notice of dispute has been issued only after pronouncement of judgement by Hon'ble Apex Court in Mobilox Innovations Private Limited Vs Kirusa Software Private Limited.

- (12) In the rejoinder, Operational Creditor denied supply of any inferior quality of coal. It is specifically stated the said allegation was made as an afterthought. It is made clear in the rejoinder that there was no supply of inferior quality of coal as alleged. Secondly, the Corporate Debtor itself requested for extension of time for payment of the outstanding balance.
- (13) The contention of Learned Counsel for Corporate Debtor that notice of dispute was raised by Corporate Debtor even

prior to issue of demand notice dated 25.10.2017. Thus, the contention of the Learned Counsel when there was dispute over the claim, then Petition is to be rejected. In this connection, Learned Counsel for Corporate Debtor relied on the decision of Apex Court judgement in Mobilox Innovations Private Limited Vs Kirusa Software Private Limited at para 34 which deals with conditions for initiation of CIRP against the Corporate Debtor. The Learned Counsel for Corporate Debtor relied on para 34 of the Judgement of the Hon'ble Apex Court and contended the Adjudicating Authority has to see the existence of any dispute between the parties or record of any suit pending or arbitration proceedings filed before receipt of demand notice of the unpaid operational debt in relation to such dispute. Therefore, learned Counsel would contend that Corporate Debtor raised dispute which existed prior to the issue of Demand Notice, the Petition is to be rejected.

- (14) The Learned Counsel for Operational Creditor also relied upon on the same decision and quoted para 40 of the judgement, which is as under:-

"Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in



fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.

- (15) The Learned Counsel contended if dispute really exists in fact and is not spurious, hypothetical and illusory, then the Petition is to be rejected. The contention of the Learned Counsel that alleged dispute is invented only after pronouncement of judgement by Apex Court in the above case. Secondly, Learned Counsel contended the Corporate Debtor never raised any dispute soon after accepting the consignment and utilising the same. Counsel would contend, had it been true that quality of the coal supplied is not according to the standards then why coal was utilised. Counsel also contended that Coal is subject to test in the laboratory of Corporate Debtor. If really the coal is not confirming to the standards, the test reports of the laboratory of the Corporate Debtor would disclose the same because the coal was subject to test in the Laboratory of the Corporate Debtor, which is one of the conditions of the Purchase orders. So, Counsel contended in the normal course, the coal supplied to the Corporate Debtor should have been tested in the Laboratory of Corporate Debtor and unless it confirms to the standards, Corporate Debtor would not have accepted the consignment. It is true that the coal to be tested in the laboratory of the Corporate Debtor before accepting the consignment. We have to see the purchase orders marked as Annexure-D. One of the terms of the Purchase orders deals with sample analysis which is as follows:-

“Sampling Analysis:

Samples to be collected for every 5,000 MT, from vessel during discharge and the sampling and analysis report will be taken and noted, as per

results of the Lab in our Power Plant at Thoothukudi. Your representative can be present during Sample drawing, sample preparation, sealing and testing of samples, as a spectator only. If any discrepancy is notice by him, he can bring to our attention immediately. Umpire samples drawn will be sealed and kept in the Lab for a month.

So it is very clear from above Clause that sample for every 5000 MT of coal will be collected and tested and sample will be kept for one month after sealing and it is in the presence of a representative of Operational Creditor. When once consignment supplied is subject to thorough testing of samples in the Laboratory of Corporate Debtor, then how it is open to the Corporate Debtor to contend that coal is of sub-standard quality and is not in conformity to the standards as per purchase orders. The Operational Creditor has also relied on Annexure-L. They are discharge port receipt reports. This is a certificate of quality issued by Stewart Surveyors & Assayers Pvt. Ltd. There is nothing to show on record except bare averments that the quality of coal supplied was inferior quality and not according to the standards.

- (16) Here is a case where Corporate Debtor started is orally contending without any basis or proof that coal supplied is of inferior quality and quantity is also not according to the purchase orders. It is very surprising that Corporate Debtor accepted the consignment, used the coal but alleged it is of inferior quality. No credence can be given to the alleged dispute which was raised for the first time after a lapse of several months of taking delivery, utilising the same in its Thermal Plant. The dispute is only illusory and is not supported by substantive piece of evidence.


