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

IA 230/2017 in C.P. (I.B) No. 19/7/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.11.2017**

Name of the Company: VITOL S.A.
V/s.
Asian Natural Resources (India) Ltd. & Ors.

Section of the Companies Act: Section 60(5)(c) and 65 of the Insolvency and
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	SAURABH N. SOPARKAR	SENIOR ADVOCATE	APPLICANT] <u>Monaal.</u>
2.	MONAAL J. DAVAWALA	ADVOCATE	APPLICANT	
3.	Aakarsh K. SHAH (For & behalf of A.R. SHETH)	ADVOCATE	RESPONDENT No. 13 to 18	<u>Arj...</u>

ORDER

Learned Senior Advocate Mr. Saurabh Soparkar with Learned Advocate Mr. Monaal Davawala present for Applicant. Learned Advocate Mr. Aakarsh Shah i/b Learned Advocate Mr. Arjun Sheth present for Respondent No. 13 to 18. None present for Respondent No. IDBI.

Order in IA 230/2017 pronounced in open court. Vide separate Sheets.

Bikki Raveendra Babu 6.11.17
**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 06th day of November, 2017.

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

I.A. No. 230 of 2017

In

C.P. No.(IB) 19/7/NCLT/AHM/2017

In the matter of:

VITOL S.A.
Registered Office at
Boulevard du Pont d'Arve 28,
CH 1205 Geneva
Switzerland

: Applicant
[Operational Creditor].

In the Matter Between:

IDBI Bank Limited
Registered Office at
IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai-400005

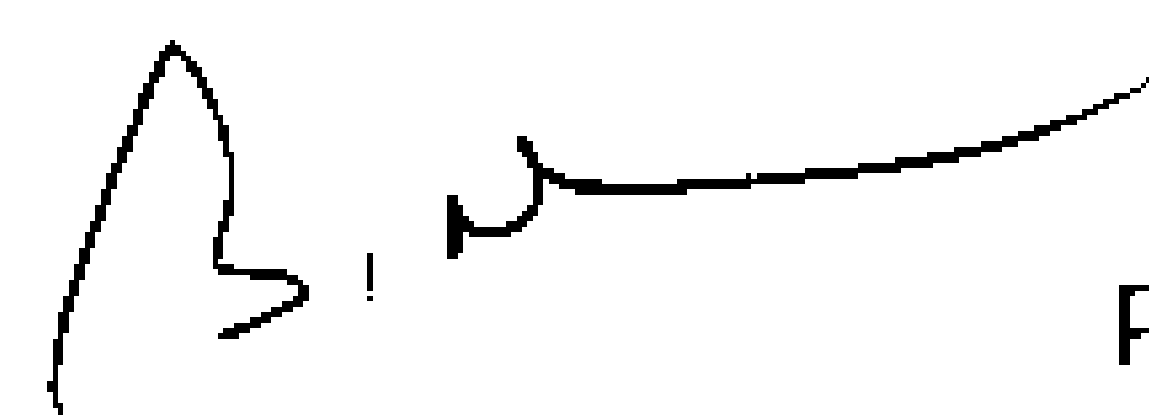
And Corporate Branch Office at
Upper Ground Floor,
Captain C.S. Naidu Arcade,
Near Greater Kailash Hospital
10-2 Old Palasia,
Indore-452001
Madhya Pradesh

: Petitioner
[Financial Creditor].

Versus

1. Asian Natural Resources (India)
Limited,
(formerly Bhatia International Limited)
Registered Office at
102, Sundaram Complex,
3, Gurmeet Nagar,
Indore-452001
Madhya Pradesh

: Corporate Debtor.



2. Bhatia Global Trading Limited
Registered Office at
BCC House, 8/5, Manoramaganj,
Navratan Bagh Main Road,
Indore-452001
3. Bhatia Coke and Energy Limited
Registered Office at
Village Ketnamallee,
Gummudipoondi, Thiruvallur,
Tamil Nadu-601201
4. Bhatia Coal Washeries Limited
Registered Office at
BCC House, 75/2, Wadgaon,
Opposite Tristar Hotel,
Nagpur Road, Chandrapur,
Maharashtra-442401
5. Hemang Resources Limited
(formerly Bhatia Industries and
Infrastructure Limited),
BCC House, Plot No.4,
6th Avenue, Harington Road, Chetput,
Chennai, Tamil Nadu-600031.
6. Bhatia Sons (India) Limited
Registered Office at
BCC House, 8/5, Manoramaganj
Navratan Bagh Main Road,
Indore-452001
7. BCC Cargo Limited
Registered Office at
Flat No.51, 5th Floor, Raj Palace,
Plot No. 219/A, 11th Road,
Khar (W), Mumbai-400050
8. BCC Enterprises (India) Limited,
Registered Office at
Flat No.51, 5th Floor, Raj Palace,
Plot No. 219/A, 11th Road,
Khar (W), Mumbai-400050
9. BCC Estates (P) Limited,
Registered Office at
BCC House, 8/5, Manoramaganj
Navratan Bagh Main Road, Indore-452001

10. Reliance Services and Consultants Pvt.Ltd.,
Registered Office at
BCC House, 8/5, Manoramaganj
Navratan Bagh Main Road,
Indore-452001

