

**BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**IA 282/2017 in C.P. (I.B) No. 32/7/NCLT/AHM/2017**

Coram:

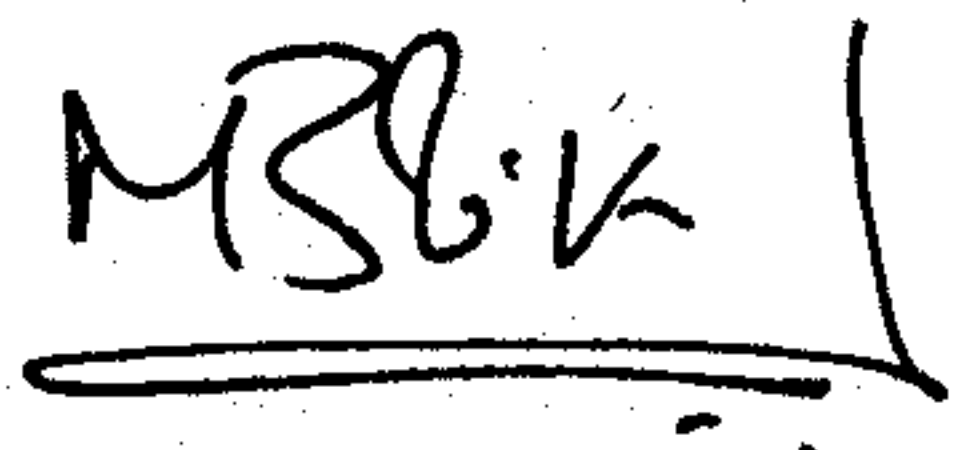
**Present: Hon'ble Ms. MANORAMA KUMARI  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.10.2017**

Name of the Company: Kuldeep Verma (IRP)  
K. S. Oils Ltd.  
V/s.  
SREI Infrastructure Finance Ltd. & Ors.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy  
Code


<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	MIHIR PARIKH	Adv.	Applicant	
2.				

**ORDER**

Learned Advocate Mr. Mihir Parikh present for Applicant (IRP). None present for Respondent.

Order pronounced in open Court. Vide separate sheet.

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 6th day of October, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH**

**I.A. No. 282 of 2017**

**In**

**C.P. No.(IB) 32/7/NCLT/AHM/2017**

**In the matter of:**

K.S. Oils Limited  
Jiwaji Ganj, Morena-476001  
Madhya Pradesh,  
Acting through the  
Resolution Professional,  
Shri Kuldeep Verma.

: Applicant/  
Corporate Debtor.

Arising out of the

**Matter Between:**

SREI Infrastructure Finance Ltd.,  
"Vishwakarma", 86C, Topsia Road (S),  
Kolkata-700046

: Petitioner/  
Financial Creditor

Versus

1. K.S. Oils Limited  
Jiwaji Ganj, Morena-476001  
Madhya Pradesh.

: Corporate Debtor.

2. Indian Council of Arbitration,  
Federation House, Tansen Marg,  
New Delhi-110001 through the  
Bench comprising of  
(1) Hon'ble Ms. Justice Gyan Sudha Mishra  
(Learned Presiding Arbitrator),  
(2) Hon'ble Mr. Justice S.S. Nijjar  
(Learned Co-Arbitrator), and  
(3) Hon'ble Mr. Justice Deepak Verma  
(Learned Co-Arbitrator)  
In Case No. AC-1972.

*Shri*

3. The State Trading Corporation of  
India Limited,  
Jawahar Vyapar Bhawan,  
Toistoy Marg,  
New Delhi-110001

: Respondents.

Order delivered on 6<sup>th</sup> October, 2017.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J).**

**Appearance:**

Mr. Sandeep Singhi with Mr. Mihir Parikh and Mr. K.K. Marfatia,  
Learned Advocates for Interim Resolution Professional.  
None present for Respondents.

**ORDER**

1. The present Interim Application, arising out of CP (IB) No. 32/7/NCLT/AHM/2017, is filed by the Applicant/Corporate Debtor seeking the following prayers;

- (a) "that the Hon'ble Tribunal may be pleased to allow this Interim Application and be pleased to hold and declare that the moratorium declared by this Hon'ble Tribunal vide order dated July 21, 2017 is applicable to the ongoing arbitration proceeding being Arbitration Case No. A C 1972, pending between the Respondent No.3, State Trading Corporation and the Applicant/Corporate Debtor before the Respondent No.2 i.e. the Arbitral Tribunal comprising of the Hon'ble Justice Ms. Gyan Sudha Mishra (Presiding Member), Hon'ble Mr. Justice Deepak Verma and Hon'ble Mr. Justice S.S. Nijjar and be pleased to pass an order restraining continuance of the aforesaid arbitration proceeding being Arbitration Case No. A C 1972;
- (b) pending the hearing and final disposal of the present Application, the Hon'ble Tribunal may be pleased to grant ex-parte ad-interim relief in terms of prayer (a);

*Manu*

- (c) pass such order that this Hon'ble Tribunal deems fit according to the facts of the case."

