

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

CA No.215 of 2017 &  
CA No.221 of 2017  
In  
CP No.150/9/HDB/2017  
U/s 9 of IBC, 2016

**In the matter of**

M/s Ind-Bharat Power (Madras) Ltd  
Plot no. 30A, Road No.1  
Film Nagar, Jubilee Hills  
Hyderabad- 500033

...Applicant /  
Corporate Debtor

**Versus**

M/s Rohan Varma Constructions Private Limited  
D.No.6-3-347/17/8, Plot No.8  
Dwarakapuri Colony  
Punjagutta, Hyderabad - 500082

...Respondent /  
Petitioner

Date of order: 28.12.2017

**Coram:**

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

**Counsels / Parties Present:**

For the Applicant /Respondent: Shri D. Srinivas, Senior  
Advocate

For the Respondent/Petitioner: Shri Sharad Sanghi  
Advocate

Resolution Professional: : Shri Ashish Rathi, RP

For Power Finance  
Corporation limited (CoC) : Shri A.S. Prashanth

Per: Rajeswara Rao Vittanala, Member (Judicial)



## ORDER

1. The Company Application bearing CA No.215 of 2017 in CP (IB) No.150/9/HDB/2017 is filed by Ind-Bharat Power (Madras) Limited (Applicant / Respondent) without quoting any provisions under Insolvency and Bankruptcy Code, 2016, by inter-alia seeking to stay all further proceedings in the Company Petition including restraining the RP from proceeding in relation to the Applicant Company pending disposal of the Company Application.
2. Heard Shri D. Srinivas, Senior Advocate for the Applicant /Corporate Debtor/Respondent: Shri Sharad Sanghi, Advocate, for the Respondent/Operational Creditor/petitioner, Shri Ashish Rathi, Resolution Professional; Shri A.S. Prashanth Advocate For Power Finance Corporation Limited (CoC). And also perused all pleadings of all the parties along with extant provisions of IBC, 2016 and IBBI (Insolvency Resolution process for Corporate Persons) Regulations, 2016.
3. Shri D.Srinivas, the learned Senior Counsel in CA No. 215 of 17 submits that Operational Creditor/ Respondent have filed C.P No. 150/9/HDB/2017 for initiation of the Corporate Insolvency Resolution Process, and it was admitted 14<sup>th</sup> August, 2017. Subsequently, the matter is settled between M/s Ind-Bharat Power (Madras) Ltd. and Rohan Verma Constructions Pvt. Ltd, and it has also filed a CA No. 221 of 2017 on 11<sup>th</sup> December, 2017 for withdrawal of the Company petition itself. He has relied upon Rule



11 of NCLT Rules, 2016 and the order dated 13<sup>th</sup> November, 2017 passed in Civil Appeal No. 18520 of 2017 in Uttara Foods and Feeds Private Limited Vs. Mona Pharmahem passed by the Hon'ble Supreme court of India. Therefore, the Company Application is maintainable and this Tribunal can exercise its inherent powers in granting the relief as prayed for.

4. Shri Sharad Sanghi, Learned Counsel for the Respondent / Operational Creditor in CA 221 of 2017 stated that the matter in question was settled by the petitioner and respondent of main Company petition and thus, the petitioner would not like to prosecute the case further. Therefore, he urged the Tribunal to dismiss Company petition.
5. Shri Ashish Rathi, Learned Resolution Professional has submitted that in pursuant to the order passed by the Tribunal, he is conducting CIRP in question in accordance with law. And both the applications are not at not at all maintainable and process once initiated cannot be stalled in between.
6. Shri A.S. Prashanth, Learned Counsel representing Power Finance Corporation (CoC) submits that the CIRP was initiated on 14.08.2017 confirming appointment of Shri Kranti Kumar Kedari as IRP. Subsequently, an Application bearing CA No.176 of 2017 has been filed by Power Finance Corporation Ltd (as a member of CoCs of Financial Creditor) under Section 22 (3) (b) of IBC for replacement of the IRP. Accordingly, the Tribunal passed an order dated 18.10.2017 by appointing Shri Ashish Rathi, as Resolution Professional





to conduct the CIRP of the Corporate Debtor. The new RP appointed, is already in the process of finalising the CIRP by taking several actions. He also submits that once the CIRP is initiated by the Tribunal, it is not the prerogative or right of any of the parties including the Petitioner to withdraw it in between and the process has to be completed in accordance with law. The judgement of the Hon'ble Supreme Court relied upon by the Applicant would not support the case of the Applicant.

