

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

(Video Conference)-Virtual Hearing

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)
CORAM: SATHYA RANJAN PRASAD - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 12.12.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/693/2021 in IA (IBC)/142/2021 in CP (IB) No.110/9/HDB/2019
NAME OF THE COMPANY	Indira Priyadarshini Hydro Power Pvt Ltd
NAME OF THE PETITIONER(S)	Andritz Hydro Pvt Ltd
NAME OF THE RESPONDENT(S)	Indira Priyadarshini Hydro Power Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

IA (IBC)/693/2021 in IA (IBC)/142/2021

Ld. Counsel Mr. T. Ravi Charan for the Applicant.
Ld. Counsel Ms. Ishita Jain for the Respondent.

Orders pronounced, recorded vide separate sheets. In the result, this application is allowed. No costs.

SD/-

MEMBER (T)

SD/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II**

I.A. No. 693 OF 2021

in

C.P. (IB) No.110/9/HDB/2019

[U/s.60(5) of the Insolvency & Bankruptcy Code r/w Rule 11 of NCLT Rules,
2016]

**In the matter of M/s.Indira Priyadarshini Hydro Power Pvt. Limited vs.
M/s.Andritz Hydro Private Limited**

In the matter of:

Mr.Ravindra Beleyur
Erstwhile RP & Chairman of the Monitoring Committee
Indira Priyadarshini Hydro Power Private Limited
Shreevathsa, No.428, 19B Cross
Jayanagar, 3rd Block
BENGALURU – 560 011

.... Applicant

Vs.

1. M/s.Andritz Hydro Private Limited
A-24, Mohan Cooperative Industrial Estate
New Delhi – 110 044
Represented by its Authrised Signatory

... Respondent 1/Operational Creditor

2. M/s.Manikaran Power Limited
301, 3rd Floor, D21, Sector 21
Dwarka, New Delhi – 110 077

... Respondent 2/SRA

Date of Order: 12.12.2023

Coram:

Hon'ble Dr.Venkata Ramakrishna Badarinath Nandula, Member, Judicial.

Hon'ble Shri Satya Ranjan Prasad, Member, Technical.

Counsel present:

For the Applicant : Mr. T. Ravichandran, Bharati Gadepally
Elavarasi D, Devadakshan K, Nivedita
Bhaskaran, Advocates

[PER: BENCH]

ORDER

- I. The instant application is filed on behalf of the Applicant, Mr.Ravindra Beleyur, Chairman of the Monitoring Committee (Ex-Resolution Professional) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, for short “**IBC/Code**” seeking to direct the 1st Respondent to handover the Plant and Machinery more fully described in the Annexure-A14 at the warehouse of the 1st Respondent to the 2nd Respondent or to its authorised representatives or to the Applicant on a date and time to be fixed by this Hon’ble Tribunal and in the event of failure, punish the 1st Respondent for wilful disobedience of the Orders of this Hon’ble Tribunal.

- II. **The gist of the Applicant’s brief is -**
 - a. The Company Petition CP(IB)110/9/HDB/2019 filed by M/s.Andritz Hydro Power Limited/Operational Creditor against M/s.Indira Priyadarshini Hydro Power Pvt. Ltd./Corporate Debtor under Section 9 of the Insolvency & Bankruptcy Code, 2016 was admitted by this Adjudicating

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Authority, vide Orders dated 12.12.2019 by appointing Mr.Nethi Mallikarjuna Setty as Interim Resolution Professional, for short 'IRP'.

- b. After assuming charge as IRP, the IRP had issued a public announcement in Form 'A' dated 18.12.2019 in two newspapers, namely, Mana Telangana, Telugu daily newspaper and Financial Express, English Daily Newspaper, inviting claims from the stakeholders.
- c. Later, in the 2nd COC Meeting held on 27.01.2020, it was resolved to appoint the Applicant, Mr.Ravindra Beleyur as Resolution Professional, for short 'RP' in place of Mr.Nethi Mallikarjuna Setty, IRP and had filed an IA 164/2020 before the Adjudicating Authority, which was admitted, vide order dated 03.03.2020. Accordingly, the Applicant, Mr.Ravindra Beleyur was appointed as Resolution Professional.
- d. Pursuant to the appointment as RP, the RP took charge of the Corporate Debtor on 16.03.2020 and appointed two Registered Valuers to determine the fair value and liquidation value of the Corporate Debtor.
- e. It is averred that some of the Plant and Machinery to be installed at the project site of the Corporate Debtor are still in the possession of M/s.Andritz Hydro Private Limited/Operational Creditor/Respondent 1 herein.

