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**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH  
SPECIAL BENCH (Video Conference)**

**PRESENT: HON'BLE SHRI BHASKARA PANTULA MOHAN – MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.9.2020 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 25/2020 in CP(IB) NO. 01/9/AMR/2019
NAME OF THE COMPANY	Anrak Aliminium Ltd
NAME OF THE PETITIONER(S)	Yokogawa India Limited
NAME OF THE RESPONDENT(S)	Anrak Aliminium Ltd
UNDER SECTION	9 OF IBC

**Counsel for Petitioner(s):**

<small>Ries</small>			
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

<small>Ries</small>			
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

Matter heard, clarification given. IA allowed vide separate orders.

  
**MEMBER JUDICIAL**

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NATIONAL COMPANY LAW TRIBUNAL  
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IA No. 25 of 2020 in  
TCP (IB) No. 01//AMR/2019 in  
[CP (IB) No. 373/9/HDB/2018]

Application under Section 60(5)(a) of I&B Code, 2016 R/w Rule 48(2), 15 & 11 of  
the NCLT Rules, 2016

In the matter of M/s Anrak Aluminium Limited

Between

M/s. Yokogawa India Ltd.,  
Plot No.96, Electronic City Complex,  
Hosur Road, Bangalore – 560 100.

... Applicant

And

M/s. Anrak Aluminium Ltd.,  
APIIC Industrial Park, Rachapalli (Village)  
Makavarapalem (Mandal), Vishakapatnam,  
Andhra Pradesh – 531 113.

... Respondent

Date of Order: 01.09.2020

CORAM:

Hon'ble Bhaskara Pantula Mohan, Member Judicial.

Appearance:

For the Applicant: Mr. K.V. Rusheek Reddy, Advocate.

For the Respondent: Mr. P. Vikram, Advocate.

ORDER

1. It was submitted that the Applicant herein filed an application no. CP (IB) No.373/9/HDB/2018 before the Hon'ble NCLT u/s 9 of the Insolvency and Bankruptcy Code against the Respondent hereinabove. It is pertinent to state that along with the applicant, State Bank of India, Hyderabad also filed a Company Petition No. CP (IB) No. 79/7/HDB/2018 u/s 7 of the Insolvency and Bankruptcy Code in the capacity of the financial creditor seeking initiation of Corporate Insolvency Resolution Process against Anrak

Aluminium Ltd, which is the respondent hereinabove. It is pertinent to mention that all the company petitions filed against the respondent were heard together by the Hon'ble Tribunal. Subsequently on 19.09.2019, the Hon'ble Tribunal was pleased to admit the Company Petition No. CP(IB)No. 79/7/HDB/2018 filed by the financial creditor and directed that corporate insolvency resolution process CIRP of the respondent shall commence and appointed Sri Madhusudhan Rao as the IRP.

2. Subsequently in the petition no. CP(IB) No. 373/9/HDB/2018 filed by the present applicant under section 9, the Hon'ble Tribunal passed an order on 20.09.2019 referring to the initiation of the CIRP of the respondent vide its order dated 19.09.2019 and directed the applicant to take appropriate steps thereby effectively disposing off the application of the applicant. The copy of order dated 20.09.2019 passed by the NCLT Amaravati is filed as Annexure 'B'. That accordingly, the applicant reached out of the IRP for its submission regarding payment of its claim in the capacity of operational creditor, however the IRP on 18.11.2019 addressed an email to the applicant wherein it was brought to the applicants notice that the CIRP initiated pursuant to as the NCLT order 19.09.2019 in the company petition no. CP(IB)No. 79/7/HDB/2018 stood dismissed as withdrawn as per the order dated 01.10.2019 of the NCLT, Amaravati, the entire process of IRP as against Anrak Aluminium Ltd. has been closed.
3. It was submitted that the dues of the Applicant i.e. the operational creditor are still pending and have not been paid by the Corporate Debtor i.e., Anrak Aluminium Ltd. It was stated that the concerns of the operational creditor were never addressed by the IRP who was appointed since his appointment was withdrawn as per order dated 01.10.2019. It was further stated that since the application filed by SBI was being admitted, the Section 9 Application filed by the Operational Creditor was not adjudicated upon by this Hon'ble Tribunal. Further in the background of the entire IRP process as against Anrak Aluminium Ltd. being withdrawn, the only remedy available to the applicant is to approach this Hon'ble Tribunal seeking restoration of the proceedings filed under section 9 of the IBC in its company petition no. CP (IB) No. 373/9/HDB/2018.

