

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT-II)

IA. 5484/ND/2021

IN

Company Petition No. (IB)-479 (ND)/2019

IN THE MATTER OF:

M/s Oriental Bank of Commerce

...Financial Creditor

Versus

M/s. Yamuna Infradevelopers Private Limited

...Corporate Debtor

AND IN THE MATTER OF:

**Ms. Rita Gupta, Liquidator
Yamuna Infradevelopers Private Limited
45-46, Basement, Satya Niketan,
Moti Bagh-II, New Delhi-110021**

...Applicant/ Liquidator

Versus

**1) Mr. Inder Pal Singh
Director of the Suspended Board of
Yamuna Infradevelopers Private Limited
At 111, Santpura Road, Model Town,
Yamuna Nagar, Haryana-135001**

...Respondent No.1

**2) Mr. Rajinder Kumar
Director of the Suspended Board of
Yamuna Infradevelopers Private Limited
At 111, Santpura Road, Model Town,
Yamuna Nagar, Haryana-135001**

...Respondent No.2

**3) The Mining Officer, Yamunanagar
Mines and Geology Department
Government of Haryana,
Office of District Industries Centre,
Yamunanagar, Haryana - 135001**

...Respondent No.3

**4) The DGMG
Mines and Geology Department,
Government of Haryana,
30 Bays Building,
Sector 17-C, Chandigarh-160017**

...Respondent No.4

SECTION: Section 60(5)(c) of The NCLT Rules, 2016 read with Sec. 33(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.

CORAM :

SH. BHASKARA PANTULA MOHAN, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENTS:

For the Applicant : Adv. Sumit K Batra and Adv. Manish
For the Respondents : Khurana, alongwith Liquidator in person.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Ms. Rita Gupta, Liquidator (hereinafter referred to as the **"Applicant"**) of M/s Yamuna Infradevelopers Private Limited (hereinafter referred to as **"Corporate Debtor"**) has filed the present IA No. 5484 of 2020 under Section 60(5)(c) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **"Code"**) read with Section 33(5) of the code and Rule 11 of the NCLT Rules, 2016.

2. That the Applicant has made the following prayers :

a) set aside the order dated 26.11.2020 as passed by the Director General, Mines and Geology, State of Haryana for having been passed against the provisions and spirit of Insolvency and Bankruptcy Code, 2016; and/or;

b) stay the operation of order dated 26.11.2020 as passed by the Director General, Mines and Geology, State of Haryana for having been passed against the provisions and spirit of Insolvency and Bankruptcy Code, 2016; and/or;

c) Pass such other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

3. To put succinctly, the background of the case is that the Financial Creditor, M/s. Oriental Bank of Commerce filed an Application bearing No. (IB)-479(ND) 2019 under Section 7 of IBC, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely, M/s. Yamuna Infradevelopers Pvt. Ltd. (**hereinafter referred to as "YIPL"**). This Adjudicating Authority vide order dated 01.05.2019 had initiated the CIR Process against the Corporate Debtor. It has been submitted that since no resolution applicant came forward to take over the business of YIPL under the CIRP, on an application filed by the RP, this Adjudicating Authority vide order dated 18.12.2019 initiated the liquidation proceedings against the Corporate Debtor and appointed Ms. Rita Gupta as the Liquidator of the Corporate Debtor.

4. That the main grievance of the Applicant is against the order dated 26.11.2020 passed by the Director General, Mines and Geology (DGMG), State of Haryana, whereby the rights granted to the Corporate Debtor YIPL for extraction of boulders, gravel and sand from the minor mineral block, namely, Begampur Block/YNR/B-37 have been terminated on account of non-payment of outstanding amount of contract money, R&R Fund and TCS. The applicant has termed this action of DGMG as violation of Sections 14 and 33(5) of the IBC, 2016.

5. It is stated by the Applicant that before initiation of the CIR process, the Corporate Debtor YIPL participated in the e-auction and by offering the highest bid, it obtained the mining contract of Minor Mineral Block, namely, "Begampur Block/YNR-B37" having tentative area of 39.50 hectares for extraction of boulders, gravel and sand. The mining operation in the Block commenced from 16.09.2017.

