

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT V  
INTERLOCUTORY APPLICATION. No. 3233/2022**

**In  
CP(IBC)No. 3434/MB/C-V/2019**

*Application filed under Rule 11 of the N.C.L.T Rules,  
2016.*

*In the matter of*

**Bank of Baroda**

**...Applicant**

**V/s**

**UTI Structured Debt Opportunities Fund-1  
And Others.**

**...Respondent**

**In the matter between:**

**Halliburton Offshore Services Inc ....Petitioner**

**v/s**

**Mercator Petroleum Limited ...Corporate Debtor**

**Order Pronounced on :- 02.11.2023**

***Coram:***

**Smt. Anuradha Sanjay Bhatia : Member (Technical)**

**Shri. Kuldip Kumar Kareer : Member (Judicial)**

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT V

I. A. No. 3233/2022

In

CP No. 3434/MB/C-V/2019

*Appearances:*

**For the Applicant** : AVP Partners.

**For the Respondent** : I.C. Legal.

**ORDER**

*Per: Shri. Kuldip Kumar Kareer (Judicial Member)*

1. This is an application filed by the Applicant under Section Rule 11 of the N.C.L.T Rues, 2016 seeking, inter-alia, the followings reliefs: a) to restrain the Respondent No.01- UTI Structured Debt Opportunities Fund-I from passing resolutions in abuse of its majority voting share in the committee of creditors of the Corporate Debtor- Mercator Petroleum Limited; and b) Direct that the Respondent No.01- UTI Structured Debt Opportunities Fund-I should not be allowed to vote on the resolutions proposed by itself. The Respondent No.02 is Mr. Satish Kumar Gupta, a Resolution Professional of the Corporate Debtor-Mercator Petroleum Ltd.

**Case of the Applicant in brief:**

2. The present Application is being filed by Bank of Baroda, a financial creditor of Mercator Petroleum Limited ("Corporate Debtor") holding 31.80% voting share in the committee of creditors of the Corporate Debtor

("CoC"). The Applicant is seeking directions from this Hon'ble Tribunal to inter alia, restrain UTI Structured Debt Opportunities Fund I ("UTI") (Respondent No. 1 herein), a financial creditor of the Corporate Debtor having 68.20% voting share in the CoC from abusing the same and to further bring on record the gross and malafide acts of UTI in the CIRP of the Corporate Debtor.

3. The Corporate Debtor was admitted to Corporate Insolvency Resolution Process ("CIRP") pursuant to an order of this Hon'ble Tribunal dated August 31, 2020 in Company Petition No. 3434 of 2019. The erstwhile resolution professional was replaced and Mr. Satish Kumar Gupta ("Resolution Professional") was appointed by an order of this Hon'ble Tribunal dated August 11, 2022, at the behest of UTI. UTI passed a resolution to replace the erstwhile Resolution Professional for not entertaining its illegal and mala fide proposals to discard the valuation reports already obtained even when the contents of the same were not known to the members of the CoC and obtaining fresh valuations ("UTI Resolutions"), which resolutions are ex facie contrary to the provisions of the Insolvency and Bankruptcy Code, 2016 ("Code") as well as Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. ("CIRP Regulations"). The Applicant has challenged the UTI Resolutions and the matter is currently sub-Judice before this Hon'ble Tribunal.

4. UTI has filed a claim in the CIRP of the Corporate Debtor as a beneficiary of a corporate guarantee issued by the Corporate Debtor in respect of non-convertible debentures issued by Mercator Limited. In this regard, UTI conveniently failed to inform the Respondent No. 2 about the recoveries made by UTI from Mercator Limited (the principal borrower) and update its claim in respect of Regulation 12A of the CIRP Regulations in respect of the Corporate Debtor. Respondent No 2 was apprised about the said recoveries by the Applicant and has now requisitioned additional information from UTI to update and revise UTI's claim in accordance with the provisions of the Code.
  