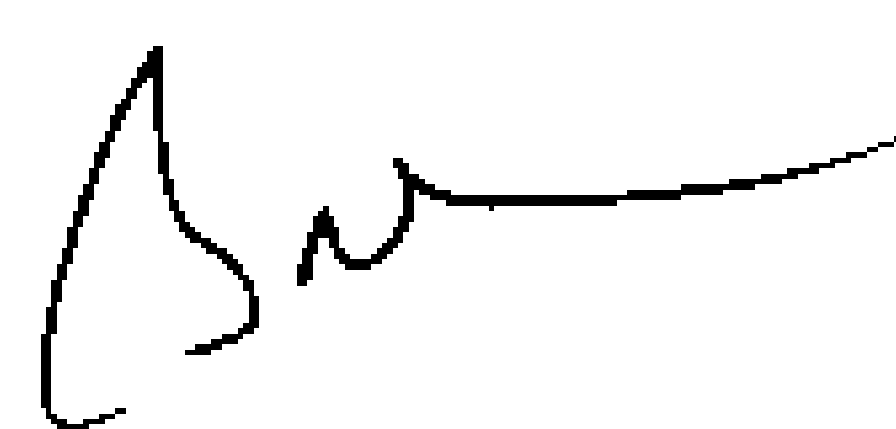
11. Ishaar Overseas Pvt Ltd.,
Registered Office at
BCC House, 8/5, Manoramaganj
Navratan Bagh Main Road,
Indore-452001

12. Associated Transport Company
Through its sole proprietor
Mr. Surender Singh Bhatia
s/o. Mr. Kripal Singh Bhatia,
residing at Flat No.801,8th Floor,
Le Orchid, 15th Road,
Khar (West), Mumbai-400052
AND
Plot No.13 & 14, Aditya Nagar,
Indore-452001.

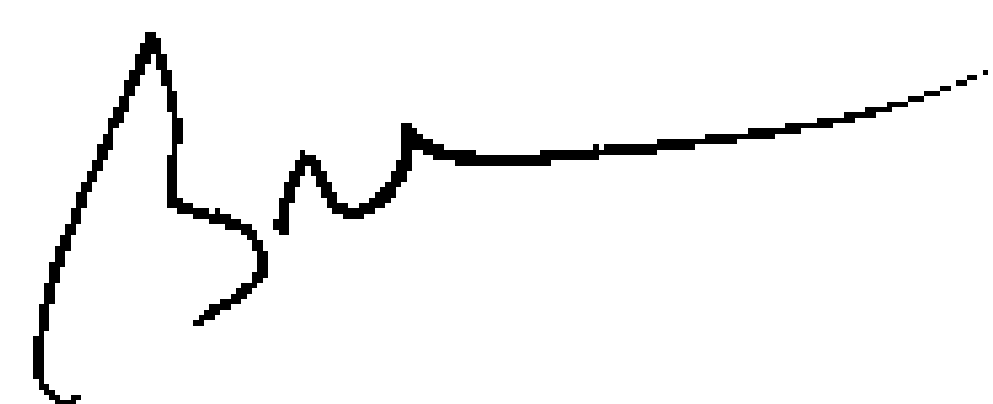
13. Surinder Singh Bhatia
s/o. Mr. Kripal Singh Bhatia,
residing at Flat No.801,8th Floor,
Le Orchid, 15th Road,
Khar (West), Mumbai-400052
AND
Plot No.13 & 14, Aditya Nagar,
Indore-452001.

14. Gurvinder Kaur Bhatia
W/o Surinder Singh Bhatia,
residing at Flat No.801,8th Floor,
Le Orchid, 15th Road,
Khar (West), Mumbai-400052
AND
Plot No.13 & 14, Aditya Nagar,
Indore-452001.

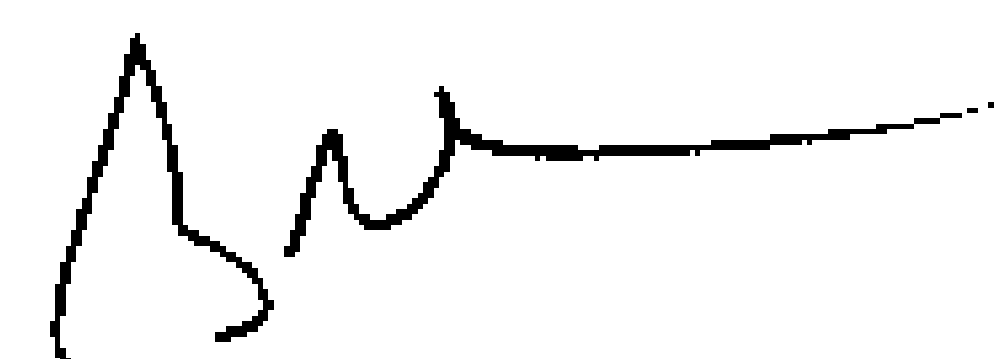
15. Gurvinder Singh Bhatia
S/o. Mr. Kripal Singh Bhatia
Residing at Plot No.1,2,3,4,
Aditya Nagar,Vishnupuri Colony,
Indore-452001



16. GS Bhatia (HUF),
Through its karta Gurvinder
Singh Bhatia,
S/o. Mr. Kripal Singh Bhatia
Residing at Plot No.1,2,3,4,
Aditya Nagar,Vishnupuri Colony,
Indore-452001
17. Amandeep Singh Bhatia
S/o Gurvinder Singh Bhatia
Residing at Plot No.1,2,3,4,
Aditya Nagar,Vishnupuri Colony,
Indore-452001
18. Veena Bhatia
W/o Gurvinder Singh Bhatia
Residing at Plot No.1,2,3,4,
Aditya Nagar,Vishnupuri Colony,
Indore-452001
19. Ishipal Kaur Bhatia;
W/o Gurvinder Singh Bhatia
Residing at Plot No.1,2,3,4,
Aditya Nagar,Vishnupuri Colony,
Indore-452001
20. Manjeet Singh Bhatia
S/o Mr.Kripal Singh Bhatia
53, Gajanand Mandir Colony,
Chandrapur, Maharashtra-442401
21. Indrajit Kaur Bhatia
W/o Manjeet Singh Bhatia,
53, Gajanand Mandir Colony,
Chandrapur, Maharashtra-442401
22. Kulwant Singh Bhatia
S/o. Sh.Harcharan Singh Bhatia
MIG-7, Housing Board Colony,
Jawaharlal Nehru Ward, Katni,
Madhya Pradesh-483501
23. State Bank of India
Through its Indore branch office at
AB Road (Near GPO), Indore.



