

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
26-06-2024 AT 10:30 AM**

**CP (IB) No. 391/7/HDB/ 2022**

**AND**

**IA(IBC) 1122, 1123, 239 & 1311/2024 in CP (IB) No. 391/7/HDB/ 2022**

u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

Edelweiss Asset Reconstruction Company Limited

**...Financial Creditor**

**AND**

GVK Gautami Power Limited

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**O R D E R**

**IA(IBC) 1122/2024 & 1123/2024**

Orders pronounced. In the result, **these applications are dismissed. No costs.**

**IA(IBC) 239/2024**

Learned Counsel Mr Karan Kohli, for Resolution Professional present through Video Conference.

No representation for the respondent.

For hearing, matter adjourned to 23.07.2024.

**IA(IBC) 1311/2024**

Learned Counsel Mr C Tulasi Krishna, for applicant present physically.

Heard. We did not find any satisfactory reason of urgency.

Hence, **this application is dismissed.**

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – I**

**IA (IBC) No.1122 OF 2024  
AND  
IA (IBC) No.1123 OF 2024  
IN  
CP (IB) No. 391/7/HDB/2022**

*Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read  
with Rule 11 of the National Company Law Tribunal Rules, 2016*

**Between:**

Sri Lakshmi Narayana Industries,  
#6-46/1, Survey No. 433/1, 433/2,  
Pidimgoyya-V, Rajahmundry Rural – 533 103,  
E.G. District, A.P.  
Rep. by its Authorized representative Mr. Bhamidipati Vijay

**... Applicant**

**Versus**

1. GVK Gautami Power Limited,  
Plot # 10, Paigah Colony Phase-I, S.P.Road,  
Secunderabad, Hyderabad, T.S., India – 500003.  
Rep. by Resolution Professional Mr. Anil Kohli  
ARCK Resolution Professionals LLP  
Flat No. 409, 4<sup>th</sup> Floor, Ansal Bhawan,  
16 Kasturba Gandhi Marg, Connaught Place,  
New Delhi – 110001.  
[insolvency@arck.in](mailto:insolvency@arck.in)

2. The Krishna Lubricants,  
859/1A & 1B, Vadisaleru,  
Rajampeta (M) E.G.District, A.P., India

**...Respondents**

**In the Matter of:**

Edelweiss Asset Reconstruction Company Limited

**...Financial Creditor**

**Versus**

GVK Gautami Power Limited

**...Corporate Debtor**

**DATE OF ORDER: 26.06.2024**

**CORAM:-**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)  
Shri. Charan Singh, Hon'ble Member (Technical)

**PARTIES/COUNSELS APPEARANCE: -**

For the Applicant : Mr. Akkiraju Sainath, Counsel  
For the Respondent No.1 : Mr. Abhishek Anand, Counsel  
For the Respondent No.2 : Mr. VVN Narayana Rao, Senior Counsel  
assisted by Mr. Tulasi Krishna, Counsel

**PER: BENCH**

**COMMON ORDER**

1. These Applications are filed by the Applicant Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, praying:

**Prayers in IA(IBC).No. 1122 of 2024**

- i. To pass protective orders, prohibiting the Respondents from lifting the waste oil which is the subject matter of the Sale order dated 07.12.2023 issued in favour of the Applicant.
- ii. To direct the Respondents to pay costs.

**Prayers in IA(IBC).No.1123 of 2024**

- i. To direct the Respondent No.1 to permit the Applicant to lift the total quantity of approximately 2500 KL of waste oil forming the subject matter of the sale order dated 07.12.2023 issued in favour of the Applicant duly setting aside the order of the First Respondent dated 04.03.2024 issued in favour of the Second Respondent who has miserably failed to comply with earlier directions which is also without any notice to the Applicant and in violation of the subsisting interim order of stay of NCLAT, Chennai,
- ii. To direct the Respondents to pay costs.

**2. Common averments of the Applications i.e., (IA(IBC).No. 1122 of 2024 & IA(IBC).No.1123 of 2024**

- 2.1 It is stated that the First Respondent placed a sale order on the Second Respondent vide Sale order dated 20.09.2023, for sale of 2600 KL of

waste oil at the rate of Rs.47 per litre plus GST. As per the said contract the Respondent No.2 has to deposit a sum of Rs.50,00,000/- within a week and lift the agreed stock within four months from the said date.

