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**NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 ON 11.12.2018**

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

APPLICATION NUMBER : MA/632/2018
PETITION NUMBER : CP/39/IB/2018
NAME OF THE PETITIONER(S) : TIFFIN BARYTES ASBESTOS & PAINTS LTD
NAME OF THE RESPONDENT(S) : STATE OF KARNATAKA & 3 OTHERS
UNDER SECTION : 11,60 OF IBC

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
REPRESENTATION BY WHOM			

✓ 1) K. Nivethya

Counsel for RP

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✓ 2) E. ONPRAKASH
Senior Advocate
R. NURALI
Advocate

Counsel for Coc

J. (u) 7.

3) Vasudhara

RP

M. (u) 7.

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

*MA/632/2018 filed in CP/39/2018 by
Mr. Vasudevan, Resolution Professional
under Section 14, 20 and 25 r/w Section
60 (5) of the Insolvency and Bankruptcy
Code, 2016 and the NCLT Rules.*

In the matter of **M/s. Tiffins Barytes Asbestos & Paints Limited.**

Mr. Vasudevan

....Applicant / Resolution Professional

Vs.

State of Karnataka and others

... Respondents

Order delivered on 11th of December, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Resolution Professional : Mr. K. Murthy, Counsel.

*For CoCs : Mr. E. Om Prakash, Senior
Counsel for Mr. R. Murali, Counsel.*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL):

1. Resolution Professional along with his Counsel is present. Learned Sr. Counsel for the 4th Respondent viz., CoCs, is present. There is no representation on behalf of Respondent Nos.1 to 3. The Registry has

reported that the notices have been sent and the same have been served on the said Respondents. The Counsel for Applicant has also sent private notices which have also been served on the Respondents. Besides this, the Counsel for the Applicant has submitted that e-mail communications have been sent to the Respondents Nos.1 to 3. A Memo has been filed along with the e-mail communications; the same is placed on record. It appears that the Respondent Nos.1 to 3 are well aware about the proceedings pending before this Authority, in spite of the service, there is no representation on their behalf. It seems the Respondent Nos.1 to 3 are not interested in prosecuting the case. The service against the Respondent Nos.1 to 3 is held sufficient. They are proceeded *ex parte*.

2. MA/632/2018 has been filed by the Resolution Professional with the following prayers:-

- i. *Hold that the order dated 26.09.2018 passed by the 2nd Respondent is in violation of*

Section 14 of the IBC and therefore Null and Void and not binding on the Corporate Debtor.

- ii. *Consequentially hold that the renewed Mining Lease bearing M.L.No.2293 vide Annexure__ in favour of the Applicant in respect of Iron Ore over an extent of 472.32 Acres (191.13 Hectares) of Revenue land in Sy.No.311 of Haraginadona Village in Bellary Taluk, Bellary District, is deemed to be valid upto 31.03.2020 in accordance with Sec. 8 A (6) of the M.M.D.R.Act, 1957 as amended under the Mines and Minerals (Development and Regulation) Amendment Act, 2015, in the interest of justice and equity and that the Corporate Debtor has the statutory right under Mines and Minerals (Development & Regulation) Act, 1957 & Minerals (other than Atomic and Hydro Carbons and Energy Minerals) Concession Rules, 2016, to carry on the mining operations and transport the extracted mineral from 28.05.2018 to 31.03.2020 from the mining lease area covered under the Mining Lease Deed bearing M.L.No.2293 vide Annexure __ in the interest of justice and equity.*

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- iii. *Consequentially direct the Respondents 1 to 3 to execute supplement Deeds extending upto 31.03.2020, the period of the Mining Lease bearing M.L.No.2293 vide Annexure ___ in accordance with Sec. 8 A (6) of the M.M.D.R Act, 1957 as amended under the Mines and Minerals (Development and Regulation) Amendment Act, 2015, in the interest of justice and equity.*
- iv. *Issue and other Relief, order or direction as deemed fit under the circumstances of the case, in the interest of justice.*

3. The issue involved in the matter is pertaining to the termination of Mining Lease bearing No. ML-2293 during declaration of moratorium and the request for Deemed Extension of the said Mining Lease has been rejected vide Order dated 26.09.2018.

4. In this matter, the CIR Process against the Corporate Debtor was initiated on 12.03.2018 and the Resolution Professional has written to the Respondents on 14.03.2018 informing them about the commencement of CIR Process against the Corporate

Debtor and declaration of Moratorium and requested for Deemed Extension of Mining Lease mentioned above.

