

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.54/9/HDB/2017
Under Section 9 of the IBC, 2016 r/w Rule 6 of I&B
(Application to Adjudicating Authority) Rules, 2016

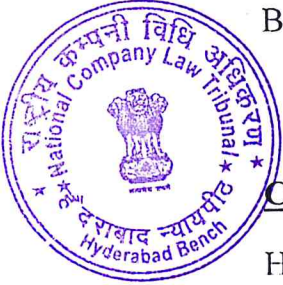
In the matter of

M/s. Energy Infraconsulting India Pvt. Limited
Regd. Office at 7-1-24, B-Block,
5th Floor, Roxana Towers, Green Lands,
Begumpet, Hyderabad - 500 016,
Rep. by Director Sri B.Prasad.Operational Creditor

Versus

M/s. Athena Chhattisgarh Power Limited
Regd. Office at 7-1-24,
Ground Floor, Roxana Towers,
Begumpet, Hyderabad - 500 016.
... Corporate Debtor

Date of Order : 04.12.2017



CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Counsels Present:

For the Petitioner	:	Mr.G.V.Gangadhar
	:	Mr.K.V.Sivaprasad
For the Respondent	:	Mr.S.Chakrapani
	:	Mr. Ch.Mahesh

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. The present Company Petition bearing C.P.(IB).No.54/9/HDB/2017 was filed by Energy Infraconsulting India Pvt. Limited (Operational Creditor) seeking direction to initiate

Corporate Insolvency Resolution Process (CIRP) against Athena Chhattisgarh Power Limited (Corporate Debtor) under Section 9 of the Insolvency and Bankruptcy Code, 2016.

2. Heard Mr.G.V.Gangadhar, Advocate along with Mr.K.V. Sivaprasad, Advocate for the Operational Creditor and Mr.S.Chakrapani, Advocate along with Mr.Ch.Mahesh, Advocate for the Corporate Debtor.
3. The Corporate Debtor owes a sum of Rs.72,17,171/- to Operational Creditor towards various invoices.
4. The Adjudicating Authority vide Order dated 14-08-2017 admitted the petition filed by the Operational Creditor and appointed Mr.Naga Bhushan Bhagawati, Chartered Accountant (Regn.No.IBBI/IP-P00032/2016-17/10085) as Interim Resolution Professional and posted the matter on 20-09-2017.
5. Mr.B.Naga Bhushan, IRP has filed an affidavit dated 12-09-2017 praying the Hon'ble Tribunal as :
 - a. Operational Creditor be directed to provide for the cost of Public Announcement as well as information required for giving the Public Announcement;
 - b. Operational Creditor be directed to give a formal appointment letter agreeing for the professional fees to be paid to the Interim Resolution Professional and also arrange / agree to arrange for the professional fee;
6. Mr.B.Naga Bhushan, IRP has addressed a letter to NCLT dated 22-09-2017 and urged the Hon'ble Bench to dismiss the Application of the Operational Creditor as he is not coming forward to meet the cost of the public announcement and also the professional fees of the IRP and also urged to penalize the



Operational Creditor for having wasted the time of the Judiciary without understanding the basic provisions of the Law and also pay professional fees for the time spent on the assignment.

7. Mr.Moiz Khan, Director, Energy Infraconsulting India Pvt. Limited has filed an Affidavit dated 03-10-2017 submitting that the Operational Creditor is not carrying on any business, as the huge amounts to the tune of Rs.4.00 crores was held up with the Corporate Debtor and further submits that on account of withholding of huge amounts, Energy Infraconsulting India Pvt. Limited was unable to pay salaries to its staff & employees over a period of time and the strength has come down from 75 Nos to 3 Nos at this present stage. There are no resources to the Operational Creditor to bring Rs.6.00 Lakhs to meet the Insolvency Resolution Process. The Operational Creditor expresses its inability to bear any cost for initiation of Insolvency Resolution Process.
8. The Counsel for the Operational Creditor has filed an Affidavit dated 03-10-2017 submitting as follows:-

- a. Subsequent to filing of the Company Petition, the Hon'ble Tribunal was pleased to grant several opportunities to the Corporate Debtor to repay the due amount. On 14-08-2017, when the Corporate Debtor expressed their inability to pay the dues within 6 months' time, Hon'ble Tribunal expressed its view to admit the petition and appointed IRP to initiate Insolvency Proceedings. The counsel for the Operational Creditor has suggested the name of the IRP to the Adjudicating Authority and the Adjudicating Authority has accepted the proposal to appoint IRP and the consent of the IRP in prescribed Form-2 was not obtained due to insufficient time.



