

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. (IB)-142(PB)/2017

IN THE MATTER OF:

Hythro Power Corporation Limited and
Hythro Power Corporation Limited

.....Petitioner

SECTION : UNDER SECTION 10 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

Judgment delivered on 28.06.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

DEEPA KRISHAN
Hon'ble Member (T)

For the Petitioner(s) : Shri Vaibhav R. Venkatesh, Advocate

For the Intervener(s) : Shri Aditya Tiwari, Advocate

JUDGMENT

CHIEF JUSTICE (RETD.) M.M. KUMAR, HON'BLE PRESIDENT

Hythro Power Corporation Limited has filed the instant petition invoking Section 10 of Insolvency and Bankruptcy Code, 2016 by describing itself as a Corporate applicant. The aforesaid petition has been filed on the strength of the resolution dated 04.04.2017 (Annexure A/6). Under item No. 5 it has been resolved

to authorise Ajay Bishnoi and/or Amul Gabrani, Directors of the petitioner company to file the petition under Section 10 of the Code, 2016 and nominate an interim resolution professional.

Avigo Venture Investment Limited has filed objection. Learned counsel for the objector has drawn our attention to the Article 166 (b) sub articles (6) & (7) of the Articles of Association. The aforesaid articles read as under:-

“Article 166 (b) No action shall be taken or resolution be passed by the Board except with the prior written consent of Avigo, in respect of the following matters. The rights under this article shall terminate on the successful completion of the IPO. The term “Company” is expanded to include the Company and all its Subsidiaries for the purpose of this Article.

- 1).
- 2).
- 3).
- 4).
- 5).
- 6). Any business restructuring, merger, acquisition, reorganization, consolidation and diversification, new equity investments and divestments, sale, transfer or amalgamation, of the Company and all or substantially all of its assets, sale of shares of




Company or sale of all or substantially all of the assets of the Company including patents, trademarks and other Intellectual Property Rights. For the purpose of this Article 'substantially all of the assets' would mean any transaction or a group of transactions in any Financial Year which exceeds 20% of the total assets as per immediately preceding Financial Year's audited financial statements;

- 7). Any liquidation, liquidity event, winding-up, dissolution, disposition, sale, license, Encumbrance or closure of an existing business."

The objection raised by learned counsel for the objector is that 'Avigo' has not been asked to give its written consent for any business restructuring, reorganization or liquidation/winding-up and the present insolvency resolution process would necessarily has the elements or characteristics business restructuring, liquidation or winding-up. It cannot be accepted that corporate insolvency process would not cover business restructuring, liquidation or winding-up. Therefore, the resolution dated 04.07.2017 would not be sufficient to maintain the instant petition unless the prior written consent of 'Avigo' is obtained in terms of Article 166 (b) of the Articles of Association. Mr. Tiwari learned counsel for the objector has also submitted that the Articles of Association appended with the

petition has deliberately concealed the Article 166 (b) and correct copy is attached with the objection. Article 166 (b) has been taken only from the copy appended with the objections.

Shri Vaibhav R. Venkatesh, learned counsel for the petitioner has however argued that the insolvency resolution process may not necessarily imply business restructuring, liquidation or winding-up. Another submission made by the learned counsel is that the objector may raise objections before the Committee of Creditors contemplated by Section 21 and it is not the stage for raising such type of objection.

Having heard the learned counsel for the parties, we are of the considered view that the resolution on the basis of which this petition has been filed would require prior written consent of 'Avigo' as Corporate Insolvency Resolution Process would necessarily involve the element of business restructuring, financial restructuring, liquidation or eventual winding-up. It would therefore result in violation of Article 166 (b) and sub articles (6) & (7) of Articles of Association. Under Section 10 of Companies Act, 2013 the articles bind the Company and its members. It is futile to argue that it may not happen during the insolvency resolution. It cannot be denied that the process involve the element of business restructuring, liquidation or eventual winding up. There is no escape from the aforesaid conclusion and once it is so then the resolution dated 04.04.2017 would not be

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sufficient to maintain the present petition. Accordingly, we sustain the preliminary objection raised by the objector.

As a sequel to the above discussion this petition fails and the same is dismissed.

Sd/-

(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT

Sd/-

(DEEPA KRISHAN)
(MEMBER TECHNICAL)

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