

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
19-10-2023 AT 10:30 AM

IA (IBC) 796/2023 in CP(IB) No. 329/7/HDB/2020
u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VS

Dharti Dredging and Infrastructure Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

IA (IBC) 796/2023

Order pronounced. In the result, this **IA is partly allowed.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

**IA.NO. 796 OF 2023
IN
CP (IB) No. 329/07/HDB/2020**

*Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with
rule 11 of the National Company Law Tribunal Rules, 2016.*

Between:

**G.Madhusudhan Rao,
Resolution Professional of
Dharti Dredging and Infrastructure Ltd.**
Having office at 7-1-285, Flat No. 103,
Sri Sai Swapnasampada Apartments,
Balkampet, Sanjeev Reddy Nagar,
Hyderabad, Telangana – 500 038.
Email: ddailirp@gmail.com

... Applicant

V/s.

**Mr. Krishna Komaravolu,
Resolution Professional of
Mantovani Di Dharti Private Limited**
Registration No. IBBI/IPA-02/IP-IPN00562/2017-2018/11699,
H.No. 7-1-214, Flat No. 409, Vamsikrishna Apartments,
Dharam Karan Road, Ameerpet, Hyderabad,
Telangana – 500 016.
Email: irp.mddpl@gmail.com

... Respondent

IN THE MATTER OF:

State Bank of India

... Financial Creditor

Versus

Dharti Dredging and Infrastructure Ltd.

... Corporate Debtor

Date of Order: 19.10.2023

CORAM:-

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri. Charan Singh, Hon'ble Member (Technical)

PARTIES/COUNSELS APPEARANCE: -

For the Applicant : Shri G.P.Yash Vardhan, Counsel
For the Respondent : Shri Maharshi Vishwaraj, Counsel

PER: BENCH

ORDER

1. This is an Application filed by the Applicant Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 prays to:
 - a. Directing the Respondent to forthwith pay an outstanding CIRP dues aggregating to Rs.1,65,13,322.60/- (Rupees One Crore Sixty-Five Lakhs Thirteen Thousand Three Hundred and Twenty-Two and Sixty Paise only) (including Interest of Rs.3,34,679.60) till 30.04.2023 to the Corporate Debtor arising out of agreements mentioned in Para 3 (I) to (III) of the captioned Interlocutory Application.
 - b. Directing the Respondent to hand over the four-wheeler vehicles (Cars) which are mentioned in the Schedule-I of the Agreement for Hire & Purchase of Vehicles agreement dated 12.07.2021.

- c. Directing the Respondent to hand over the 3rd Floor of the Property of the Corporate Debtor which is mentioned in the Schedule of Property of Rental Agreement dated 01.04.2019.
- d. Directing Respondent to place before this Tribunal sufficient evidence and proof that outstanding dues payable to the Applicant during the CIRP of the Mantovani Di Dharti Private Limited arising out of the agreements mentioned in Para 3 (I) to (III) supra are made part of the CIRP cost of the Mantovani Di Dharti Private Limited.
- e. To pass other order or orders which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The averments put forth by the Applicant are:

- 2.1 It is averred that the main Company Petition was filed by the State Bank of India against the M/s. Dharti Dredging and Infrastructure Ltd (“Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 due to default committed by the Corporate Debtor in repaying the outstanding loan amounts. It is further stated that, after appreciating the documentary evidence with respect to debt and default, this Tribunal vide its Orders dated 05.04.2022 has admitted the captioned Company Petition by appointing Applicant herein i.e., Mr. G.Madhusudhan Rao, as the Interim Resolution Professional and later confirmed as Resolution Professional of the Corporate Debtor by the CoC.

2.2 It is stated that upon scrutiny of records and books of accounts of the Corporate Debtor during CIRP, the Applicant has identified certain receivables enumerated hereunder from M/s. Mantovani Di Dharti Private Limited (“MDPL”), under the following Agreements for Rent & Lease basis (other than sub contract agreements) entered between Corporate Debtor and the MDPL.

A. Agreement dated 01.12.2018 for Lease and Purchase of Tremie Barge:

That the Corporate Debtor vide Lease and Purchase Agreement dated 01.12.2018, leased out Tremie Barge (ID DO – GMB/DAHEJ/55) owned by it to the MDPL, for a period of 7 years, commencing from 01.12.2018 to 30.11.2025 against total consideration of Rs.15,00,00,000/- (Rupees Fifteen Crores only) along with applicable taxes, payable in 84 equal installments (i.e., Rs.17,85,714.30/- per installment) as per Clauses 1,2,3 and 4 of said Agreement dated 01.12.2018.

B. Rent Agreements in respect of premises located at Begumpet, Hyderabad

That vide Rent Agreement dated 01.04.2019, the Corporate Debtor let out property owned by it, on 2nd, 3rd, 4th & 5th floors of DDIL Bhavan, at H.No.

6-3-1113/2 situated at B.S.Maktha, Begumpet, Hyderabad – 500016 admeasuring 12041.28 Sq.ft carpet area, to the MDPL, for a period of 11 months. A fixed rent of Rs.5,00,000/- (Rupees Five Lakhs only) per month was payable on or before the 10th day of every succeeding month, as per Clauses 1 and 2 of the said Rent Agreement dated 01.04.2019. Thereafter the said Rent Agreement dated 01.04.2019 was renewed several times by the parties, through execution of various Renewal Rent Agreements dated 01.03.2020, 03.06.2021 and 04.01.2022. It is pertinent to note that, Lease deed expired on 30.11.2022.

C. Agreement dated 12.07.2021 for Hire & Purchase of Vehicles:

That an Agreement for Hire and Purchase of Vehicles dated 12.07.2021 was entered into between the Corporate Debtor and the MDPL to let out the following vehicles, against lumpsum monthly consideration of Rs.2,00,000/- (Rupees Two Lakhs only) payable within 10 days from the date of invoices raised by Corporate Debtor, as per Clauses 1 and 2 of the said Agreement dated 12.07.2021.

