

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

CP (IB) No. 54/9/HDB/2017
U/S 9 of IBC, 2016 R/w Rule 6 of Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of

Energy Infraconsulting India Pvt. Ltd
7-1-24, B-Block, 5th Floor
Roxana Towers, Green Lands
Begumpet,
Hyderabad - 500016

...Operational Creditor

Versus

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OF THE ORIGINAL



Athena Chhattisgarh Power Limited
Office at 7-1-24, Ground Floor
Roxana Towers, Begumpet
Hyderabad - 500016

...Corporate Debtor

Date of order: 14.08.2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties Present:

For the Operational Creditor: Shri G.V. Gangadhar, Advocate

Shri K.V. Sivaprasad, Advocate

For the Corporate Debtor: Shri S. Chakrapani, Advocate

Shri CH. Mahesh, Advocate

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. The present Company Petition bearing No. CP (IB)/54/09/HDB/2017, was filed by Energy Infraconsulting India Pvt Limited (Operational Creditor) seeking direction to initiate Corporate Insolvency Resolution Process (CIRP) against Athena Chhattisgarh Power Limited (Corporate Debtor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



2. Heard Shri G.V. Gangadhar, Advocate along with Shri K.V. Sivaprasad, Advocate for the Operational Creditor and Shri S. Chakrapani, Advocate along with Shri Ch. Mahesh, Advocate for the Corporate Debtor.
3. As per the details furnished, the Corporate Debtor owes a sum of Rs. 72,17,171.00/- to the Operational Creditor towards various invoices. Operational Creditor served their demand notice dated 24.03.2017, requesting the Corporate Debtor to pay the amount due to it. The Corporate Debtor has received the demand notice on 24.3.2017 by hand and acknowledged the same.
4. The Learned Counsel for the Respondent filed a memo dated 06.06.2017 stating that he is not disputing on the quantum of amount and ensured that their Bankers have been requested to release the requisite funds to settle the issue and requested time till 30.06.2017. When the case was taken up on 30.6.2017, Shri Ch. Mahesh, Learned Counsel for the Corporate Debtor filed a memo giving an undertaking to pay an amount of Rs. 72,17,171/- in three instalments, with the first instalment to be released in the 1st week of July, 2017, and as such the case was posted for 31.07.2017.

When the case came up again for reporting compliance on 31.07.2017, the Learned Counsel for the Corporate Debtor expressed its inability to make the payment as agreed upon on 30.06.2017, citing reason that there was no positive response from their banker. Case was again posted on 08.08.2017. During the hearing on 08.08.2017, the Learned Counsel for the Corporate Debtor requested one more opportunity to make the payment and the learned counsel for the Operational Creditor did not oppose the adjournment and thus, the case was posted for 11.08.2017.



5. Today when the case was listed, the Corporate Debtor again expressed its inability to pay outstanding amount and requested to proceed under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC).
6. The Petitioner / Operational Creditor also recommended the name of Mr. Naga Bhushan Bhagawati, to act as Interim Resolution Professional (IRP) and requested for moratorium under section 14(1) of the Insolvency and Bankruptcy Code, 2016 and submitted also Form No.2.
7. Though the matter was initially listed before the Adjudicating Authority on 03.05.2017, in view of the memo filed by the Corporate Debtor, Undertaking given by Corporate Debtor to settle outstanding dues, various opportunities were granted to ensure the settlement of outstanding dues in concurrence with Operational Creditor, however the Corporate Debtor subsequently expressed its inability to pay its outstanding debt as stated supra, therefore we have no other alternative, but to admit the Company Petition U/s 9 of IBC 2016. We are of the considered view, that the instant case is a fit case to admit under Section 9 of IBC 2016, as explained supra. Further are also satisfied that there is no disciplinary proceeding pending against the IRP.

8. In the result, the Company petition bearing CP No.(IB)/54/9/HDB/2017 is hereby admitted by exercising powers under section 9(5) (i), and declaration of moratorium under Sections, 13, 14 of the IBC, 2016.:

- 1) We hereby appointed Mr. Naga Bhushan Bhagawati, (Registration No. IBBI/PA-001/IP-P00032/2016-2017/10085 as Interim Resolution Professional (IRP) having address at 1-1-380/38, Ashok Nagar Extension, Hyderabad – 500020, Tel. No. 9849995678.
- 2) Declared moratorium prohibiting the following as mentioned under section 14 namely;
 - (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including executing of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor;
- 3) This order of moratorium shall have effect from today till completion of Corporate Insolvency Resolution Process (CIRP) or till passing an order for liquidation of Corporate Debtor under section 33, whichever is earlier;



- 4) Direct to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016, on www.ibbi.gov.in (designated website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to public.ann@ibbi.gov.in, in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in its Official website.

- 5) The IRP is directed to follow all extant rules of IBC and all the rules and regulations framed by Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for corporate Persons) Regulations, 2016. Afford full opportunity to all concerned parties to the issue by duly following Principles of Natural Justice;
- 6) Both the petitioner and respondent are directed to extend full-co-operation to the IRP to discharge his statutory functions;
- 7) Direct the personnel of Athena Chhattisgarh Power Limited, its promoters or any other person associated with the management of Athena Chhattisgarh Power Limited, to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.
- 8) Post the case on 20th September, 2017 with a direction to the IRP to apprise this Tribunal, about steps being



taken him from time to time, in the instant CIRP, by way of filing an affidavit. The IRP is also directed to schedule meeting(s) of concerned parties, verification of creditors etc., in such a way that CIRP shall complete well before the scheduled 180 days prescribed under the Code.



sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

sd/-
RAJESWARA RAO VITTANALA
Member (Judicial)

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[Signature]
Dy. Regr./Asst. Regr/Court Officer/
National Company Law Tribunal, Hyderabad Bench

Order Received by 10 Registry
प्रमाणित प्रति 31-8-2017
CERTIFIED TRUE COPY
केस संख्या CASE NUMBER. CR(B) NO. 54/9/ADB/2017
निर्णय का तारीख DATE OF JUDGEMENT. 14.8.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 31.8.2017