

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH  
I.A. 30/2017, 31/2017, M.A.295/2017, 296/2017 and 212/2017 in  
CP 1A/I&BP/NCLT/MAH/2017**

**Under Section 60(5), 77 and 10 of IBC, 2016**

Dakshin Haryana Bijli Vitran Nigam Ltd. .... Applicant

In the matter of

U. B. Engineering Ltd. .... Corporate Debtor

Order delivered on 5.12.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)  
Hon'ble V. Nallasenapathy, Member (T)

For the Applicant: Mr. Sai Kumar, Counsel a/w Mr. Rahul Sinha, Advocate, i/b DSK Legal

For the Respondent: Mr. Ashish Pyasi, Advocate, i/b Dhir&Dhir Associates

For the Intervener: Mr. Shruti Sardesai, i/b Sanjeev Maheshwari.

*Per B. S. V. Prakash Kumar, Member (Judicial)*

**ORDER**

**I.A. No.30 of 2017 in CP 1A/I&BP/NCLT/MUM/2017**

It's an Intervention Application filed by one Dakshin Haryana Bijli Vitran Nigam Ltd. stating that this applicant entered into an Agreement dated 30.5.2011 with Corporate Debtor namely U. B. Engineering Ltd. for carrying two work orders dated 31.5.2011 by the Corporate Debtor for supply and erection of distribution lines in Gurgaon District Haryana. Owing to certain disputes arose between the parties, the applicant terminated the said contract on 9.7.2012, pursuant to which, when this Corporate Debtor invoked arbitration on 14.7.2012 claiming ₹30,37,58,299 along with interest against this applicant, it has as well made counter claim against the Corporate Debtor for an amount of ₹112,00,69,944.

2. While the same pending before the Arbitrator, on section 10 petition filed under I&B Code by this Corporate Debtor, this Bench on 18.1.2017 admitted the same declaring Moratorium u/s 14 of the Code, On having the Arbitral Tribunal adjourned that case to another date on the ground moratorium has been declared under this Code, this applicant has filed this add-party petition to implead it as party to this proceeding so as to protect the interest of the applicant for it has bonafide claim against the Corporate Debtor.

3. To which the Corporate Debtor side filed reply stating that inherent power lying with National Company Law Tribunal Rules under Rule 11 is not applicable to this proceeding to implead the applicant as party to this proceeding because Insolvency & Bankruptcy code has not been governed by Rules of NCLT. Moreover there being no provision under IBC for impleadment of third party in a proceeding u/s 10 of Insolvency & Bankruptcy Code, this Corporate Debtor has denied that it is under any liability to independently put it to the applicant about declaration of Moratorium, for already public announcement has been made in pursuance of declaration of moratorium in pursuance of the directions of this Bench, this applicant therefore could not say that since declaration of moratorium has independently not been put to the notice of this applicant. Moreover, since a provision is carved out in the Code to a claimant to make claim before Insolvency Resolution professional, this applicant is entitled to make its claim, if any before the Insolvency Resolution Professional as prescribed under this Code, in view of the same, this applicant need not be impleaded as party to the proceeding.

4. On perusal of the rival contentions, since it appears that this applicant made counter claim to the claim the Corporate Debtor made before the Arbitrator, it is a dispute to be decided by the Arbitrator, in the meanwhile, if law permits this applicant to make claim before the RP, it is at liberty to make such claim, then that RP will take appropriate call after verification of the claim made by this applicant.

5. Once any petition for initiation of Insolvency Resolution process is admitted, the rest of the action will go before Insolvency Resolution professional, in any event for there being no proceeding pending before this Authority for adjudication, the question imploding somebody as party to the proceeding will not arise.

For there is a due process for making a claim and verification of the same, this applicant is supposed to pursue those actions instead of coming before this Bench, in

view of the same, this application is hereby dismissed for no merit is found for allowing this application.

**I.A. No.31 of 2017 in CP 1A/I&BP/NCLT/MUM/2017**

It's another application moved by Dakshin Haryana Bijli Vitran Nigam Ltd. under Rule 11 of the National Company Law Tribunal Rules for clarification as to whether the moratorium order passed on 18.1.2017 against the Corporate Debtor Company will suspend the proceedings in respect to the claim and counter claim of the Corporate Debtor and the applicant pending before the Arbitral Tribunal.

2. In this application, the applicant itself stated that the counter claim made by the applicant is inseparable from the claim made by the Corporate Debtor, therefore it goes without saying that the proceeding pending against the Corporate Debtor even as a counter claim will remain suspended by the moratorium order passed by this Bench on 18.1.2017.

3. In view of the same, this application is hereby disposed of clarifying that the moratorium order passed against the Corporate Debtor will govern the proceedings pending before the Arbitral Tribunal.