- 2.3 It is stated that on 30.06.2022, the MDPL was due and liable to pay the Corporate Debtor an amount of Rs.15,32,78,126/- (Rupees Fifteen Crores Thirty-Two Lakhs Seventy-Eight Thousand One Hundred Twenty-Six only) arising out of the above-mentioned Agreements. It is further states

via e-mails dated 16.05.2022, 31.05.2022, 01.06.2022, 16.06.2022 and 30.06.2022 the Applicant reminded the MDPL to clear their outstanding dues in respect of the Corporate Debtor under aforesaid Agreements.

2.4 It is stated that as MDPL was neither paying the rent/lease nor handing over the Assets of the Corporate Debtor i.e., Cars/Vehicles, Vessels, Building and Tremie Barge and further as the Code does not in any manner, permit adjustment of receivables against claims of creditors during CIRP. Adjusting of the claims by and against the Corporate Debtor by the Resolution Professional during the CIRP is beyond the ambit of the powers of the Resolution Professional conferred under the Code. The Applicant left with no other alternative has filed IA.No. 804 of 2022 before this Tribunal on 10.08.2022 against the MDPL for recovery of an amount aggregating to Rs.15,32,78,126/- (Rupees Fifteen Crores Thirty-Two Lakhs Seventy-Eight Thousand One Hundred Twenty-Six only).

2.5 It is stated that, during the pendency of the above mentioned I.A., this Tribunal vide its Order dated 11.11.2022 has admitted the MDPL into CIRP and appointed Mr. Krishna Komaravolu (“Respondent”) as IRP of the Respondent and later confirmed as RP. Thereafter, this Tribunal vide

Order dated 17.11.2022 disposed off IA.No. 804 of 2022 with directions to the Applicant to file a claim with the Respondent.

2.6 It is stated that, pursuant to the Order dated 17.11.2022 passed by this Tribunal, the Applicant has addressed an e-mail dated 21.11.2022 to the Respondent, informing that MDPL has taken above mentioned assets of the Corporate Debtor under lease and as the Corporate Debtor failed to pay the outstanding amounts, the Applicant was constrained to file an IA, before this Tribunal. The Respondent was also informed that, Applicant is in the process of filing claim for all dues payable by the MDPL till CIRP commencement of MDPL and that monthly rentals from November 2022 have to be paid by the Respondent.

2.7 It is stated that, since no reply was received from the Respondent, Applicant sent a reminder e-mail dated 29.11.202, wherein the Applicant informed the Respondent to either pay the monthly rent and lease, or all equipment including the Tremie Barge were to be returned, failing which the Applicant will be constrained to pursue available legal remedies.

2.8 It is stated that, since no reply was received from the Respondent, Applicant sent a reminder e-mail dated 29.11.2022, wherein the Applicant informed the Respondent to either pay the monthly rent and lease, or all

equipment including the Tremie Barge were to be returned, failing which the Applicant will be constrained to pursue available legal remedies.

2.9 It is stated that, as informed to the Respondent, the Applicant has submitted the claim with respect to dues payable by the MDPL to the Corporate Debtor in Form-B on 30.12.2022 and the Respondent after several correspondences, admitted the Claim of the Corporate Debtor to the tune of Rs.11,10,392/- (Rupees Eleven Lakhs Ten Thousand Three Hundred and Ninety-Two only) on 18.04.2023.

2.10 It is stated that, the Applicant sent another reminder e-mail dated 05.12.2022 informing the Respondent that lease deeds executed by the Corporate Debtor and MDPL is expiring on 30.11.2022 and enquired whether the Respondent will be vacating the premises and also raising invoices till 30.11.2022. It is further stated that, the Respondent vide e-mail dated 06.12.2022 informed the Applicant, to raise invoices from November 2022 for monthly rentals and lease charges as per the existing agreements, and that Respondent would discuss all matters with the CoC and get back on the plausible course of action.

2.11 It is stated that, the Applicant thereafter sent a follow-up e-mail dated 20.12.2022 enquiring about the status of the decision of the CoC. It is

submitted that, the Applicant sent an e-mail dated 22.12.2022 informing the Respondent that since no confirmation/payment was forthcoming from the Respondent, the Applicant is cancelling all contracts and requested the Respondent to make payment towards outstanding invoices and hand over all the assets to the Corporate Debtor.

2.12 It is stated that, thereafter, the Respondent replied vide e-mail dated 22.12.2022 informed the Applicant that in the First CoC Meeting held on 16.12.2022, it was decided that all existing agreements/arrangement would be continued. The Respondent further informed the Applicant that the invoices raised by the Applicant in November 2022 have been duly acknowledged, but since the MDPL is not generating any revenue, the payment of invoices will be made in due course and all such expenses would form part of the CIRP costs.

2.13 It is stated that, the Applicant has raised invoices towards the payment of the rent/ lease for the office building, Hire charges for Cars/ Vehicles and Tremie Barge from November 2022 till April 2023. It is stated that, the Respondent vide its e-mail dated 11.02.2023 for the time first has raised an issue with respect to the invoice raised for the month of the Feb' 2023 for Tremie Barge on the ground that, MDPL has paid some amount on

behalf of the Corporate Debtor to as upfront amount to the Federal Bank towards settlement of the claims of the Corporate Debtor.

2.14 It is stated that, in response to the e-mail dated 11.02.2023, the Applicant vide e-mail date 15.02.2023 has requested the Respondent to submit, details and proof of GST remitted and TDS deducted and accounted for and also the revised lease deed if any executed between the Corporate Debtor and MDPL. Further, the Applicant also requested the Respondent to remit the agreed and undisputed rental and lease amounts or else hand over all the assets of the Corporate Debtor which are in the possession of the Respondent with immediate or latest within 2 days from the 15.02.2023. The Applicant further submitted a note to the Respondent stating the payment of Rs.4 Crores made to Federal Bank is on account payment and part of the Lease/Hire charges payable area only paid.