5. Counsel for the Applicant has also referred to the communication dated 05.05.2018 wherein it has been recorded that the Government may decide on the matter after providing an opportunity of hearing to the concerned. The said communication also refers to the fact of commencing of the CIR Process against the Corporate Debtor and declaration of Moratorium. Pursuant to the said communication, the 2nd Respondent viz., the Secretary (Mines), Department of Commerce and Industries, Government of Karnataka, Vikasa Soudha, 1st Floor, Dr. Ambedkar Road, Bangalore – 560 001 has conducted the enquiry, which was attended by the Resolution Professional and written submissions were filed. The operative part of the submissions contained at page 63 onwards under Paras 24 to 26 is reproduced as under:-



"It is also necessary to state that till date, there has been no specific allegation made by the Department of Mines & Geology pointing out the transactions which would violate the provision contained under Rule 37 of Mineral Concession Rules, 1960.

It is further submitted that as on date, the only civil dispute pending between the Applicant herein and Sri C. Satyanarayana is before the Sole Arbitrator and in the recent claim filed by Sr. C. Satyanarayana before the Insolvency Resolution Professional. There are no other proceedings pending between the applicant and Sri C. Satyanarayana in any other Court and all the other cases have been closed without any relief being granted in favour of Sri. C. Satyanarayana. Further issues have been framed by the Sole Arbitrator but the proceedings have presently been kept in abeyance in view of Sec.14 of the Insolvency & Bankruptcy Code with an order dated 04/07/2018 passed by the Arbitrator instructing the parties to take appropriate proceedings under the Code by moving the appropriate authority at the earliest for modification of the order of moratorium by allowing the continuation of proceedings before the Arbitrator.



It is further submitted that Sec.14 of the Insolvency & Bankruptcy Code, 2016 imposes a Moratorium on continuation of pending suits or proceedings against the Corporate Debtor. In the present case, M/s. Udhyaman Investments Private Limited has filed a petition bearing CP/39/(IB)/CB/2018 against the applicant herein under Sec.7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Chennai. The National Company Law Tribunal, Chennai has passed the Order dated 12/03/2018 admitting the said petition and ordering the commencement of the Corporate Insolvency Resolution Process. Thus, at this stage, there can be no action taken for any termination of the mining lease.

WHEREFORE, *for the reasons and circumstances stated above, it is prayed that this Authority may be pleased to consider the above facts and circumstances including the points of Law and record the deemed extension of M.L.No.2293 upto 31/03/2020 and this Authority may kindly take immediate action and issue the necessary permission to the applicant to immediately commence the mining operations over the area in question and to put up the extracted Iron Ore for E-*

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auction being conducted by the Monitoring Committee.

6. Based on the enquiry, an Order came to be issued on 26.09.2018 by the Under Secretary to Government, Commerce & Industries Department (Mines), State of Karnataka whereby the Application filed for Deemed Extension of Mining Lease bearing ML No.2293 by the IRP was rejected in spite of the recommendations of the Director, Department of Mines and Geology, Bangalore.

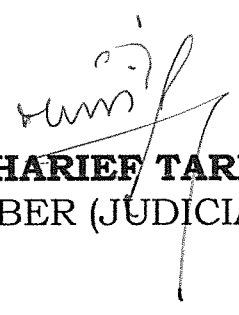
7. Therefore, the Order dated 26.09.2018 issued by the Under Secretary to Government, Commerce & Industries Department (Mines), State of Karnataka rejecting Deemed Extension of Mining Lease bearing ML No.2293 is hereby set aside, as the same is in violation of the Moratorium declared by this Authority on 12.03.2018 under Section 14(1) of the I&B Code, 2016. Consequently, the Respondent Nos. 1 to 3 are directed to execute Supplement Deeds extending the period of the Mining Lease bearing ML No.2293 upto 31.03.2020, in accordance with Sec. 8 A (6) of the

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M.M.D.R Act, 1957 as amended under the Mines and Minerals (Development and Regulation) Amendment Act, 2015, within a period of two weeks from the date of the receipt of the certified copy of this Order.

8. A certified copy of this Order will be issued by the Registry to the Resolution Professional, who in turn shall deliver the same to the Respondent 1 to 3 for compliance of the above direction. Accordingly, MA/632/2018 stands **disposed of**.

9. The Order is dictated in open court in the presence of the Counsel for the Resolution Professional and Senior Counsel for the CoC.


[CH. MOHD SHARIEF TARIQ]
MEMBER (JUDICIAL)

P.ATHISTAMANI