24. State Bank of Indore
Yeshwant Niwas Road, Indore.
25. UCO Bank
Through its Indore branch office at
Sanyogitaganj, Indore.
26. Union Bank of India
Through its Indore branch office at
Sindhi Colony Branch, 30 Patel Nagar,
Sneh Nagar Main Road, Indore
27. Oriental Bank of Commerce
Through its Indore branch office at
Sindhi Colony Branch, 30 Patel Nagar,
Sneh Nagar Main Road, Indore
28. The Hong Kong and Shanghai Banking
Corporation Ltd.,
Through its Delhi branch office at
25, Barakhamba Road,
New Delhi-110001
29. State Bank of Mysore,
Through its Indore branch office at
MG Road, Indore.
30. Indusind Bank Limited
Through its Indore branch office at
Industry House, 15 Agra Bombay Road,
Old Pafasia, Indore-452001
31. HDFC Bank Limited
Through its Indore branch office at
104, First Floor, Commercial House,
7 Race Course Road, Indore-452001
32. Standard Chartered Bank
Through its Delhi branch office at
Narain Manzil, 23 Barakhamba Road,
New Delhi-110001
33. Bank of Baroda
Through its Indore branch office at
13, Old Palasia, AB Road, Indore-452081



34. Bank of India
Through its Indore branch office at
13-B, Ratlam Kothi, Kanchan Bagh,
Indore-452001
35. SBICAP Trustee Company Ltd
Registered Office at
202, Maker Tower "E"
Cuffe Parade, Mumbai-400005 : Respondents.

Order delivered on 6th November, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Mr. Saurabh Soparkar, learned Senior Advocate, with Mr. Aditya Krishnamurthy, Ruchir Goenka, Monaal Davawala, learned Advocates for the Applicant.

Mr. Arjun Sheth, learned Advocate for Respondents No. 13 to 18.
Mr. Baiju Bhagat, learned Advocate for IDBI.

None present for IRP. IRP already filed Report on 5.9.2017

ORDER

1. The Applicant is one of the Operational Creditors of Asian Natural Resources (India) Limited, formerly known as Bhatia International Limited, under Section 60, sub-section (5), Clause (c) and Section 65 of Insolvency and Bankruptcy Code, 2016 ("Code" for short) read with Rule 11 of National Company Law Tribunal Rules, 2016 and Section 424 of the Companies Act, 2013, praying for the following reliefs;

- "(a) That this Hon'ble Tribunal be pleased to allow the Applicant i.e. Vitol S.A. to be impleaded as a Respondent in the instant Company Petition pursuant sections 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 read along with section 423 of the Companies Act, 2013;



- (b) That this Hon'ble Tribunal be pleased to declare that the instant Company Petition filed by the Petitioner/Financial Creditor an abuse of process of the Tribunal pursuant to Rule 11 of the National Company Law Tribunal Rules, 2016;
- (c) That this Hon'ble Tribunal be pleased to pass appropriate orders under section 65 of the Insolvency and Bankruptcy Code, 2016 that the Petitioner/Financial Creditor has fraudulently or with a malicious intention instituted the instant Company Petition;
- (d) That this Hon'ble Tribunal be pleased to pass an order of mandatory injunction against the Petitioner/Financial Creditor to commence insolvency proceedings against Respondents No. 2 to Respondent No.11 i.e. various entities in the Bhatia Group (comprising Bhatia Coke and Energy Limited, Bhatia Coal Washeries Limited, Bhatia Industries and Infrastructure Limited, Bhatia Sons (India) Limited, BCC Cargo Limited, BCC Enterprises (India) Limited, BCC Estates (P) Limited, Reliance Services and Consultants Ltd., Associated Transport Company and Ishaar Overseas Pvt.Ltd) and initiate legal proceedings against Respondent No. 12 to Respondent No.21 the Bhatia Family (comprising Mr. Surinder Singh Bhatia, Mr. Gurvinder Singh Bhatia, Mr. Amandeep Singh Bhatia, Mrs. Veena Bhatia, Mrs. Gurvinder Kaur Bhatia, Mr. Manjeet Singh Bhatia, Mrs. Indrajit Kaur Bhatia, Ms. Ishipal Kaur Bhatia, Mr. Kulwant Singh Bhatia, GS Bhatia (HUF) who have issued personal guarantees to the Petitioner/Financial Creditor;
- (e) That this Hon'ble Tribunal be pleased to pass an order declaring that the various entities in the Bhatia Group including but not limited to Bhatia Coke and Energy Limited, Bhatia Coal Washeries Limited, Bhatia Industries and Infrastructure Limited, Bhatia Sons (India) Limited, BCC Cargo Limited, BCC Enterprises (India) Limited, BCC Estates (P) Limited, Reliance Services and Consultants Ltd., Associated Transport Company and Ishaar Overseas Pvt.Ltd are a common economic entity and/or benami entities holding on to the erstwhile assets of the Corporate Debtor and/or fraudulent conduits holding on to the erstwhile assets of the Corporate Debtor and/or transferee *pendente lite* and/or garnishee holding on to the erstwhile assets of the Corporate Debtor assets of the corporate debtor;
- (f) That in the alternative to prayer clause (d) and (e), this Hon'ble Tribunal be pleased to clarify the purport of its earlier order dated 23rd May 2017, does not restrict the Applicant from initiating appropriate proceedings and/or