2. On perusal of the record, it is found that the Applicant/Corporate Debtor has filed this Application being aggrieved by the order dated 3<sup>rd</sup> August, 2017 passed by the Hon'ble Indian Council of Arbitration, New Delhi. The Applicant/Corporate Debtor has submitted that on passing of the order dated 21<sup>st</sup> July, 2017 by this Adjudicating Authority, NCLT, Ahmedabad, admitting the petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, produced the said order before the Hon'ble Indian Council of Arbitration, New Delhi, in Arbitration case AC-1972 going on between Respondent No.3 State Trading Corporation of India Ltd and the Corporate Debtor, but the Hon'ble Indian Council of Arbitration (Respondent No.2) vide its order dated August 3, 2017, held, inter alia, that the moratorium declared by this Adjudicating Authority does not include the pending arbitration proceedings which are at the stage of final hearing, and at the highest the execution of the award may be governed by the said provision. It is further submitted by the Applicant/Corporate Debtor that despite the moratorium declared by this Adjudicating Authority the Hon'ble Indian Council of Arbitration (Respondent No.2) directed to continue with the aforesaid arbitration proceedings.

2.(A) During the course of arguments, Learned Counsel appearing for the Applicant/Corporate Debtor has relied upon the decisions rendered in the following cases;

1. State Trading Corpo. Vs. Rajratna Naranbhai Mills Ltd. And Anr. (Decided by the Hon'ble High Court of Gujarat on 26.2.1971 in Letters Patent Appeal No.10 of 1970);

*Alkhan*

2. Mrs. Vasantha Ramanan Vs. Official Liquidator and Others (Decided by the Hon'ble Madras High Court on February 18, 2003).

On perusal of the above said citations, it appears to this Adjudicating Authority, that the reliance placed by the learned counsel upon the above decisions do not apply to the facts of the present case.

3. In context of the pendency of proceeding before the Arbitral Tribunal, it is necessary to quote the following observations made by the Hon'ble Indian Council of Arbitration in its order dated August 3, 2017;

*".....Section 14 1(a) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely:-*

*(a) 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;*

*From perusal of the same, we are of the view that moratorium as per this provision would cover moratorium on the pending suits and proceedings as also "execution of any judgement or a decree or order in any court of law, Tribunal, arbitration panel or other authorities" which clearly reflects that it is the execution of a judgement or decree or award of the Arbitral Tribunal which may be liable for moratorium but would not include the pending arbitration proceedings which are at the final stage of hearing. To make the position further clear it is noted that although the award of the Tribunal might be a subject matter of moratorium by the adjudicating authority of the insolvency proceeding, the arbitration proceeding before the Tribunal would not include the pending arbitration proceeding specially those which are at the stage of getting finalized.*

*Adm.*

*Taking this view as a correct view, we propose to conclude this proceeding whereby we had already heard the Counsel for the Claimant yesterday i.e., 2<sup>nd</sup> August 2017 and the Counsel for the Respondent has to advance the arguments today. Ld. Counsel for the Respondent has fairly brought the order of the NCLT to the notice of the Tribunal referred to herein before but for the reasons stated herein before, we consider to complete the arbitration proceeding by concluding the hearing today.*

*Admittedly the said order has been passed on 21.07.2017 and was very much within the knowledge of the Respondent, which is reflected from the said order, yet for the reason best known to the Respondent, it was not brought to the notice of the Tribunal, when final hearing of the matter commenced yesterday. Thus, Respondent has to face the consequences of its own default committed herein....."*

On perusal of the above said observations made by the Hon'ble Indian Council of Arbitration, it would be amply clear that the same are self-explanatory inasmuch as it is evident that even after getting the notice from this Tribunal, the Corporate Debtor never brought to the notice of this Adjudicating Authority with regard to the pendency of the arbitral proceeding pending before the Hon'ble Indian Council of Arbitration.

4. In the facts and circumstances as discussed above in sequel, I am of the view that the Interim Application No. 282 of 2017 filed by the Applicant/Corporate Debtor against the order dated August 3, 2017 passed by the Hon'ble Indian Council of Arbitration, New Delhi, is not maintainable before this Adjudicating Authority. Accordingly, the present Application stands disposed of as not maintainable. No order as to costs.

Signature:



**Ms. Manorama Kumari, Member (J).  
Adjudicating Authority.**