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- f. In response to the Public Announcement dated 18.12.2019, the summary of the claims received from the stakeholders and updated as on 17.02.2021 is as follows:

Sl.No.	Description	Claim Amount (Rs.)	Claim Admitted (Rs.)
1.	Financial Creditors	33,88,34,175/-	33,79,16,607/-
2.	Operational Creditors	10,74,22,703/-	2.76.90.864/-
3.	Statutory Authorities	2,88,95,340/-	2,57,26,493/-
4.	Workmen	--	--
5.	Employees	--	--
Total		47,51,52,218/-	39,13,33,964/-

- g. It is averred that this Adjudicating Authority, vide Order dated 02.07.2021 approved the Resolution Plan submitted by M/s.Manikaran Power Limited/2nd Respondent and appointed the Applicant as Chairman of the Monitoring Committee. **A copy of the Order is filed as Annexure-A4 of the application at page nos.26 to 39 of the application.**

- h. In terms of the Resolution Plan, the Successful Resolution Applicant taken possession of all the assets including plant and machinery, stores and invoices of the Corporate Debtor available at the warehouse of the Operational Creditor/M/s.Andritz Hydro Private Limited.

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- i. Para 3.4 of the Resolution Plan shows the proposed payment to the Operational Creditors, which is as follows:

“Proposal for payment to the Operational Creditors:

As per the data provided and claim amount admitted by the RP, the claims admitted pertaining to the Operational Creditors of the Corporate Debtor are Rs.5.34 crores. Resolution Applicant allots Rs.10.00 lakhs for settlement of the claims admitted or will be admitted in future. The allotted amount will be paid within 30 days from the effective date. The payment is proposed on the basis of the equipment available at the site of the Andritz Hydro Private Limited indicative list of equipment is detailed as per Annexure-a. The list in Appendix A is indicative in nature while any other equipment which is related to equipment listed should be considered as part of the list. Based on the order of Adjudicating Authority, the Adjudicating Authority need to direct Andritz to release all the charge on the machinery to Resolution Applicant on the effective date. All the future cost such as transportation, erection and commissioning will be separately negotiated with Andritz by the Resolution Applicant.

The amount payable to the Operational Creditor is determined to be higher than the amount receivable to the category in any other circumstances under the Code.

- j. The 1st Meeting of the Monitoring Committee was held on 19.07.2021 wherein an action plan for effective implementation of the Resolution Plan was discussed.
- k. On 24.07.2021, the Applicant addressed a letter to the 1st Respondent setting out the various facts including the approval of the Resolution Plan and requested to discuss the next steps for implementation of the Resolution Plan.

1. The 2nd Meeting of the Monitoring Committee was held on 18.08.2021 and discussed the following matters;
 1. Signing of MOU between the 2nd Respondent and the Operational Creditor/the 1st Respondent herein;
 2. Appeal filed by the 1st Respondent before the Hon'ble NCLAT.
 3. Need for filing an application before NCLT for protecting the interest of the 2nd Respondent.
- j. On 07.09.2021, the Applicant addressed another letter to the 1st Respondent and a copy marked to the 2nd Respondent requesting to move the Plant and Machinery to their warehouse. In response, a reply dated 15.09.2021 was received from the 1st Respondent raising untenable contentions, which is filed as **Annexure-A9** of the application.
- k. The 1st Respondent had preferred an Appeal Comp. Appeal AT (Ins) No.248/2021 before the Hon'ble NCLAT and had also moved an application for interim stay, which was not granted by the Hon'ble NCLAT.
1. It is averred that there is correspondence between the Applicant and the 1st Respondent regarding ownership of the plant and machinery situated at the warehouse of the 1st Respondent. The Applicant issued a Letter dated