continuing with existing proceedings including but not limited to various interim applications filed under Execution Application No. 240 of 2011 before the Bombay High Court against various other entities in the Bhatia Group including but not limited to Bhatia Coke and Energy Limited, Bhatia Coal Washeries Limited, Bhatia Industries and Infrastructure Limited, Bhatia Sons (India) Limited, BCC Cargo Limited, BCC Enterprises (India) Limited, BCC Estates (P) Limited, Reliance Services and Consultants Ltd., Associated Transport Company and Ishaar Overseas Pvt.Ltd and the members of the Bhatia Family including but not limited to Mr. Surinder Singh Bhatia, Mr. Gurvinder Singh Bhatia, Mr. Amandeep Singh Bhatia, Mrs. Veena Bhatia, Mrs. Gurvinder Kaur Bhatia, Mr. Manjeet Singh Bhatia, Mrs. Indrajit Kaur Bhatia, Ms. Ishipal Kaur Bhatia, Mr. Kulwant Singh Bhatia, GS Bhatia (HUF);

(g) That this Hon'ble Tribunal be pleased to pass an order against Respondents No. 22 to 34 (comprising the State Bank of India, State Bank of Indore, UCO Bank, Union Bank of India, Oriental Bank of Commerce, The Hong Kong and Shanghai Banking Corporation Ltd, State Bank of Mysore, Indusind Bank Limited, HDFC Bank Limited, Standard Chartered Bank, Bank of Baroda, Bank of India, SBICAP Trustee Company Ltd) to place on record all documents relating to the cross default available to them to move against any entity in the Bhatia Group including but not limited to Bhatia Coke and Energy Limited, Bhatia Coal Washeries Limited, Bhatia Industries and Infrastructure Limited, Bhatia Sons (India) Limited, BCC Cargo Limited, BCC Enterprises (India) Limited, BCC Estates (P) Limited, Reliance Services and Consultants Ltd., Associated Transport Company and Ishaar Overseas Pvt.Ltd and all documents relating to the personal guarantees issued to the Bhatia Family including but not limited to Mr. Surinder Singh Bhatia, Mr. Gurvinder Singh Bhatia, Mr. Amandeep Singh Bhatia, Mrs. Veena Bhatia, Mrs. Gurvinder Kaur Bhatia, Mr. Manjeet Singh Bhatia, Mrs. Indrajit Kaur Bhatia, Ms. Ishipal Kaur Bhatia, Mr. Kulwant Singh Bhatia, GS Bhatia (HUF) for the debts of the Bhatia Group;

(h) That this Hon'ble Tribunal be pleased to pass an order directing the Interim Resolution Professional to intervene in garnishee proceedings against MMTC Ltd and State Trading Corporation of India Limited before the Delhi High Court being Execution Petition No.58 of 2015 in order to recover Rs. 80,98,36,185 due and payable from MMTC Ltd to the Corporate Debtor and Rs. 21,74,85,502 due and payable from State Trading Corporation of India Limited to the Corporate Debtor, garnishee proceedings against

Madhya Pradesh Power Generation Company Ltd before the Court of II Additional District Judge, District Court, Jabalpur (MP), Ex AB/0500273/2015 in order to recover a sum of Rs. 75,50,30,403 due and payable by Madhya Pradesh Power Generation Company Ltd to the Corporate Debtor and garnishee proceedings against Kerala Sponge Iron Ltd before the Court of II Additional District Judge, Palakkad Kerala, Execution Petition No. 146 of 2015 to recover 3,46,71,137 due and payable from Kerala Sponge Iron Ltd to the Corporate Debtor;

- (i) That this Hon'ble Tribunal be pleased to clarify the purport of its earlier order dated 23rd May 2017, does not restrict in any manner whatsoever or prevent the Hon'ble Gujarat High Court in Petition under Arbitration Act No.19 of 2017 from auctioning the cargo of the cargo of 40,600 MT of coal discharged from the vessel MV Iolcos Confidence at the Navlakhi Port, Gujarat;
- (j) That this Hon'ble Tribunal be pleased to pass an order under section 424 2(a) of the Companies Act, 2013 summoning Respondent No. 13/Mr. Surinder Singh Bhatia and Respondent No.14/Mr. Gurvinder Singh Bhatia to be examined on oath;
- (k) That this Hon'ble Tribunal be pleased to pass an order directing the Interim Resolution Professional to place on record the books of accounts of the Corporate Debtor for the past 10 years;
- (l) Any other reliefs this Hon'ble Tribunal deems fit in the interest of justice, equity and good conscience;
- (m) Provide for the costs of making this application."

2. The facts in brief, that are germane for the purpose of disposal of this Application, are as follows;

2.1. IDBI Bank Limited filed CP (IB) No. 19 of 2017 before this Adjudicating Authority against Asian Natural Resources (India) Limited under Section 7 of the Code for triggering of Corporate Insolvency Resolution Process. The said Application was admitted by this Adjudicating Authority by order dated 23rd May, 2017. This Adjudicating Authority appointed Shri Nitin Hasmukhlal Parikh, Company Secretary as 'Interim Resolution Professional'. This

Adjudicating Authority also granted moratorium under Section 13 of the Code for the purposes referred to in Section 14 of the Code.

3. It is stated in this Application that the Applicant on 17th January, 2011 obtained a London Arbitral Award against Asian Natural Resources (India) Limited for a sum of USD 68.43 Million in addition to cost of GBP 758,580 along with interest. The claim of the Operational Creditor against the Corporate Debtor is Rs.529,18,40,254.65 in addition to interest @ 2% over LIBOR till realization.

