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BEFORE THE ADJUDICATING AUTHORITY (IB) No. 171 of 2017
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 171/7/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 18.01.2018**

Name of the Company: IFCI Ltd.
V/s.
Reliance Marine And Offshore Ltd

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr Dinesh P.V. with Adv Vishal Raval M/S Saru Najmi (IFCI)	Sr Adv.	FOR IFCI	
2.	Mr. Saurabh Soparkar Senior Advocate, with Nandish Chudgar Rabeel Patel Ajay Joshi for Nanavati Associates	Adv.	Respondents	

ORDER

1. Learned Senior Advocate, Mr. Dinesh P.V. with Learned Advocate, Mr. Vishal Raval on behalf of India Law LLP are present for Financial Creditor/Petitioner. Learned Senior Advocate, Mr. Saurabh Soparkar with Learned Advocate Mr. Nandish Chudgar with

Learned Advocate, Mr. Raheel Patel with Learned Advocate Mr. Arjun Joshi, on behalf of Nanavati Associates present for Respondent.

2. Learned Senior Counsel appearing for Respondent requested this Adjudicating Authority to defer the hearing regarding admission of this Petition, CP (IB) No. 171 of 2017 on the ground that another Petition, CP(IB) No. 172 of 2017 filed by same Financial Creditor, IFCI Ltd., against the Corporate Guarantor of the Corporate Debtor in this case is not going to be taken up for hearing today on the ground that Special Bench is ceased of the matter relating to the jurisdiction of the Adjudicating Authorities in matters wherein the Corporate Debtor is facing winding up proceedings before various Hon'ble High Courts.

3. Learned Counsel appearing for the Financial Creditor opposed the deferring of hearing on the ground that this Petition and the Petition against the Corporate Guarantor are altogether different and there is no need to have a simultaneous hearing of both Petitions. After hearing the learned Counsel for both the sides, this Adjudicating Authority is of the view that sub-sections (2) and (3) of Section 60 operate only in case of proceedings initiated against the Personal Guarantor but not Corporate Guarantors. More over there is no provision in the IB Code that require simultaneous hearing of Corporate Insolvency Resolution Process Petitions filed against Corporate Debtor and the Corporate Guarantor. Even in case of personal guarantors, Section 60(2)(3) only speaks of jurisdiction but not simultaneous hearing.

4. This Petition is filed by the Financial Creditor against the Corporate Debtor, Reliance Marine and Offshore Limited, whereas the same Financial Creditor, i.e., IFCI Ltd., filed another Insolvency Petition, CP (IB) No. 172 of 2017 against Reliance Naval and Engineering Limited. It is stated that M/s. Reliance Marine and

Offshore Limited, who is the Corporate Debtor in CP (IB) No. 171 of 2017 is the Principal Borrower whereas M/s. Reliance Naval and Engineering Ltd., who is the Corporate Debtor in CP (IB) No. 172 of 2017, is the Corporate Guarantor of Reliance Marine and Offshore Ltd.

5. It is pertinent to mention here, that in respect of Reliance Naval and Engineering Limited, certain winding up Petitions were pending before the Hon'ble High Court. This Adjudicating Authority, on the principle of propriety, has been adjourning the matters wherein winding up Petitions are pending before the Hon'ble High Courts on the ground that the said aspect has been ceased of by the Special Bench constituted in National Company Law Tribunal, New Delhi. Therefore, CP (IB) No. 172 of 2017, in which the Guarantor is the Corporate Debtor, is adjourned to some other date. Since no winding up Petition is pending in respect of Reliance Marine and Offshore Limited, who is the Corporate Debtor in CP (IB) No. 171 of 2017, there is no need to adjourn the CP (IB) No. 171 of 2017. This Adjudicating Authority by order dated 19.12.2017 dismissed IA No. 410 of 2017 filed by the Corporate Debtor wherein a prayer is made to keep the CP (IB) No. 171 of 2017 in abeyance till the Hon'ble High Court of Gujarat decide the constitutional validity of Section 7 of IB Code in Special Civil Application No. 19808 of 2017. The said Application was dismissed. As against that order, the Corporate Debtor preferred Company Appeal No. AT (INS) No. 21 of 2018. The Hon'ble National Company Law Appellate Tribunal dismissed the said Appeal as withdrawn.

6. When CP (IB) No. 171 of 2017 came up for hearing, the learned Senior Counsel appearing for the Corporate Debtor requested this Adjudicating Authority to adjourn the CP (IB) No. 171 of 2017 since CP (IB) No. 172 of 2017 is going to be adjourned on the ground that the debt involved is one and the same. No doubt, in respect of

the debt due to Financial Debtor, IFCI Ltd., the Corporate Debtor in CP (IB) No. 171 of 2017, i.e., Reliance Marine and Offshore Limited is the Principal Borrower, and the Corporate Debtor in CP (IB) No. 172 of 2017 is the Corporate Guarantor. In view of the fact that the Registered Office of the Corporate Debtor, Reliance Naval and Engineering Ltd is also situated within the territorial jurisdiction of this Tribunal, the Financial Creditor, by exercising its option, chose to proceed both against the Principal Borrower and the Guarantor before this Authority. In Law, there shall be two separate Corporate Insolvency Resolution Proceedings against the Principal Borrower and the Guarantor be it personal/corporate because they are two different persons or two different Companies. There is no scope for mixing the Insolvency Resolution Process in respect of two different persons or entities in one winding up Petition although one Financial Creditor or a group of Financial Creditors can move for Corporate Insolvency Process. Therefore, the proceedings against the Principal Borrower and the proceedings against the Corporate Guarantor are two different proceedings. There is no need that the decision in both the proceedings should be one and the same. It depends upon the facts and circumstances of that particular case, the documents relied upon and the legal aspects. Therefore there is no justification for making the request to defer the hearing in CP (IB) No. 171 of 2017 till the hearing in CP (IB) No. 172 of 2017 is taken up. It is nothing but an invention to some how gain time in CP (IB) No. 171 of 2017. Therefore, the request of the learned Senior Counsel appearing for the Corporate Debtor in CP (IB) No. 171 of 2017 is wholly misconceived and it is not a justifiable request.

7. After this order is passed, the learned Senior Counsel appearing for the Corporate Debtor represented that there is need to test this order before the Higher forum since it has got universal application and it involves questions of law. This Adjudicating Authority, with a view not to take away the right of Appeal, is adjourning this matter to 30th January, 2018, but not on the ground

that the hearing in this Petition has to be taken up simultaneously with CP (IB) No. 172 of 2017.

ENT on 30.1.2018 for hearing

Signature:



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

Signature:



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

Rmr..