

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

I.A. No. 1153 of 2021

In

Company Appeal (AT) (Ins.) No. 633 of 2020

IN THE MATTER OF:

State Bank of India

**....Appellant/
Applicant**

Vs.

M/s. Athena Energy Ventures Pvt. Ltd.

.... Respondent

For Appellant: Mr. VM Kannan, Advocate.

For Respondents: Mr. RS Shravan Kumar, Advocate.

**ORDER
(Virtual Mode)**

05.07.2021 The present I.A. No. 1153 of 2021 has been filed by the Appellant-State Bank of India seeking directions in disposed Company Appeal (AT) (Ins.) No. 633 of 2020. The Learned Counsel for the Applicant is heard. Mr. RS Shravan Kumar, Advocate holding for Ramesh Babu Paluta, Advocate appears on behalf of Respondent.

2. The Learned Counsel for the Applicant submits that by the Impugned Order dated 24th November, 2020 this Tribunal had held that there could be simultaneous CIRPs against the Principal Borrower as well as the Corporate Debtor. It is stated in the operative order reads as under:

“The Appeal is allowed. Impugned Order passed by the Adjudicating Authority dated 4th March, 2020 is quashed and set aside. CP(IB)No. 466/7/HDB/2019 filed by the Appellant before Adjudicating Authority is restored to the file of the Adjudicating Authority. The Adjudicating Authority is directed to admit the Application CP(IB)No.466/7/HDB/2019 and pass further necessary Orders as per provisions of IBC. The Adjudicating Authority is requested to appoint the same IRP/RP as has been appointed in CP(IB)616/7/HDB/2018 in the CIRP

proceeding against M/s. Athena Chattisgarh Power Ltd. (Principal Borrower). The IRP/RP will act in accordance with law keeping observations in this Judgment in view.”

3. The Learned Counsel submits that as per Orders of this Tribunal Adjudicating Authority (NCLT, Hyderabad Bench) admitted CP (IB) 466/7/HDB/2019 on 16.04.2021 and appointed Mr. C. Bala Mouli IRP/RP, as Mr. C. Bala Mouli was appearing as Resolution Professional for the Principal Borrower-Athena Chattisgarh Power Ltd. It is stated that Mr. C Bala Mouli filed application that now he has attained the age of 70 years and is doubtful if he can continue to act as IRP. The Learned Counsel submits that even otherwise M/s. Athena Chattisgarh Power Ltd. (Principal Borrower) is now in Liquidation and that one Mr. Kumar Raajan has been appointed as a Liquidator as per CoC Meeting dated 24th December, 2020. The Learned Counsel submits that in such situation Mr. C. Bala Mouli cannot be Resolution Professional for the Respondent-Athena Energy Ventures Pvt. Ltd.- the Corporate Guarantor and the Principal Borrower- M/s. Athena Chattisgarh Power Ltd. The Learned Counsel submits that Mr. C Bala Mouli himself filed an Application before the Adjudicating Authority saying that he would not be able to function as Resolution Professional but the Adjudicating Authority expressed orally on 30.04.2021 that in view of the Orders passed by this Tribunal it would not be possible for them to take another view.

4. We had in our Judgment dated 24th November, 2020 referred to Paragraph 7.10 of the Report of the Insolvency Law Committee dated February, 2020 and it had expressed that upon recovery of any portion of the claims of a creditor in one of the proceeding, there should be a corresponding

revision of the claim amount recoverable by that creditor from the other proceeding. In view of such Report of the Insolvency Law Committee we had observed in Paragraph 16 of our Judgment as under:

“16.....It would be a matter of adjustment when the Creditor receives debt due from the Borrower/ Guarantor in the respective CIRP that the same should be taken note of and adjusted in the other CIRP. This can be conveniently done, more so when IRP/ RP in both the CIRP is same. Insolvency and Bankruptcy Board of India may have to lay down regulations to guide IRP/ RPs in this regard.”

It is clear that the object of our direction to request the Adjudicating Authority to appoint same IRP/RP as has been appointed in the CIRP proceeding against M/s. Athena Chattisgarh Power Ltd. (Principal Borrower) was to ensure that there should be convenience of making corresponding revisions when a particular claim amount is recovered. Now when it is stated that Principal Borrower is under Liquidation and the CIRP against the Corporate Guarantor Respondent Athena Energy Ventures Pvt. Ltd. is pending, it plainly requires that the Resolution Professional who is working as a Liquidator of the Principal Borrower should be appointed as Resolution Professional for the Corporate Guarantor.

5. There was no harm even if the Adjudicating Authority had passed the orders. However, as it is stated that the orders are not still passed. It would be appropriate that the Adjudicating Authority immediately pass necessary orders. We have seen CoC Minutes dated 22.12.2020 with regard to Athena Chattisgarh Power Ltd. (Annexure A-4) Item ‘C’ “1” to appoint Kumar Rajan as Liquidator (instead of RP-Mr. C. Bala Mouli).

6. Learned Counsel for the Respondent submits that the Respondent does not have any objection with regard to appoint Resolution Professional appointed as Liquidator of the Principal Borrower-M/s. Athena Chattisgarh Power Ltd. to be the Resolution Professional of Athena Energy Ventures Pvt. Ltd.-the Corporate Guarantor.

7. We dispose the present I.A. No. 1153 of 2021 with direction to the Adjudicating Authority (NCLT, Hyderabad Bench) to immediately pass orders on application filed by IRP-Mr. C. Bala Mouli dated 26.04.2021 (Annexure A-3) and may appoint IRP the Professional working as Liquidator of the Principal Borrower-M/s. Athena Chattisgarh Power Ltd. to be the IRP/Resolution Professional of the Corporate Guarantor-Athena Energy Ventures Pvt. Ltd. in CP (IB) No. 466/7/HDB/2019.

8. The Learned Counsel for the Applicant makes a request to exclude period from 16th April, 2021 till now. As it appears that the Adjudicating Authority appointed Mr. C. Bala Mouli, it would be appropriate for the Applicant to seek appropriate relief before the Adjudicating Authority itself if occasion so arises.

The Application is disposed, accordingly.

**[Justice A.I.S. Cheema]
The Officiating Chairperson**

**[Mr. V.P. Singh]
Member (Technical)**

Basant B./gc.