4. Applicant/Operational Creditor filed Execution Application No. 240 of 2011 before Hon'ble Bombay High Court to enforce and execute the London Arbitral Award dated 17th January, 2011 against the property of the Corporate Debtor within the jurisdiction of the Hon'ble Bombay High Court which inter alia included the office premises situated at 101, Orbit Plaza at New Prabhadevi Road, Mumbai. The Corporate Debtor resisted the enforcement of the London Arbitral Award on the grounds enumerated in Section 48 of the Arbitration and Conciliation Act, 1996. The Hon'ble Bombay High Court rejected the said objections raised by the Corporate Debtor by its Judgment dated 15th September, 2014. Therefore, the foreign Award is deemed to be the decree of the Hon'ble Bombay High Court by virtue of the Arbitration and Conciliation Act, 1996. In the Special Leave Petition (Civil) No. 813 of 2015 preferred by the Corporate Debtor against the order of the Hon'ble Bombay High Court, before the Hon'ble Supreme Court of India, conditional stay was granted. The Corporate Debtor filed Interim Applications No.1 of 2015 and 2 of 2015 before the Hon'ble Supreme Court seeking orders modifying the stay order dated 19th January, 2015 made in SLP No. 813 of 2015. The Hon'ble Supreme Court of India vide its order dated 13th February, 2015 rejected the Interim Applications No. 1 of 2015 and 2 of 2015 filed by the Corporate Debtor. Since the Corporate Debtor failed to furnish Bank Guarantee of 50% of the decretal amount there is no stay on the

Section 48 Objection Judgment passed by the Hon'ble Bombay High Court.

5. Applicant made several allegations in the Application against the officers of Indore Branch of IDBI Bank. It is alleged that the Officers of IDBI Bank and officers of other Banks in order to surreptitiously insulate the assets of Corporate Debtor from the London Arbitral Award dated 17th January, 2011 and from other financial and operational creditors of the Corporate Debtor entered into a clandestine arrangement with Mr. SS Bhatia and Mr. GS Bhatia whereby assets and funds of the Corporate Debtor were fraudulently hived off and/or dissipated and/or surreptitiously funnelled to Mr. SS Bhatia and Mr. GS Bhatia and a web of companies wholly beneficially owned and controlled by Mr. SS Bhatia and Mr. GS Bhatia which trade under the banner 'Bhatia Group'. It is also alleged that the officers of Indore Branch of IDBI Bank in order to give effect to their fraudulent machinations have chosen not to proceed against the guarantors including Mr. SS Bhatia and Mr. GS Bhatia and their assets.

6. The following are the modus operandi, according to the Applicant adopted by certain Indore Officers of IDBI Bank along with Mr. SS Bhatia and Mr. GS Bhatia to defraud the Financial and Operational Creditors of the Corporate Debtor;

"a. Certain officers in the Indore Branch of the IDBI Bank would turn a blind eye to the Corporate Debtor entering into purported business transfer agreements to transfer its trading, coke and washeries business undertakings as a going concern on a slump sale with BGTL, BCEL and BCWL at grossly insufficient consideration and/or a consideration which was an absolute eye wash;

b. Certain officers in the Indore Branch of the IDBI Bank would turn a blind eye to the Corporate Debtor transferring the totality of its overseas assets of more than USD 83 Million held by one of its wholly owned overseas

subsidiaries in Dubai – Ishar Overseas Limited (“IOF”) to another overseas subsidy Bhatia International Pte.Limited of Singapore (“BIPL”) and diluted its stake in both companies Funds from BIPL would thereafter be fraudulently funnelled into BCEL.

c. Certain officers in the Indore Branch of the IDBI Bank would turn a blind eye to the Corporate Debtor novating various purchase and sale contract for coal that it had with various suppliers and end users of coal to entities in the Bhatia Group such as BIL.

d. Certain officers in the Indore Branch would only look towards defunct entities such as BIL and BGTL to recover their dues but will wilfully chose not to proceed against Mr. SS Bhatia and Mr. GS Bhatia and their fraudulent conduits to which the erstwhile assets of the Corporate Debtor had been fraudulently hived off and/or dissipated and/or funnelled to.”

7. There is also hiving off of the overseas assets of the Corporate Debtor which are narrated hereunder;

“a. M/s. Fleetmar Shipping Company Limited of Cyprus (“Fleetmar”) which was the registered owner of the vessel *MV Harkriipa*;

b. M/s. Guru Corporation Limited of Marshall Islands (“Guru”) the registered owner of the vessel *MV GURASIS*;

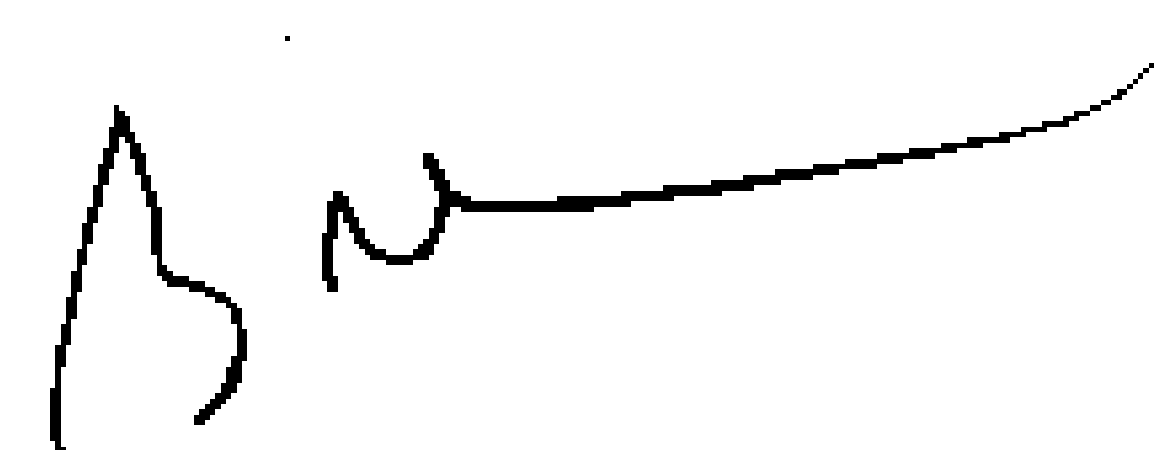
c. Indore Corporation Limited of Marshall Islands (“Indore”) the registered owner of the vessel the *MV Pride of Indore*;

d. PT Bhatia International of Indonesia – an company trading in coal in Indonesia (99% equity stake)”.