2.15 It is stated that, the Respondent vide e-mail dated 18.02.2023 has informed the Applicant that he would be handing over the motor vehicles taken on lease with effect from 01.03.2023 and similarly in case of the office building except 3rd floor the remaining two floors will be handed over to the Applicant by 01.03.2023. The Applicant was informed through the above-mentioned e-mail that, rental for the 3rd floor shall be fixed on

mutual acceptance. It is pertinent to note that, the Respondent through above-mentioned email has informed the Applicant that, MDPL is not generating any income for several months as such lease rentals could not be paid for CIRP period of the MDPL. However, the outstanding dues till the end of February, 2023 will be treated as CIRP cost. Further, the Respondent has also informed that as far as the Tremie Barge is concerned as the same is subject matter before this Tribunal in IA. 22 of 2023, the Respondent informed that, he shall abide by the Order of this Tribunal.

2.16 It is stated that, as the matter stood thus, the Resolution Plan for the Corporate Debtor submitted by Consortium of Yogayatan Ports Private Limited and Dr. Rajendra Raja Bali Singh was approved by the members having 100% voting share in the CoC on 23.02.2023. Thereafter, the Applicant has filed an Interim Application No. 385 of 2023 before this Tribunal on 27.02.2023 for approval of the Resolution Plan.

2.17 It is further stated that the Respondent has addressed another e-mail dated 28.02.2023 to the Applicant requesting for extension of time till 31.03.2023 for handing over of the vehicles as well as office building except 3rd floor. The Respondent also informed that, he would pay the amounts out of the funds available and in any case the rentals shall form

part of the CIRP costs of the MDPL. The Applicant in response, has addressed an e-mail dated 28.02.2023 requesting the Respondent to vacate the office building and also handover the assets of the Corporate Debtor immediately. It was also brought to the notice of the Respondent that, the said assets of the Corporate Debtor in the possession of the MDPL, have to be handed over to Successful Resolution Applicant of the Corporate Debtor. Thereafter, the Applicant has also addressed a reminder e-mail on 01.03.2023.

2.18 It is stated that, the Applicant has addressed an email dated 02.03.2023 informing the Respondent that, MDPL is in possession of the assets of the Corporate Debtor without paying the amounts and requested the Respondent to handed over the assets of the Corporate Debtor as the same have to be handed over to Successful Resolution Applicant of the Corporate Debtor and also pay all the outstanding dues from the CIRP commencement date of the MDPL.

2.19 It is stated that, as stated supra, the Respondent vide e-mail dated 06.12.2022 informed the Applicant to raise invoices from November, 2022 for monthly rentals and lease charges as per the existing agreements. Further, the Respondent vide e-mail dated 22.12.2022 informed the

Applicant that invoices raised by the Applicant that invoices raised by the Applicant in November, 2022 have been duly acknowledged, but since the Corporate Debtor is not generating any revenue, the payment of invoices will be made in due course and all such expenses would form part of the CIRP costs. The Respondent vide e-mail dated 28.02.2023 also requested the Applicant for extension of time till 31.03.2023 for handing over of the vehicles as well as office building. The Respondent also informed that, he would pay the amounts out of the funds available and in case the rentals shall form part of the CIRP costs of the MDPL. Therefore, this only goes to show that the claim of the Applicant towards the dues payable by MDPL to the Corporate Debtor is undisputed and Respondent is duty bound to pay the outstanding dues of the Corporate Debtor.

2.20 It is stated that, the MDPL was admitted into CIRP by the Order of this Tribunal on 11.11.2022. As the MDPL was in possession of the assets of the Corporate Debtor and the same have been utilized by the MDPL, the Applicant has raised invoices towards the payment of the rent/ lease for the office building. Hire charges for Cars/ Vehicles, and Tremie Barge from November 2022 till April 2023.

2.21 It is stated that, the Respondent has handed over only 2nd, 4th & 5th floors of the property of the Corporate Debtor situated at DDIL Bhavan, at H.No.6-3-1113/2 situated at B.S.Maktha, Begumpet, Hyderabad – 500016, but has not handed over the 3rd Floor and the same property is still in the possession of the MDPL and the same is not handed over to the Applicant despite the lease period under the Agreement having expired on 30.11.2022. Further, till dated the Respondent has neither paid the outstanding dues nor handed over the possession of the assets of the Corporate Debtor which is causing grave loss of the stakeholders of the Corporate Debtor.

2.22 It is stated that, as per Section 14 (2A) of the Code, the supply of such goods or services which are essential and critical to the Corporate Debtor cannot be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor fails to pay the said dues arising out of such goods and services. Therefore since no confirmation/payment was forthcoming from the Respondent, the Applicant vide email dated 22.12.2022 has informed the Respondent that all the contracts/agreements executed between the Corporate Debtor and the MDPL stands cancelled and the Respondent is required to make

payment towards outstanding invoices and hand over all the assets to the Corporate Debtor.

2.23 It is stated that, the Respondent has informed the Applicant that outstanding dues payable to the Corporate Debtor during the CIRP of the MDPL, towards the agreements mentioned in Para 3 (I) to (III) supra, will form part of the CIRP cost of the MDPL. However, despite addressing repeated emails & making oral requests and reminders to the Respondent has neither made payment to the Applicant/ Corporate Debtor so far, nor submitted any document to the Applicant showing the amount payable to the Corporate Debtor is made part of the CIRP cost of MDPL. Further, Applicant is given to understand the said outstanding dues in respect of the major Asset i.e., Trime Barge are not made as part of the CIRP cost of the MDPL. Therefore, it is imperative that the Respondent place before this Tribunal sufficient evidence and proof that outstanding dues payable to the Corporate Debtor during the CIRP of the MDPL.