07.01.2021 and 10.01.2021 to the 1st Respondent bringing to their notice including –

- i. The fact that the contention of the 1st Respondent with regard to their stand regarding the ownership had not been passed on to the Corporate Debtor has no basis;
 - ii. That the ownership has already been passed on to the Corporate Debtor; and
 - iii. That the applicant has got a right as a Resolution Professional under Section 25(1)(a) of the Code.
- m. The 1st Respondent was taking a plea that the ownership of the plant and machinery has not been passed on to the Corporate Debtor.
- n. It is averred that the Resolution Plan was approved by the COC in its 19th meeting held on 04.03.2021 wherein the representatives of the 1st respondent were present and no objection has been raised on this issue.
- o. It is also averred that the Applicant had filed an application for approval of the Resolution Plan on 13.03.2021, which was allowed by this Adjudicating Authority vide order dated 02.07.2021. The 1st Respondent did not choose to raise its objections before the Adjudicating Authority.

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After approval of the Resolution Plan, the Applicant requested the 1st Respondent to handover the plant and machinery, but the 1st Respondent was not inclined to handover the assets. The Applicant has been authorized by the members of the Monitoring Committee in its meeting held on 25.10.2021 to take appropriate steps for taking possession of the plant and machinery from the 1st Respondent. The act of the 1st respondent in not permitting the transfer of plant and machinery to the 2nd respondent who is the successful Resolution Applicant amounts to wilful disobedience of the orders of this Adjudicating authority.

- p. It is averred that the Resolution Plan is binding on all the stakeholders including the 1st respondent. Therefore, the 1st respondent is bound to handover possession of the plant and machinery situated at the warehouse of the 1st respondent to the 2nd respondent. Hence, this application.

III. The gist of the Respondent's brief is –

- i. The contents of the present Application filed by the Applicant are false and denied in entirety except wherein they are specifically admitted.

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- ii. It is averred that the Applicant is seeking the possession of the Machineries, owned by Respondent No.1. Pertinently, the ownership of such Machineries is the core subject matter of the Appeal bearing no. CP (IB) (AT) 238 of 2021 ("Appeal"), pending adjudication before the Hon'ble National Company Law Appellate Tribunal, Chennai ("Hon'ble NCLAT"). Any continuation of proceedings in the said Application before this Hon'ble NCLT regarding the handing over of the Machineries will cause irreparable harm and grave prejudice to the Respondent No. 1 herein, as adjudication by this Hon'ble Tribunal will cause multiplicity of legal proceedings concerning the same subject matter before the Hon'ble NCLAT and this Hon'ble Tribunal. **The Hon'ble Supreme Court in .D. Cawasji & Co., Etc. Etc vs The State Of Mysore & Anr, 1975 1 SCC 636, had held that - *avoiding multiplicity of unnecessary legal proceedings should be an aim of all courts. Therefore, this Application must be dismissed.***
- iii. It is averred that the present Application is not maintainable for the following reasons and ought to be dismissed:
- i. The present Application has been filed by Mr. Ravindra Beleyur, in his capacity of Resolution Professional of the Corporate Debtor. It is averred that the office of resolution professional stands vacated after the end of CIRP, and therefore, no application can be filed in his capacity as resolution professional.

- ii. The Hon'ble NCLAT *vide* its order dated 06.10.2021 admitted the said Appeal. However, filing of the present Application by the Applicant is an afterthought, as the same has been filed after the filing and admission of the Appeal. The same is intended to delay the process of adjudication and create unwarranted impediment for Respondent No. 1. Therefore, the same shall be dismissed *in limine*.
- iii. This Adjudicating Authority, *vide* its order dated 02.07.2021 approved the Resolution Plan submitted by M/s.Manikaran Power Limited ("Respondent No. 2"). It is averred that once an order is pronounced, the Hon'ble NCLT should not adjudicate upon the issues arising thereafter. It is relied on the **judgement of the Hon'ble Supreme Court in SBI vs. SN Goyal 2008 8 SCC 92** has categorically held that a quasi-judicial authority will become *functus officio* when its order is pronounced. Therefore, the jurisdiction of the NCLT became *functus officio* on the ground of pendency of this Appeal concerning the same subject matter.
- iv. It is denied that no objections have been raised pursuant to ownership of the machineries. It is averred that several correspondences and the minutes of 10th COC meeting