6. It is submitted by the Applicant that on commencement of CIRP, it has intimated all the stake holders, including, the Mines and Geology Department, Government of Haryana, regarding factum of appointment of the applicant as the Liquidator and also sought details of the mining sites leased out to YIPL through auction.

7. It is further submitted by the Applicant that the fact of initiation of the liquidation proceedings was intimated vide letter dated 04.01.2020 to the Mines and Geology Department, Yamuna Nagar, which was received by the said Department on 10.01.2020. It has been added that vide the same letter the Applicant sought details regarding MMP1 and MMP2 returns and documents pertaining to the mining operations of YIPL. That the emails dated 11.01.2020, 15.01.2020 and 07.02.2020 were also sent to collect the said details but the same were not provided.

8. It is further added by the Applicant that constrained by the no response, she personally visited the office of the Mines and Geology Department, Office of District Industry Centre - Yamuna Nagar, on 10.02.2020 and met the Mining Officer Mr. Ashok Kumar and intimated him the entire facts. It is added that one letter dated 10.02.2020 was also

submitted to Shri Ashok Kumar and monthly instalment report was taken by the Applicant from the said officer. It is further submitted that upon seeking information with regard to YIPL, the concerned Officer refused to divulge any details and stated that it is an internal matter of YIPL and in the absence of any direction from the Court, no information can be provided to the Applicant. It was suggested by him that any information required by the Applicant can be obtained through RTI.

9. It is further submitted by the Applicant that vide email dated 26.02.2020, the Applicant informed the Mining Officer, Mines and Geology Department, Government of Haryana, at Yamuna Nagar regarding the order dated 18.12.2019 passed by the NCLT New Delhi, ordering for liquidation of YIPL. It was informed in the said email that all the assets, including the contractual rights are the part of liquidation estate of YIPL and cannot be appropriated other than by the mode provided under the Code.

10. It is averred by the Applicant....

“That on 13.08.2020, a suspension order-cum-Show Cause Notice was sent from the office of the District Mining Officer, Mines and Geology Department, Yamuna Nagar, Haryana, regarding non-payment of dues to the tune of Rs. 37,22,50,669/- and for suspending the mining operations altogether. The said notice was duly responded and it was intimated that under Regulation 27 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, any payment which is of periodical nature, the claim in respect of such payment can be made only up to the liquidation commencement date i.e. up to 27.12.2019. Further, it was also submitted to the District Mining Officer that no claim in respect of the outstanding dues of YIPL was submitted by the District Mining Officer before the due date that was 26.01.2020.”

11. It is stated by the Applicant that time again, the facts of initiation of liquidation proceedings and appointment of the Applicant as the liquidator of YIPL, were intimated to the concerned Mining Officer at Yamuna Nagar and it was also intimated that in terms of the provisions of Insolvency and Bankruptcy Code, 2016, there was no obligation on the part of the YIPL to pay any contract money pursuant to initiation of the liquidation proceedings and the appropriate course of action for the concerned department would have been to file their claim before the Applicant and participate in the process of liquidation. However, ignoring all the facts and the fact of pendency of various applications filed by the Applicant, the DGMG Haryana vide order dated 25/26.11.2020 terminated the contract granted in favour of YIPL for extraction of miner minerals from Begampur Block of District Yamuna Nagar.

12. It is further stated by the Applicant that despite being aware of the pendency of the applications as preferred by the applicant, the DGMG Haryana went ahead to pass the impugned order without giving an opportunity of hearing to the Applicant/Liquidator. It is recorded in the order dated 25/26.11.2020 that an opportunity of hearing was given to the erstwhile promoter/management on 11.08.2020 and letters duly signed by them were accepted by the competent authority while giving them an opportunity to make good of the defaults, however, the defaults were not made good and the payments remained outstanding. It is submitted by the Applicant that the erstwhile Management/Promoters in any case had no authority to represent the Corporate Debtor before the competent authority in view of the CIRP proceedings initiated against

them. They had no role whatsoever in the affairs of business of the Corporate Debtor. The fact of liquidation of the corporate debtor was well within the knowledge of the competent authority, who while ignoring the same, passed the order dated 25/26.11.2020 ordering termination of the contract awarded to the Corporate Debtor.