2.24 It is stated that, the MDPL is due and liable to pay an amount of Rs.1,61,78,643/- (Rupees One Crore Sixty One Lakhs Seventy Eight Thousand Six Hundred and Forty Three only) to the Corporate Debtor. Further, as the Corporate Debtor is MSME under the MSME Act, 2006,

MDPL is liable to pay compound interest with monthly rests to the Corporate Debtor on the outstanding amounts at three times of the bank rate i.e., 6.75% on delayed payments. Therefore, MDPL is liable to pay interest @ 20.25% and the calculation of the interest payable sent to the Respondent on 02.05.2023 amounting to Rs.3,34,679.60 totalling to Rs.1,65,13,322.60/- (Rupees One Crore Sixty Five Lakhs Thirteen Thousand Three Hundred and Twenty-Two and Sixty Paise only).

2.25 It is stated that, the Applicant has approached this Tribunal by filing this Application, seeking directions against the Respondent to pay the outstanding receivables/amounts aggregating to Rs.1,65,13,322.60/- (Rupees One Crore Sixty Five Lakhs Thirteen Thousand Three Hundred and Twenty-Two and Sixty Paise only) are arising out of Agreements. The break of the amounts payable by the MDPL including interest under MSME Act, 2006 is clearly captured in the table which is filed as Annexure No.26.

2.26 It is stated that, Applicant has filed an IA.No.22 of 2023 under Section 66 of the Code against the Respondent and other parties and the Applicant sought directions from this Tribunal against the Respondent for handing over the possession of the Tremie Barge to the Applicant. As the said IA

is pending adjudication, the Applicant is not seeking a relief against the Respondent for handing over the possession of the Tremie Barge to the Applicant in this IA. It is stated that there are sufficient and plausible reasons for acceptance of the captioned Application. It is stated that if the present Application is not allowed the same will cause irreparable and substantial loss to the legitimate rights and interest of the Corporate Debtor.

3. The Respondent filed counter, inter-alia stating that :

- 3.1 It is stated that the present Counter does not contain a detailed para-wise reply to the merits of this Application. However, nothing contained in the Petition should be deemed to have been admitted by the Respondent for the reason of specific non-traverse. The Respondent reserves their right to file a detailed para-wise Counter, if deemed necessary and/ or if any such requirement arises.
- 3.2 It is stated that the present Application was filed by the Petitioner i.e., Resolution Professional of M/s. Dharti Dredging and Infrastructure Limited (DDIL), under Section 60(5) of IBC 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking orders of this Tribunal in payment of CIRP dues amounting to Rs.1,65,13,322.60/-

(including interest of Rs.3,34,679.60/-) till 30.04.2023, to handover four-wheeler vehicles, to handover 3rd floor of the property of the Corporate Debtor to the applicant and to produce evidence that the dues of the Applicant have been included in CIRP costs of Corporate Debtor.

3.3 It is stated that the Rental Agreement dated 1st April 2019 was for 3rd floor of the DDIL Bhavan at H.No. 6-3-1113/2 situated at B.S.Maktha, Begumpet, Hyderabad – 500016 from where activities of the Corporate Debtor were being carried out since its inception. All the records and documents and majority of the employees were at this place. The undersigned, after reviewing the situation, the availability of funds with the company and after interacting with the CoC, had handed over 2nd and 4th floors of the office building to the Applicant vide mail dated 18.02.2023 and 28.02.2023. The same was acknowledged by the applicant and Rental invoice was raised only for 3rd floor rent thereafter. As few employees to run the company as going concern are occupying the 3rd floor and the records of the Corporate Debtor are also kept in the 3rd floor, it is essential for the present situation to be continued and hence the third floor could not be vacated. As such the respondent had sent a proposal through mail dated 24.03.2023 to the Applicant for signing a new agreement for the rental of the 3rd floor till completion of CIRP. However,

the Applicant has been submitting the rental invoices on pro rata basis of the earlier agreement for occupation of 3rd floor of the office building.

- 3.4 It is stated that Agreement for Hire and Purchase of Vehicles dated 12.07.2021 between DDIL and the Corporate Debtor (CD) for letting out of 12 Vehicles by DDIL to CD. It is stated that Three Vehicles were handed over to the Authorized Representative of the RP on 1st June, 2023. Further, three vehicles were sold much prior to signing of the agreement two vehicles were in scrap condition lying at the project sites and the remaining five vehicles were with the senior employees of the CD. The undersigned had instructed the senior company officials to handover the remaining vehicles at the earliest. The present status of the vehicles reported by the officials of the Corporate Debtor vide mail dated 23.06.2023 is attached as Annexure – A1.
- 3.5 It is stated that the agreement dated 01.12.2018 was for lease and purchase of Tremie Barge. The agreement is for a period of seven years and at the end of the 7th year, the asset will be transferred to MDPL upon payment fall the rental dues to DDIL. MDPL paid Rentals for a substantial period including Rs.4,00,00,000/- paid to Federal Bank to protect the Asset. This matter was explained in the counter Reply filed by the undersigned in

IA.No.22 of 2023 filed by RP of DDIL in matter of Tremie Barge and the same is under adjudication before this Tribunal. It is also stated that the undersigned will abide by the decision of this Tribunal. This was already communicated to the Applicant from time to time.

3.6 It is stated that the allegation of the Applicant that the Rental amount due is not considered as CIRP costs is imaginary and false. The amount due to the Applicant has been considered as CIRP costs of the Mantovani Di Dharti Private Limited (MDPL). Mail has been sent to the Resolution Applicants of MDPL on 18.03.2023, providing the details of the CIRP Expenditure Budget, during the first round of inviting Resolution Plans and again on 15.06.2023 informing the revised CIRP Budget for considering the same at the time submitting their resolution plan. A copy of the mail dated 18.03.2023 and 15.06.2023 is attached herewith as Annexure-A2. The company is not generating any revenue despite best efforts by the Resolution Professional. However, the amount due to the Applicant was considered as part of CIRP expenditure right from CIRP commencement date and the same was intimated to the Applicant time and again. Copy of the mails dated 22.12.2023, 18.02.2023 and 28.02.2023 are attached as Annexure – A3. Despite of this, the RP of DDIL is making false allegations.

