

SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(PHYSICAL HEARING)

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI.CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.06.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Intervention Petition (IBC)/8/2023 in CP (IB) No.372/7/HDB/2018
NAME OF THE COMPANY	Indu Projects Ltd
NAME OF THE PETITIONER(S)	Bank of India
NAME OF THE RESPONDENT(S)	Indu Projects Ltd
UNDER SECTION	7 of IBC

ORDER

Intervention Petition (IBC)/8/2023

This application is dismissed, vide separate orders.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.8/2023 in IA No.305 of 2023
in CP(IB) No. 372/7/HDB/2018
u/s 60(5) of IB Code, 2016

In the matter of:

M/s. Earthin Projects Ltd,
In consortium with K. Ramachandra Rao
Transmission & Projects Pvt. Ltd.
D.No.1-1867-B, Velamapalem,
Srikalahasthi (M) – 517 644,
Tirupati District

.... Applicant

Vs

1. Indu Projects Limited,
1009, Indu Fortune Fields,
13th Phase, KPHB Colony,
Hyderabad – 500 072.
2. Mr. Anup Kumar Singh,
H.No.162/D/702, Lake Gardens,
Kolkata, West Bengal – 700 045.

....Respondents

Date of order: 19.06.2023

CORAM:

Hon'ble Justice Smt. Telaprolu Rajani, Member (Judicial)

Hon'ble Sri Charan Singh, Member (Technical)

Counsels present:

For the Applicant : Mr. Chandrasen Reddy, Senior Advocate

For Respondents/RP : Mr. S. Ravi, Senior Advocate
Mr. V.V.S.N. Raju, Advocate

Heard on : 13.06.2023

**[PER: BENCH]
ORDER**

1. This application is filed by the Applicant M/s. Earthin Projects Ltd, seeking to implead himself as Respondent in IA No.305 of 2023 in CP No.372/HDB/2018 and not to pass any order in IA No.305 of 2023 in CP No.372/HDB/2018, during the pendency of this Application.

2. The brief facts of the case as per the application, are as follows:
 - a. The Application is filed on behalf of the Applicant in consortium with K. Ramachandra Rao Transmission & Projects Private Limited. The Corporate Debtor (CD) was taken into CIRP by order dated 25.02.2019 by this Tribunal. Resolution Professional (RP) was appointed. After conclusion of the initial CIRP, the Resolution Plan submitted by the Applicant was approved by this Tribunal by order dated 01.10.2021.

 - b. In compliance with an extant provision of the Code, the Applicant has also provided Bank Guarantee for Rs.5 Crores which was subsequently amended in favour of the CD. The

Applicant remitted a total amount of Rs.60 Crores as part compliance of the Resolution Plan.

- c. As things stood thus, the Applicant could not make the complete payment as per the terms of the Resolution Plan due to the financial difficulties which were induced due to COVID 19. The Applicant is ready to make the full payment of the agreed Resolution amount as agreed in the Resolution Plan along with the interest, even today.
- d. The Respondent, in the meantime, has filed an application seeking a fresh CIRP which was allowed by this Tribunal to complete the CIRP within 60 days from the date of order, which is 05.09.2022. The RP did not make the Applicant as a party to the said IA. The Applicant has challenged the said order before the Hon'ble NCLAT. The Hon'ble NCLAT dismissed the application and a Civil Appeal No.1133/2023 is preferred before the Hon'ble Supreme Court and the same is pending. An order directing the RP to conduct a fresh CIRP is without any legal basis and this Tribunal could not have passed such an order.

- e. The RP has filed several applications, seeking extension of time for submission of the Resolution Plan and the same was extended. Thus the last date for completion of CIRP is 11.02.2023.
- f. The RP has filed the present application under Section 30 of the IBC, 2016, seeking approval of the Resolution Plan submitted by one of the bidders who has submitted an application for the resolution of the company, Indu Projects Limited, in pursuance of the fresh CIRP which has been initiated vide order dated 05.09.2022. The Applicant learnt that the CoC approved the Resolution Plan which was submitted for an amount of around Rs.400 Crores which is substantially lesser than the amount offered by the Applicant. Thus, the CoC is being forced to take a lesser amount in resolution even though, there is an availability of a better offer from the Applicant herein. RP has filed an IA No.305 of 2023, without impleading the Applicant herein, who is necessary and proper Party to the Application.
- g. In the above facts and circumstances, it is prayed to permit the Applicant to be impleaded in the above Application to place all

material facts on record and till then not to pass any orders in the IA. Hence, this application.