Therefore, I do not agree with the contention of the Learned Counsel for Corporate Debtor that a dispute existed prior to the demand notice issued by Operational Creditor. Therefore I hold that alleged dispute is only imaginary or is spurious.


- (17) Next contention of the Learned Counsel for Corporate Debtor that there is variation with regard to claim. Therefore, when the claim itself is in dispute, the Petition cannot be admitted. The contention of the Learned Counsel for Corporate Debtor that in demand notice dated 25.10.2017, the Operational Creditor claimed the outstanding Principal amount at Rs.30,94,22,203/- However, Counsel contended in the Petition filed under Section 9 of I&B Code, the Principal amount claimed is Rs. 24,82,60,270/- and interest is Rs.6,11,61,933. So, Counsel contended that there is variation in respect of outstanding Principal amount. The contention of Counsel for Corporate Debtor that at one stage Operational Creditor claimed Principal amount as Rs. 30,94,22,203/- and at another stage it is stated that the Principal amount is Rs. 24,82,60,270/- and interest is Rs. 6,11,61,933/- and together the total amount is Rs. 30,94,22,203/-. The Counsel for Operational Creditor would contend it has been specifically shown in the Petition filed under Section 9 in Form-5, the principal amount is Rs. 24,82,60,270/- and interest is Rs. 6,11,61,933/-, totalling at Rs. 30,94,22,203/-. Thus, contention of the Learned Counsel there is absolutely no variation over the claim. I do agree with the contention of the Learned Counsel that the total outstanding due was Rs. 30,94,22,203/-which comprises of Principal amount as well as interest. Therefore, there is no variation at all over the balance payable. In this

connection, Learned Counsel for Operational Creditor has also drawn attention of the Tribunal that Annexure G which is the e-mail dated 21.07.2016 at page 32-34, wherein the Corporate Debtor shared with Operational Creditor the ledger balance maintained by the Operational Creditor in its books of account. The outstanding balance payable to the Operational Creditor as per ledger extract of Operational Creditor was Rs.26,09,70,156/-. It is also the case of Corporate Debtor that it paid an amount of Rs.1 crore and also raised debit note of Rs.5,35,021/- which was adjusted against the invoice dated 26.06.2015. So after deducting the said amount the outstanding, balance amount is Rs. 24,82,60,270/. Thus, according to the Operational Creditor, amount payable under two invoices was Rs. 25,87,95,291.00 and after deducting the payment and also giving credit to debit note, the balance was Rs. 24,82,60,270/- It is clear for delayed payments, Operational Creditor is entitled for interest @ 12%. So interest is added to the Principal outstanding balance and total claim comes to Rs. 30,94,22,203/-.

- (18) The next contention of the Learned Counsel for the Corporate Debtor that Operational Creditor has not filed Board Resolution but filed Resolution passed by management and administrative Committee of Board of Directors of Operational Creditor Company. On the other hand, the Counsel for Operational Creditor would contend Operational Creditor filed Board Resolution marked as Annexure-C dated 16.10.2017. Annexure-C shows a Resolution was passed by Management and Administrative Committee of the Board of Directors of Operational Creditor Company that Company Secretary as well as Manager (Legal) were empowered to file Petition before

NCLT and other authorities. Annexure-C is sufficient for the purpose of filing Petition.


- (19) When the matter was pending, the Corporate Debtor filed again written synopsis on 27.08.2018. The Corporate Debtor further filed written submission along with Annexures 1-4 on 30.08.2018. Already, Corporate Debtor filed written submissions. Again Corporate Debtor raised some points which I have discussed supra. The Corporate Debtor relied on the decision of the Hon'ble Apex Court reported MANU/SC/0872/2018 dated 14.08.2018 in the matter of K.Kishan Vs Vijay Nirman Company Pvt Ltd contended that Operational Creditor whose claims are usually smaller are not able to put the Corporate Debtor into Insolvency Resolution Process prematurely or initiate the process for extraneous considerations.
- (20) When the matter was pending, the Corporate Debtor took time for settlement. Finally, Corporate Debtor did not honour the commitments to pay the instalments agreed. Therefore, the Operational Creditor requested the Tribunal to proceed with the matter. The Corporate Debtor took time for settling the claim but it failed to honour the commitment. It is also the contention of the Counsel for Corporate Debtor that a compromise was reached between Corporate Debtor and TANGEDCO by which Corporate Debtor to receive money from TANGEDCO and requested time. It is the case of Corporate Debtor compromise was reached between parties before the Hon'ble NCLAT. However, in this case, the Corporate Debtor was granted time but failed to pay to the Operational Creditor. The Adjudicating Authority has to see whether Corporate Debtor committed default in paying unpaid operational debt.
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- (21) So, in the light of documentary evidence and in the light of my above discussion, the Operational Creditor has established that Corporate Debtor has committed default in payment of operational debt and therefore, it is a fit matter for Petition to be admitted.
- (22) Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
- (1) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; Transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
 - (2) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - (3) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified
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by the Central Government in consultation with any financial sector regulator.

