

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 444/2017 in C.P. No. 31/I&BP/2017

Under section 60(5) of the IBC, 2016

In the matter of
Mangalam Cement Ltd.

....Applicant

v/s.

Gupta Coal India Pvt. Ltd.

....Respondent

Order delivered on 04.01.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Sachin Mandlik a/w Shyam Dasgupta
i/b Khaitan & Co.

For the Respondent: Ami Jain, Adv. & Mr. Abhay Manudhane,
Resolution Professional

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

ORDER

Oral Order dictated in the open court on 01.12.2017

It is an application filed by a company namely Mangalam Cement Ltd. u/s 60(5) of the Insolvency and Bankruptcy Code 2016 seeking a direction to Insolvency Resolution Professional to release 41628 metric tons of balance coal owned by the applicant because the applicant herein on 30.04.2008 entered into an agreement with Western Coal Fields Ltd. for supply of coal to the applicant on the terms and conditions mentioned in the "Coal Supply Agreement" dated 30.04.2008. However, as the quality of the coal was not up to the mark, the Applicant entered into an agreement dated 01.09.2012 with the Corporate Debtor in order to "wash" the coal and improve its quality. Accordingly, this Corporate Debtor agreed to take delivery of the coal from Western Coal Fields Ltd., wash the same and have it transported back to the applicant. In pursuance thereof, the Corporate Debtor started collecting the applicant's coal from the Western Coal Fields Ltd. and washing the same. It went well for some time. However, in or around 2014, the Corporate Debtor started

defaulting on its obligation to supply the washed coal to the applicant as mentioned in the agreement dated 01.09.2012. When this Corporate Debtor failed to supply coal, on the verbal enquiry made by the applicant, this Corporate Debtor wrote a letter on 26.08.2014 admitting that the said coal of the applicant was lying in its possession for a significant amount of time by which some of it was internally combusted and got deteriorated. Again, this Corporate Debtor wrote another letter on 22.09.2014 stating that it would resume supply at the earliest, but even after lapse of a month, requisite amount of material was not despatched by this Corporate Debtor. For the coal not being supplied, the applicant wrote another letter on 18.12.2014 requesting the Corporate Debtor to despatch the coal to the applicant as assured by the Corporate Debtor. Since the coal, as agreed by the Corporate Debtor, did not come to the applicant, this Corporate Debtor wrote another letter on 29.12.2014 reiterating that it was willing to make good the losses caused, by supplying equivalent quantity of the remaining coal from an 'alternative source'.

2. To establish the coal was supplied by Western Coal Fields Ltd. to the Corporate Debtor in pursuance of the agreement between the applicant and the corporate Debtor, this applicant placed 'Road Delivery Orders' dated 21.02.2015 and 28.02.2015 to make it clear that ownership of the coal lies with the applicant and debtor was merely appointed by the applicant as a facilitator for washing coal. Since neither coal came to the applicant nor was equivalent quantity supplied by the debtor, this applicant issued one more letter on 05.10.2015 to the Corporate Debtor informing that it would not issue any further orders to the Western Coal Fields Ltd. to let this Corporate Debtor take coal from the Western Coal Fields.

3. In repeatedly reiterating the Corporate Debtor to make good the losses happened to the applicant, the Corporate debtor wrote a letter on 20.02.2017 admitting that it would despatch Pet Coke in lieu of the equivalent washed coal amounting to ₹14,94,89,386.45

with a request to bear with the Corporate Debtor till they were able to arrange the pet coke as mentioned above.

4. In backdrop of it, having the Corporate Debtor failed to adhere to the promises made in the voluminous correspondences taken place with the applicant, a petition u/s 9 of Arbitration and Conciliation Act 1996 was filed by the applicant before the Hon'ble District Judge, Kota, Rajasthan, wherein an order was passed directing the Corporate Debtor to maintain 'status quo' with respect to the coal forming the subject matter of the present application. In view of the same, this Applicant filed this application seeking a direction against the Resolution Professional to release 41,628 MT of balance coal in the possession of the debtor or to pay to the Applicant sum of ₹6,24,42,000 as compensation for losses caused due to non-supply of the aforementioned coal in time along with costs of the present application.

5. The Counsel appeared on behalf of the Applicant has not pressed the relief for compensation in the application on merits, therefore, the point left to be decided by this Bench is as to whether relief sought by the Applicant to release of the coal of 41628 MT by the Corporate Debtor is maintainable or not.

6. On the submission made by the Applicant's Counsel, the Counsel appearing on behalf of the Resolution Professional has stated that no coal is in existence to release it to the applicant as claimed, much less the pet coke as prayed by this applicant, on which the Resolution Professional has made a categorical statement that on verification of the records, the coal purported to have been brought to the Corporate Debtor was already shown as burnt due to internal combustion, today no coal is remaining in the company to return the same to the Applicant herein. No doubt, the company has been doing other business, but the coal as specified by the applicant is shown as burnt in the records of the company, upon which the company had

also made insurance claim, of course it was denied by the Insurance Authority.

7. The Resolution Professional has further stated that this Corporate Debtor has been procuring the coal and selling it but this particular coal said to have been supplied through Western Coal Fields Ltd. is not present to supply to the applicant herein. Not only that, the Pet Coke coal mentioned in this application is also not present.

8. Therefore, question of supplying of Pet Coke coal to the applicant, by looking at some letters given by the Corporate Debtor, cannot happen for two reasons; **(i)** the Resolution Professional's rights and duties are limited to the extent mentioned by IBC, whereby this Resolution Professional could not decide as to whether coal has been supplied, if so how much coal has been supplied and whether the same could be compensated by some other terms & conditions as mentioned in the application, **(ii)** the Resolution Professional cannot even grant any compensation as mentioned in this application, for these reasons, the Resolution Professional submits that this application is liable to be dismissed.

9. On hearing the submissions of either side, since the records of the Corporate Debtor have not disclosed anywhere that the coal purported to have come to the Corporate Debtor company is lying in the fields of the Corporate Debtor, therefore, supplying the same to the applicant herein will not arise. As to the assurance given by the Corporate Debtor for supplying of Pet Coke cannot be given effect to by the Resolution Professional henceforth this Resolution Professional is not bound to supply any such coal to the applicant herein. Moreover, this Resolution Professional has made clear that no such Pet Coke coal is available in the fields of the Corporate Debtor.

10. In view of the above reasons, we are of the view that there is no merit in the application moved by the applicant, henceforth, the same is hereby dismissed with liberty to applicant to proceed in accordance with law.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

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