8. Further, according to the Applicant, IDBI Bank has alleged debt of approximately Rs. 82.04 Crores against the Corporate Debtor and its fraudulent conduit BGTL. There are no substantial assets for the Corporate Debtor and BGTL to satisfy the debt claim

of IDBI but still certain officers of Indore Branch of IDBI Bank have turned a blind eye to the fact with other entities. Bhatia Group has significant assets and lucrative business and the IDBI Bank has a right of recourse against those entities which inter alia including the following;

- a. Bhatia Coke and Energy Limited (“BCEL”) whose 2016 Balance Sheet reveals that the company has a positive net worth (total assets – total liabilities) of approximately Rs. 153.19 Crores, a copy of which is annexed to the Application as Annexure E;
- b. Bhatia Coal Washeries Limited (“BCWL”) whose 2016 Balance Sheet reveals that the Company has a positive net worth (total assets – total liabilities) of approximately Rs. 21 Crores, a copy of which is annexed to the Application as Annexure F;
- c. Bhatia Industries and Infrastructure Limited (now known as Hemang Resources Limited) (“BIIL”) whose 2017 Balance Sheet reveals that the company has a positive net worth (total assets – total liabilities) of approximately Rs. 41.43 Crores, a copy of which is annexed to the Application as Annexure G;
- d. Bhatia Sons (India) Limited (“Bhatia Sons”) whose 2016 Balance Sheet reveals that the company has a positive net worth (total assets – total liabilities) of approximately Rs. 17.36 Crores, a copy of which is annexed to the Application as Annexure H;
- e. BCC Cargo Limited whose 2016 Balance Sheet reveals that the company has a positive net worth (total assets – total liabilities) of approximately Rs. 5.14 Crores, a copy of which is annexed as Annexure I to the Application;
- f. BCC Enterprises (India) Limited reveals that the company has a negative net worth (total assets – total liabilities) of approximately Rs. 14.88 Crores, a copy of which is annexed as Annexure J to the Application;



g. BCC Estates (P) Limited whose 2016 Balance Sheet reveals that the company has a positive net worth (total assets – total liabilities) of approximately Rs. 30.54 Crores, a copy of which is annexed as Annexure K to the Application;

h. Reliance Services and Consultants Ltd., reveals that the company has a negative net worth (total assets – total liabilities) of approximately Rs. 26 Lakhs, a copy of which is annexed as Annexure L to the Application;

i. Ishaar Overseas Pvt.Ltd, whose 2016 Balance Sheet reveals that the company has a positive net worth (total assets – total liabilities) of approximately Rs. 9.44 Crores a copy of which is annexed as Annexure M to the Application.

9. The aforesaid Companies collectively trade under the banner “Bhatia Group”. The promoters, key management personnel, shareholders are Mr. SS Bhatia and Mr. GS Bhatia and their immediate family members who have provided personal guarantees to the IDBI Bank in addition to mortgaging their personal immovable properties to the IDBI Bank.

10. The Authorised Officer of IDBI Bank, who is the Financial Creditor of Asian Natural Resources (India) Limited that triggered the Corporate Insolvency Resolution Process under Section 7 of the Code, filed objections which, inter alia, read as follows;

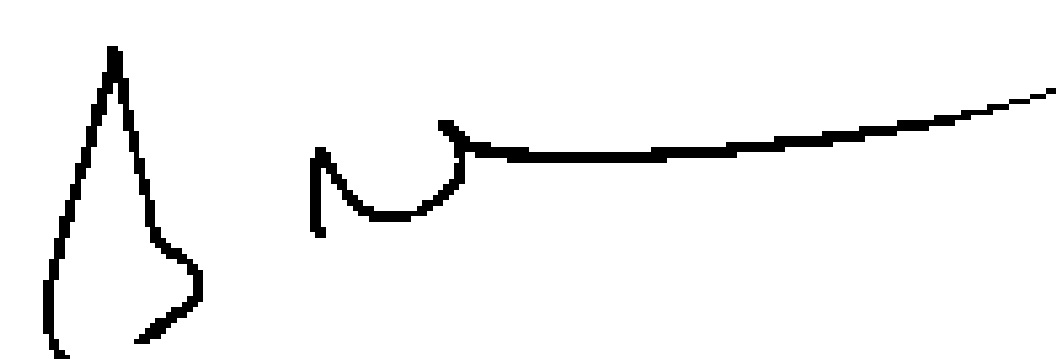
(a) IDBI Bank denied the allegations of collusion between the Bank and Asian Natural Resources (India) Limited. IDBI Bank stated that it has never indulged in selectively cherry-picking BGTL and ANRL as suggested by the Applicant herein. IDBI Bank further stated that it has filed insolvency applications against principal borrowers as well as all Corporate/Personal guarantors or is in the process of filing insolvency applications before appropriate authority. The IDBI Bank denied the allegation that the total dues are Rs. 82 Crores. IDBI Bank stated that the dues of Rs. 84 Crores approximately and

Rs. 38 Crores approximately are against the principal borrower i.e., BGTL and ANRL respectively and other entities are corporate guarantors and personal guarantors. According to the IDBI the corporate guarantors and personal guarantors are also being sued simultaneously before appropriate Tribunals and Forums. It is also stated that IDBI has already filed 4 Applications before this Adjudicating Authority against the guarantors. It is further stated that after the admission of the insolvency application filed by IDBI and after the same is confirmed by the National Company Law Appellate Tribunal the Applicant is not entitled to file this Application. IDBI Bank further stated that this Application filed by the Applicant under Section 60(5)(c) and Section 65 of the IB Code is not maintainable.

