

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

CP/TCP/CSP/CSA/TCSP/TCSA/NO. 37 / (MAH) / 20 17

CORAM:

Present: SHRI M. K. SHRAWAT
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 17.04.2017

NAME OF THE PARTIES: M/s. *Ravinder Gopal*
NS
My Tattva & mital Lifespaces pvt ltd.

SECTION OF THE COMPANIES ACT: _____ OF THE
Companies Act 1956/2013/I & BP Code 2016.

S. No.	NAME	DESIGNATION	SIGNATURE
1.	Aditya Thakkar a/w Anuag Mankar Ranjit Shetty i/b Argus Partners	Respondents	<i>Devf.</i>
2	Adv. Akhil. Sorastry a/w Adv. Tejas Lunya. i/b Thodur Law Associates Adv. Aparna Iyer i/b Thodur Law Associates	Advocate for Petitioner	<i>Tejas Lunya</i> <i>Aparna Iyer</i>

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ORDER

C.S.A. No. 37/230-232/NCLT/MB/MAH/2017

1. The Learned Representatives of both the sides are present and respectively argued on the Preliminary Objection of existence of dispute along with the question of "maintainability" of the Petition.
2. On hearing the Arguments of both the sides it is deemed fit to refer this Legal question for the kind consideration of the Hon'ble President to constitute "Special Bench". The proposed question and the proposed letter to be issued is as under :-

*"The Hon'ble President,
National Company Law Tribunal,
Block No.4, Ground, 6th, 7th & 8th Floor
C.G.O.Complex, Lodhi Road,
New Delhi- 110 003.*

Hon'ble Sir,

*Sub: Constitution of "Larger Bench" / "Special Bench" –
Invocation of Jurisdiction under Section 419(5)
of Companies Act 2013.*

1. *That in the case of Mr. Ravindra Gopal (Petitioner) versus M/s. Tattva and Mittal Life Spaces Pvt. Ltd.(Respondent) bearing CP-No.37/ 1 & BP/NCLT/MB/MAH/2017, a Petition has been filed on 9TH March 2017 before NCLT Mumbai Bench to initiate Corporate Insolvency Resolution Process in which the Petitioner is "Operational Creditor" for a debt of Rs.89,05,400/- due since 27-09-2016 under the provisions of Insolvency & Bankruptcy Code 2016.*
2. *That the Operational Creditor had issued a Notice of Demand dated 14th January,2017 under Section 8 of Insolvency and Bankruptcy Code 2016. The Respondent has replied vide a Notice of Dispute dated 25th January, 2017 alleging therein that no work was done by the Petitioner as required under an agreement.*

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3. *That the Respondent has therefore challenged the maintainability of the Petition on the preliminary ground that "Dispute" is in existence in terms of Section 5(6) read with Section 8 (2) of The Code 2016 hence Petition is to be rejected under the provisions of Section 8(5) (ii) (d) of The Code.*
4. *That the Respondent has placed reliance on the following decisions of the NCLT Benches:-*
 - a) *M/s. One Coat Plaster V/s. M/s. Ambience Private Limited, C.A No. (I.B.) 07/PB/2017, C.A No. (I.B.) 08/PB/2017 Order dated 1st March, 2017 NCLT Principle Bench, New Delhi.*
 - b) *Philips India V/s Goodwill Hospital and Research Centre Ltd. CP No. (IB)-03(PB)/2017 Order dtd. 2nd March 2017 passed by Pr. Bench NCLT New Delhi.*
 - c) *Annapurna Infrastructure Pvt. Ltd. & Ors. V/s Soril Infra Resources Ltd. CP No. (IB)-22(PB)/2017 dated 24-3-2017, NCLT, Principle Bench New Delhi.*
 - d) *M/s. Kirusa Software Pvt. Ltd. V/s M/s. Mobilox Innovations Pvt. Ltd. CP No. 02/I & BP/NCLT/MAH/2017 dtd. 27th January, 2017 passed NCLT, Mumbai Bench.*
5. *That the Petitioner has placed reliance on the decisions of the NCLT Benches as under:-*
 - a) *M/s. Essar Projects India Ltd. V/s. M/s. MCL Global Steel Pvt. Ltd. CP No. 20/I & BP /NCLT/MAH/2017 Order dtd. 6th March 2017 NCLT Mumbai Bench.*
 - b) *M/s. DF Deutsche Forfait AG and Anr V/s M/s. Uttam Galva Steel Ltd., CP No. 45/ I & BP/NCLT/MAH/2017 dated 10-04-2017 NCLT Mumbai Bench.*

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6. *That the Respected Principle Bench has opined that the term "Dispute" is not an exhaustive definition as is evident from the use of expression "Includes" in the Definition Section 5 of The Code. The Petition was dismissed on the ground that there was an existence "Dispute". On the contrary respected Coordinate Bench, Mumbai has opined that definition of "Dispute" under Section 5(6) "means" a dispute in Court of Law or Arbitral Tribunal. It has also been opined in the case of M/s. DF Deutsche Forfait AG and Anr V/s M/s. Uttam Galva Steel Ltd. (supra) that with all humility do not agree to rely on the orders of Co-ordinate Benches. Dissenting orders expressing contradictory views of the respected Coordinated Benches are placed before the undersigned.*
7. *That this situation; where divergent views have been expressed by the different Benches of a Tribunal; has been addressed by the Hon'ble Supreme Court in the case of Sub. Inspector Rooplal and Anr. V/s. Lt. Governor through Chief Secretary and Others (2000) 1 Supreme Court Cases 644 (para 12) wherein expressed serious dissatisfaction and held that one Co-ordinate Bench cannot pronounce judgement contrary to another Bench, but directed to refer to a larger bench if disagrees with the earlier pronouncement. Following the ratio - decidendi laid down by the Hon'ble Supreme Court in my humble opinion following question of law, if deem fit by my Lordship; can be referred for consideration of Special / Larger Bench; -*

A) *Whether the expression "Includes" used in definition of "Dispute" U/S 5(6) Insolvency & Bankruptcy Code 2016 can be substituted by the expression "means"?*

B) *Whether the term "Dispute" as defined u/s. 5 (6) of The Code is in relation to dispute lis-pendens in Court of Law or in Arbitration and not in relation to dispute raised by Operational Debtor?*

C) *Whether in a situation when the "dispute" is not in the Court of Law but raised by Operational Debtor the Petition to be rejected under Section 9 (5) (ii) (d) of The Code?*

8. *That if your Honour consider appropriate a Special Bench/ Larger Bench can be constituted to address the aforementioned legal issues, or any ancillary issue, if my Lordship considers appropriate for adjudication.*
9. *Submitted for kind consideration.*

Yours Sincerely,

Sd/-

(M.K.SHRAWAT) "

3. Telephonically it is informed by the Head Office, New Delhi, that somewhat identical question is pending for disposal before the NCLAT, New Delhi.
4. Under the circumstances, the Law and the conventions do not permit to proceed with the matter and to wait for the directions, therefore, the Petition is adjourned to 06.06.2017.

Sd/-

M.K. SHRAWAT
MEMBER (JUDICIAL)

17.04.2017.