3. The Respondents filed Counter, denying the averments of the Petition. It is further contended that the Applicant has filed the instant application, seeking specific directions against the interest of the Respondents. At the very outset, the Applicant has no Locus Standi to file this Application. It is only filed in order to derail the time-bound process of CIRP of the CD. It is further submitted that the Resolution Plan submitted by the Applicant was approved by the CoC and also by the Tribunal. The Applicant was required to bring a total amount of Rs.541 Crores towards the Resolution Fund as per the approved Resolution Plan within 90 days from the effective date. But he could not implement the Resolution Plan within the stipulated timeline.
 - a. The Applicant preferred an Interim Application No.77 of 2022 before this Tribunal, seeking an extension of 60 days from 23.01.2022 for implementation of Applicant's Resolution Plan which was rejected vide Order dated 01.03.2022 and directed the RP to forfeit the EMD amount. An Appeal was preferred

before the Hon'ble NCLAT, Chennai and the Hon'ble NCLAT, Chennai vide order dated 13.04.2022 granted an extension of 3 months from 13.04.2022 for paying the amount as per the Resolution Plan along with an interest @8% from 23.01.2022. Even after so many extensions, the Applicant could not implement the Plan.

- b. The RP filed IA No.283 of 2022 before this Tribunal, seeking fresh CIRP by granting 60 days time which was allowed by order dated 05.09.2022 recording that the time granted by the Hon'ble NCLAT, Chennai was over and the Applicant could not fulfil its commitments. The Applicant preferred an Appeal before the Hon'ble NCLAT, Chennai against the Order of this Tribunal in IA No.283 of 2022 which was dismissed on merits. Given the non-compliances of the Applicant, he lost his locus standi.
- c. The law is well settled on the wisdom of the CoC. *The Hon'ble Supreme Court of India in a catena of landmark judgments such as K. Shashidhar Vs. Indian Overseas Bank and Others (2019) 12 SCC 150; Committee of Creditors, Essar Steel India Limited Vs. Satish Kumar Gupta and Ors. (2020) 8 SCC 531;*

Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh and Others (2020) 11 SCC 467 has held that the commercial wisdom of CoC is supreme and neither the 'Adjudicating Authority' nor the 'Appellate Authority' can trespass the commercial wisdom of the 'Committee of Creditors'.

- d. IA 305 of 2023 is filed for the approval of the new Resolution Plan. This Application herein has no locus standi to be part of the present proceedings as its role ended when it was unable to implement its Resolution Plan. Hence, this application is liable to be dismissed.
4. We heard both the Counsel. The Counsel for the Applicant submits that an Appeal is preferred against the order of the Hon'ble NCLAT before the Hon'ble Supreme Court. Hence, he seeks this Tribunal to keep this application pending.
5. It can be noted that the CIRP is time bound process. No interim order is granted by the Hon'ble Supreme Court, staying the proceedings in this IA. The prospects of success of the Resolution Applicant in the Hon'ble Supreme Court seems to be very bleak when looked at from the reasons mentioned in

the order of the Hon'ble NCLAT. Apart from that, it can be seen that inspite of the time being extended, the Applicant could not implement the Plan. Hence, the Resolution Plan of the Applicant got to be rejected and the Earnest Money Deposit was also forfeited. By order dated 05.09.2022, this Tribunal permitted the RP to conduct the CIRP afresh in the light of the failure of the Applicant in following the commitment made in the Resolution Plan. Against the said order, the Applicant moved the Hon'ble NCLAT, Chennai by way of an Appeal. The Hon'ble NCLAT, Chennai observed that; "This Appellate Tribunal has already discussed that in its earlier order dated 13.04.2022 three additional months period was given to the Appellant to settle all the payments as per the approved Resolution Plan. Subsequently, in different appeal filed by one Operational Creditor before the Hon'ble Supreme Court of India challenging this Appellate Tribunal's Order vide Civil Appeal No.3660 of 2022, the Hon'ble Supreme Court of India dismissed the same vide order dated 29.08.2022. Accordingly, "three months period extended by the Appellate Tribunal was also over and no payment was made. Hence, prima-facie, it looks that the Appellant had taken all the legal remedies available to it including various Interlocutory Applications filed

before the Adjudicating Authority, appeal made to this Appellate Tribunal and upholding this Appellate Tribunal order by the Hon'ble Supreme Court of India filed by one of the Operational Creditor (and not the Appellant). As such, no further scope is available to this Appellate Tribunal to invoke any of the provisions available under I&B Code, 2016 to give any further relief to the Appellant at this juncture.”

6. It is also an admitted fact that in the fresh CIRP, this Applicant did not submit any Resolution Plan.

7. The Counsel for the Respondent relied on the judgement of the Hon'ble NCLAT in the case of Vasan Health Care Pvt. Ltd. Wherein it was held:

“Appellant being an Unsuccessful Resolution Applicant, has no ‘Locus’, to ‘assail’ a ‘Resolution Plan’ or its ‘implementation’, coupled with a candid fact that he is not a ‘Stakeholder’, as per Section 31(1) of the I & B Code, 2016, in relation to the ‘Corporate Debtor’, this ‘Tribunal’, without any haziness, holds that the Appellant is not an aggrieved person coming within the ambit of Section 61(1) of the I & B Code, 2016, especially when he is not a privy to the Resolution Plan.”

8. Hence, in view of the above background of law and facts in this case, we find no locus for the applicant and we dismiss this application.

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**(JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

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