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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.09.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.563/9/HDB/2019
NAME OF THE COMPANY	VS Lignite Power Pvt Ltd
NAME OF THE PETITIONER(S)	Refex Industries Ltd
NAME OF THE RESPONDENT(S)	VS Lignite Power Pvt Ltd
UNDER SECTION	9 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
M. S. Thiwillakumar Rao	Adv		
S.V. Ramana Murthy		ramana.sukobally@gmail.com 9849340269	SVR Murthy

ORDER

Petition is admitted vide separate orders.


Member (T)
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Member (T)

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

CP (IB) No. 563/9/HDB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016

In the matter of M/s. VS Lignite Power Private Limited

M/s. Refex Industries Limited
Bascon Futura SV IT Park, New #10/2,
Old #56L, Venkatanarayana Road,
T Nagar, Chennai – 600 017

...Applicant/
Operational Creditor

VERSUS

M/s.VS Lignite Power Private Limited
8-2-293/82/A/431/A,
Road No.22, Jubilee Hills,
Hyderabad – 500033,
India

...Corporate Debtor/
Respondent

Date of order: 18.09.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner : Mr.Anjana T.Reddy, and Mr. R.Sameer
Ahmed, Counsels.

For the Respondent: Mr. M.S.Trivikrama Rao, Counsel.





Heard on: 13.09.2019.

Per: Hon'ble Shri Narender Kumar Bhola, Member (Technical)

ORDER

1. The present Petition is filed by Refex Industries Limited(operational creditor) against Lignite Power Private Limited(Corporate debtor). The Corporate Debtor had defaulted in paying Rs. 8,06,00,642/- (Rupees Eight Crores Six Lakhs Six Hundred and Forty Two only). Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. The brief averments stated in the Petition are that:
 - a. The applicant/operational creditor avers that the Corporate Debtor issued a Work Order to Operational Creditor on 15.09.2017 ("**WO**") for excavation of Overburden at Gurha (East) Lignite Mine, Village - Gurha, Taluk -Kolayat, District - Bikaner, Rajasthan. The Total Value of Work Order was Rs. 11,25,00,000/- (Rupees Eleven Crores Twenty Five Lakhs only).
 - b. It is averred that on 05.03.2018, the Operational Creditor raised a bill for Rs. 11,25,86,760/- (Rupees Eleven Crores Twenty Five Lakhs Eighty Six Thousand Seven Hundred and Sixty only) along with Rs. 2,02,65,616.80/- (Rupees Two Crore Two Lakh Sixty





Five Thousand Six Hundred Sixteen and Eighty paise only) as applicable taxes, totalling to Rs.13,28,52,377/- (Rupees Thirteen Crores Twenty Eight Lakhs Fifty Two Thousand Three Hundred Seventy Seven only).

- c. It is averred that out of the total outstanding amount the Corporate Debtor has paid an amount of Rs.5,00,00,000/- (Rupees Five Crores only) on 13.04.2018 and the balance outstanding of Rs. 8,06,00,642/- (Rupees Eight Crores Six Lakhs Six Hundred and Forty Two only) excluding TDS has not paid till date.
- d. It is averred that Operational creditor has filed the documents in order to prove the existence of operational debt and the amount in default. Demand Notice (FORM -3) dated 15.05.2019 which has been sent to the Corporate Debtor is marked as **Annexure-I**, to the application. Work Order dated 15.09.2017 which is placed by the corporate debtor is marked as **Annexure-II** to the application and Tax Invoice bearing Invoice No.RA1 dated 05.03.2018- is annexed as **Annexure-III** to the application. Letter regarding balance confirmation by Corporate Debtor is also annexed to the application as **Annexure-IV**. Copy of Bank Statement is also annexed as **Annexure-V** to the application.