- b. On 03-09-2017, the Counsel for the Operational Creditor obtained a certified copy of the order and handed over the same to the IRP. The IRP was pleased to give his quotation for Rs.3.00 lakhs towards his fees payable in two instalments and Rs.2.00 lakhs towards cost of public announcement. The same was informed to the Operational Creditor who has expressed inability to procure Rs.5.00 lakhs at a time from the market as the Operational Creditor Company is already in Doldrums and as such the Operational Creditor is not in a position to bear any expenses. The counsel on record was also not paid his fees as agreed by the Operational Creditor.
- c. The Counsel for the Operational Creditor submitted that the above said events are virtually transpired during the course of the proceedings before the Hon'ble Tribunal and as such there is no malafide intention on the part of the counsel appearing for the Operational Creditor in obtaining the order from this Hon'ble Tribunal without prior consent from the IRP in Form-2.



9. Interim Resolution Professional has also filed an Affidavit dated 03-10-2017 submitting as follows:-
- a. It is submitted that in pursuant to the Section 14 of the IBC, 2016, a public announcement is required to be given within 3 days from the date of receipt of Order.
- b. It is further submitted that the IRP has made several attempts to contact the Operational Creditor including a visit to both the offices of the Operational Creditor as well as Corporate Debtor to collect the information. When the efforts did not fructify and because time was running out, he had submitted an affidavit and letter dated 12.09.2017 to the Hon'ble Bench requesting for an early hearing of the matter. As requested, the case was posted for hearing

on 14.09.2017 and other than the IRP, no one appeared before the Hon'ble Bench on that date. The IRP had made his disposition and confirmed that the letter of consent was not given by him for the appointment and that the Operational Creditor had proceeded in the matter without obtaining the formal consent from the IRP.

- c. The IRP had sent a mail to the Operational Creditor on 29.08.2017 informing about the terms of appointment which includes meeting the cost of public announcement and also the fees to be paid to the Interim Resolution Professional. However, the letter of offer was never sent by the Operational Creditor and for that reason, the IRP had not given his consent for the assignment also.

10. The Company Petition was heard on several dates viz 03.05.2017, 09.05.2017, 06.06.2017, 30.06.2017, 31.07.2017, 08.08.2017, 11.08.2017, 14.08.2017, 14.09.2017, 22.09.2017, 25.09.2017 and 03.10.2017. After hearing both the parties, the Tribunal admitted the case by an Order dated 14.08.2017 by appointing Mr.B.Naga Bhushan as Interim Resolution Professional and also imposed moratorium. The Learned Counsel for Operational Creditor has filed the letter issued by the IRP expressed his willingness to act as IRP. By believing that IRP has duly accepted the offer of appointment as IRP and documents filed in their support, the Tribunal has admitted the above case. However, the IRP could not initiate the Corporate Insolvency Resolution Process due to failure to bear the cost of the initial process of CIRP i.e. Advertisement for Public Announcement, IRP Fee etc. He also further submitted that several attempts were made by him to contact the Operational Creditor but did not fructify. Incidentally it is also noted that



the Registered Office of the Operational Creditor and Corporate Debtor are situated in the same building at Hyderabad. Therefore, the initiation of CIRP is vitiated due to the lapses on the part of the Operational Creditor.

11. When the matter was take up for hearing, both the Learned Counsel for Operational Creditor as well as Interim Resolution Professional appeared. The Learned Counsel for Operational Creditor did not give any convincing reasons for not extending cooperation to the IRP.
12. In view of the above facts and circumstances, the C.P.(IB) No.54/9/HDB/2017 is dismissed and consequently revoked the order dated 14-08-2017.
13. We also direct the all Counsels / Professionals to be careful in future and not to file any Application of this nature, which will otherwise invite adverse orders from the Tribunal, wherein the parties are not in a position to meet even the basic cost of Public Announcement, Fee Payable to Interim Resolution Professional.
14. No order as to costs.

Sd/-
RAVIKUMAR DURASAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANAL
MEMBER (JUDICIAL)

for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *C.P.(IB) No. 54/9/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *4.12.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *4.12.2017*

