

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II**

SPECIAL BENCH(Video Conference)

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 29.07.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.1145/2020 in CP(IB) No.372/7/HDB/2018
NAME OF THE COMPANY	Indu Projects Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Indu Projects Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced in IA No. 1145/2020 vide separate sheets.

-Sdl-

Member (Technical)

-Sdl-

Member (Judicial)

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

IA No.1145 of 2020
in
CP (IB) No.372/7/HDB/2018

U/s. 60(5) OF I&B CODE, 2016.

In the matter between :

M/s Vishal Nirmitti Private Limited
Represented by its Director
Ajay B. Tapadia, S/o Bhagwan Das Tapadia
Shivam, Plot No.14, Gulmohar Park
S. No.132/1/3/ Aundh, Pune, MH- 411007.

.. Applicant

AND

1. Bank of India
Hyderabad Large Corporate Branch
1st Floor, PTI Building
A.C. Guards, Masab Tank
Hyderabad – 500004. .. Financial Creditor
2. Anup Kumar Singh
Resolution Professional
Indu Projects Limited
1009, KPHB, Kukatpally
Hyderabad – 72.
3. Committee of Creditors
Indu Projects Limited
1009, KPHB, Kukatpally
Hyderabad – 72.
4. Karnataka Bank Ltd.
Represented by its Managing Director & CEO
Post Box No.599
Mahaveera Circle, Kankanady
Mangaluru – 575 002, Karanataka.
5. Earthin Project Ltd.
D. No.1/1867-B, Velama Palem
Srikalahasti, Chittor Dist – 517 644. .. Respondents

Date of Order: 29.07.2021

**Coram: MADAN BHALCHANDRA GOSAVI MEMBER JUDICIAL
Dr. BINOD KUMAR SINHA MEMBER TECHNICAL**

- Sd/-

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Parties / counsels present:

- For Applicant : Shri Ch. Siddhartha Sarma, Advocate.
For Respondent no.2 : Shri VVSN Raju, AV Padma Reddy, Praveen Kumar Jain and A. Sravanthi, Advocates.
For Respondent no.4 : Mrs. Bharati JVL, Advocate.

(Per Bench)

1. Brief background of the parties to the instant Application are as under:-

This application is filed by Director of the Operational Creditor to the Corporate Debtor, viz. M/s Indu Projects Limited, seeking directions against respondent no.2/ Resolution Professional to convene a meeting of CoC to consider the issue of credit facility by Karnataka Bank's Tirupati Branch in favour of respondent no.5; and also seeking directions against respondent no.4/ Karnataka Bank to place the entire record concerning issuance of Bank Guarantee by its Tirupati Branch in favour of Resolution Professional and file facts before this Tribunal.

The Corporate Debtor is a company incorporated under the Companies Act, 1956 having its CIN as U45200TG2001PLC038175.

Respondent no.1 is the Financial Creditor/ Bank of India is a statutory body under Bank of India Act, 1955. The Financial Creditor has filed the main petition being CP (IB) No.372/ 7/ HDB/ 2018 under section 7 of the I&B Code. The same has been admitted vide order dated 25.02.2019

Respondent no.2 is appointed as Resolution Professional vide order dated 04.06.2019.

Respondent no.3 is CoC of Corporate Debtor.

Respondent no.4/ Karnataka Bank has issued PBG to Earthin Projects, respondent no.5, for onward submission to respondent no.2/ Resolution Professional for participating in CIRP of Corporate Debtor.

Respondent no.5 is a company which has participated in CIRP of Corporate Debtor and which has been declared as H1 by respondent no.3/ CoC.

2. Brief facts of the case as stated by the Applicant are as under:-

- a. Respondent no.2/ Resolution Professional has issued notice dated 16.07.2019 seeking bids from prospective Resolution Applicants for Corporate Debtor. However, CoC has rejected resolution plans filed by

some of the prospective bidders. Pursuant to extension of CIRP for 54 days, respondent no.2 invited resolution plans by newspaper publication dated 25.07.2020.

