

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- II)

Item No. 207

(IB)-197(PB)/2017

IA-2449/2024, IA-2454/2024, IA-2467/2024, IA-2529/2024
IA-2591/2024, Cont.P-13/2024, IA-415/2024, IA-5780/2023
CA-372/2018, IA-182/2024, IA-1960/2023, IA-2802/2023
IA-2086/2023, IA-6082/2023, IA-5457/2023, IA-5263/2023
IA-6429/2023, IA-6513/2023, IA-1653/2020, CA-01/2024
IA-833/2024, IA-1677/2024

IN THE MATTER OF:

**Edelweiss Asset Reconstruction
Company Ltd.**

... Applicant/Petitioner

Versus

Tecpro Systems Ltd.

... Respondent

Under Section: 7 of IBC, 2016 (Liq.)

Order delivered on 04.06.2024

CORAM:

**SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)**

**SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)**

PRESENT:

For the Applicant : Adv. Aditya Dewan in IA-2952/2024, Adv. Anjali Sharma, Adv. Deepak Bashta, Sr. Adv. Sunil Fernandes, Adv. Charu Bansal, Adv. Rajshree Chaudhary, Adv. Prithviraj Oberai

For the Respondent : Adv. Kaustubh Shukla, Adv. Saurabh Singh, Adv. Sumant Batra, Adv. Nidhi Yadav, Adv. Sarthak Bhandari for R-3 in IA-5457/2023

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-2449/2024: For the reasons stated therein, the IA is allowed and the progress report is kept on record, subject to all just exceptions.

IA-2454/2024: The prayer made in the captioned application reads thus:

It is most respectfully prayed that this Hon'ble Tribunal, in the light of the above-stated facts and circumstances, be pleased to allow the present application and grant approval to the Applicant to initiate and continue appropriate proceedings against M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd.

Pass such other order or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances mentioned hereinabove.

The Ld. Counsel appearing for the Applicant could draw our attention to Section 35(1) of IBC, 2016 and submitted that in terms of clause-k of sub-section (1) of Section 35, the Liquidator can institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name of or on behalf of the Corporate Debtor, only subject to the direction of this Adjudicating Authority. In para 2 and 3 of the IA, the Applicant (Liquidator) has given the details of the contract entered into between the Corporate Debtor and M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd., to espouse that on account of breach of contract, the arbitration clause contained therein could be invoked and the required arbitral proceedings could be initiated.

She could draw our attention to the notice/letter dated 14.02.2017 placed on record as Annexure A3. A perusal of the letter reveals that the Corporate Debtor had given 30 days' notice to the M/s Rajasthan Rajya Vidyut Utpadan Nigam Ltd., calling upon it to appoint its Arbitrator, so that the Corporate Debtor could also appoint its arbitrator and the arbitral proceedings could move further.

In view of the aforementioned, the leave is granted to liquidator to take further steps, pursuant to aforementioned notice/letter dated 14.02.2017, placed on record as Annexure-A3 to the application. **The application stands allowed.**

IA-2467/2024: For the reasons stated therein, the IA is allowed and the amended memo of parties is kept on record, subject to all just exceptions.

IA-5457/2023: IA is taken on record. Let the notice be issued to Respondent No. 3 as per the amended memo of parties.

Issue notice to the Respondent No. 3 returnable on 24.07.2024. The Applicant undertakes to serve notice upon the Respondent through all modes viz. registered post, speed post, courier service and E-mail. Affidavit of service be filed within one week. Reply, if any, may be filed by the Respondent within one week from the date of receipt of the notice. Rejoinder, if any, may be filed before the next date of hearing.

The Ld. Counsel for the Applicant undertakes to upload the amended memo of parties against IA-5457/2023.

List on 24.07.2024.

IA-2529/2024: The prayer made in the captioned application reads thus:

It is most respectfully prayed that this Hon'ble Tribunal, in the light of the above-stated facts and circumstances, be pleased allow the present application and grant approval to the Applicant to continue arbitration proceedings against M/s NTPC Ltd.

Pass such other order or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances mentioned hereinabove.

Ld. Counsel appearing for the Applicant submitted that previously the proceedings were pending before Arbitral Tribunal comprising Hon'ble Justice Vijender Jain (Retd.), Hon'ble Justice Mr. S.N. Agarwal (Retd.) and Hon'ble Justice Mr. A.N. Venugopala Gowda (Retd.), but unfortunately Hon'ble Justice Mr. S.N. Agarwal has since passed away and Hon'ble Justice Ravindra Bhat, Former Judge of the Supreme Court has consented to act as one of the Member of Arbitral Tribunal.