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explicitly highlight that the Respondent No. 1 has raised objections regarding the ownership of Machineries, which was not brought before this Hon'ble Tribunal. Therefore, the approved Resolution Plan could not have included the assets of the Respondent No. 1 in keeping this Hon'ble Tribunal in complete obliviousness of the objections. **Copies of correspondence and minutes of 10th COC meeting are filed as Annexure A1 and Annexure A2 respectively.**

- v. It is averred that the Respondent No. 1 was not intimated about the inclusion of such Machineries into the Resolution Plan, nor was provided with the copy of the Resolution Plan. After the approval of the Resolution Plan by the Adjudicating Authority, vide its order 02.07.2021, the Respondent No. 1 *vide* its email dated 07.07.2021 and 13.07.2021 requested for a copy of the approved Resolution plan, which was not furnished to the Respondent and the Respondent No. 1 could not have been apprised of the inclusion of such Machineries in the approved Resolution Plan. **A copy of emails dated 07.07.2021 and 13.07.2021 are filed as Annexure A3 of the counter.**
- vi. It is averred that pursuant to Section 24 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), if the operational creditor's aggregate dues are more than 10% of total debt, he or his representatives may sit in the COC

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proceedings. Unlike financial creditors, however, he is vested with no voting rights, irrespective of how much his share in the debts may be. Therefore, the Applicant's contention that the Respondent No. 1 being operational creditor should have objected to the Resolution Plan during the approval of the Resolution Plan is fallacious and is rendered nugatory.

- vii. It is averred that the approved Resolution Plan proposes the payment of Rs.10 lakhs to the Operational Creditors, including the Respondent No. 1. But the Respondent No.1 did not get the amount of Rs.10 lakhs proposed to the Operational Creditors. The Applicant, by circumventing the Resolution Plan and the provisions of IBC, admitted the claim of another operational creditor, Ministry of Non-Renewable Energy ("MNRE") beyond the permissible date, which is clear contradiction of provisions of the IBC and rendered payment which has not been provided to MNRE under the Resolution Plan.
- viii. It is submitted that Section 23 of the Sale of Goods Act, 1930 ("SOG Act") categorically posits that the title in case of sale of unascertained or future goods by description does not pass to the buyer till such goods are 'unconditionally appropriated' to the buyer by the seller. Considering the provisions of clause 5.3.3 of the Contract and keeping in mind the defaults committed by the Corporate Debtor in

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making payments against the invoices raised by the Respondent No. 1 and delay in taking delivery of the Machineries, any such appropriation cannot take place unless full payment has been made by the Corporate Debtor to the Respondent No. 1. Therefore, the present Application is devoid of any reasonable or legal explanation as to why the ownership of the plant and machineries stands transferred to corporate debtor. The relevant clause of the contract has been reproduced below

"5.3.3. If the Contract Is terminated under Clauses 5.3.1 or 5.3.2, then the contractor shall Immediately

- a) Cease all further work, except for such work as may be necessary for the purpose of protecting that part of the Facilities already executed, or any work required to leave the Site in a clean and safe condition*
- b) Terminate all subcontracts, except those to be assigned to the employer pursuant to paragraph (d) (ii)*
- c) Remove all contractor's Equipment from the Site and repatriate the contractor's and its Sub- contractor's personnel from the Site.*
- d) In addition, the contractor, subject to the release of payments by employer shall*
 - (i) Deliver to the employer' the parts of the Facilities executed by the contractor up to the date of termination*
 - (ii) To the extent legally possible, assign to the employer all right, title and benefit or the contractor to the Facilities and to the Plant and Equipment as of the*

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dale of termination, and, as may be required by the employer, in any subcontracts concluded between the contractor and its Sub- contractor.