3.7 It is stated that there is no merit in the prayers made by the Applicants viewed in the context of the undisputed facts and circumstances as brought out above, and the Application deserves to be dismissed. Further, it is stated that the CIRP process of MDPL is expiring on 07.08.2023 and the RP is receiving the Resolution Plan from Resolution Applicants (Last Date for submission of Resolution Plan is 04.07.2023). In view of the same this Tribunal is requested to direct the Applicant to allow the continuation of the present status with regard to the office building and vehicles. Therefore, it is prayed that this Tribunal may be pleased to dismiss the present IA.No.796 of 2023 filed by the Applicant.

4. **Memo filed on 11.09.2023 by the Applicant stating that:**

4.1 It is stated that this Tribunal on 14.07.2023 has passed following Order

“that during the course of the hearing today in so far as the hire charges claimed as outstanding but not paid are to the tune of Rs.1,65,13,322.60/- (Up to April, 2023) and we find that the Respondents are bound to pay the hire charges as per the lease besides to deliver the physical possession of the same. However, in this regard learned counsel for the respondents raised an objection regarding this quantum of the arrears of hire charges claim contending that a sum of Rupees Four Crores have been deposited in the month of December, 2018 which needs to be taken into account before arriving at the exact amount of hire charges payable. It is not in dispute that sum of Rupees Four Crores has been deposited as submitted by the learned counsel for the respondents. Learned Counsel for the respondents also claim that the said sum carries interest and the same also needs to be taken into consideration while arriving at the correct sum payable. Therefore, under the circumstances we first direct the Resolution

Professional of the both sides to reconcile their claims with the help of records available and place on record the same within seven days.”

4.2 It is therefore stated that, the erstwhile Resolution Professional has addressed an e-mail dated 19.07.2023 to the Respondent by bringing to his notice the following:

- i. As on date of payment of Rs.4 Crores by Mantovani Di Dharti Private Limited (“MDPL”) to Federal Bank on 30.08.2021, MDPL has to pay more than Rs.4 Crores to Dharti Dredging and Infrastructure Ltd (“DDIL”) on account of hires charges on Tremie Barge itself.
- ii. MDPL has taken Tremie Barge on 01.12.2018 at Hire Charges of Rs.17,85,714 PM+GST @ 18%. Hence, the pending Tremie Barge Hire Charges is Rs.6,95,35,703 (i.e., $17,85,714 * 33 + 18\%$ GST on Hire Charges) as on date of the payment of Rs.4 Crores made to DDIL.
- iii. The MDPL has just paid Rs.4 Crores as against the part of the outstanding dues as on account of the hire charges on Tremie Barge only. Hence even reduction of the future hire charges also will not arise. Further the clause of Interest is not mentioned by the respondent in any document except first time raised before this Tribunal which is completely not applicable as respondent itself is due to the Applicant even after considering the payment of Rs.4 Crores. The Respondent is just misleading.

- iv. That MDPL also admitted DDIL's claim as Rs.11,10,392 by e-mail dated 18.04.2023. Further, CoC of the MDPL has confirmed for taking the Assets of the DDIL on lease and accordingly Respondent has addressed an email to erstwhile Resolution Professional for payment of all the Hire or Lease Charges from the date of admission of MDPL into CIRP i.e., from 11.11.2022 onwards only.
- v. To include the total hire or lease Charges in respect of the Tremie Barge into MDPL CIRP cost which were accrued from the date of CIRP admission date (i.e., 11.11.2022) of MDPL @ 17,85,714 PM+GST @ 18% till 18.07.2023 (e-mail addressed by the Respondent for handing over). Total accrued Hire or Lease charges on account of Tremie Barge is Rs.1,73,78,261.43 + MSME Interest payable and including interest on interest payable on delay GST remittance is Rs.1,85,55,173.89 as on date of 08.08.2023 in respect of Tremie Barge itself. Copy of the said e-mails are filed herewith as **Annexure No.2**.

4.3 Thereafter, the Respondent has addressed an e-mail to the Applicant on 07.08.2023 stating:

- i. That Respondent informed the Applicant on 17.07.2023 about the handing over of the Tremie Barge physically and requested the

Applicant to nominate their authorized representative for the said purpose. The process was completed on 22.07.2023.

- ii. Regarding the lease Rentals payable, the Applicant have provided the details and as per Applicant's calculations during the CIRP Period, it amounts to Rs. 1,85,55,173.89 inclusive of GST Interest on the delayed Interests.
- iii. However, upon verification of the details sent by Applicant, Applicant have not considered the interest payable on the advance of Rs.4,00,00,000/- paid to Federal Bank on Applicant's behalf towards One Time Settlement in respect of the Tremie Barge, to prevent the Bank from initiating the CIRP of DDIL.
- iv. That as on the commencement of CIRP of DDIL, the Applicant have admitted the claim made by MDPL for an amount of Rs. 6,29.80,670/- (against the claim of Rs. 13,38,32,290/-) which includes this advance of Rs.4 Crores. Hence, DDIL is entitled to the interest as per the correspondence exchanged between the MDPL & DDIL.
- v. The aspect of the interest is also brought to the notice of the Hon'ble NCLT only and the same is required to be adjusted from the Lease Rental arrears. Accordingly, the balance amount payable against the

Tremie Barge is Rs.42,42,042/-. (Rs.1,73,78,261-Rs.1,31,36,219).

Copy of the said e-mail is filed herewith as Annexure No.3.