Having drawn our attention to the order dated 15.03.2024, passed by Hon'ble Delhi High Court in ***O.M.P. (Misc.) (COMM.) 221/2024, titled "Tecpro Systems Ltd. Versus NTPC Ltd."***, she submitted that the term of the arbitration has been extended for period of 9 months with effect of 14.03.2024.

According to her, it is the claim of the Corporate Debtor, represented by the Liquidator, which need to be examined by the Arbitral Tribunal, and in terms

of the provisions of Section 35(1)(k) of IBC, 2016, she needs leave of this Tribunal to pursue the proceedings.

In due deference to the aforementioned provision of the Code, relied upon by the Ld. Counsel appearing for the Liquidator and Corporate Debtor, the IA is allowed and the arbitral proceedings, pending before the aforementioned Arbitral Tribunal are allowed to be pursued by the Liquidator. **The IA stands disposed of.**

IA-2591/2024: The prayer made in the captioned application reads thus:

It is most respectfully prayed that this Hon'ble Tribunal, in the light of the above-stated facts and circumstances, be pleased allow the present application and grant approval to the Applicant for having filed, and for continuing the arbitration appeal/ proceedings against TSGENCO and its consortium partners, Gammon India Pvt. Ltd. and VA Tech Wabag.

Pass such other order or orders as this Hon'ble Tribunal may deem fit in the facts and circumstances mentioned hereinabove.

Ld. Counsel appearing for the Liquidator qua the Corporate Debtor could draw our attention to para 2 (b) to 2 (f) of the application to espouse that the appeal preferred against the award dated 07.11.2023 passed by the sole arbitrator need to be pursued before the Principal Civil Court Hyderabad, in the interest of the Corporate Debtor and the Creditors.

In the wake of the provisions of Section 35(1)(k) of IBC, 2016 and the submissions made by the Ld. Counsel appearing for the Applicant, **the IA is allowed**, and the Liquidator is permitted to pursue the appeal preferred in the IA.

Cont.P-13/2024: Issue notice to the Respondent returnable on 24.07.2024. The Applicant undertakes to serve notice upon the Respondent through all modes viz. registered post, speed post, courier service and E-mail. Affidavit of service be filed within one week. Reply, if any, may be filed by the Respondent within one week from the date of receipt of the notice. Rejoinder, if any, may be filed before the next date of hearing.

List on 24.07.2024.

IA-5780/2023: Mr. Fernandes, Ld. Sr. Counsel appearing for the SCC submitted that the Liquidator has been acting without consulting the SCC. It is also his submission that the liquidator is also acting contrary to the instructions given by the SCC. Maybe, in terms of the provisions of Regulation 31A(1) of IBBI (Liquidation Process) Regulations, 2016, the advice of the consultation committee is not binding on the Liquidator, but as has been provided in Regulation 31A(9) the Consultation Committee should advise the Liquidator by vote of not less than 66% of the representative of the Consultation Committee. Thus, two propositions i.e. concerning the Stakeholder's Consultation Committee and following its advice are different and independent propositions. The Liquidator may have immunity to say that the Consultation extended to him by the Consultation Committee is not binding but it is not open to the Liquidator not to consult the Consultation Committee.

In the wake, let all the pending applications be placed before the Stakeholder's Consultation Committee within one week from today and the Stakeholder's Consultation Committee will file an affidavit separately in each of the applications, indicating their stand qua the fate of the same. In the meantime, the Liquidator is directed not to act without consulting the Stakeholder's Consultation Committee, in terms of the provisions of Regulation 31A(9) of IBBI (Liquidation Process) Regulations, 2016. The Liquidator would also file separate affidavit explaining therein, as to why and how he could act without consulting the Stakeholder's Consultation Committee or in defiance of the advice given by the Committee to him. He should file the affidavit within two weeks from today.

List on 24.07.2024.

IA-415/2024, CA-372/2018, IA-182/2024, IA-1960/2023, IA-2802/2023, IA-2086/2023, IA-6082/2023, IA-5263/2023, IA-6429/2023, IA-6513/2023, IA-1653/2020, CA-01/2024, IA-833/2024, IA-1677/2024: Let all the pending applications be listed on 24.07.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)