

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

IA 139 of 2019 in CP(IB) No. 137/7/NCLT/AHM/2018

Coram: Hon'ble Mr. MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)  
Hon'ble Mr. VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE  
NATIONAL COMPANY LAW TRIBUNAL , AHMEDABAD BENCH ON 04.09.2020

Name of the Company:

KEC International Ltd.

V/s

Mr. Bhuvan Madan, RP for  
(Diamond Power Infrastructure Ltd.) & Anr.

Section:

Section 60(5) IBC,2016

**ORDER**

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

  
(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

Dated this the 4th day of September, 2020.

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT -I**

**IA No. 139 of 2019**

**IN**

**CP (IB) No.137/7/NCLT/AHM/2019**

KEC International Ltd.  
having registered office at:  
1<sup>st</sup> Floor, RPG, House,  
463, Annie Besant Road,  
Worli-Mumbai-400 030

....Applicant


V/s.

1. Mr. Bhuvan Madan, RP  
For Diamond Power Infrastructure Limited,  
Pricewaterhouse Coopers Professional Services LLP,  
17<sup>th</sup> Floor, Building 10, Tower-C,  
DLF Cyber City, Gurgaon, Haryana-122 002

2. Directorate of Enforcement  
Department of Revenue,  
Ministry of Finance (GoI),  
3<sup>rd</sup> Floor, Nanalal Chambers,  
Opp. Times of India, Ashram Road,  
Ahmedabad-380009

.... Respondents

Order Pronounced on 4<sup>th</sup> September, 2020



**Coram: MADAN B. GOSAVI, MEMBER(J)  
VIRENDRA KUMAR GUPTA, MEMBER (T)**

**Appearance:**

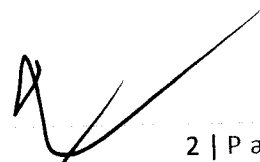
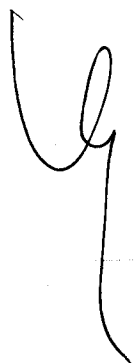
Applicant- Learned Senior Counsel Mr. Rashesh Sanjanwala  
a.w. Learned Counsel Mr. Nirag Pathak

Respondent- Learned Counsel Mr. Ravi Sharma

**ORDER**

**[Per: MADAN B. GOSAVI MEMBER (J)]**

1. This Application is filed under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 against the Resolution Professional Mr. Bhuvan Madan of the Corporate Debtor M/s. Diamond Power Infrastructure Ltd., which is admitted under Corporate Insolvency Resolution Process by this Adjudicating Authority vide its order dated 24<sup>th</sup> August, 2018.
2. This Application is for the directions to the Resolution Professional to return the goods (raw materials/semi-finished/finished) owned by the Applicant lying with the Corporate Debtor. According to the Applicant the raw material was delivered to the Corporate Debtor for



processing. It was agreed that the Corporate Debtor was to return the goods to the Applicant after the processing in form of finished and semi-finished state. The goods were handed over to the Corporate Debtor prior to its admission in Corporate Insolvency Resolution Process. Upon admission of the Corporate Debtor in Corporate Insolvency Resolution Process, the Respondent no. 1 was appointed as the 'Resolution Professional'.

3. The Applicant claimed its goods back in whatsoever state there were lying i.e. raw materials/semi-finished/finished, but the Resolution Professional refused to return the same on the ground that an order of moratorium is already passed by this Adjudicating Authority under Section 14 of the Insolvency & Bankruptcy Code, 2016.
4. The Resolution Professional also withholds the goods on the ground that the Applicant did not pay processing charges to the tune of Rs. 37.37 lacs to the Corporate Debtor.

5. We called upon the Resolution Professional to file his say to this application, however, Resolution Professional instead of filing say produced on record the minutes of 12<sup>th</sup> Committee of Creditors meeting held on 11<sup>th</sup> December, 2019, wherein, the dispute about the goods was discussed.
6. We perused the minutes. The CoC did not object to return all the goods to the Applicant. They directed Resolution Professional to settle the matter of GST payment with the Applicant. They also directed Resolution Professional to identify the goods.
7. We have heard Learned Senior Counsel Mr. Rashesh Sanjanwala for the Applicant and Learned Resolution Professional in person.
8. From the pleadings of the parties as noted above, it is abundantly clear that the goods in dispute are not assets of the Corporate Debtor Section 18(f) states that the Resolution Professional to **take control and custody of any asset over which the Corporate**

**Debtor has ownership rights as recorded in the balance sheet of the Corporate Debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including...".** Explanation to this sub-clause makes it clear that the “ **assets shall not include assets owned by the third party in possession by the Corporate Debtor held under trust or under contractual arrangements including bailment...**” In this case, the goods in form of raw material lying in the custody of the Corporate Debtor for processing under the contract of bailment. The Resolution Professional cannot withhold such goods.

9. From perusal of the minutes of the meeting of Committee of Creditors dated 11<sup>th</sup> December, 2019, we find that there appears some dispute between the Corporate Debtor and the Applicant about the payment of processing fees by the Applicant to the Corporate Debtor and payment of GST dues. We make

it clear that, we are not entering in to that dispute. If some amount is recoverable from the Applicant and if Applicant has any claim in form of set-off that amount against the Corporate Debtor, then parties are free to approach appropriate forum in-terms of Section 25(2)(g) of the Insolvency & Bankruptcy Code, 2016.

In view of this, we pass following order :

**ORDER**

- i. The Resolution Professional is directed to handover the goods of the Applicant (raw materials/semi-finished/finished) within seven days from the date of this order.
- ii. The Resolution Professional and representative of the Applicant shall identify the goods and make inventory.
- iii. If dispute arises about the identification of goods, then the Adjudicating Authority shall appoint an Officer at the cost of the Applicant to do the job.

- iv. The Resolution Professional has right under Section 25(2) (b) of Insolvency & Bankruptcy Code, 2016 to proceed against the Applicant for recovery of any sum of money, if due.
- v. In view of this, the IA No. 139 of 2019 in CP(IB) No. 137 of 2018 is stands disposed of.

*Virendra*  
4/9/2020  
**(VIRENDRA KUMAR GUPTA)**  
**ADJUDICATING AUTHORITY**  
**& MEMBER(T)**

*M.B. Gosavi*  
4/9/2020  
**(M. B. GOSAVI)**  
**ADJUDICATING AUTHORITY**  
**& MEMBER(J)**

Signed on this day 4<sup>th</sup> September, 2020

vc/