

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (CH) (Ins.) No. 270/ 2022**

**&**

**I.A. No. 579,580/ 2022**

**In the matter of:**

**Kunaparaju Sudharshan Varma**

**....Appellant**

**Vs.**

**M/s Rangrao Baburao Gaikwad & Anr.**

**....Respondents**

**Present**

**For Appellant: Mr. Yogesh Jagia along with Mr. D V A S Ravi Prasad & Mr. Nitish Bhandari, Advocates.**

**For Respondents: None.**

**ORDER**  
**(Virtual Mode)**

**19.07.2022:** Counsel for the appellant has submitted that the Corporate Debtor (Respondent No. 3) had entered into a Power Purchase Agreement on 8<sup>th</sup> January, 2009 to sell electricity to the Maharashtra State Electricity Institution Company Ltd., however, due to various reasons the plant became non operational and as such the company stopped its operations.

The respondent No. 1 promoted a special purpose vehicle for the operation of the power plant under the name and style of RSP Energy LLP and entered into a MoU on 3<sup>rd</sup> November, 2016 with Corporate Debtor (Respondent No. 3).

It is submitted that earlier an Application under Section 7 of the IBC, 2016 (in short the Code) was filed by the Respondent No. 1 which was dismissed by the Learned Tribunal on the ground that there was no privity of contract as the plant was on an operational lease contract but later on the Respondent no. 1

filed an application under Section 9 of the Code on the ground that it had supplied the raw material (fuel).

Counsel for the Appellant has submitted that once there was no privity of contract between Respondent No. 1 and the Appellant as it was held at the time of dismissal of the Application filed under Section 7 which had attained finality as it was not challenged any further then how there could be a privity of contract between the parties in the application filed under Section 9. It is also submitted that the plant was on operational lease in which the Appellant had nothing to do and if any fuel was supplied as alleged then it was the liability of the RSP Energy LLP and not of the Appellant.

Issue notice to the respondents for **5<sup>th</sup> August, 2022**.

In the meantime, the operation of the Impugned Order dated 25<sup>th</sup> November, 2019 shall remain stayed till the next date of hearing.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

*Sim/md*