7. The record of case shows that the main Company petition was listed before the Bench for admission on various dates viz.14.08.2017, 20.09.2017, 22.09.2017, 16.10.2017, 10.10.2017, 18.10.2017, 10.11.2017, 08.12.2017, & 28.12.2017. After hearing both the parties, and extending sufficient opportunities to both the parties, this Tribunal admitted the case. Since the Respondent in CP was not inclined to settle the small debt in question, this Tribunal had ultimately admitted, appointed IRP and subsequently changed the IRP with new Resolution Professional. In the instant case, admittedly, the claim of the Operational Creditor of the C.P is only Rs.1,81,08,219/- and there are other creditors namely Rural Electrification Corporation Limited and India Infrastructure Finance Company totalling about Rs.10,98,98,14,108/- and total claims from other Operational Creditors amounting to Rs. 8,80,50,987/- Therefore, the claims are not settled against the Corporate Debtor. The Hon'ble Supreme court in the cited case has permitted the withdrawal of case since the parties involved in the issues have settled matter.



It is not in dispute that even though the main CP is initiated by Rohan Varma Constructions Private Limited (Operational Creditor) and its claim of Rs.1,81,08,219/-is settled , other claims against the Corporate Debtor are still not settled so far. The object of the IBC is to settle all the claims of Financial and Operational Creditors against the Corporate Debtor in one CIRP, in which IRP will invite all claims against Corporate Debtor and would make every effort to resolve the debts in question so as to revive debt ridden Company, failing which, it would lead to liquidation. And IBC is a single window judicial system to resolve the issue of debt ridden Companies within time stipulation as prescribed under the Code.



8. The Hon'ble Supreme Court ,has in its earlier order dated 24.07.2017, has inter-alia held that the NCLAT could not avail of inherent powers recognised by Rule 11 of NCLAT Rules, 2016, in view of Rule 8 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to allow a compromise to take effect after admission of the Insolvency Petition. The Hon'ble Supreme Court in its subsequent order dated 13<sup>th</sup> November, 2017 passed in CA No. 18520 of 2017, has observed, that in order to avoid the parties to approach it for similar relief, to exercise its powers under Article 142 of the Constitution of India, the relevant rules may be amended by the Competent Authority so as to include such inherent powers in the concerned judicial forums constituted under IBC. However, it is not placed on record that the above rule is amended so far by Competent Authority as observed by the Hon'ble Supreme Court. Moreover, as stated

supra, all the claims against the Corporate Debtor are still not resolved / compromised and only a small claim of the Petitioner/Operational Creditor was settled. Therefore, the judgement of the Hon'ble Supreme Court cited supra, would not be applicable to the facts and circumstances of present case. Therefore, CIRP as ordered by this Tribunal has to be continued without any interruption and both the applications are liable to be dismissed.

9. In view of the facts and circumstances of the case, Company Applications bearing CA No.215 of 2017 and CA No. 221 of 2017 in C.P No.150/9/HDB/2017 are hereby dismissed. No order as to costs.

*sd/-*  
RAJESWARA RAO VITTANALA  
MEMBER (JUDICIAL)

*For* *He*  
Dy. Regr./Asst. Regr./Court Officer/  
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER...*CA No. 215 of 2017 & CA No. 221 of 2017*  
निर्णय का तारीख  
DATE OF JUDGEMENT...*28.12.2017*  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON...*8.1.2018*