

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.179  
IA/473(AHM)2022 in CP(IB) 14 of 2018

**Order under Section 60(5) IBC,2016 14 & rule 11 of NCLT,2016.**

**IN THE MATTER OF:**

Wind World (India) Ltd  
Through Mr. Shailen Shah  
The Resolution Professional of  
Wind World (India) Limited  
V/s

.....Applicant

Principal Chief Conservator of Forests & Ors

.....Respondents

**Order delivered on ..06/07/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)  
Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
DIVISION BENCH  
COURT-1**

**IA No.473 of 2022**  
in  
CP (IB) No.14/NCLT/AHM/2018

**IA No.473 of 2022**

(Application under Section 60(5) read with Section 14 of IBC and Rule 11 of the National Company Law Tribunal Rules, 2016)

Wind World (India) Limited  
Through Mr. Shailen Shah  
The Resolution Professional of  
Wind World (India) Limited  
Having Office at:  
2<sup>nd</sup> Floor, Lodha Excelus  
Apollo Mills Compound  
N M Joshi Marg,  
Mahalaxmi, Mumbai  
Maharashtra-400 011

..... Applicant

Versus

1. Principal Chief Conservator of  
Forests  
(Head of Forest Force)  
Aranya Bhavan  
18<sup>th</sup> Cross, Malleswaram  
Bangalore

..... Respondent No.1

2. Chief Conservator of Forests  
Bellari Circle, Kamma Street  
Mothi Circle  
Ballari-583 101

..... Respondent No.2

3. Deputy Conservator of Forests  
Chitradurga Division  
VP Extension  
Chitradurga-577 501

..... Respondent No.3

4. The Principal Chief Conservator  
of Forest (Forest Conservation)  
and Nodal Officer (FCA)  
3<sup>rd</sup> Floor, Aranya Bhavan  
Malleshwaram 18<sup>th</sup> Cross  
Bengaluru-560 003 ..... Respondent No.4
5. Chief Secretary  
Government of Karnataka  
Room No.320  
Vidhana Soudha  
Bengaluru-560 001 ..... Respondent No.5

**In the matter of:**

**CP (IB) No.14 of 2018**

(Application under Section 7 of the Insolvency and Bankruptcy Code,  
2016)

IDBI Limited ..... Financial Creditor

Vs.

Wind World (India) Limited ..... Corporate Debtor

Order Pronounced on 06.07.2022

**Coram: Madan Bhalchandra Gosavi-Member (Judicial)**  
**Kaushalendra Kumar Singh-Member (Technical)**

**Appearance:**

Mr. Navin Pahwa, Sr. Advocate, along with Mr. Ravi Pahwa,  
Advocate, for the Applicant.

None present for the Respondents.

**ORDER**

1. This application, i.e., IA 473 of 2022, is filed by the Resolution Professional of the Corporate Debtor, viz., M/s. Wind World (India) Limited under Section 60(5) read with Section 14 of IBC and Rule 11 of the National Company Law Tribunal Rules, 2016 to quash and set aside order dated 07.05.2022 passed by the Respondent No.1, i.e. Principal Chief Conservator of Forests, Bangalore, whereby and whereunder the Respondent No.1 directed the Chief Conservator of Forests, (Respondent No.2), Ballari Circle, Ballari, to initiate the suspension of the operation of windmills till further order. It is also prayed that the Respondents (officials of the Forest Department, Karnataka State) may be directed to allow the corporate debtor to run the windmills and issue further directions to Respondent No.1 to direct BESCO to continue releasing 90% of the power sale revenue to the customers of the corporate debtor and continue retaining 10% thereof.
2. The notice of this application has been served upon the respondents but no one appeared for them.
3. We heard Learned Senior Counsel Mr. Pahwa, for the RP and perused the material on record.
4. The following facts need to be noted:

