

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

CP (IB) No. 17/9/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 Thermal Power 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. 17/9/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 Thermal Power Limited.

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

- (a) M/s Ind-Barath Thermal Power 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 dated 25.04.2015 and 20.05.2015. Accordingly, the Corporate Debtor entered into two separate High Seas Sales (HSS) Agreements dated 26.06.2015 and 12.08.2015 respectively. Subsequently, the Operational Creditor went on to deliver the coal as promised by 12.07.2015 with respect to purchase order dated 25.04.2015 and by 24.08.2015 with respect to the purchase order dated 20.05.2015. The Delivery has been recorded and verified via the Port Discharge reports for both the consignments and the Debtor had not raised any objection or demur as to the work executed by the Applicant in respect of the price and quality thereof.
- (b) Thereafter the petitioner raised their respective invoices in respect of the said two purchase orders totalling to Rs. 30,94,22,203/- which were duly accepted and acknowledged by the Corporate Debtor.
- (c) The Operational Creditor has also received an email dated 21.07.2016 from the Corporate Debtor, who has shared a ledger confirming the total outstanding as Rs.25,09,70,156/-.



(d) 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 25.10.2017, demanding the Corporate Debtor to pay the principle amount of Rs. 30,94,22,203/- with interest.

(e) 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 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. 16/09/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. Anantha Kumar
For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER. CP(IB) No. 17/9/HDB/2018
निर्णय का तारीख
DATE OF JUDGEMENT... 18.1.2018
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 25.1.2018