**M.A. No.295 of 2017 in CP 1A/I&BP/NCLT/MUM/2017**

The same applicant has filed this MA for an amendment to the Miscellaneous Application filed u/s 77 of Insolvency & Bankruptcy Code, 2016 r/w Rule 11 of National Company Law Tribunal Rules, 2016.

2. It is an application seeking impleadment of promoter directors of the Corporate Debtor as parties to the MA filed to initiate action u/s 77 of the Code.

3. To avoid repetition of the discussion that has come in MA 296/2017, it is hereby succinctly stated that when operational debt claim itself is disputed, no obligation lies upon the Corporate Debtor to show it as debt in the Books of the company, therefore, in any event, not showing this dispute as Operational debt in the books of the company cannot be called as a fraudulent action by the Corporate Debtor, , no occasion therefore will arise to add these promoter directors as parties to an application which has no cause of action to survive.

4. Since this Bench has already noted that no cause of action is found in the MA moved to initiate action u/s 77 of the Code, law does not warrant this Bench to exercise

jurisdiction for adding promoter directors as parties to the Miscellaneous Application No. 296 of 2017, hence this MA is hereby dismissed as misconceived.

**M.A. No.296 of 2017 in CP 1A/I&BP/NCLT/MUM/2017**

It's an application preferred by Dakshin Haryana Bijli Vitran Nigam Ltd. under Section 77 of the Code praying for inter-alia an order recalling the order dated 18.1.2017 for non-disclosure of the claim of the applicant against the Corporate Debtor in Section 10 company petition under the Code, this applicant sought for an order referring this matter to Insolvency and Bankruptcy Board for filing complaint before Special Court against the persons knowingly and wilfully not given complete information in respect to the Arbitration proceedings in the Company petition filed under Section 10 of the Code.

2. Initially this applicant filed this MA u/s 77 of the Code for recalling the order dated 18.1.2017 and for a direction against the Corporate Debtor to be liquidated and also for a direction to the Insolvency Resolution Professional to refer this complaint to Insolvency and Bankruptcy Board of India.

3. On reading this application, the grievance of the applicant herein is, since its counter claim has not been mentioned in Section 10 Petition, this Corporate Debtor shall be tried by Special Court on the ground the Corporate Debtor fraudulently concealed the Arbitration proceedings pending before the Arbitral Tribunal.

4. By examining the submissions of the applicant, it is indeed the Corporate Debtor initiated Arbitration proceedings for claim against the applicant wherein the applicant has come up with counter claim. Looking at the counter claim made by the applicant, it is evident that it is already disputed before the Arbitral tribunal. Once any claim is disputed and pending before Court of Law, it is not an obligation upon the Corporate Debtor to show such claim as claim payable to an Operational Creditor. Moreover, if at all, the applicant has any grievance over it, it has to make its claim before the Insolvency Resolution Professional, thereafter, if at all any grievance before RP, then it is free to proceed as prescribed under this Code.

5. Since this Bench has not found any cause of action to move this MA for direction for referring this case to Insolvency & Bankruptcy Board of India so as to file a complaint before the Special Court, this application is hereby dismissed.

**M.A. No.212 of 2017 in CP 1A/I&BP/NCLT/MUM/2017**

This applicant filed another MA u/s 60(5) of Insolvency & Bankruptcy Code, 2016 for transfer of Arbitration proceedings from the Arbitral Tribunal to this Bench for adjudication of the claim and counter claim pending in the said case.

2. The reply filed by the Corporate Debtor discloses that this MA is legally untenable, for no order as to transfer of pending arbitration proceedings by and against the Corporate Debtor can be passed by this Bench, whereby this application is liable to be dismissed.

3. By looking at the averments made by both sides and the provisions of this Code, it appears that no provision has been carved out in this Code to deal with the matters pending with other forums in relation to the Corporate Debtor, this Bench cannot claim to have jurisdiction to try or inquire into the legal proceedings filed by or against the Corporate Debtor before other competent forum.

4. On reading Section 25 of this Code (Duties of Resolution Professional), it is evident that Resolution Professional is given duty to represent and act on behalf of the Corporate Debtor with third parties, exercise rights for the benefit of the Corporate Debtor in judicial, quasi-judicial or arbitration proceedings. It is further said under Section 35 of the Code (Powers and Duties of the Liquidator), the Liquidator is authorised to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the Corporate Debtor, on seeing such power given to Insolvency Resolution Professional in the Corporate Insolvency Resolution period and duty upon the liquidator to represent the Corporate Debtor in the legal proceedings pending before other forums, this Bench cannot claim to have any jurisdiction to adjudicate the proceedings instituted or pending against the Corporate Debtor or by the Corporate Debtor.

5. Therefore it is hereby held that there is no merit in this MA moved by the applicant, accordingly, this MA is hereby dismissed as misconceived.

**Sd/-**

V. NALLASENAPATHY  
Member(Technical)

**Sd/-**

B. S. V. PRAKASH KUMAR  
Member (Judicial)