(i) The corporate debtor admitted in CIRP on 02.02.2018. The applicant was initially appointed as the IRP. Subsequently, his appointment as the RP has been confirmed. The CoC has received the Resolution Plan. It has been approved by the CoC. Later-on, the Resolution Applicant made an application before this Adjudicating Authority to permit it to withdraw the Resolution Plan on the ground that the plan was pending for approval of this Adjudicating Authority for more than two years, the Resolution Plan does not remain commercially viable and there is a loss of revenue as some plants of the corporate debtor have been closed down during the last two years. This Adjudicating Authority after hearing in detail all parties, permitted the Resolution Applicant to withdraw the resolution plan vide order dated 08.09.2020 passed in IA No.439 of 2020. The said order was challenged by the RP and CoC in an Appeal before the Hon'ble NCLAT and the Hon'ble NCLAT vide order dated 20.09.2021 in Company Appeal (AT) (Insolvency) No.814 of 2020 and Company Appeal (AT) (Insolvency) No.826 of 2020 set aside the order of permitting the resolution applicant to withdraw the resolution plan in view of the judgment of the Hon'ble Supreme Court rendered in the case of ***Ebix Singapore Private Limited Vs. Committee of Creditors of Educomp Solutions Limited & Anr. [Civil Appeal No.3224 of 2020 and other appeals]***

(ii) This Adjudicating Authority is in the process of hearing IA No.476 to 2018 filed by the RP for approval of the

Resolution Plan. Almost about 40 applications are filed by various stakeholders opposing the RP's application for approval of Resolution Plan. Day-to-day hearing of aforesaid applications is being held but due to voluminous record and submissions of a number of Ld. Counsels appearing for the parties, the hearing could not be completed till this date.

(iii) Meanwhile, the RP filed captioned IA for direction to the respondents to allow him to operate the windmills which are installed on the forest land. We have noted all the above facts only for the reason that the CIRP of the corporate debtor is still going on, in view of the proviso to Section 14(4) of IBC. Since the RP is still in charge of the affairs of the corporate debtor, pending approval of resolution plan, it is his duty to keep the corporate debtor as a going concern as per Section 25(1) of the IBC.

(iv) Ld. Sr. Counsel for the RP pointed out that initially the lease period granted to the corporate debtor by the Forest Department ended on 19.06.2018, which was after the commencement of CIRP of the corporate debtor. He further submitted that on 09.01.2020 (during CIRP) the RP made an application for renewal of the lease which was accepted by the office of the Principal Chief Conservator of Forests.

(v) The Principal Chief Conservator of Forests passed an order dated 07.05.2022, the relevant portion thereof is extracted hereinbelow:

*“The request of the User Agency was examined by this office. It was observed that FC renewal proposal involved some deviations from the approved lease area and was likely to attract penalty from Government of India in the form of regularization under the Forest (Conservation) Act, 1980. The request of User Agency was considered provided that the Government interests could be safeguarded to take care of the financial liabilities arising at the time of FC renewal.*

*It was felt that the Government interest under Forest (Conservation) Act 1980 could be safe guarded if the Bangalore Electricity Supply Company (BESCOM) withheld the revenue likely to be shared with the User Agency for the power generation to the tune of approximately Rs.370.00 lakh as per a tentative estimation. If so, the windmills could be permitted to run so that there was no disruption of power generation and minimum required maintenance of the machines could be carried out.*

*Under the above circumstances, PCCF (Hoff) directed the DCF Chitradurga to permit the user agency to undertake the minimum maintenance of the Wind Mills to keep*

*them running and inform the BESCO to withhold an amount of Rs.370.00 lakh from the power revenue due to the user agency till proper clearance under Forest Conservation ACT 1980 is in place.*

*FC proposal was uploaded on 09-01-2020 the same has been verified and accepted by PCCF (FC) on 07-03-2020 and the proposal forwarded to DCF Chitradurga on 22-05-2020. DCF Chitradurga submitted the proposal to CCF, Bellary Circle on 27-06-2021.*

*In response, CCF, Bellary circle had raised EDS query to DCF Chitradurga on 08-09-2021 the same was communicated by DCF Chitradurga to UA on 05-08-2020. User Agency replied to the EDS query on 25-03-2022. Now the proposal is pending at DCF, Chitradurga for further processing.*

