

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

CP (IB) No. 16/9/HDB/2018

U/s 9 of IBC, 2016 R/w Rule 6 of
I & B (AAA) Rules, 2016

In the matter of

M/s Gandhar Oil Refinery (India) Limited
DLH Park, 18th Floor, S.V. Road
Goregaon (West)
Mumbai City – 400062

...Petitioner /
Operational Creditor

Versus

M/s Ind Barath Power Gencom Limited
Plot No. 30a, Road No.1, Film Nagar
Jubilee Hills, Hyderabad-500033

...Respondent /
Corporate Debtor

Date of order: 18.01.2018

CORAM

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

Counsels / Parties Present:

For the Petitioner: Shri N. Vinesh Raj along with Shri P.
Srinivas, Advocates

For the Respondent: Shri Yogesh Jagiya along with Shri
D.V.A.S. Ravi Prasad, Advocates.

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Petition bearing CP (IB) No. 16/9/HDB/2017 is filed by Gandhar Oil Refinery (India) Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of I & B (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution



process (CIRP) in respect of Ind-Barath Power Gencom Limited.

2. Brief facts, leading to filing of the present Company Petition, are as under:-

- (a) M/s Ind-Barath Power Gencom Limited (Respondent / Corporate Debtor) has placed orders with Gandhar Oil Refinery (India) Limited (Petitioner / Operational Creditor) for supply of Indonesian Steam Non Coking Coal vide purchase orders between August, 2014 and April, 2017. Between August, 2014 and April, 2017, the Operational Creditor raised sales invoices for an amount of Rs. 142,78,53,292/- against which there was a sales return for the amount of Rs.14,55,33,370/- constituting net sales of Rs.128,23,19,222/-.
- (b) Between December 2015 and May 2017, the Corporate Debtor paid an amount of Rs. 112,09,46,524/- to the Operational Creditor which was adjusted against the invoices raised by the Operational Creditor between August 14, 2014 and April 13,2017 on FIFO basis.
- (c) Further various debit notes and credit notes have been exchanged between the Operational Creditor and Corporate Debtor from March 2015 to August 2017 resulting in the net effect of Rs.5,83,54,811/- payable by the Corporate Debtor to the Operational Creditor.
- (d) The total outstanding debt claimed by the Operational Creditor is Rs. 34,41,47,227/-
- (e) In spite of numerous efforts being made by the Petitioner / Operational Creditors, the Corporate Debtor failed to pay outstanding amount leading to the issue of demand notice dated 30.10.2017,



demanding the Corporate Debtor to pay the principle amount of Rs. 30,94,22,203/- with interest.

(f) When the efforts of the Petitioner / Operational Creditor to get dues failed, the present Company Petition is filed by seeking to initiate CIRP in respect of the Corporate Debtor.

3. Heard Shri N. Vinesh Raj and Shri P. Srinivas, Ld. Counsels for the Petitioner Company and Shri Yogesh Jagiya and Shri D.V.A.S. Ravi Prasad, Learned Counsels for the Respondent.

4. Shri Vinesh Raj, Learned Counsel for the Petitioner / Operational Creditor fairly submit that there are some inadvertent mistakes committed in pleadings as he has filed two similar cases and instead of rectifying these mistakes / errors and file an amended petition, it would be just and proper to permit him to withdraw the present Company Petition so that it reduces time for taking up the matter. He has also filed a memo dated 18.01.2018, by inter-alia stating that the petitioner may be permitted to withdraw the present company petition, with a liberty to file fresh Company Petition in accordance with the procedure prescribed under the IBC for the same cause of action.

5. Shri Yogesh Jagia, Learned Counsel who takes notice for the Respondent / Corporate Debtor, has pointed out that the Operational Creditor has not even fulfilled the fundamental requirements to entertain this company petition. Thus, it is liable to be rejected. In case, the Adjudicating Authority is inclined to take up the matter, he may be permitted to file his reply.

6. We have considered the pleadings of both the parties. We agree with the contention of the Learned Counsel for



the Operational Creditor to withdraw the Company Petition instead of amending the same, as it is time consuming factor. Shri Yogesh Jagia, Learned Counsel for the Corporate Debtor has no objection for permitting the Petitioner to withdraw the present Company Petition.

7. In view of the facts and circumstances of the case and the memo dated 18.01.2018 submitted by the Learned Counsel for the Petitioner / Operational Creditor, Company Petition bearing CP (IB) No. 17/09/HDB/2018 is disposed of as withdrawn, by reserving liberty to the Petitioner to file fresh Company Petition for the same cause of action duly following the provisions of IBC. No order as to costs.



sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER...*CP(15)16/9/HDB/2018*
निर्णय का तारीख
DATE OF JUDGEMENT...*18.1.2018*
प्रति तैयार किया गया तारीख
COPY MADE READY ON...*25.1.2018*