13. It is further submitted by the Applicant that the termination of the said contract would ultimately lead to the closure and virtual death of the Corporate Debtor and no attempts whatsoever may result in its revival as the primary asset of the Corporate Debtor was this mining contract and in absence of the contract in respect of the said mines, the entire exercise would not yield any results. It has been contended by the applicant in its written submissions that the said order dated 25/26.11.2020 is even otherwise contrary to the spirit and dictum of the Hon'ble Supreme Court of India as held in the case of **Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and others 2018 SCC online (SC) 1733** and **Swiss Ribbons Private Limited Vs. Union of India and others 2019 SCC Online (SC) 73**, wherein the Hon'ble Apex Court has emphasized that every effort must be made to avoid the death of the Corporate Debtor and every effort must be made to run the Corporate Debtor as a going concern. 9. Thus, it is prayed that the order dated 25/26.11.2020 passed by the DGMG (Respondent No.4) terminating the mining contract of the Corporate Debtor be set aside. Further, since the mining contract commenced from 16.09.2017 was for a period of 8 years, the period from the date of liquidation till the date the contract is restored by

the Tribunal be excluded from the tenure of 8 years in order to put in efforts for revival of the business of Corporate Debtor.

14. That despite repeated service of notice to the Respondents no 3 and 4, there was no representation on their behalf and accordingly, the Respondents no. 3 & 4 were proceeded ex-parte vide order dated 29.11.2021 passed by this Bench.

15. After hearing submissions and perusing the documents placed on record by the Applicant, this Bench is of the view that that in order to determine whether the order dated 25/26.11.2020 passed by the DGMG (Respondent No.4) is in violation of Section 33(5) of IBC, 2016, it is necessary to examine the same. The scanned copy of the order dated 25/26.11.2020 is reproduced below :



Director General, Mines & Geology, Haryana
ORDER

The minor mineral mines of district Yamuna Nagar were notified on 27th April, 2015 and a Corrigendum was issued on 19.05.2015 for grant of mining contracts through e-auction to be held on 10th-11th June, 2015 as per terms and conditions of the auction notice. M/s Yamuna Infradevelopers Pvt. Ltd., Admin. Office-111, Santpura Road, Model Town, Yamuna Nagar-135001 having accepted the conditions of the notice participated in the e-auction and offered the highest bid of Rs. 10,40,50,000/- [Rs. Ten Crore forty lacs fifty thousand only] per annum against Reserve Price of Rs. 10,40,00,000/- for obtaining the Mining Contract of Minor Mineral block namely 'Begampur Block/YNR 8-37' for extraction of Boulder, Gravel and Sand having tentative area of 39.50 hectares. As per requirement of the auction notice they deposited an amount of Rs. 01,04,05,000/- towards initial bid security. The highest bid was accepted by the State Government and accordingly the acceptance of the bid/Letter of Intent (LoI) was issued on 19.06.2015. The successful bidder executed contract agreement with the State on 11.04.2016.

2. Whereas, as per terms & conditions of the auction notice the actual mining operations were to be allowed only after prior Environmental Clearance of competent authority as per requirement of EIA notification dated 14.09.2006 of MoEF, CC Gol as amended from time to time. Further, the period of contract was to commence from the date of grant of Environmental Clearance or after 12 months from the date of issuance of LoI dated 19.06.2015, whichever is earlier.

3. Whereas, the contractor after obtaining environmental clearance from SEIAA on 29.06.2017 and Consent to Operate from the Haryana State Pollution Control Board commenced mining operation on 16.09.2017.

4. Whereas, the contractor as per terms of clause 3 (b) part III of the contract agreement the contractor firm was under obligation to pay advance instalment of contract money by the 7th of each month. Further as per clause 4 part III of contract agreement where the contractor was operating the area, he



Director General, Mines & Geology, Haryana
was required to pay an additional amount, equal to 10% of the contract money, towards Mines and Mineral Development, Restoration and Rehabilitation Fund (R&R fund). However, the contractor company was not depositing the required dues despite notice.

5. Whereas, the contractor was operating the mine but was not paying the Government dues. Furthermore, this office received communication from Smt. Rita Gupta, Liquidator appointed as a Liquidator for the CD by the National Company Law Tribunal, New Delhi Bench (NCLT) informing that the Liquidation process under the Insolvency and Bankruptcy Code, 2016 ("Code") had been commenced against the contractor (M/s Yamuna Infradevelopers Pvt. Ltd.) vide order dated 18.12.2019 passed by the NCLT.