*PCCF (FC) mentioned to the members at the meeting that since the restart of the wind mills, more than 21 months has lapsed. Thus a reasonable opportunity which was given by PCCF (HoFF) on 24/7/2020 and 11/08/2020 to carry out the maintenance of the wind mill and produce power has lapsed. Further PCCF (Hoff) had also permitted the BESCO to release the payments after withholding 3.70 crores with itself and after deducting 10% of the amount payable towards power purchase from future bills on 07-11-2020.*

*All the above was done in good faith so that the state is not deprived of power and the investment infrastructure of the company does not go waste and Government interest was sought to be safeguarded by withholding 3.70 crores and by retaining 10% of the future bills with BESCO.*

*However, it appears that the company has taken undue advantage of this and has not taken proactive steps to submit the completed FC proposal in a form such that the same can be sent to Government of India for renewal.*

*The members deliberated in detail and came to a consensus that continuation of the windmill is not tenable in this situation. Hence, following decisions were taken:*

- 1. To immediately suspend the operations of the Wind Mills till further orders.*
- 2. The User Agency to comply to all EDS queries raised by Chief Conservator of Forests Bellary and CCF to submit the completed FC proposal within a week without fail.*
- 3. Chief Conservator of Forests, Bellary to contact BESCO for Withholding all further payments in respect of the project.”*

(vi) On 07.05.2022 decision of the Respondent No.1 was conveyed to the Chief Conservator of Forests, i.e. Respondent No.2.

(vii) On perusal of the order dated 07.05.2022, passed by Respondent no. 1, it appears to us that as the Corporate Debtor (RP) did not comply with certain EDS queries, the operation of windmills was suspended.

(viii) Ld. Sr. Counsel pointed out that on 09.05.2022 detailed proposal complying all queries has been submitted and the same is still pending for consideration of Respondent No.1. He further submitted that Respondent No.1 ought not to have suspended the operation of the windmills in view of Explanation to Section 14(1) of the IBC. Unless the corporate debtor remains as a going concern, there is no possibility of maximization of value of its assets. This ground could be raised for rejecting the resolution plan. Hence, the respondent may be directed to initially allow the Corporate Debtor to run the windmills on the leased land by setting aside the order dated 07.05.2022 passed by the Respondent No. 1 which was communicated to the Chief Conservator of Forests.

(ix) The Ld. Sr. Counsel further pointed out one more order was passed by the Respondent No.1 on 23.07.2020 whereby the Respondent No.1 had allowed the corporate debtor to

continue with the lease on certain conditions. The relevant portion thereof is reproduced hereinbelow for ready reference:-

*“It is felt that the government interests under Forest (Conservation) Act, 1980 can be safeguarded if the Bangalore Electricity Supply Company (BESCOM) withholds the revenue likely to be shared with the User Agency for the power generation to the tune of approximately Rs.370.00 lakh as per a tentative estimation. If so, the windmills can be permitted to be run so that there is no disruption of power generation and minimum required maintenance of the machines can be permitted.*

*Under the above circumstances, you are directed to take the following action on the request dated 05.06.2020 of the User Agency:*

- (i) Permit the User Agency to undertake the minimum maintenance of the windmills to keep them running, and*
- (ii) Inform the BESCOM to withhold an amount of Rs.370.00 lakh from the power revenue due to User Agency till proper clearance under Forest (Conservation) Act, 1980 is in place.*

*Compliance of the above directions may be reported to this office through Chief Conservator of Forests, Ballari Circle, at the earliest.”*

5. Since no one appeared on behalf of the Respondents in this proceedings despite service of notice, we do not know Respondent No.1's stands on the proposal dated 09.01.2020 submitted by the Corporate Debtor for renewal of the lease. We consider it proper to direct the Respondents to allow the Corporate Debtor to run the windmills as per the Respondents own order dated 23.07.2020 on the same conditions as mentioned therein. We hold so because in our considered view to keep windmills working is essential part in relation to resolve insolvency of the Corporate Debtor.

6. With this, we allow this application to the above extent and dispose of this IA with no order as to costs.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

Sudha