



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
IA/9(MP)2023
in

TP 258 of 2019 [CP(IB) 111 of 2018]

Proceedings under Section 60(5) of IBC, 2016 r.w. Rule 11 of NCLT Rules, 2016

IN THE MATTER OF:

Entegra LtdApplicant

V/s

Shree Maheshwar Hydel Power Corporation Ltd & OrsRespondents

Order delivered on 17/03/2023

Coram:

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

PRESENT:

For the Applicant :

For the Respondents :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Braj Mohan

-sd-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

IA/9(MP)2023

In

TP 258 of 2019 [CP (IB) 111 of 2018]

IA/9(MP)2023

(An application filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 11 of the National Company Law Tribunal Rules, 2016)

IN THE MATTER OF:

Entegra Limited

Applicant

Versus

**Shree Maheshwar Hydel Power Corporation
Limited**

Through its Resolution Professional & Ors.

Respondent

Memo of Parties

Entegra Limited

Niranjan 99 Marine Drive
Mumbai-400002

Applicant

Versus

**Shree Maheshwar Hydel Power Corporation
Limited**

Through its Resolution Professional Mr.Apoorv
Sarvaria
Abhayanchal Parisar, Post Mandaleshwar
Mandaleshwar-451221

Respondent No.1

Mr.Apoorv Sarvaria

Interim Resolution Professional/ Resolution
Professional of Shree Maheshwar Hydel Power
Corporation Limited
Suite No.1, 19 Park Area Karol Bagh
Delhi, Central,
National Capital Territory of Delhi -110005

Respondent No.2



Committee of Creditors

of Shree Maheshwar Hydel Power Corporation
Limited

Through Lead Member of CoC
Power Finance Corporation Limited
Urjanidhi, 1, Barakhamba Lane
Connaught Place, New Delhi-110001

Respondent No.3

Power Finance Corporation Limited

Urjanidhi, 1, Barakhamba Lane
Connaught Place, New Delhi-110001

Respondent No.4

Rural Electrification Corporation Limited

Core 4, 7 Lodhi Road
New Delhi- 110003

Respondent No.5

IFCI Limited

IFCI Tower, 61, Nehru Place
New Delhi-110019

Respondent No.6

**Housing and Urban Development
Corporation Limited**

HUDCO BHawan, India Habitat Centre
Lodhi Road, New Delhi-110003

Respondent No.7

Order Reserved on: 03.03.2023

Order Pronounced on: 17.03.2023

Coram: Dr.Madan B. Gosavi, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For the Applicant:	Ld. PCS Mr.Umesh Ved
For the IRP/RP	Ld. Mr.Apoorv Sarvaria
For the CoC:	Ld. Counsel Mr.Deepak Khurana

ORDER

1. This application IA/09(MP)2023 is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 11 of NCLT Rules, 2016 by Entegra Limited through its authorized representative Mr. Puneet Jain seeking direction to remove the Respondent No. 2- Mr. Apoorv Sarvaria as Resolution Professional (RP)



of Respondent No. 1 Company-Shree Maheshwar Hydel Power Corporation Limited and to reconstitute the Committee of Creditors (**CoC**) of Respondent No.1 Company by inclusion of the claim of the Applicant & by removal of Respondent Nos. 4 to 7 from the CoC.

2. The application under section 7 was filed by the respondent No.4- Power Finance Corporation Limited (PFC) against the respondent No.1 company- Shree Maheshwar Hydel Power Corporation Limited for initiation of Corporate Insolvency Resolution Process (CIRP) of the company. The respondent No.1 company was admitted into Corporate Insolvency Resolution Process (CIRP) by the Adjudicating Authority, Kolkata Bench vide order dated 27.09.2022 since there was difference of opinion by this Adjudicating Authority. The Respondent No. 2- Mr.Apoorv Sarvaria was appointed as Interim Resolution Professional (IRP) by this Adjudicating Authority vide order dated 30.09.2022.

3. The IRP constituted the CoC wherein respondent No. 4 to 7 i.e. Power Finance Corporation Limited (PFC), Rural Electrification Corporation Limited (REC), IFCI Limited (IFCI), Housing and Urban Development Corporation Limited (HUDCO) have voting share of 44.62%, 14.81%, 1.17% & 18.86% respectively.

4. We have heard the learned PCS for the applicant, IRP- Mr.Apoorv Sarvaria and learned counsel for the respondent-COC. On perusal of the records and proceedings, it is noted that PFC, HUDCO, REC etc. are the lenders of the Corporate Debtor i.e. respondent No.1 company. Out of them, PFC was actually controlling the affairs of the Corporate Debtor since 2005. Further, there is a report from ROC, Gwalior, suggesting that the affairs of the Corporate Debtor were being mismanaged by the PFC while in control.



At this stage, we don't wish to enter into that controversy because the appeal against the admission of the Corporate Debtor in CIRP under Section 7 of the IBC is still pending before the Hon'ble NCLAT.

5. Meantime, the IRP constituted the CoC, making PFC, HUDCO REC etc. as the Members of the Committee of Creditors. The applicant alleged that they are related parties of the Corporate Debtor and hence cannot become CoC Members.

As against this, the PFC and other creditors submitted that they cannot be termed to be the related parties of the Corporate Debtor in view of the first proviso of Section 21(2) of the Insolvency & Bankruptcy Code, 2016.

6. We sincerely feel that in view of the complex facts presented before us by both the sides, we have to decide whether provisions of first proviso to Section 21(2) of the Code would apply or second proviso to Section 21(2) of the Code would apply to the case in hand. It requires detailed analysis of facts and law.

7. Hence, we fix the matter for further consideration on 11.05.2023 directing the RP to keep on hold the CIRP of the Corporate Debtor till then.

-sd-

Kaushalendra Kumar Singh
Member (Technical)

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Dr. Madan B. Gosavi
Member (Judicial)

Swati