2.2 It is stated that while lifting of the same was not started and since the same was agreed to be lifted within four months of the said order, the waste oil was left as it is. Subsequently the Corporate Debtor entered into Corporate Insolvency Resolution Process vide orders dated on 20.10.2023 passed by this Hon'ble Tribunal. It is stated that the Respondent No.1 requested the Respondent No.2 to complete the lifting process vide letter dated 14.11.2023.

2.3 It is averred that the Respondent No.1, nothing the delay in the lifting of the waste oil forming the subject matter of the agreement dated 20.09.2023 vide email dated 05.12.2023 cancelled the sale order issued in favour of the Second Respondent. It is submitted that pursuant to the failure of the Second Respondent to lift the waste oil, the Respondent No.1 issued a sale contract in favour of the Applicant vide Sale Order bearing No. GVKGPL/SO-WO/02/2023-24, dated 07.12.2023 at enhanced rate i.e., at the rate of Rs.50 per litre plus GST.

- 2.4 It is further stated that as per the conditions of the sale order dated 07.12.2023, the Applicant deposited Rs.50 Lakhs on 09.12.2023 to the Respondent No.1 and commenced lifting the waste oil valued Rs.25,62,600/- in various spells, making payments for the purchases along with GST until they were directed to stop lifting by the Respondent NO.1 following NCLT's order dated 11.12.2023.
- 2.5 It is stated that on 11.12.2023 this Hon'ble Tribunal passed interim order in IA.No. 1927 of 2023 and suspended the email communication dated 05.11.2023 of the IRP and ordered maintenance of status quo as on 20.09.2023. It is averred that the Respondent No.1 filed an appeal against the orders dated 11.12.2023 of this Hon'ble Tribunal and the Hon'ble NCLAT, Chennai vide orders dated 21.12.2023 in IA.No. 405 and 406 of 2023 in CA(IB) No. 451 of 2023 suspended the said order and kept extending the interim orders periodically which interim order is subsisting till date.
- 2.6 It is stated that this Hon'ble Tribunal was not informed of the factum of extensions of the interim orders leading to the assumption that the interim stay on the cancellation of the Second Respondents sale was not

in effect resulting in continuing adjudication contrary to the interim orders granted in CA(IB) No. 451 of 2023 by Hon'ble NCLAT.

2.7 It is stated that this Hon'ble Tribunal vide orders dated 04.03.2024 disposed the IA.No. 1928 of 2023 setting a timeline for the Respondent No.2 to lift the waste oil at the rate of Rs.50 per Litre within a maximum time period of 43 days replacing the previous rate of Rs.47 per litre with a directive to cancel the arrangement upon failure to comply and to engage another contractor in such eventuality. In pursuance of the said orders of the Respondent No.1 issued a revised Sale order dated 04.03.2024 in favour of Respondent No.2.

2.8 It is stated that as the Second Respondent failed to comply with the direction of the Hon'ble NCLT, the Respondent No.1 asked the Applicant to resume work at an enhanced rate of Rs.51 per litre plus GST which was agreed to by the Applicant leading to lifting of waste oil from 01.04.2024 to 22.04.2024 making an overall payment of Rs.1,15,66,736/-.

2.9 It is stated that subsequently, without notice to the Applicant, the Respondent No.1 is allowing the Respondent No.2 to resume lifting of

waste oil as indicated by a sample e-way Bill No. 121861621853 dated 20.05.2024 being filed as a material paper which action is not only contrary to the order of interim stay passed by NCLAT but also without any direction by this Hon'ble Bench. It is stated that the applicant is paying higher sale value than the Respondent No.2 and further, their contract cannot be terminated without notice and assigning valid reasons.

2.10 It is stated that the Applicant filed an application seeking for direction in favour of the Applicant to lift the entire waste oil. If the Respondent No.2, pending disposal of the said application on merits, lifts the waste oil, it will adversely affect the contractual rights of the Applicant and the Applicant will be put to huge loss.

3. We have carefully perused these applications and find that the relief in IA.No.1123 of 2024 is consequential to the relief sought for in IA.No.1122 of 2024. Thus, the prayers in both these IA's are inter connected and the facts of both the case are identical. In view of this a common order is passed.



4. Respondents No.1 and 2 have not filed any counter to the applications, however made their oral submissions, opposing the applications.
5. In the light of the contest as above, the point that arises for our consideration is:

**POINT:**

**Whether these applications are maintainable on the touch stone of the facts of the case?**

**SUBMISSIONS:**

6. The learned counsel for the applicant submits that this Tribunal passed an interim order 11.12.2023 in IA.No. 1927 of 2023, whereby it suspended the email communication dated 05.11.2023 of the IRP and ordered maintenance of 'status quo' obtaining as on 20.09.2023. Learned Counsel further submitted that the Respondent No.1/ resolution professional filed an appeal against the said order of this Tribunal and the Hon'ble NCLAT, Chennai vide orders dated 21.12.2023 in CA(IB) No. 451 of 2023 suspended the said order and said interim order is subsisting till date.

