

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**


(2)

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 11.09.2018 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.399/9/HDB/2018
NAME OF THE COMPANY	Indus Towers Ltd
NAME OF THE PETITIONER(S)	G.U. Kameswara Rao
NAME OF THE RESPONDENT(S)	Indus Towers Ltd
UNDER SECTION	9 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
R. Sushanth Reddy	ADV	9885129028	

**Counsel for Respondent(s):**

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

**ORDER**

Orders passed vide separate order.

The registry to return the application to the operational creditor along with copy of this order for presentation before the bench of concerned NCLT.

  
Member(Judl)

Pavani

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

CP (IB) No. 399/9/HDB/2017  
U/s 9 of IBC, 2016  
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of

G.U.Kameswara Rao,  
H.No.3-9/10, Plot No.10,  
Main Road, RTC Colony,  
Madenaguda,  
Hyderabad,  
Telangana- 500 049.

...Petitioner/  
Operational Creditor

**VERSUS**

M/s. Indus Towers Limited  
Survey No. 133, 4-51,  
8th Floor, SLN Terminus,  
Beside: Botanical Gardens,  
Gachibowli,  
Hyderabad.

...Respondent/  
Corporate Debtor

Date of order: 11.09.2018

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)

**Parties / counsels present:**

For the Petitioner: Shri R.Sushanth Reddy, Advocate.

For the Respondent: Shri M.Srinivas Reddy, Advocate.


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

Heard on: 06.08.2018, 21.08.2018 and 03.09.2018


**ORDER**

1. This petition is filed by, G.U.Kameswara Rao, who is the Operational Creditor stating that Indus Towers Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. 26,01,788/- and hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. Averments in the application in brief:
  - a. Corporate Debtor Company " Indus Towers Private Limited Company is incorporated under Companies Act, 1956 having its registered office as mentioned in the cause title.
  - b. The Indus Tower Private Limited, is registered infrastructure provider, category-I(IP-I) by virtue of registration granted by the Department of Telecommunications, Ministry of Communication and IT, Government of India, and is engaged in the business of establishment, maintenance and provision of telecommunication infrastructure, which inter alia includes providing towers and other allied equipment and leasing of antennae sites on multi- tenant sharing basis, to various telecom service providers like wireline and wireless communications including cellular service providers.
  - c. It is averred in the application that the lease deed dated 06.03.2014 was executed between G.U.Kameswara Rao, and Indus Tower Limited, to lease out the terrace rights admeasuring 1000 sq.fts out of total extent of 166 sq.yards of building of Operational creditor for the purpose of installing

telecom tower by Indus Towers Limited. By signing the agreement Indus Tower Limited paid an amount of Rs. 1.1 Lakhs towards interest free refundable security deposit and the monthly rental amount which is agreed at the rate of Rs. 27,500/- per month.

- d. The operational creditor averred that the rental amount of Rs. 27,500/- was paid for the first two months in full and part of the third months' rent was paid and in total an amount of Rs. 67,500/- was paid by way of cash and thereafter the monthly rental amounts remained unpaid by citing the reasons that the neighbours are objecting to the construction. Though the peaceful possession of terrace had been handed over to the corporate debtor in the month of March, 2014 corporate debtor started constructing the tower and stopped the construction in between citing the reason that neighbours are objecting to the erection of the tower.
  - e. It is averred that the corporate debtor has obtained electricity connection from the State Electricity Board for the purpose of tower which is for commercial purpose and also obtained construction permission from GHMC.
  - f. It is averred that Operational creditor issued a notice in Form-3 on 05.04.2018 and the said notice was replied by the corporate debtor by making all false, vague and untenable allegations. The operational creditor avers that due to non-payment of the rents by Indus Towers Limited, Operational creditor was put to hardships.
  - g. The operational creditor avers that he never obligated to take all necessary permissions nor was required to do the installation under the lease deed. Operational creditor requested the Tribunal to initiate corporate insolvency
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proceeding against the corporate debtor for non- payment of debt amounting to Rs. 26,01,788/- including interest of 24% PA.