4. Under these circumstances, unless this Hon'ble Tribunal is pleased to restore the above Company Petition in the interest of justice, the Applicant/Operational Creditor shall be put to irreparable loss and hardships.

It is therefore prayed that this Hon'ble Tribunal may be pleased to restore the Company Petition No. 373/9/HDB/2018 and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

This precisely is the case of the Applicant.

5. On the other hand the Respondent herein has filed its counter in which it was submitted that the Operational Creditor filed the present Application praying for restoration of the present Company Petition i.e. TCP (IB) No. 1/9/AMR/2019, in view of the withdrawal of insolvency proceedings (CIRP) against the Corporate Debtor in another Company Petition TCP (IB) No. 36/7/AMR/2019 (State Bank of India vs. M/s Anrak Aluminium Limited).
6. It was submitted that the present Company Petition i.e. TCP (IB) No. 1/9/AMR/2019 was filed by the Operational Creditor under section 9 of the Insolvency and Bankruptcy Code (Code) for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
7. It was submitted that on 19.09.2019, this Hon'ble Tribunal admitted another Company Petition filed by one of the Financial Creditors i.e. State Bank of India against the Corporate Debtor under Section 7 of the Code in TCP (IB) No. 36/7/AMR/2019 (State Bank of India vs M/s Anrak Aluminium Limited).
8. It is submitted that after passing of order dated 19.09.2019 by this Hon'ble Tribunal directing initiation of CIRP by appointing Interim Resolution Professional, all the pending insolvency petitions stand disposed of by operation of law giving rise to the right to all the Claimants to file their claim before the IRP/Resolution Professional.
9. It is further submitted that after passing an order dated 19.09.2019 for admission of CIRP against the Corporate Debtor, the Corporate Debtor had settled the disputes with the Financial Creditor i.e, State Bank of India and subsequently has been released from CIRP under Section 12A of the I&B Code by order dated 01.10.23019 passed by this Hon'ble Tribunal.

10. It was also submitted that as per Section 14 of the Code, no further Company petition shall be entertained by the Hon'ble NCLT, once CIRP is commenced against the Corporate Debtor and all the pending cases shall stand infructuous as all the creditors have to file their claims before Interim Resolution Professional.
11. It is submitted thus passing of order dated 19.09.2019 in TCP (IB) No.36/7/AMR/2019 (State Bank of India vs M/s Anrak Aluminium Limited) after commencing CIRP, the instant Company Petition and cause of action based on which such petition was filed, gets merged with the order passed in pursuance of which Operational Creditor herein have to file its claim before Interim Resolution Professional. As the Present Company was closed vide order dated 20.09.2019, the Operational Creditor has to give demand notice and take steps as per the procedure contemplated under I & B Code, 2016.

The argument on the part of the counsel for Respondent that the cause of action gets merged with the order passed in pursuance of which Operational Creditor herein has to file its claim before Interim Resolution Professional is absolutely not acceptable and is absurd. It should be kept in mind that the other Petition filed under Section 7 of I&B Code, 2016 is still pending and not admitted. And hence the cause of action with this Petition very much survives. In view of the same IA allowed, Petition is restored. List the Petition on 10.09.2020.



**BHASKARA PANTULA MOHAN  
MEMBER JUDICIAL**