6. Whereas, the contractor company was not paying the Government dues on regular basis and at the same time the company was facing liquidation process. The Mining Officer, Yamuna Nagar was directed vide letter dated 06.08.2020 to take action to suspend the mining operations as per the provisions of the State Rules, 2012 and was further directed to recover the outstanding dues. The Mining Officer, Yamuna Nagar suspended the mining operations of 'Begampur Block/YNR B-37' vide order dated 13.08.2020.

7. Whereas, the contractor has become insolvent but was operating the mine and was not paying Government dues as per the schedule and is in default in payment. Accordingly, they were afforded an opportunity of hearing on 11.08.2020 and at the time of hearing the contractor submitted a letter dated 11.08.2020 and undertook to clear all the outstanding dues. The contractor company did not clear the Government dues in time, accordingly vide letter dated 25.09.2020, they were directed to submit their final submission by 30.09.2020. The contractor company vide letter dated 30.09.2020 again requested for one-month time.

Smith B. B.

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Director General, Mines & Geology, Haryana
8. Whereas, the contractor company failed to pay up to date Government dues as per their commitment, so, in exercise of the powers conferred under rule 56 (7)(vi) of the Haryana Minor Mineral Concession, Stoking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, the contract granted in favour of M/s Yamuna Infradevelopers Pvt. Ltd., for extraction of minor mineral from 'Begampur Block/YNR B-37' of District Yamuna Nagar is hereby terminated with adjustment of security amount of Rs. 02,60,12,500/- against outstanding dues. It is directed that outstanding amount of contract money, R & R Fund and TCS till date of possession alongwith interest shall be paid failing which the same shall be recovered as arrears of land revenue.

Place : Panchkula.
Dated: 25.11.2020.

(Signature)
(Amitabh Singh Dhillon, IPS)
Director General, Mines and Geology,
Haryana.




Director General, Mines & Geology, Haryana

Speed Post

Endst No. DMG/HY/Cont./Begampur Block/YNR B-37/2015/ 555A Dated: 26-11-20

A copy is forwarded to M/s Yamuna Infradevelopers Pvt. Ltd., Admin. Office-111, Santpura Road, Model Town, Yamuna Nagar-135001 for information and necessary action. He is directed to handover the possession of mine immediately and pay outstanding government dues at an earliest, failing which the same shall be recovered as arrears of land revenue.



Mining Engineer,
for Director General Mines & Geology,
Haryana.

Speed Post

Endst No. DMG/HY/Cont./Begampur Block/YNR B-37/2015/

Dated:

A copy is forwarded to Deputy Commissioner, Yamuna Nagar for information and necessary action.



Mining Engineer,
for Director General Mines & Geology,
Haryana.

Speed Post

Endst No. DMG/HY/Cont./Begampur Block/YNR B-37/2015/

Dated:

A copy is forwarded to the Assistant Mining Engineer, Department of Mines & Geology, Yamuna Nagar for information. He is directed to recover outstanding government dues from the contractor as per rule.


Mining Engineer,
for Director General Mines & Geology,
Haryana.

16. That from perusal of order dated 25/26.11.2020 (Supra), it is observed that the DGMG Haryana/Respondent No.4 has made the following observations against the Liquidator :

"5. Whereas, the contractor was operating the mine but was not paying the Government dues. Furthermore, this office received communication from Smt. Rita Gupta, Liquidator appointed as a Liquidator for the CD by the National Company Law Tribunal, New Delhi Bench (NCLT) informing that the Liquidation process under the Insolvency and Bankruptcy Code, 2016 ("Code") had been commenced against the contractor (M/s. Yamuna Infradevelopers Pvt. Ltd) vide order dated 18.12.2019 passed by the NCLT.

6. Whereas, the contractor company was not paying the Government dues on regular basis and at the same time the company was facing liquidation process. The Mining Officer, Yamuna Nagar was directed vide letter dated

06.08.2020 to take action to suspend the mining operations as per the provisions of the State Rules, 2012 and was further directed to recover the outstanding dues. The Mining Officer, Yamuna Nagar suspended the mining operations of 'Begampur Block/YNR B-37' vide order dated 13.08.2020.