11. Respondent No. 17 filed objections which are similar to the objections filed by the Corporate Debtor, Respondent No.1. It reads that no question arising out of or in relation to the insolvency resolution or liquidation proceedings arose in this Application and therefore the present Application under Section 60(5)(c) is not maintainable. It is further stated that Section 65 of the Code only provides for a penalty to impose by the Adjudicating Authority in case of fraudulent or malicious petitions.

12. This Adjudicating Authority by order dated 23rd May, 2017 appointed Interim Resolution Professional with a direction to him to commence Corporate Insolvency Resolution Process in respect of Asian Natural Resources (India) Limited, and consequentially granted moratorium under Section 13 of the Code prohibiting the purposes referred to in Section 14.

13. There is no dispute about the fact that Applicant is one of the Operational Creditors of Asian Natural Resources (India) Limited. Therefore the Applicant is entitled to file a claim before the Interim Resolution Professional in respect of Asian Natural Resources (India) Limited.



14. The first and foremost question that needs to be answered in this Application is whether this Application is maintainable under Section 60(5)(c) of the Code.

14.1. Section 60 of the Code deals with the jurisdictional aspect of the Adjudicating Authority, more so by sub-section (5) of Section 60. For the sake of ready reference, Section 60 sub-section (5) clause (c) is reproduced hereunder;

“(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a).....

(b).....

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.”

14.2. The averments made in the Application mainly relate to the screening of certain properties by the Corporate Debtor; diversion of funds that are due to the Corporate Debtor; and the alleged collusion between the Corporate Debtor and the Financial Creditor/IDBI Bank's Officers.

14.3. Once the Corporate Insolvency Resolution Process starts, the management and conduct of affairs of the Corporate Debtor comes into the hands of Insolvency Resolution Professional or Resolution Professional. In this Application, notice is given to the Insolvency Resolution Professional. He appeared once before this Adjudicating Authority. But the Insolvency Resolution Professional did not file any objections to this Application, except his Reports dated 13th June, 2017 and 5th September, 2017. However, in his

Report dated 5th September, 2017, the Insolvency Resolution Professional stated that there is stalemate in the appointment of Resolution Professional in view of division among financial creditors that constituted Committee of Creditors in the ratio of 65% : 35% in the matter of replacement of Interim Resolution Professional.

14.4. The questions raised by the Applicant certainly, in my considered view, relate to Insolvency Resolution Process and in case if Insolvency Resolution Process fails the questions raised by the Applicant relate to liquidation process. Therefore, in that view of the matter, it cannot be said that this Application is not maintainable under Section 60(5)(c) of the Code.

14.5. Apart from Section 60, sub-section (5), Clause (c) of the Code, taking into considerations the allegations made in the Application, it is necessary to refer to certain other provisions of the IB Code. Section 43 of the Code deals with preferential transactions and relevant time. Section 44 deals with Orders in case of preferential transactions. Section 45 deals with avoidance of undervalued transactions. Section 46 deals with relevant period for avoidable transactions. Section 47 deals with Application by creditor in cases of undervalued transactions. Section 48 deals with Order in cases of undervalued transactions. No doubt, Sections 43 to 48 are in Chapter III which deal with liquidation process but not resolution process. Therefore, it may be argued that invoking of the above said Sections comes into picture only in case of commencement of liquidation process but not during resolution process. But Section 43 refers to Resolution Professional also. The question of forming an opinion by the Resolution Professional will arise only during the stage of Resolution Process. Therefore, Section 43 can be invoked. Even during Resolution Process or liquidation proceedings, if there is any grievance that pertains to preferential transactions, the Resolution Professional is entitled to move the Adjudicating Authority under Section 44, and the Adjudicating Authority is empowered to pass orders. Section 45 says about declaration of undervalued

transactions by a Liquidator or Resolution Professional. In case of undervalued transactions, Section 47(1) of the Code enables a Creditor, in case Resolution Professional has not reported it to the Adjudicating Authority, to file an application. It is not stated in Section 47 that a Creditor should be a Financial Creditor or a Secured Financial Creditor. Section 47 gives authority to a Creditor, Member or Partner of a Corporate Debtor to make an Application to the Adjudicating Authority to declare a particular transaction as void, in case Resolution Professional did not take any action. The very fact that the Resolution Professional was given the task of dealing with undervalued transactions and in case if the Resolution Professional fails to do the same, certain other persons as named above were given authority to move before this Adjudicating Authority, clearly goes to show that Section 47 of the Code applies even during pendency of Corporate Insolvency Resolution Process. Section 49 enables the Adjudicating Authority to pass orders to set aside the undervalued transactions as referred to in sub-section (2) of Section 45, and therefore keeping the allegations in the Application and keeping the Report dated 5.9.2017 of Insolvency Resolution Professional in the matter, this Adjudicating Authority is of the considered view that this Application, before this Adjudicating Authority, is maintainable.