4.4 Thereafter, on 08.08.2023 the Respondent sent another e-mail stating the following:

- i. In pursuance of the order dated 14.07.2023 in IA(IBC) 796/2023, we delivered the possession of the Tremie Barge to your authorized representative on 21.07.2023. In obedience to order of the Hon'ble NCLT we are ready to have discussion regarding lease rentals and we hereby further inform that we are ready with all relevant data and records for reconciliation of the accounts. Hence, we request you to fix a date for reconciliation of the accounts.
- ii. In pursuance of the order dated 14.07.2023 in IA(IBC) 796/2023 we request you to take the delivery of Vehicle Bearing No. OR 21 B 9939 (Scrap Condition) which is available at Yanam and Vehicle Bearing No. AP 09 TA 7324 (Scrap Condition) which is available at Birpur Project Site. We gave instructions to the staff concerned to cooperate with you while taking the delivery of the vehicles.
- iii. The details of the Three Vehicles which were sold prior to initiation of CIRP are as follows:
 - a) Toyota Fortuner (2011 model bearing No. MH 43 AF 9785) - The sale was made during 2018 to Mr. Ramu Yellappa Chougale and the RC status, challan are attached evidencing the sale of the vehicle. This fact was also informed to the RP of DDIL by the Company Secretary of DDIL on 05.04.2023 and a copy of the correspondence is attached.

- b) Toyota corolla Altis (2013 Model bearing No. AP 09 CJ 915) - The said vehicle was sold to Mr. S Kantha Rao, the earlier Promoter Director on attainment of his superannuation at the age of 71 years in the year 2015. Copy of the letter issued to Mr. Kantha Rao is attached.
- c) Skoda Superb (MH 43 AW 1716) - The said vehicle was sold to Mr. Sayed Sadiq Abbas Sayed on 20.03.2019. Copies of the transfer of ownership of vehicle in Form-29 are attached. The fact was communicated to RP of DDIL on 12.10.2022 by Company Secretary of DDIL (much before the commencement of CIRP of MDPL).
- iv. We have already handed over the following three vehicles which are parked in the parking area of the DDIL office building and the keys were handed over to your company representative Mrs. Girija Bala, Company Secretary:
- i. Toyota Corolla Altis - TS 069 EA 7277
 - ii. Toyota Land Cruiser Prado - TS 07 EC 3299
 - iii. Ford Fiesta Classic - AP 09 CS 4109
- v. We request you to fix a date for discussion regarding lease rentals and if you need any clarification on any aspect, please contact us through e-mail. Copy of the said e-mail is filed herewith as Annexure No.4.
- 4.5 It is stated that the Applicant has addressed an e-mail dated 08.08.2023 to the Respondent informing that, vide Order dated 14.07.2023, in IA.No. 796/2023 this Tribunal has directed Applicant and Respondent to reconcile our claims with the help of the records available and place on record the same is due and payable within one week from 14.07.2023 and

last date for reconciliation as per the Order of this Tribunal fell on 20.07.2023.

4.6 It is further stated that the Applicant has addressed two e-mails on 19.07.2023 i.e., two days before the last date mentioned in Order dated 14.07.2023. However, Respondent has not responded to the same. However, on 07.08.2023 which is on the 25th day from the last date of the Order 14.07.2023, Respondent has sent an e-mail which is completely in non-compliance of the Order dated 14.07.2023.

4.7 The Respondent contention is that

- i. Upon verification of the details sent by Applicant interest payable on the advance of Rs.4,00,00,000/- paid to Federal Bank on behalf of DDIL towards One Time Settlement in respect of the Tremie Barge, to prevent the Bank from initiating the CIRP to DDIL was considered.
- ii. That claim of MDPL was admitted for an amount of Rs. 6,29,80,670/- (against the claim of Rs.13,38,32,290/- which includes this advance of Rs.4 Crores. Hence, MDPL is entitled to the interest as per the correspondence exchanged between the MDPL & DDIL.

Date of payment	Amount	Date of Handover	No of days	Int@16% p.a.
19.01.2021	40,00,000	17.07.2023	909	15,93,863
15.05.2021	1,00,00,000	17.07.2023	793	34,76,164
21.05.2021	50,00,000	17.07.2023	787	17,24,932
24.08.2021	1,00,00,000	17.07.2023	692	30,33,425

30.08.2021	1,10,00,000	17.07.2023	686	33,07,836
	4,00,00,000			1,31,36,219

iii. The aspect of the interest is also brought to the notice of this Tribunal and the same is required to be adjusted from the Lease Rental arrears. Accordingly, the balance amount payable against the Tremie Barge is Rs.42,42,042/- (Rs. 1,73,78,261 – Rs.1,13,36,219). We request you to consent for the same.

4.8 The Applicant's reply

- i. Respondent was requested firstly to prove that MDPL have paid Rs. 4 Crores as deposit but not as part of rentals and provide proof of documentary/ records for proving that all the rentals as on date of payment of Rs. 4 Crores fully remitted to DDIL, then only the question of charging the Interest will come into picture if it is mentioned in any of the records/ agreement.
- ii. That Respondent has admitted DDIL claim as Rs.11,10,392/- by email dated 18.04.2023. Further, Respondent has mentioned that CoC of MDPL agreed and confirmed for taking the Assets of the DDIL on lease from the date of MDPL CIRP commencement date i.e., from 11.11.2022 onwards only and Respondent have sent another e-mail asking to raise the invoices from the date of MDPL CIRP admission i.e., from 11.11.2022 and DDIL also agreed to continue the Assets with MDPL with a view that lease rentals will come to DDIL at least from the date of MDPL CIRP admission date and CoC of MDPL agreed for the same.

iii. In view of the above, please include Rs.1,85,55,173.89 as CIRP Cost for MDPL on account of Lease rentals due and payable in respect of Tremie Barge alone towards lease charges, interest, GST delay interest due to GST department payable by MDPL to DDIL as on 08.08.2023. The calculations are as under and any penalty and damages levied by GST department due to non remittance of GST will be communicated separately and need to payable by MDPL.