5. Further, to take over the Corporate Debtor for free and defeat the rights of the Applicant, which is a first charge holder, as well as the other stakeholders, UTI has submitted a resolution plan for the Corporate Debtor. As the Resolution Professional is acting in a manner which is not in the interest of UTI, although in accordance with the applicable law, UTI has now again sought to replace the Respondent No. 2 and appoint Mr. Amit Rastogi as the resolution professional of the Corporate Debtor. In light of the foregoing and in the interest of justice, this Hon'ble Tribunal be pleased to take on record the aforesaid conduct of UTI and allow the present Application.

**Submissions of the Respondent as per the Additional Affidavit:**

6. The IA No.3191 of 2022, IA No.3433 of 2022, Intervention Application Nos. 10 and 11 of 2022, IA No.2327 of 2022 and IA No.3541 of 2022, the resolution plans came for consideration and approval of the Committee of Creditors.
7. During the pendency of the aforementioned applications, in order to amicably resolve the issues, expedite the resolution of the Corporate Debtor, avoid liquidation of the Corporate Debtor, and otherwise in the interest of the Corporate Debtor and all its stakeholders including the Respondent No. 1 and the Applicant, it has been, inter alia, agreed in their commercial wisdom between this Respondent and the Applicant i.e. Bank of Baroda, being the only two members of the CoC, that the distribution of the upfront offered to the Secured Financial Creditors would be in a certain ratio i.e. 60% of the proceeds to the Applicant and 40% to this Respondent. Also, considering that the plan approved is filed by Indian Oil Corporation Limited ("IOCL"), a Fortune 500, well reputed and highly regarded government/ public sector undertaking.
8. The aforesaid, was agreed despite the fact that the Respondent No.1 has a 68.2% voting share and the Respondent No. I would have received a much higher upfront amount, in the event the distribution was at pro-rata basis

between the secured financial creditors. Even as per the voting share of 58.78% (as has been wrongfully reduced by the Respondent No.2 and illegally so as per this Respondent's case) the Respondent No. 1 would have received a much higher upfront amount, in the event the distribution was at pro-rata basis between the secured financial creditors.

9. **A critical and inalienable element of this arrangement** i.e. the distribution of the upfront amount offered be distributed in a certain ratio, **is** the confirmation provided by the Applicant, **that the Applicant would unconditionally withdraw the:** (i) IA No.2327 of 2022; and **(ii) this present IA No.3233 of 2022;** and (iii) Intervention Application Nos.10 and 11 of 2022 in IA Nos.3191 and 3433 of 2022 respectively; all filed by the Applicant and all their allegations therein. It was, inter alia, also agreed and confirmed by the Applicant that the Applicant had no objection to the dismissal in favour of this Respondent and/or withdrawal of IA No.354 1 of 2022 and would take all steps towards withdrawal/ dismissal thereof, in accordance with law.

10. As it stands, a resolution plan has now been approved by the Respondent No.1 and the Applicant and the distribution was agreed owing to and in accordance with the commercial understanding between the parties and an IA No.1124 of 2023 has been filed seeking approval of this Hon'ble Tribunal for the approved Resolution Plan. **However, the Applicant has**

**not taken steps to withdraw the aforementioned applications and in respect of withdrawal/dismissal of the present application.**

11. In the meantime, the Hon'ble Tribunal has commenced the hearing of the IA No.3 541 of 2022 and IA No.3191 and 3433 of 2022, the same is part heard. apprehends and strongly believes that this entire exercise is either done to prolong the CIRP process or to deliberately send this Corporate Debtor into liquidation. It is submitted that the commercial wisdom and understanding of 100% of the CoC is not open to challenge or question by the Respondent No.2 and is binding on the Respondent No.2/ RP.