7. **Whereas, the contractor has become insolvent but was operating the mine and was not paying Government dues as per the schedule and is in default in payment. Accordingly, they were afforded an opportunity of hearing on 11.08.2020 and at the time of hearing the contractor submitted a letter dated 11.08.2020 and undertook to clear all the outstanding dues.** The contractor company did not clear the Government dues in time, accordingly vide letter dated 25.09.2020, they were directed to submit their final submission by 30.09.2020. The contractor company vide letter dated 30.09.2020 again requested for one-month time.

8. Whereas, the contractor company failed to pay up to date Government dues as per their commitment so, in exercise of the powers conferred under rule 56 (7)(vi) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, the contract granted in favour of M/s Yamuna Infradevelopers Pvt. Ltd., for extraction of minor mineral from 'Begampur Block/YNR B-37' of District Yamuna Nagar is hereby terminated with adjustment of security amount of Rs. 02,60,12,500/- against outstanding dues. It is directed that outstanding amount of contract money, R & R Fund and TCS till date of possession along with interest shall be paid failing which the same shall be recovered as arrears of land revenue.

(Emphasis Supplied)

17. That from the bare reading of para 5 of the order dated 25/26.11.2020 (Supra), it is evident that the Respondent No.3 & 4 were having full knowledge of commencement of the Liquidation proceedings against the Corporate Debtor. However, they did not file their claim before the Liquidator. Further, from the contents of the para 7 of the said order, it clearly emerges that the Respondent No. 3 & 4 were aware of the

Insolvency proceedings of the Corporate Debtor and this has been the main ground for terminating the subsisting mining contract of the Corporate Debtor.

18. In our considered view, after the initiation of CIRP or liquidation proceedings, the dues could have been claimed by the Respondent No. 3 & 4 by filing a claim before the then RP / Liquidator respectively. We notice that even after the initiation of Liquidation proceedings, the Respondent No. 3 & 4 instead of filing its claim with the Liquidator, resorted to initiation of parallel proceedings against the Corporate Debtor and termination of its mining contract.

19. Furthermore, we observe that despite being aware of commencement of the Liquidation proceedings against the Corporate Debtor, the Respondent No. 3 & 4 afforded an opportunity of hearing on 11.08.2020 to the contractor (Ex-management) who, as it appears from the content of para 7 of the order, submitted a letter dated 11.08.2020 to clear all the outstanding dues. Obviously, the Ex-management had no locus to represent the Corporate Debtor before the Respondent No. 3 & 4 in view of the CIRP proceedings initiated against them/corporate debtor.

20. That we further observe that the Respondent no 3 had earlier issued a show cause notice dated 13.08.2020 for an outstanding demand of Rs.37,22,50,669/-, which was duly replied by the Liquidator vide letter dated 17.08.2020. The scanned copy of the said show cause notice is reproduced overleaf :

From

District Mining Officer,
Mines & Geology Department,
Yamunanagar.

To

M/s Yamuna Infra Developers Pvt. Ltd.
House No. 111, Santpura Road,
Model Town, Yamunanagar

Memo. No. MO/YNR/ 2338
Dated Yamunanagar, the: 13.08.2020

Subject:

Suspension of Mining operations/productions and dispatch due to non-payment of monthly contract money & contribution to the R&R fund inter alia including Show cause for termination of contract, as per the provisions of the State Mining Rules, 2012, in respect of Begampur/ YNR B37 Block- Regarding.

On the subject noted above.

2. Whereas, you in the e-auction held on 10-11.06.2015 offered a highest bid of Rs. 10,40,50,000/- against the reserve price of Rs.10,40,00,000/- for obtaining mining contract of Begampur/ YNR 37 Block for the extraction of Boulder, Gravel and sand, from the tentative area of 39.50 hectares. The highest bid offered by you was accepted by the State Government and accordingly, the Lol was issued vide dated 19.06.2015 in your favour.

3. Whereas, as per the terms and conditions of the grant, the period of contract was to commence from the date of the Environment clearance or after 12 months from the date of the grant of EC, whichever is earlier. In your case, the period of contract commenced from 19.06.2016, i.e. after the expiry of 12 months from the date of issuance of Lol, whereas, the mining operations in the area were commenced by you w.e.f 16.09.2017, after obtaining Environment Clearance and other mandatory permissions from the concerned department/s. Hence liability of your company to deposit monthly instalment/ government dues, started w.e.f 19.06.2016 itself.