(iii) Deliver to the employer all drawings, specifications and other documents prepared by the contractor or its Sub-contractor as of the date of termination in connection with the Facilities.

- ix. It is averred that pursuant to provisions of the SOG Act, 1930 and the Contract dated 30.03.2012 entered between the Respondent No. 1 and the Corporate Debtor, the Machineries and the assets which are in question could not be said to have formally transferred to the Corporate Debtor, as the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled., which have not been fulfilled in the present case.
- x. It is averred that the Resolution Plan which provides for an upfront payment of Rs.2.54 Crores against the admitted claim of Rs.33.7 Crores to the Secured Financial Creditors, which is 7.5% of the claim amount to the financial creditors of the Corporate Debtor, whereas the operational creditor including the Respondent No. 1 herein has been provided with only Rs.10 lakhs against the admitted claims of Rs.5.34 Crores, which is 1.8% of the claim amount. Such

distribution is discriminatory, arbitrary, and unfair as it completely disregards the interests of the operational creditor.

- xi. It is further denied that Respondent No. 1 herein *vide* its letter dated September 15, 2021, raised untenable contentions. It is averred that actual warehouse charges were required to be paid by the successful Resolution Applicant, for keeping the Machineries, which are in question, as the same was agreed by the Applicant under the approved Resolution Plan.
- xii. It is averred that mere presence of the Respondent No. 1 in the 19th COC meeting does not signify that the actual contents of the Resolution Plan were in cognizance of the Respondent No. 1. Further, since, the operational creditor does not have right to vote during the COC meeting, it was nugatory on part of the Respondent No. 1 to contend the approval of the Resolution Plan. Further, in minutes of 10th COC, the Respondent No. I specifically made the COC to record its objections regarding the ownership of the Machineries, which were completely ignored by the COC. Therefore, it could not be said that the Respondent No. 1

herein had a fair chance to represent its interest, especially about the ownership of the Machineries.

- xiii. It is further denied that Respondent No. 1 did not choose to object before this Hon'ble Tribunal when the Resolution Plan was being considered, as it was not aware whether such Machineries or the assets have been included into the approved Resolution Plan, as it did not have the copy of the approved Resolution Plan. It is imperative to note that it is only after the Applicant's letter dated 24.08.2021 that the Respondent No.1 came to know that such Machineries have been included into the Resolution Plan.

IV. **The gist of the Applicant's brief in Rejoinder is –**

- i. It is submitted that an appeal AT (INS) 238/2021 is pending before the Hon'ble National Company Law Appellate Tribunal (NCLAT) challenging the orders passed by this Hon'ble Tribunal approving the Resolution Plan. The 1st Respondent herein had filed interim application seeking stay of all proceedings. The Hon'ble NCLAT had refused to grant any order of stay. **A copy of the daily order passed by the Hon'ble NCLAT on 06.10.2021 & 17.12.2021 are filed as Annexure A1 of the Rejoinder.** There is no basis for the 1st Respondent to contend that any adjudication of this Hon'ble Tribunal will cause multiplicity of proceedings concerning the same subject matter. The

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reliance is placed by the 1st Respondent in the judgment of **D.Cawasji & Co. etc. Vs The State of Mysore & Another in 1975 1 SCC 636** has no application to the facts of the present case. The mechanism is a time bound one and once the Hon'ble Tribunal has passed the order approving the Resolution Plan the same is binding on all the stakeholders including the 1st Respondent as per the provisions of the Insolvency and Bankruptcy Code.

- ii. It is denied that no application can be filed by the Applicant herein in the capacity as Ex Resolution Professional. The instant application is filed as erstwhile Resolution Professional and Chairman of the Monitoring Committee and the necessary authorisation for filing the application is also filed as **Annexure A2 of the Rejoinder**
- iii. It is denied that the filing of the application is an afterthought and that the same is intended to delay the process of adjudication and create unwarranted impediment for the Respondent. The 1st Respondent herein ought to have complied with the directions of this Adjudicating Authority and handed over the machineries. The Minutes of 2nd Monitoring Committee meeting held on 16.08.2021 would reveal that the present application has been filed in pursuance of resolution passed at 2nd Monitoring Committee and a copy of the 2nd Monitoring Committee meeting is filed as Annexure A3 of the Rejoinder. The appeal referred to in paragraph 2(B) was filed only on 17th August, 2021 and it was listed for admission for the first time only on 6th of November, 2021.