4.9 It is stated that the reconciliation could not take place between the Applicant and Respondent. Therefore, it is prayed to this Tribunal to allow this Application.

5. The Respondent filed additional affidavit on 26.09.2023, inter-alia stating that:

5.1 It is stated that in response to IA 796 of 2023 filed by the Petitioner i.e., Erstwhile Resolution Professional of M/s. Dharti Dredging and Infrastructure Limited (DDIL), under Section 60(5) of IBC, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016.

5.2 This Tribunal vide its order dated 14.07.2023 issued directions in respect of following matters:

- a) Handover the Tremie Barge Vessel.
- b) Handover the office premises (3rd Floor)
- c) Handover/give account of 13 vehicles.
- d) Reconcile the lease rental on Tremie Barge.

5.3 It is stated that the Tremie Barge Vessel was handed over on 21.07.2023, copy of the document and receipt of Tremie Barge is attached as **Annexure – A1** and communication was sent on 08.09.2023 of vacating the 3rd Floor of office premises and accordingly handed over on 13.09.2023 and the e-mail communication is attached as **Annexure – A2**.

5.4 It is stated that a) 3 (Three) vehicles handed over on 01.06.2023 and the copy of the document is attached as **Annexure- A3**. 3 (Three) Vehicles were disposed/transferred much before the Hire & Purchase agreement dated 12.07.2021 was signed and erroneously included in the agreement and E-mail communication was sent on 08.08.2023 and copy of the communication is attached as **Annexure – A4**.

b) It is stated that 2 (Two) vehicles were in scrap condition lying at Yanam and Birpur project sites and the details of the vehicles along with contact persons were communicated on 08.08.2023 and communication is attached as **Annexure – A4**.

c) It is stated that 3 (Three) vehicles were handed over on 13.09.2023 and copy of the document is attached as **Annexure – 5**.

d) It is stated that 2 (Two) vehicles are in the possession of Corporate Debtor and CD requested the SRA to consider the option of selling the vehicles. This Tribunal is requested to allow the handing over of these vehicles by 31.12.2023.

5.5 It is stated that the erstwhile RP vide his mail dated 19.07.2023 communicated that the lease rentals on the Tremie Barge from CIRP commencement date to the date of handing over of Tremie Barge worked out to Rs. 1,73,78,261/- + interest. The undersigned vide his mail dated 07.08.2023 communicated to the erstwhile RP that the lease rental amount is as per the agreement but the interest on the advance of Rs. 4 (four) Crore amounting to Rs. 1,31,36,219/- is to be considered and the balance amount of Rs. 42,42,042/- can be paid by Corporate Debtor. A copy of the mail dated 19.07.2023 and 07.08.2023 are attached as **Annexure – A6 & Annexure – A7** respectively.

5.6 It is stated that on 02.09.2023 the undersigned met the erstwhile RP of DDIL and requested him to take up the matter with CoC of DDIL to come to consensus and requested this Tribunal to consider the following facts and directions have given below to the parties.

- a) An amount of Rs. 4 (Four) Crores was paid by the Corporate Debtor during the period January to August, 2022 to Federal Bank on behalf of DDIL towards one time settlement in respect of the Tremie Barge to prevent the bank from initiating the CIRP of the DDIL. The interest on bank of Federal Bank was 16% and MDPL requested DDIL to pay the interest amount on the advance of RS. 4 (Four) Crores which worked out of Rs. 1,31,36,219/-.

- b) It is stated that Tremie Barge was in the possession of Corporate Debtor the same was not deployed from August, 2022 onwards due to cancellation of the agreement of MDPL with SWAN LNG Limited.
- c) It is stated that no revenue was generated by the Corporate Debtor during the entire CIRP period.
- d) It is stated that MDPL paid substantial amounts to DDIL post its NPA and some of the amounts paid in the form of rental deposits of Rs. 1.2 Crores, refurbishing of office premises Rs. 25 lakhs etc., were not accepted as a claim by erstwhile RP of DDIL.
- e) It is stated that the IA No. 22 of 2023 was filed in the month of January, 2023 and the direction to hand over the Tremie Barge was given in the month of July, 2023 by this Tribunal. This intermittent period may be excluded while calculating the lease rentals of Tremie Barge as the matter was sub-judice.
- f) It is stated that both DDIL and MDPL are MSME companies. MDPL was willing to pay an amount of Rs. 42 lakhs as explained.

5.7 It is prayed to this Tribunal in light of the above seeking directions on the rental amounts of Tremie Barge in the interest equity and justice in respect of the matter.

6. The Counsel for the Applicant filed memo on 04.10.2023 stating that,
any penalties and damages by GST department need to be payable by MDPL over and above amount due of Rs.2,16,55,431/-. It is further stated that the MDPL has not complied with this Tribunal Order dated 14.07.2023 and that the receivables are due from MDPL to DDIL as on date.

7. The Counsel for the Applicant filed Written Submissions on 11.10.2023, by reiterating the application and memos, apart from that

7.1 It is stated that as on 30.09.2023 MDPL is due and liable to pay Rs. 2,16,55,431/- (Rupees Two Crores Sixteen Lakhs Fifty-Five Thousand Four Hundred and Thirty-One only) to DDIL which are arising out of Agreement mentioned in Para No. 3(I) to Para No. 3(III) of the captioned I.A., Further any penalties and damages by the GST department needs to payable by MDPL.

7.2 It is stated that the said rentals forming part of CIRP of the MDPL will have to be paid to many Employees, Workmen and Secured Operational Creditors and Secured Financial Creditors of the DDIL as per DDIL's Approved Resolution Plan by this Tribunal. The Applicant has filed a

memo on 04.10.2023 detailing the amounts payable by MDPL to DDIL which shall be part of the CIRP cost of the MDPL.