3. Reply/counter filed by the Corporate debtor:

- a. Corporate debtor avers that the company is in the business operation of lignite fired power plant installed with a capacity of 1x135 MWs at Gurha Village, Bikaner District, Rajasthan.
- b. It is averred that corporate debtor has a mining lease of lignite which is a major source of fuel for its power

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plant. It is stated that for the purpose of mining lignite the overburden was required to be excavated. In this regard the corporate debtor issued a work order to the operational creditor vide order dated 15.09.2017 for the purpose of excavating the overburden so as to expose the lignite seam.

- c. It is averred that the quantity of excavation was 12.50 lakhs cubic meters of overburden to be excavated and depended upon the requirement and other field conditions. The overall 12.50 lakhs cubic meters overburden was required to be removed over a period of five(5) months i.e up to February 2018. The estimated cost of overburden removal was Rs.11,25,00,000/- exclusive of Goods and Sales Tax(GST). The operational creditor was required to submit running account bills only on completion of work to the satisfaction of corporate debtor and payment was required to be made within 10 days of submission of the RA bills.
- d. It is averred that the operational creditor had raised an invoice for a sum of Rs.13,28,52,377/- on 05.03.2018 for which the corporate debtor has paid an amount of Rs.5,00,00,000/- on 13.04.2018. Thereafter due to financial distress the corporate debtor could not make any further payments and thus requested time to clear the outstanding which could not do so in time.
- e. It is averred that the corporate debtor had diligently tried to fulfil its commitment under the work order dated 15.09.2017, but for certain unavoidable facts and circumstance surrounding the power sector with regard to cash flows, lack of power purchase agreements and other such mitigating factors which

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are beyond the control of corporate debtor has resulted in delay for the payment.

- f. It is averred that inspite of various challenges across power sector, corporate debtor and its promoters have increased their support and commitment much beyond what was originally envisaged and tried to clear the pending payments. But the corporate debtor on account of number of facts and circumstances like unavailability of required restriction on mining by the state Government, PPA(Power Purchase Agreement) delayed realization of money from the State DISCOMS Etc. which are beyond the control of the corporate debtor.
 - g. It is thus stated that the in the light of above facts and circumstances Tribunal may consider the matter and pass such order which may deem fit.
4. We have heard the counsel for Operational Creditor and counsel for corporate debtor. This Petition is filed by Operational Creditor under section 9 of Insolvency and Bankruptcy Code, 2016. Operational creditor filed Form-5 and furnished the information with regard to the operational debt which is committed default by corporate debtor.
 5. The case of Operational Creditor is that the Corporate Debtor failed to pay an amount of Rs. 8,06,00,642/- (Rupees Eight Crores Six Lakhs Six Hundred and Forty Two only) under the work order dated 15.09.2017. The work order is attached in Petition as **Annexure II**. The statutory demand notice in Form 3 dated 15.05.2019 as required under Section 8 of the Insolvency and Bankruptcy Code, 2016, Board resolution, Tax Invoice bearing Invoice No.RAI dated 05.03.2018, for Rs.13,28,52,377 and Letter dated 30.09.2019 regarding balance confirmation by the corporate debtor, etc are attached to the petition. Thus, Operational Creditor filed





the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(2) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(3) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, inter alia, by Sections 15, 17,18,19,20, and 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of CIRP. His Conduct should be above Board and independent and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the code to extend every assistance and cooperation to the interim resolution professional as may be required by him in managing the affairs of the Corporate Debtor. The interim resolution professional is under duty to protect and preserve the value of the property of the Corporate Debtor and shall perform all his functions strictly in accordance with the provisions of the Code.

(5) That the order of moratorium shall have effect from 18.09.2019 till the completion of the Corporate Insolvency



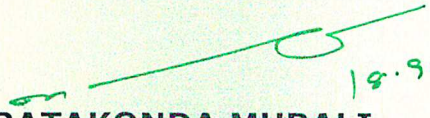


Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Accordingly, this Petition is admitted.


18.9.19
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)


18.9.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

Pavani