

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB- 803/ND/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**IN THE MATTER OF:**

**M/S TRACTEBEL ENGINEERING PRIVATE LIMITED**

**...Applicant/Operational Creditor**

**VERSUS**

**M/S PATNAZI POWER LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on: 28.01.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**For the Applicant : Ms. Palak Rohmetra, Advocate**

**For the Respondent: ---**

## **MEMO OF PARTIES**

### **M/S TRACTEBEL ENGINEERING PRIVATE LIMITED**

Having its registered office at:

A-3, 2<sup>nd</sup> Floor, Neeti Bagh,

New Delhi- 110049

**...Applicant/ Operational Creditor**

## **VERSUS**

### **M/S PATNAZI POWER LIMITED**

Having its registered office at:

Flat No. 709, EROS Apartment 56,

Nehru Place,

New Delhi- 110019

**...Respondent/ Corporate Debtor**

## **ORDER**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Tractebel Engineering Pvt. Ltd.

(for brevity 'Applicant') through its authorized representative Mr. Tarun Aggarwal who is duly authorized vide Board resolution dated 03.10.2017 with a prayer to initiate the Corporate Insolvency process against M/s Patnazi Power Limited (for brevity 'The Company').

2. The Applicant, the Operational Creditor namely M/s Tractebel Engineering Private Limited is a company incorporated under the provisions of Companies Act, 1956 having CIN No. U74899DL2000PTC104134.
3. The company is having its registered office at A-3, 2<sup>nd</sup> Floor, Neeti Bagh, New Delhi- 110049.
4. The Respondent, the Corporate Debtor namely M/s Patnazi Power Limited is a company incorporated on 08.05.2013 under the provisions of Companies Act, 1956 with CIN No. U74999DL2013PLC251812.
5. The company is having its registered office at Flat No. 709, EROS Apartment 56, Nehru Place, New Delhi- 110019.
6. The Authorised Share Capital of the respondent company is Rs. 2,00,00,000/- and Paid Up Share Capital of the

company is Rs. 94,20,000/- as per Master Data of the company.

7. It is the case of the applicant that the respondent company namely M/s Patnazi Power Limited was formed as a subsidiary of Energo Engineering Projects Limited to undertake the development of 21MW Patnazi Bunjwah Hydro Power Project near Thatri, District Kishtwar, Province Jammu of J&K State on BOOT basis. The respondent company has entered into Implementation Agreement for this Hydro Power Project with Jammu & Kashmir State Power Development Corporation Limited for a concession period of 35 years. Subsequently, the respondent company advanced a 'request for proposal' dated 22<sup>nd</sup> July 2013 for the preparation of detailed report and survey works for 21 MW Hydro Power Project. On 13<sup>th</sup> September 2013, the applicant company submitted the proposal for preparation of reports and surveys against the request for proposal advanced by the respondent company. Subsequently, final Work Order was issued by the respondent company to the applicant company on 24<sup>th</sup>

January 2014 for the preparation of detailed report and survey works for 21 MW Hydro Power Project.

8. It is further submitted by the applicant company that after completing its contractual obligations and completing the work entrusted to it, the reports were submitted by the applicant. The respondent company submitted the Detailed Project Report (DPR) for its Hydro Power Project to JKSPDC. JKSPDC has in lieu of its approval/ acceptance to DPR granted the Techno- economic clearance (TEC) in respect of the Hydro Power Project to respondent company dated 04 June 2016. A final invoice bearing 2017/914000222 dated 28<sup>th</sup> August 2017 was raised for the services provided by the applicant company on the respondent. The applicant sent continuous reminder letters dated 01.11.2017, 21.11.2017 and 13.12.2017 with requests to make outstanding payments of Rs. 61,46,892/- for the services rendered, but there was no response at all.
9. It is further submitted by the applicant that on 17 January 2018, the applicant sent a demand notice under Section 8

of the Insolvency and Bankruptcy Code, 2016 to the respondent company asking them to make the outstanding payments of Rs. 61,46,892/- within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Corporate Debtor. The Corporate Debtor replied to the said notice on 02<sup>nd</sup> February 2018 wherein Corporate Debtor denied its liability to make the payment stating that the applicant company failed to complete work within stipulated time period. Until the issuance of the demand notice, no dispute had ever been raised by the Corporate Debtor. As a matter of fact, when the work done by the applicant was accepted by the JKSPDC, there is no room for respondent to claim the non-completion of work by applicant.

10. It is further submitted by the applicant that a meeting was fixed between the representatives of the applicant and the corporate debtor wherein it was pointed out that the applicant had failed to adjust 10% advance received under Clause 4.1 & 4.2.2 of the Work Order for Survey &

Investigations Items/ Activities as per BOQ being a sum of Rs. 10,38,046/-. The applicant thereafter, issued a credit note bearing no. DH0000000018 dated 18.05.2018 of Rs. 10,38,046/- with a request to release the balance payment amounting to Rs. 51,08,846/-. However, inspite of receiving the credit note, the Corporate Debtor has failed to make the payment.

11. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 51,08,846/-.
12. In spite of various requests made and reminders sent to the Corporate Debtor by the Applicant, the Company has neither paid nor responded to the applicant.
13. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code was issued on 11.06.2018 to the Corporate Debtor.
14. Despite the demand notice sent under Section 8 of the Code, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand notice raising

any dispute, hence this application, seeking to unfold the process of CIRP.

15. This Tribunal is constrained to proceed with the matter *exparte* as per order 10.12.2018 in relation to the Corporate Debtor. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
16. The applicant has attached the copy of bank statement of HDFC Bank for the period of 01.02.2014 to 27.06.2018 in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
17. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
18. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:

a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to—

a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(4) The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, provided that where at any time during the corporate insolvency resolution process

period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

20. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Ankit Kishore Sinha having registration no. IBBI/IPA-002/IP-N00669/2018-2019/12027 having email address [ankitkishoresinha90@gmail.com](mailto:ankitkishoresinha90@gmail.com) and contact number is 9990839925 the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

21. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the

Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

**(DR. DEEPTI MUKESH)**

**MEMBER (JUDICIAL)**