

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP/3(IB)/CB/2017

M/s.Nupower Renewables Private Ltd.
Vs
M/s. Cape Infrastructure Private Ltd.

Orders passed on 7th July 2017

CORAM

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Applicant : M/s.M.Velmurugan, Ms.Girija Velmurugan and
Mr.K.S.Elangovan, Advocates

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

ORDER

1. The Application TCP/ 3(IB)/CB/2017 has been filed by M/s.Nupower Renewables Private Ltd. against M/s. Cape Infrastructure Private Ltd. u/s 9 of the I&B Code, 2016 claiming Rs.5,25,00,000/- along with interest @ 18% per annum w.e.f.18th September 2013 till the date of realisation.

2. The brief history of the case is that the petitioner has engaged the Corporate Debtor for rendering services in respect of setting of and development of 300 MW Windpower Project in the State of Gujarat under a Frame work Agreement dated 19.04.2011. The Corporate debtor has received Rs.5,25,00,000/- as advance from the petitioner. But the Corporate Debtor did not perform the services as agreed. Thereafter, the Corporate Debtor has agreed to refund the sum within two to three years starting from January 2014 vide Agreement dated 18th September

2013. Ultimately, the Corporate Debtor failed to make the payment as promised. The petitioner issued legal notice on 30th October 2015 and the Corporate Debtor replied to the notice vide letter dated 29.11.2015 raising allegations which are not failing within the term 'dispute' as defined u/s 5(6) of the I&B Code, 2016.

3. In the light of the above facts and circumstances, the petitioner prays for winding up of the company and appointment of OL as a liquidator to the respondent company and grant such other relief(s) as deemed fit.

4. The petition filed before the Hon'ble High Court of Madras stood transferred to this Bench on 20.04.2017. The petitioner has been directed to send private notice to the respondents by way of speed post and file the proof of service on the respondents along with an affidavit. The petitioner complied with the directions and filed proof of service on the respondents on 06.06.2017 placing on record, the postal receipt and acknowledgement. But the Respondent did not appear in the matter before this Bench. The service against the Respondent was held sufficient and the Respondent was proceeded ex parte.

5. We have heard the counsel for petitioner. The term 'services' used in Section 5 (21) of the I&B Code, 2016 is of a wide connotation which is inclusive. In order to interpret the statutory provision, we have to place an interpretation which gives effect to the intention of the Legislature. The facts and circumstances disclosed in the petition clearly

suggest that the petitioner had advanced money to the Corporate Debtor for providing services and the payment made is for services which the Corporate Debtor agreed to render for the said consideration.

6. The main issue that needs determination is as to whether or not the Operational Creditor falls within the purview of the definition of “Operational Creditor” as provided under sub-section (20) of Section 5 of the IBC 2016. For the sake of better appreciation, the definition of the “operational creditor” given under the Insolvency And Bankruptcy Code 2016 is reproduced as follows :-

“Operational Creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”.

It is clear from the above mentioned definition that the ‘operational creditor’ means a person to whom an operational debt is owed and it includes any person to whom such a debt has legally been assigned or transferred. In order to understand the term ‘operational debt’, we may refer to the definition provided under Section 5 (21) of the IBC 2016 which is as follows :-

“Operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

7. The definition of “Operational Debt” refers to claim in respect of the provisions of goods or services or dues arising under any law. Therefore, we have to construe the term ‘Operational Debt’ with respect to purposive and contextual interpretation. Therefore, the petitioner’s claim falls within the purview of ‘Operational Debt’. In order to explain the same, the counsel for petitioner has given an example of the relationship between the client and the Law firm. If the Law firm is paid for rendering the services by a client and the Law firm fails to render such services, then the client can claim the money advanced on account of the services which were to be rendered by the Law firm. Similarly, in case the Law firm renders the services and the client has not paid, the Law firm can make the claim. Therefore, in both the ways, consideration is paid/agreed to pay, falls within the definition of ‘Operational Debt’.

8. In the light of the above, the petitioner is falling within the purview of the definition of the Operational Creditor. We hereby allow the application of the Operational creditor and order the commencement of the corporate insolvency resolution process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

9. There is no proposal for appointment of the Interim Resolution Professional (IRP). Therefore, we direct the Registry to make a reference to the IBBI for recommending the name of Interim Resolution Professional, **within ten days from the date the copy of this order is received.** On receiving the recommendation from the Board, the Registry

shall place the matter before the Bench for appointment of the IRP and passing of the appropriate order.

10. However, we declare the moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process. Therefore, we order to prohibit all of the following, namely :

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.

11. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

12. Accordingly, the application is admitted. The Registry is directed to communicate this order to the operational creditor and corporate debtor.


(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)