3. The corporate debtor filed preliminary objections. The corporate debtor questioned the maintainability of application before this Tribunal. It is the case of corporate debtor that applicant/operational creditor had shown wrongly the address of registered office of corporate debtor in Form 5 at page-2 as if it is in Survey No. 133, 4-51, 8<sup>th</sup> Floor, SLN Terminus, Beside Botanical Garden, Gachibowli, Hyderabad, Telangana.
  4. Corporate debtor further alleged in the demand notice in Form 3 the operational had given 3 addresses. It is the case of corporate debtor that the operational creditor is fully aware that its registered office is at Gurgaon in state of Haryana. It is the case of corporate debtor that the registered office of the corporate debtor was at New Delhi. In the reply to the demand notice, the registered office address of the corporate debtor is shown as Bharti Crescent, 1 Nelson Mandela Road, Vasant Kunj, Phase-II, New Delhi.
  5. It is also the case of corporate debtor in the lease deed filed by operational creditor it is shown the registered office address is situated in New Delhi in the above address.
  6. It is also the case of corporate debtor that registered office was shifted from New Delhi to Gurgaon in state of Haryana. The contention of corporate debtor is that this Tribunal has no jurisdiction to entertain the application against the corporate debtor as the registered office of corporate debtor is in Gurgaon state of Haryana. By virtue of Section 60(1) of I&B Code. The corporate debtor has raised preliminary objections with regard to the jurisdiction of this Tribunal to entertain this application.
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7. I have heard the counsels for operational creditor and corporate debtor. The operational creditor filed application under section 9 of I&B Code against corporate debtor to trigger Corporate Insolvency Resolution Process alleging default of payment of operational debt.
8. The operational creditor shown in Form 5, the circle office address of the corporate debtor as if it is its registered office. The demand notice in Form 3 was sent to the corporate debtor to three address. One of the address is at Gurgaon state of Haryana. Section 60(1) of I&B Code deals with Jurisdiction which reads as follows:

*“The Adjudicating Authority, in relation to insolvency resolution and guarantors there of shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.”*
9. It is true the Tribunal in whose jurisdiction registered office of the corporate debtor is situated an application under section 9 of I&B Code is to be filed before the said Tribunal. The place of the registered office of the corporate debtor confers jurisdiction on the Tribunal for application filed under section 9 of I&B Code.
10. Circle office of the corporate debtor can't be taken for initiating action against corporate debtor under section 9 of the code by the operational creditor. May be the circle office of the corporate debtor is in Hyderabad. However the place of circle office can't confer jurisdiction on the Tribunal to proceed against corporate debtor. The place of registered office of corporate debtor is deciding factor regarding jurisdiction according to section 61 of I&B Code.
11. Corporate debtor filed a copy of order passed by R.D at Page 109 of preliminary objections that the registered office of



corporate debtor was shifted from New Delhi to Gurgaon state of Haryana. The registered office of corporate debtor was originally at New Delhi. It is clear from lease deed which is relied by the operational creditor. As on the date of filing the present petition. The registered office of the corporate debtor is situated at Gurgoan state of Haryana.

12. Therefore operational creditor can't maintain this application filed under section 9 of I&B Code in this Tribunal. Operational creditor has to file application against corporate debtor before concerned NCLT having jurisdiction over the place of registered office of corporate debtor.
13. I agree with the contention of counsel for corporate debtor that this Tribunal has no Jurisdiction to entertain the present application.
14. Therefore the application is to be returned to the operational creditor for presentation before concerned NCLT having jurisdiction over the registered office of corporate debtor.
15. In the result this Tribunal holds that it has no jurisdiction to entertain the present application and ordered the registry to return the application to the operational creditor along with copy of this order for presentation before the bench of concerned NCLT exercising the jurisdiction over the place of registered office of corporate debtor which is at Gurgaon state of Haryana.

  
11-9-18  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**