4. Whereas, you are aware that as per the terms and conditions of the grant you are under obligation to pay monthly advance contract money alongwith additional amount of 10% of the contract money towards Mines and Mineral Development, Restoration and Rehabilitation Fund (R&R).

5. Whereas, you are also aware that as per the provisions of Rule 56(7)(ii), the mining operations are liable to be suspended in case of non-payment of Government dues despite notice and further in case of non-payment of the dues despite suspension

of mining operations, the contract can be terminated as per the provisions of Rule 56(7) of the State Rules, 2012.

6. Whereas, as per the office record, for the period of commencement of mining operations, you have deposited the full monthly instalment only upto 01.08.2019 and part payment for the month of September 2019 on account of contract money. Further for with regards to amount of 10% of the contract money to be deposited towards Mines and Mineral Development, Restoration and Rehabilitation Fund (R&R), you have paid only 01.07.2019 and part payment in August, 2019. The total amount deposited is as under:

- Rs. 21,88,02,014/- (for the contract money from 1.09.2017 to 30.09.2019)
- Rs. 02,12,43,534/- (for the R&R Fund from 1.09.2017 to 31.08.2019)

The total above comes to be Rs. 24,00,45,548/-

7. Whereas, thereafter you had not deposited the due monthly instalment/ contract money and the 10% of the contract money on account of R&R fund. The details of the same/ government dues, pending against you till August, 2020, is as under:

Contract Money Details

- Rs. 12,45,62,984/- (for the contract money from 01.10.2019 to 31.08.2020)
- Rs. 02,05,28,374/- (interest upto 10.08.2020 on the contract money amount)

R&R Fund Details

- Rs. 01,30,93,269/- (for the R&R Fund from 01.09.2019 to 31.08.2020)
- Rs. 20,90,165/- (interest upto 10.08.2020 on the R&R amount)

The total of above comes to be Rs. 16,02,74,792/- (Rs. 13,76,56,253 as principal amount+ Rs. 2,26,18,539 as interest)

8. Whereas, apart from the dues of the period of post commencement of mining operations, the dues of un-commenced period is also pending against you, as your liability to pay the contract money got started w.e.f 19.06.2016. Thus for the un-commenced period qua prior to commencement of mining operations, a total amount of Rs. 12,91,95,411/- + Rs.08,27,80,466/- (as interest calculated upto 10.08.2020) is also due against you, totalling to Rs. 21,19,75,877/-.

9. Whereas, as per the above mentioned position/ facts, the grand total amount of Rs. 37,22,50,469/- (Rs. 21,19,75,877/- of uncommenced period + Rs. 16,02,74,792/- of uncommenced period) have been accumulated against you and as per the past history qua since approx. one year, you are not interested to pay the government dues, therefore I, Neeraj Kumar, Mining Officer, Department of Mines and Geology,

Yamunanagar, in exercise of the power conferred upon me by and in accordance with Clause 1(a) Part IV of the said agreement read with Rule 56(7)(ii) of the Haryana Minor Mineral Concession, Stocking, Transportation and Prevention of Illegal Mining Rules, 2012, and all other powers enabling me in this behalf, hereby suspend your mining operations alongwith dispatch of mineral from your contract area with immediate effect till such time the aforementioned default/ government dues/ amount/ is cleared.

Further as per the provisions of Rule 56(7)(ii), this Suspension order may also be treated/ considered as Show cause notice for termination of the contract along with forfeiture of security in the event of continuation of default for a period of 30 days from the date of issuance of these orders and the pending amount shall be recovered through arrear of land revenue. It may also be noted that you shall also be liable to pay the dues for the suspension period.



Mining Officer,
Department of Mines & Geology,
Yamunanagar

Endst. No. MO/YNR/

Dated:

A copy is forwarded to the following for kind information please.

- a. Director General, Mines and Geology, Haryana at Chandigarh w.r.t. their office memo no. DMG/HY/Cont./Begampur Block/YNR B-37/2015/ 2559 dt. 06.08.2020.
- b. Deputy Commissioner, Yamunanagar.
- c. SP, Yamunanagar.
- d. Sub-Divisional Magistrate, Bilaspur.
- e. SHO, Chachrauli.


