

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

(30) **M.A. 876/2018** in C.P. 1832/IBC/NCLT/MB/MAH/2017

CORAM:

Present : SH. M.K. SHRAWAT,  
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **12.09.2018**.

NAME OF THE PARTIES: IDBI Bank Ltd.  
V/s.  
EPC Constructions India Ltd.  
&  
**NLC India Limited (Applicant of MA 876/2018)**  
V/s.  
Mr. Abhijit Guhanthakurta, Resolution Professional.

SECTION OF THE COMPANIES ACT : 60(5) of I&B Code, 2016.

**INTERIM ORDER**

1. A Miscellaneous Application is submitted on 14.08.2018 by NLC India Limited seeking relief as under :-

*"(a) The Resolution Professional (Respondent No.1 herein) be directed to forthwith give necessary instructions to the concerned persons to release / handover the material/ goods owned by the Applicant herein and presently lying in the custody of the officers of Corporate Debtor;"*

2. The Applicant (NLC India Limited) is in the business of Power generation to Southern States of India. The Applicant currently operates 4 open cast lignite mines having an aggregate capacity of 30.6 million tons per annum. The Applicant also operates 6 thermal power stations, 5 being in State of Tamilnadu and one in State of Rajasthan. In order to expand the project and to ensure power supply to the larger base in country, the Applicant decided to Erect and Commission a new 1000 MW lignite based power project viz. Neyveli New Thermal Power Project at Neyveli, Tamilnadu. The new project was sanctioned by Government of India vide its order dated 9<sup>th</sup> June 2011 with a sanctioned project cost of ₹5907.11 Crore in October 2010. In view of the project being sanctioned, the Applicant parallely signed long term power purchase agreement with State of Tamilnadu, Karnataka, Kerala and Andhra Pradesh, etc. For supply of proposed power generated from the project. It is pertinent to mention at this stage that this project is also given a mega power project status. The Applicant has also availed loans

loans for implementation of the project to an extent of ₹4,135 crores. In order to commission the plant, the Applicant invited offers from various parties and in the said process, the Corporate Debtor herein was awarded part of the project (Balance of Plant (BOP) –NTA 3 Package).

2.1. The Corporate Debtor (i.e. EPC Construction India Ltd.) was awarded a contract in respect of a part of the project (Balance of Plant (BOP) – NAT3 Package) and the said contract was split into three separate contracts viz. (i) Supply Contract, (ii) Civil Contract and (iii) Services Contract after the issuance of Letter of Award (LoA). The initial consideration for the award was ₹1159.07 Crores which was later on also amended on account of additional work in Group No.1 package (220 KV Switch Yard). There was a slow progress in completion of the contract hence NLC India written letters time to time to take necessary steps for effective implementation of the terms of the contract. An extension was also granted subject to right to levy Liquidated damages. Later on it was noticed that not only the Corporate Debtor had failed to perform the contract but it was also found that the financial condition of the Corporate Debtor was very bad.

2.2. In the meantime, IDBI had moved a Petition u/s. 7 of the Insolvency Code as a Financial Creditor against M/s. EPC Construction India Pvt. Ltd. for an amount of Debt of ₹969,17,72,492/- and the said Petition was admitted by appointing an IRP on 20.04.2018. The Resolution Professional had taken over the possession and control over the assets of the Corporate Debtor. In view of this, the NCL India Limited had moved this Application and made the Resolution Professional as a party.

3. The Applicant has demonstrated that it is urgent to get all those assets under possession of the Resolution Professional be released immediately in view of a communiqué of Respected Under Secretary to the Government of India dated 28.08.2018 addressed to Chairman-cum-Managing Director of NCL India Limited and stated therein as under :-

*"Reference is invited to your letter cited wide (sic) which you have confirmed that both the units of 2x500 MW at Neyveli will be commissioned by 15.12.2018 and Hon'ble Prime Minister may be invited to dedicate the project to the nation on any date after 15.12.2018.*

2. *The matter is being taken up with PMO accordingly. Hence, you must ensure that all the necessary steps required to commission these units before this date are taken so that the project is ready in all respects for inauguration by the Hon'ble Prime Minister. The progress of its commissioning as per this deadline must be monitored as CMD level on weekly basis with a view to ensure that there is no delay on any activity in this regard. MoC should be kept informed of the progress on fortnightly basis."*

4. From the side of the Resolution Professional Learned Representative had objected to release the assets on the ground that during the pendency of "Moratorium", no assets of the Corporate Debtor be released, modified or disposed of. The Resolution Professional has taken over the control over the assets of the Corporate Debtor as prescribed u/s. 18(f) of the Insolvency Code. It is vehemently objected that the Resolution Process shall be affected adversely on release of the substantial inventory of the Corporate Debtor.

5. Having heard the submissions of both the sides, this Bench is of the view that the Adjudicating Authority has the jurisdiction to entertain or dispose of any application against the Corporate Debtor if involves any question of priority or any question of law or fact in relation to the Corporate Debtor. Section 60(5) empowers to deal with such situation. Having considered this legal position, it is judicially permissible to consider the urgency as expressed in a Letter issued by the Learned Under Secretary to the Government of India dated 28.08.2018. Otherwise also, the work of the Power Generation Company, i.e. NLC India Limited/ Applicant may get adversely affected in case of non-availability of certain equipments. I, therefore, direct the Resolution Professional to hand over the list of the machinery as inventorised by the Applicant which is not the complete list but the list of most urgent equipments/ machinery required to complete the pending project within the time prescribed as suggested in the aforementioned Letter. With these directions, MA 876/2018 stood allowed. Rest of the matter is already listed for hearing on **05.10.2018**.

SD/-  
**(M.K. SHRAWAT)**  
Member (Judicial)

Date : 12.09.2018

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