12. Since, the issues and disputes have now been amicably resolved by the Respondent No.1 and the Applicant in their commercial wisdom, and the Applicant has agreed to withdraw the aforementioned applications and contentions against this Respondent. It is just, necessary and appropriate that the following be dismissed as withdrawn, unconditionally:

- (i) IA No. 2327 of 2022;
- (ii) **IA No.3233 of 2022 (i.e. the present IA);**
- (iii) Intervention Application No. 10 of 2022 in IA No.3191 of 2022;
- (iv) Intervention Application No.11 of 2022 in IA No. 3433 of 2022

13. It is submitted that since the only affected person i.e. the Applicant has arrived at a commercial understanding with the Respondent No. 1, inter alia as set out above, it is just, necessary and appropriate that:

- (i) IA No.3191 of 2022 - be allowed and the decision dated 19<sup>th</sup> October 2022 of the Respondent No.2 reducing this Respondent's claims be set aside;
- (ii) IA No.3433 of 2022 - be allowed and the decision dated 9<sup>th</sup> November 2022 of the Respondent No.2 reducing this Respondent's claims be set aside;
- (iii) IA No.3541 of 2022 - be dismissed as infructuous.

### **ANALYSIS AND FINDINGS**

14. We have heard the learned counsels for the Applicant as well as for the Respondent. We have also gone through the records, documents and the written submissions placed before us.

15. The present Application has been filed by Bank of Baroda, a financial creditor of Mercator Petroleum Limited ("Corporate Debtor") holding 31.80% voting share in the committee of creditors of the Corporate Debtor ("CoC"). The Applicant is seeking directions from this Hon'ble Tribunal, inter alia, to restrain UTI Structured Debt Opportunities Fund I ("UTI") (Respondent No. 1 herein), who happens to be a financial creditor of the Corporate Debtor having 68.20% voting share in the CoC from abusing the same and to further bring on record the gross and malafide acts of UTI in the CIRP of the Corporate Debtor. The Applicant has also sought for the

directions from this Hon'ble Tribunal to not allow the UTI to vote on the resolutions proposed by itself.

16. The Applicant has filed several other applications before this Tribunal of interlocutory nature. I.A. No. 2327/2022 was filed by the Applicant for discarding the valuation reports prepared by the registered valuers and calling for a fresh valuation report. Intervention Petitions No.10 and 11 of 2022 have also been filed by the Applicant seeking intervention in I.A Nos. 3191 and 3433 of 2022 respectively. Pursuant to filing of aforementioned applications, there were several rounds of negotiations/discussions between the UTI and the Applicant i.e. Bank of Baroda. Simultaneously, there were negotiations/discussions between the members of the committee of creditors and the Resolution Applicant. UTI and the Applicant have agreed to mutually resolve their differences. It was agreed that the resolution plan proposed will be approved by both the parties. The creditors also agreed to share the proceeds given by the Resolution Applicant in the ratio of 60:40 in which the Applicant's share is 60% and UTI's share is 40%. Based on this understanding distribution which is agreed between the members of CoC, the Resolution Plan was considered by the Applicant and the UTI, and was also approved. This approved Resolution Plan is now pending for approval of the Adjudicating Authority u/s 31 of the Code in I.A. No. 1124 of 2023.

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17. The CoC meeting has already taken place and the resolution plan has already been approved by the Applicant and the Respondent pursuant to the settlement/mutual consensus arrived between them, as discussed above. Hence, the reliefs sought by the Applicant in terms of prayers in Clauses (a) and (b) restraining the Respondent No.01 from passing the resolutions in abuse of its majority voting share in the committee of creditors of the Corporate Debtor have been rendered infructuous.

18. Hence, in view of the facts and circumstances of the case, and in view of the inter se differences being mutually resolved by the parties herein, we are of the considered opinion that this I.A. should be dismissed having been rendered infructuous. Hence, we pass the following order:

**ORDER**

- a. The Interlocutory Application No.3233 of 2022 in Company Petition (IB) No. 3434 of 2019 is hereby **dismissed** having been rendered infructuous.
- b. There shall be no order as to costs.
- c. Accordingly, this I.A. stands disposed off.

Sd/-

**ANURADHA SANJAY BHATIA**  
**(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**