Mining Officer,
Department of Mines and Geology
Yamunanagar

21. That from perusal of the show cause notice above, it is observed that the Respondent No.3 had claimed an amount of Rs. 12,45,62,984/- (towards the contract money from 01.10.2019 to 31.08.200) and Rs.2,05,28,374 as an interest thereon up to 10.08.2020. Further, an amount of Rs 01,30,03,269/- has been claimed towards the R & R Fund etc for the period from 01.09.2019 to 31.08.2020. That the aforesaid claims pertain to the period, when Corporate Debtor has been either under CIRP or Liquidation.

22. Further vide order dated 25/26.11.2020, the Respondent No.3 & 4 while exercising the powers under Rule 56(7) (vi) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 terminated the mining contract with an adjustment of the security amount of Rs.02,60,12,500/- against the outstanding dues. This action has been taken on the ground of non-payment of dues. That at this stage, we refer to the provision under Section 238 of IBC 2016, as per which IBC has the overriding effect over all other enactments and instruments. The contents of the same are reproduced below:

“Section 238: Provisions of this Code to override other laws.

238. *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law...”*

23. Hence, in our considered view, for recovery of its dues from the Corporate Debtor, which has been under CIRP/Liquidation, the Respondent No. 3 & 4 instead of exercising the powers under Rule 56(7) (vi) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, should have initiated action as per the provisions of IBC, 2016.

24. That further, knowing fully well that the Corporate Debtor has been under Liquidation, the Respondent ran the parallel proceedings and passed the order dated 25/26.11.2020 under Rule 56(7) (vi) of the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals

and Prevention of Illegal Mining Rules, 2012, which in our considered view, is also inconsistent with Section 33(5) of IBC, 2016. For immediate reference, the contents of Section 33(5) are reproduced below:

Section 33: Initiation of liquidation.

33. (5) *Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:*

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

25. **Hence, we are of the considered view that it is an apt situation where this Adjudicating Authority is constrained to exercise its powers under Section 60(5) of IBC, 2016 to quash and set aside the order dated 25/26.11.2020 passed by Director General Mines & Geology Department Haryana.**

26. It is observed that right of the Respondents to recover its rental, lease dues are affected on account of the moratorium during the CIRP. Accordingly, we refer to the Judgment of Hon'ble NCLAT passed in the matter of **Prerna Singh Vs. Committee Of Creditors of M/s Xalta Food and Beverages Pvt. Ltd. Contempt Case (AT) No. 03 of 2020 in Company Appeal (AT) (Insolvency) No. 104 of 2019 dated 17.12.2021** where in the following is held :

"19. Section 14(1) (d) provides that during the moratorium period the lessor or an owner of the property cannot recover the possession of the property from the Corporate Debtor. Regulation 31 of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations 2016 is as under:-

31. Insolvency resolution process costs. "Insolvency resolution process costs" under Section 5(13)(e) shall mean-

- (a) amounts due to suppliers of essential goods and services under Regulation 32;*
- (b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*
- (c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*
- (d) expenses incurred on or by the resolution professional fixed under Regulation 34; and*
- (e) other costs directly relating to the corporate insolvency resolution process and approved by the committee*

20. As per Regulation 31 Insolvency Resolution Process costs under Section 5(13) (e) mean defined in clause (a) to (e). for the present case, Regulation 31 (b) is relevant which provides that amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under Section 14(1) (d). Due to moratorium period the lessor could not recover the possession of the property from the Corporate Debtor. Thus, the right of lessor to recover rent are affected on account of moratorium. Therefore, the lessor is entitled to recover the rent and which shall include in CIRP costs.

21. Thus, we find no substance in the argument that the rent cannot be included in the CIRP costs..."

27. Accordingly, in terms of the judgement of the Hon'ble NCLAT (supra), we direct the Liquidator to include the rent of the property, 'Begampur Block/YNR B-37 for the CIRP/liquidation period or till the time it was used by the Corporate Debtor, to be included as CIRP cost.


(L. N. Gupta)
Member (T)


(Bhaskara Pantula Mohan)
Member (J)