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- iv. With regard to allegations in paragraph 2 (C), it is incorrect to contend that this Hon'ble Tribunal should not adjudicate upon the issues arising from the Resolution Plan in as much as it is become a functus officio. The reliance placed by the 1st Respondent in the **judgment of the Supreme Court SBI Vs S.N.Goyal in 2008 8 SCC 92** has no bearing or relevant so far as the present case is concerned. This Hon'ble Authority can exercise its jurisdiction as set out in the various provisions of the Insolvency and Bankruptcy Code(Code) and simply because the Resolution Plan has been approved, it becomes functus officio has no basis. In as much as no stay has been granted by the Hon'ble NCLAT, this Hon'ble Tribunal is entitled to adjudicate upon the non-compliance of the orders passed by this Hon'ble Tribunal.
- v. It is averred that while the I' Respondent has chosen to state that a copy of the Resolution Plan was not provided to it, it has conveniently omitted to state the fact that the representatives of the 1st Respondent were present in all the CoC meetings where the Resolution Plan was discussed and salient features of both the Resolution Plans pertaining to the proposal for payment to Operational Creditors were shared with the 1st Respondent when these were taken for discussions for the first time through email dated 08.01.2021. A copy of the email is filed as Annexure A4 of the rejoinder. It is pertinent to mention that the 1st Respondent was also kept apprised about every change, revision that was carried out to the Resolution Plan. Further the 1st Respondent attended all the meetings of the CoCs and also participated in the discussions where the modification to the Resolution Plan was discussed and deliberated and

recording of the same are also found in the minutes of meeting of the CoC.

- vi. It is averred that the Resolution Plan provided for payment of Rs.10.00 lakhs to the Operational Creditor. The Applicant herein addressed a letter on 24.07.2021 bringing to its notice the approval granted by this Hon'ble Tribunal on 2nd July, 2021 wherein it was clearly stated that the successful Resolution Applicant has made a provision of Rs.10 lakhs to the Operational Creditors including the government dues. The 1st Respondent was entitled to Rs.5,18,387/-. It is incorrect to contend that the Applicant by circumventing the Resolution Plan under the provisions of the Code admitted the claim of another Operational Creditor Ministry of Non Renewable Energy (MNRE) beyond the permissible date. The same cannot be subject matter of this application.
- vii. It is averred that the application filed under Section 9 was admitted on the ground that the Corporate Debtor did not make payments on the invoices raised by the Appellant. After the admission of the application and pursuant to the public announcement, the Operational Creditor/1st Respondent herein submitted its claim and the same was admitted. The 1st Respondent was also invited to attend the meetings of the CoC in terms of Section 24 of the Code. It is averred that the 1st Respondent did not exercise its alleged rights under the Sale of Goods Act at the relevant point of time. Having raised invoices, issued a demand notice and after having the application under Section 9 admitted, it is futile on the part of the 1st Respondent now to contend that it has got rights over the plant and machinery.

- viii. It is averred in the 10th COC meeting, the 1st Respondent had stated that it will take appropriate directions from the Adjudicating Authority with regard to the ownership rights of plant and machinery but it has not chosen to approach the Adjudicating Authority. It is also averred that issue of demand notice and filing of claim, before the Applicant would reveal that the 1st Respondent never exercised its rights of lien under the Sale of Goods Act. Having lodged the claim as an operational creditor, it is futile on the part of the 1st Respondent now to contend that the Plant and Machinery belongs to it.
- ix. It is averred that the approved Resolution Plan is binding on all the stakeholders including the 1st Respondent who triggered the CIRP. The 1st Respondent is not entitled to retain the possession of the Plant and Machinery which rightfully belongs to the Corporate Debtor and that this Respondent is entitled to.
- x. It is averred that the Applicant vide letter dated 06.09.2021 informed to the 1st Respondent stating that the 2nd Respondent has identified a warehouse for storing the machineries.
- xi. In as much as the 1st Respondent did not submit any bills relating to warehouse charges, the COC in its meeting held on 13.01.2021 while approving the Resolution Plan had resolved that the 1st Respondent will be entitled to a reasonable rent for the warehouse for the CIRP period which shall be approved by the Monitoring Committee. A copy of the minutes is filed as Annexure A6 of the rejoinder. The

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Respondent was required to raise Debit Notes for the same after the amount was approved by the Monitoring Committee.