- (4) That the order of moratorium shall have effect from 07.09.2018 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- (5) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016. That this Bench hereby appoints Shri Ajay Gaggar, 6 Old Post Office Street, 'TEMPLE CHAMBERS' (3rd Floor) Kolkata – 700001, West Bengal (Regn No. IBBI/IPA-001/IP-P00030/2016-17/10066 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


RATAKONDA MURALI
MEMBER (JUDICIAL)

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

IA No.371 of 2018
CP (IB) No. 39/9/HDB/2018
U/s 60 (5) of IBC, 2016
R/w Rule 11 of NCLT, 2016

In the matter of

M/s Sree Saasha Minerals Private Limited
Sai Krupa, No.77, Greenway Road
Raja Annamalipuram, Chennai ..Applicant /
Proposed Respondent No.2

Versus

M/s Gandhar Oil Refinery (India) Limited
DLH Park, 18th Floor, S.V. Road
Goregaon(West)
Mumbai City – 400062 ..Respondent No.1 /
Operational Creditor

M/s Ind-Barath Thermal Power Limited
Plot No. 30a, Road No.1, Film Nagar
Jubilee Hills, Hyderabad – 500003 ... Respondent No.2 /
Corporate Debtor

Date of order: 07.09.2018

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Applicant:

Shri S.V. Sai Phanindhar,
Advocate

For the Operational Creditor: Shri N. Vinesh Raj, Shri P. Srinivas and Dhruv Raj, Advocates

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

Heard on: 07.09.2018

ORDER

1. Counsel for Applicant is present. Counsel for Operational Creditor is present. This Application is filed on behalf of M/s Sree Saastha Minerals Private Limited Proposed Respondent No.2 under Section 60 (5) of I & B Code R/w Rule 11 of NCLT Rules with a prayer to implead it as 2nd Respondent in CP (IB) No.39/9/HDB/2018 and further to grant relief to adjourn the matter by four weeks to enable the Applicant to settle the claim payable by the Corporate Debtor.
2. I have heard the Counsel for Applicant. This Application was filed on 06.09.2018. The main CP is listed today for passing orders in the main petition. The Applicant wanted to be impleaded only for the purpose of getting the matter adjourned by four weeks in order to enable the Applicant to settle its claim with the Corporate Debtor.


3. Counsel for Operational Creditor strongly opposed for granting relief in favour of the Applicant only for the purpose of seeking adjournment for four weeks for which Applicant wanted to be impleaded as 2nd Respondent. Counsel has relied on the decision of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.246 of 2018 in the matter of Axis Bank Ltd Vs. Lotus Three Developments Ltd & Ors and contended third party cannot come on record in the proceedings filed under Section 7 or 9 of Insolvency & Bankruptcy Code. Hon'ble NCLAT further stated no other person has a right to be heard at the stage of admission of the application filed under Section 7 or 9 of IBC, 2016 including the "shareholders" or the "personal guarantor" etc.

4. When the matter is listed for passing orders, the present Application is filed to implead the proposed Applicant only for the purpose of seeking adjournment by four weeks. Applicant is no way connected to the proceedings. For settling its dues if any payable by Corporate Debtor, the Applicant has no right to seek for adjournment by four weeks. The main Petition is filed by Operational Creditor under Section 9. This matter was adjourned from time to time and on some occasions, time was granted for the Corporate Debtor for settling the claim of Operational Creditor and finally matter is listed today for passing of orders. The



Application has no merits at all and deserves to be dismissed.

5. In the result, Application is dismissed.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)