8. This is an application filed by the Resolution Professional of Dharti Dredging and Infrastructure Limited against the Resolution Professional of Mantovani Di Dharti Private Limited seeking directions to the Respondent to pay Rs.1,65,13,322.60/- as CIRP costs to the Applicant in lieu of payments arising out of 3 agreements stated in 3(I) to (III) of this Application for the CIRP period.
9. We heard both the resolution professionals Mr. G.Madhusudhan Rao for applicant and Mr. Krishna Komaravolu for respondent and their counsels Mr. G.P.Yash Vardhan and Mr. Maharshi Vishwaraj respectively. We also perused the records and documents submitted to the Tribunal in this case. On the basis of hearing and perusal of documents, our observations and findings are given hereunder.
10. The Applicant contended that in terms of the agreements as detailed below:
 - i. Agreement dated 01.12.2018 for Lease and Purchase of Tremie Barge:**
 - ii. Rent Agreements in respect of premises located at Begumpet, Hyderabad**

iii. Agreement dated 12.07.2021 for Hire & Purchase of Vehicles:

the MDPL was liable to pay the Applicant an amount of Rs.15,32,78,126/- up to 03.06.2022. The Applicant filed an IA.No.804/2022 for recovery of the said amount, but in the meantime MDPL was admitted to CIRP on 11.11.2022 and the Applicant has no alternative but to file the claim with Respondent for the said amount of Rs.15,32,78,126/-. The Respondent admitted claim only up to the tune of Rs.11,10,392/- as on 18.04.2023.

11. After the Respondent was admitted into CIRP, applicant sought cancellation of all contracts and requested Respondent to make payments towards outstanding invoices during CIRP period and handover the assets to the Applicant, but Respondent vide e-mail dated 20.12.2022 informed the Applicant that in the 1st COC meeting held on 16.12.2022 it was decided that all existing agreements/arrangements would continue and the payment of invoices will be made in due course and these expenses will be treated as part of the CIRP costs.
12. Accordingly, Applicant raised invoices for the said expenses from November, 2022 to April, 2023. For the first time, Respondent raised an issue in respect to the invoice raised for the month of February, 2023 for Tremie Barge on the ground that MDPL had given Rs 4.00 crores upfront

to the Federal Bank towards settlement of the claims of the applicant and respondent also claimed interest on that said amount of Rs. 4.00 Crores. Applicant strongly refuted this argument of the respondent contending that as far as Tremie Barge issue is concerned, MDPL has taken over Tremie Barge on 01.12.2018 at hire charges of Rs.17,85,741 PM + GST and the pending hire charges calculated at this rate on the date of payment of Rs.4 Crores to Federal Bank on behalf of MDPL comes to Rs.6,95,35,703/-. Hence there is no question of reduction of future hire charges on Tremie Barge during CIRP period as it was adjusted against the outstanding dues of MDPL on account of hire charges of Tremie Barge.

13. The current or the present position in regard to the handing over of assets and payment of dues are as under:
 - i. The Respondent has handed over the 2nd and 4th floors of the properties of the Applicant, but 3rd floor property is still in the possession of the MDPL/Respondent and the Respondent wants to continue to hold that possession as there is staff working from that floor and on mutually decided terms rent for the same is to be decided.
 - ii. As far as agreement for hire and purchase of vehicles is concerned, we observe from the Schedule of the said agreement, that Respondent has

explained that 3 vehicles were sold prior to CIRP, 6 vehicles have already been handed over to the Applicant and 2 vehicles are in scrap condition lying in Yanam and Bijapur projects and Respondent has only 2 vehicles with him for which he has requested the Tribunal to allow the handing over of these vehicles by 31.12.2023.

iii. As far as Tremie Barge is concerned, the Applicant has raised the bill of Rs.1,73,78,261.43/- for Tremie Barge charges from the date of CIRP admission i.e., 11.11.2022 till 11.07.2023 i.e the date on which respondent sent an email informing handover of the machine. The Applicant has also added an MSME interest amount of Rs.11,76,912.46/- payable along with the bill amount. Thus the total claim on account of Tremie Barge charges is Rs.1,85,55,173.89/-.

14. The main issue of contention between both the RPs is the payment of Rs 4.00 crores by MDPL to Federal Bank on behalf of applicant and also interest claimed on this amount which applicant is refusing to take into account before arriving at the final amount payable by the respondent. We observe that this amount is paid before CIRP by MDPL and as per IBC only claim can be raised against this amount as a financial or operational creditor but it cannot be adjusted from the charges payable for services rendered during CIRP which forms part of CIRP cost.

15. Having decided on the above contentious issue, the rest of the matters are decided on the basis of facts produced before us. Accordingly, we direct respondent as under:
- (a) To pay hire charges of Rs.17,85,741 PM + GST per month for Tremie Barge from the date of CIRP till 11.07.2023, however no interest is allowed as claimed by the applicant.
- (b) To pay rent as per agreement from the date of CIRP till date of handing over of part of premises and thereafter reduced rent proportionately on the basis of carpet area in possession of the respondent. The possession of 3rd floor as requested by respondent is allowed to continue with it till CIRP is over as requested by respondent, however on payment of proportional rent till date of possession of respondent as per carpet area in possession.
- (c) As far as rent for vehicles is concerned the respondent is directed to pay hire charges for 8 vehicles from the date of CIRP till handing over of vehicles to the applicant proportionately, out of 13 vehicles as respondent claims that 3 vehicles were sold before initiation of CIRP and 2 are in scrap condition. The possession of 2 vehicles as requested by respondent is allowed till 31.12.2023, however subject to proportionate payment of hire charges for the said period.

Sd/-

(Charan Singh)
Hon'ble Member (Technical)

Sd/-

(Dr.N.V. Ramakrishna Badarinath)
Hon'ble Member (Judicial)

Sridher