- V. The Applicant and the Respondent 1 have filed their Notes of Submissions and brief synopsis.
- VI. We have heard the learned counsels for both sides, perused the record and case law.
- VII. In the light of the context as afore mentioned, the point that emerges for our consideration is –

Whether the 1st Respondent can be directed to handover the plant and machinery (more fully described in Annexure A-14 of the application) to the 2nd Respondent/Successful Resolution Applicant?

Today, we have once again heard the Learned Counsel for the RP, Mr. T. Ravicharan and the Learned Counsel for the 1st Respondent, Ms. Ishitha Jain and perused the record.

According to the Learned Counsel for the RP, though an Appeal has been preferred by the 1st Respondent as against the Order of approval of Resolution Plan before Hon'ble NCLAT, as there was no stay granted by the Hon'ble NCLAT, the Resolution Plan has almost been implemented except for handing over of the plant and machinery (more fully described in Annexure A-14), which is in the custody of the 1st respondent.

Learned Counsel for RP, further submits that the said plant & machinery is required for the operations of the Corporate Debtor to keep the same as a going concern and therefore, any further delay in handing over of the machinery to the SRA, will continue to cause hardship to the SRA, hence prayed that this application be allowed by giving suitable directions to the 1st Respondent to deliver the Plant and Machinery (more fully described in the Annexure-A14) situated at the warehouse of the 1st Respondent to the 2nd Respondent.

However, Learned Counsel for the 1st Respondent, Ms.Ishitha Jain contends that the 1st Respondent's right as an unpaid seller under Sale of Goods Act, cannot be taken away by the RP, by insisting the 1st Respondent to deliver the plant and machinery (more fully described in the Annexure-A14), when the Corporate Debtor failed to pay the sale consideration to the 1st Respondent. Nextly, the Learned Counsel submits that since the Hon'ble NCLAT, is ceased of the matter, no order can be passed in this application pending disposal of the Appeal by the Hon'ble NCLAT.

VIII. Having heard the Learned Counsels for both sides and on perusal of the record, we wish to state that the fact that the Resolution Plan has almost been implemented and the SRA is presently operating the Corporate Debtor is not in dispute. Nextly, the submission of the Learned Counsel for the RP that

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this plant & machinery (more fully described in the Annexure-A14) is required for the operations by the SRA is also not in dispute. As regards the rights of the unpaid seller as claimed by the 1st Respondent is concerned, the 1st respondent can very well agitate the same before Hon'ble NCLAT, where the Appeal is pending.

- IX. Therefore, under the circumstances, especially considering the fact that as per the Resolution Plan the SRA is entitled to have physical custody of this Plant & Machinery, we are of the view that the application can be allowed by directing the 1st Respondent to handover the Plant & Machinery (more fully described in Annexure A-14 of the application) to the 2nd Respondent / Successful Resolution Applicant within 10 days from the date of this order, in default, the SRA/ 2nd Respondent is at liberty to approach this Tribunal for necessary directions. However, this order of ours, is without prejudice to the rights and contentions of the 1st Respondent raised before the Hon'ble NCLAT, besides subject to the final outcome of the Order in Hon'ble NCLAT, Chennai, in Company Appeal (AT) (CH) (Ins) No.238/2021. This application **IA 693/2021 is accordingly allowed. No costs.**

Sd/-

**SATYA RANJAN PRASAD
MEMBER (TECHNICAL)**

Sd/-

**DR.N.V. RAMAKRISHNA BADRINATH
MEMBER (JUDICIAL)**