15. Now, coming to the first relief (a) prayed by the Applicant, it relates to impleading of Applicant as a party to the proceedings in CP (IB) No. 19 of 2017. Applicant, being an Operational Creditor of the Asian Natural Resources (India) Limited, the Applicant has got a right to participate in the Meeting of Committee of Creditors. There is no provision in the IB Code that enables the Creditors other than those who triggered the Insolvency Resolution Process to be impleaded as parties. However, the Operational Creditor can file claims, raise objections before Insolvency Resolution Professional and also invoke the jurisdiction of this Adjudicating Authority. That means, a right of audience is always there to the Applicant in his capacity as Operational Creditor. Similarly, the Insolvency Resolution Professional shall also give notice of all meetings of

Committee of Creditors to all the Operational Creditors including the Applicant and consider the objections, if any, raised by the Operational Creditors. In that view of the matter, a formal order of impleading the Applicant as a party to the insolvency proceedings is not necessary in the facts and circumstances of the case and as per the provisions of law.

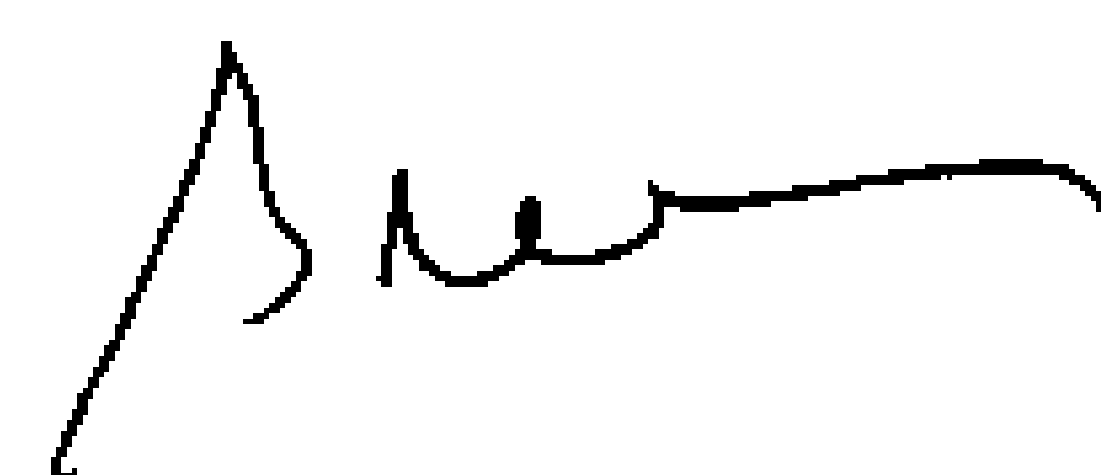
15(1). Regarding the prayer (d), it cannot be granted for the simple reason that the Adjudicating Authority cannot give directions to the Financial Creditor(s) to commence insolvency proceeding against the associated companies or sister companies of the Corporate Debtor or against the guarantors of the Corporate Debtor. Moreover, it is stated by the Financial Creditor/IDBI that it has initiated insolvency proceedings against some of the guarantors which are in progress.

15(2). Coming to the relief (e), it is not within the jurisdiction of this Adjudicating Authority to pass any orders touching the other companies which are said to be the entities of Bhatia Group.

15(3). Coming to the relief (f), in view of the moratorium order passed by this Tribunal under Section 13 of the Code in respect of all the pending proceedings, the said relief cannot be granted during moratorium period.

15(4). Coming to the relief (g), the answering of this relief would arise only in case concerned Financial Creditors initiate insolvency resolution process against the guarantors of the Corporate Debtor. Therefore, the said relief cannot be granted in this Application.

15(5). Coming to the relief (h), the Interim Insolvency Resolution Professional/Resolution Professional shall take all reasonable steps to recover all the amounts due to the Corporate Debtor.



15(6). As regards the relief (i), in view of the moratorium order passed by this Adjudicating Authority, the said relief cannot be granted, during moratorium period.

15(7). Coming to the relief (j), this is not the appropriate stage of taking evidence of the guarantors of the Corporate Debtor on oath. Therefore, the said relief is not warranted at this stage.

15(8). Coming to the relief (k), it is in the form of gathering of evidence with the aid of this Adjudicating Authority and therefore such course is not open to the Applicant in this kind of Application. However, the Insolvency Resolution Professional or the Resolution Professional shall secure all the books of evidence of the Corporate Debtor; shall keep them in his custody and shall produce the same whenever directed by this Adjudicating Authority.

15(9). Coming to the reliefs 4(b), (e) Applicant is entitled to raise those issues while considering resolution plan if any or in the liquidation proceeding.

16. However, considering the transactions pointed out by the Applicant in this Application, they need to be examined by the Interim Insolvency Resolution Professional or Resolution Professional before finalising the Resolution Process. Therefore, the Applicant is entitled to place the relevant material in respect of the allegations made by it against the Corporate Debtor before the Interim Insolvency Resolution Professional or Resolution Professional and in such case, the if the Interim Insolvency Resolution Professional or Resolution Professional is of the view that he has to invoke the jurisdiction of this Adjudicating Authority either under Section 43, 45 or 49 of the IB Code, he is entitled to approach this Adjudicating Authority. In case if the Interim Insolvency Resolution Professional or Resolution Professional fails to consider the material placed on record by the Applicant/Operational Creditor and take suitable action, then the Applicant will be at liberty to move this Adjudicating

Authority when the resolution plan if any comes up for consideration or during the liquidation process. The Committee of Creditors is directed to take steps to put an end to the stalemate in the matter of Resolution Professional within one week by moving the Insolvency and Bankruptcy Board of India, through this Authority.

17. With the above said observations and directions, this Application is disposed of.

Signature:

Handwritten signature of Sri Bikki Raveendra Babu, dated 6.11.17.

**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**