- b. In the meantime the applicant came across newspaper reports (ANNEXURE-I) that Resolution Plan submitted by respondent no.5 was approved by CoC of the Corporate Debtor and that respondent no.5 proposed to pay about Rs.500 crores to the creditors within 90 days from the date of approval of Resolution Plan and secured through Fixed Deposits live bank Guarantees of about Rs.78 crores and further infuse about Rs.40 crores into the Corporate Debtor.
 - c. The applicant made inquiries and learnt that:
 - (i) Respondent no.5 secured credit facilities of Rs.11 crores from respondent no.4/ Karnataka Bank, Tirupati Branch on 26.06.2020, which includes a Bank Guarantee facility of Rs.6 crores and OD facility of Rs.5 crores.
 - (ii) Respondent no.4/ Karnataka Bank had sanctioned Bank Guarantee for onward submission to a Chinese firm (TCL). Respondent no.4 has released the Bank Guarantee in favour of respondent no.2/ Resolution Professional.
 - (iii) Respondent no.5 had mortgaged some land properties having questionable title with Tirupati Branch of Karnataka Bank as collateral security for availing credit facility.
 - d. The applicant issued legal notices dated 14.10.2020, 26.10.2020 and 28.10.2020 (page 17-26) to Karnataka Bank, respondent no.4 herein regarding issuance of Bank Guarantee and title issues related to collateral security by its Tirupati Branch.
 - e. The applicant had also issued legal notices to 14.10.2020 and 21.10.2020 (Pages 27-30) to respondents no.2 and 3 requesting to convene CoC meeting of the Corporate Debtor. Said respondents did not reply.
3. Counsel for Respondent No.2/ Resolution Professional filed its counter stating as under:
- (i) The applicant has not submitted any proof in support of the allegations levelled in the present application. (para 5)
 - (ii) The person, who affirmed the affidavit has not produced authorization in the form of Board Resolution of the applicant/ company. (para 7)

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- (iii) The Resolution Professional and the CoC have considered the Resolution Plan submitted by Respondent no.5. Said Bank Guarantee was issued in ordinary course and the Bank is bound by the terms of the Bank Guarantee. Sanction letter dated 26.06.2020 is at Annexure A-1 and letter dated 17.07.2020 addressed by respondent no.5 to the Bank requesting for such Bank Guarantee is at Annexure.2.
 - (iv) The CoC has approved the Resolution Plan submitted by respondent no.5 with 100% voting in favour of Resolution Plan.
 - (v) Commercial wisdom of the CoC cannot be challenged without any proof as held by the Hon'ble Supreme Court in the matter of K. SHASHIDHAR Vs. INDIAN OVERSEAS BANK & OTHERS, in Civil Appeal No.10673 of 2018 and allied matters. Besides, respondent no.5 is a consortium with K. Ramachandra Rao Transmission and Projects Pvt Ltd., which has net worth more than required. Therefore, the Consortium Member has requisite financial stability to take over the Corporate Debtor.
4. Counsel for Respondent No. 4/Karnataka Bank filed its counter stating as under:
- (i) Respondent no.4/ Bank has provided secured credit facility including Bank Guarantee facility to respondent no.5 based on the financials of respondent no.5 and securities provided by them and the same have been accepted by the CoC. Respondent no.4 is in no way connected with the CIRP of the Corporate Debtor.
 - (ii) All the Resolution Applicants have to submit Bank Guarantee as per law and the same shall be refunded to unsuccessful Resolution Applicants. Acceptance of plan submitted by respondent no.5 is based on merits as considered by the CoC. Respondent no.4 has no role to play therein.
 - (iii) The Bank has issued Bank Guarantee after proper security for the same furnished by respondent no.5.
 - (iv) The applicant is unnecessarily dragging the internal matters into dispute.
5. We have heard the learned counsel for the applicant and the learned counsel for the respondents and perused the record of the case. The applicant, claiming to be Director of the Operational Creditor / company has filed this application requiring the Adjudicating Authority to direct the Resolution Professional to convene CoC meeting

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to deliberate on the allegations levelled in this IA. Another prayer made is to call for record of respondent no.4/ Bank.

6. The applicant has not produced any record to substantiate his allegations. The applicant merely states that, "he had come across media reports" and "he was reliably informed" and so on without producing any documentary evidence to prove his claim, Whereas, the CoC has approved the Resolution Plan submitted by respondent no.5 with 100% voting in favour of Resolution Plan. The CoC has accepted the action of respondent no.4/ Bank in providing secured credit facility including Bank Guarantee facility to respondent no.5 based on the financials of respondent no.5 and securities provided by them.
7. It is also pertinent to note here that reply of respondent no.4/ Karnataka Bank submitted before us is submitted by the Assistant General Manager, Karnataka Bank, Regional Office, Hyderabad, taking complete responsibility stating that the Bank Guarantee was issued after thorough scrutiny of papers submitted by respondent no.5 and the security provided by them. Thus, there is no likelihood that the Bank Guarantee will not be honoured by Karnataka Bank.
8. We have perused the judgment of the Hon'ble Supreme Court in K. SHASHIDHAR Vs. INDIAN OVERSEAS BANK & OTHERS (supra), wherein it is provided that,

"The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non justiciable."

9. As regards the second prayer to call for the entire record concerning Bank Guarantee from the Bank, we are of the view that we will not be justified in issuing such a direction without there being any evidence to do so.
10. For the above reasons we are not inclined to consider either of the prayers made by the applicant. Accordingly, the IA is dismissed.

-sd/-

DR. BINOD KUMAR SINHA
MEMBER TECHNICAL

-sd/-

MADAN BHALCHANDRA GOSAVI
MEMBER JUDICIAL