7. Learned Counsel further contended that this Tribunal was not informed of the factum of extension of the said interim order leading to an assumption that the “status quo” order was not in force, hence proceeded to hear the pending application, contrary to the interim order granted in CA(IB) No. 451 of 2023 by Hon’ble NCLAT.
8. Learned counsel further submitted that the Respondent No.1 is allowing the Respondent No.2 to resume lifting of waste oil as indicated by a sample e-way Bill No. 121861621853 dated 20.05.2024 being filed as a material paper which action is not only contrary to the order of interim stay passed by NCLAT but also without any direction by this Hon’ble Bench.
9. Per contra, the counsels for the Respondents have submitted that this Tribunal was informed about the stay order granted by Hon’ble NCLAT which is quite evident and recorded in the order dated 04.03.2024 of this Tribunal, as such the contention that in violation/suppression of the order of ‘status quo’ this Tribunal has proceeded, is in correct. Learned Counsel further submitted that, in the order dated 04.03.2024 it is clearly recorded that in the light of the order passed in IA.No.1928 of

2023 today, necessary steps will be taken before Hon'ble NCLAT where the appeal is pending. Pursuant to the same the necessary steps were taken and consequently Company Appeal No.451 of 2023 in Hon'ble NCLAT was dismissed as infructuous by Hon'ble NCLAT through its order dated 03.06.2024.

10. Learned Counsel further contended that in view of the above facts of the case, these applications are not maintainable as the purported allegations on the basis of which these applications are filed, never existed in true sense and after dismissal of Company Appeal No.451 of 2023 in Hon'ble NCLAT, now no ground survive for their continuation. The Counsel for respondent, thus prayed for dismissal of the applications.

**OUR OBSERVATIONS AND FINDINGS:**

11. We find that Applicant has filed these applications mainly on the ground that despite an order of "status quo" given by Hon'ble NCLAT in Company Appeal (AT) (CH) (Ins) No. 451 of 2023 is in force to the knowledge of the parties, the said fact was not brought to the notice of this Tribunal, while obtaining orders in IA.No.1928 of 2023 which is

“adverse” to the Applicant. We have perused the proceedings and find that this allegation of applicant is not correct. This Tribunal was informed of stay order granted by Hon’ble NCLAT while passing order in IA.No.1928 of 2023 and IA.No.1927 of 2023 on 04.03.2024. The relevant extract of the said order dated 04.03.2024 of this Tribunal, wherein this fact is recorded is reproduced hereunder:

**“IA(IBC) 1928/2023**

...

*Both sides, at the outset have submitted that this IA can be disposed of pending disposal of Company Appeal No.451 of 2023 filed as against the interim order passed in IA.No.1929/2023, before Hon’ble NCLAT, and accordingly made their submissions, in this IA, focussing on the memo filed by the applicant.*

**IA((IBC) 1927/2023**

*Learned Counsel Mr. C.Tulasi Krishna, for respondent present physically.*

*Learned Counsel Mr. Abhishek Anand, for the Resolution Professional present through Video Conference and submitted that, in the light of the order passed in IA No.1928/2023 today, necessary steps will be taken before NCLAT where the Appeal is pending, hence matter adjourned to 22.03.2024.”*

Thus, relevant parts of the said order dated 04.03.2024 clearly establishes that this fact was very much brought to the notice of the Tribunal and both parties have agreed to take suitable steps to withdraw the appeal pending in Hon’ble NCLAT, the orders were passed keeping

in mind the submissions made by both the parties. Further, we find that parties have taken suitable steps in Hon'ble NCLAT as undertaken by them before this Tribunal and Hon'ble NCLAT has already dismissed this appeal as infructuous on 03.06.2024.

12. In the above backdrop and keeping in mind that the facts/ allegations on the basis of which applications were filed by the applicant do not exist, we decide that this application is not maintainable. The point is accordingly decided.
13. Keeping in view the above, both these applications are dismissed as not maintainable, however without any costs.

**Sd/-**

Charan Singh  
Member (Technical)

**Sd/-**

Dr.Venkata Ramakrishna Badarinath Nandula  
Member (Judicial)

*Sridher*