

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO. 792 of 2020

(Arising out of the Order dated 29th May, 2020 passed by National Company Law Tribunal, Indore Bench at Ahmedabad, Court – I, in I.A. – 212/2019 in I.A. 458/2018 in TP 161/2019 in CP (IB) 19 of 2017)

IN THE MATTER OF:

Vitol S.A.

Registered Office at:
Boulevard du Pont d' Arve 28,
CH 1205 Geneva,
Switzerland

...Appellant

Versus

1. Mr. Abhishek Nagori,

Reg. No. IBBI/IPA-001/IP-P0020/2016-17/10044,
C/o JLN US & Company,
Chartered Accountants
330/348, Third Floor,
Tower A, Atlantis – K10,
Opp. Vadodara Central,
Sarabhai Main Road,
Vadodara – 390007.

...Respondent No. 1

2. Asian Natural Resources (India) Limited

(Formerly Bhatia International Limited)

‘Corporate Debtor’

Having registered office at:
102, Sundaram Complex,
Gurmeet Nagar,
Indore 452001.

...Respondent No. 2

3. Surinder Singh Bhatia

S/o Mr. Kirpal Singh Bhatia
Residing at Flat No. 801, 8th Floor,
Le Orchid, 15th Road Khar (West),
Mumbai – 400052.

...Respondent No. 3

Also at:

Plot No. 13 & 14, Aditya Nagar,
Indore – 452001.

4. Gurvinder Singh Bhatia,
S/o Mr. Kripal Singh Bhatia,
Residing at Plot No. 1, 2, 3, 4,
Aditya Nagar, Vishnupuri Colony,
Indore – 452001.

...Respondent No. 4

5. Manjeet Singh Bhatia,
S/o Mr. Kripal Singh Bhatia,
53, Gajanand Mandir Colony,
Chandrapur,
Maharashtra – 442401.

...Respondent No. 5

6. Amardeep Singh Bhatia
S/o Gurvinder Singh Bhatia,
Residing at Plot 1, 2, 3, 4,
Aditya Nagar, Vishnupuri Colony,
Indore – 452001.

...Respondent No. 6

7. Khalid Baig,
Flat No. 104, Amar Aangan,
Basant Vihar Colony,
Indore – 452010.

...Respondent No. 7

8. Amardeep Singh Bhatia,
83, Vishnupuri Annex
Indore – 452001 (MP).

...Respondent No. 8

9. Gaurav Agarwal,
204, Kalani Nagar,
Indore.

...Respondent No. 9

Present

For Appellant: Mr. Ratnanko Banerjee, Sr. Advocate with
Mr. Arvind Kumar Gupta, Mr. Aditya
Krishnamurthy & Mr. Ashutosh Tiwari,
Advocates.

For Respondents: Mr. Siram Parakkat, Mr. Mukund P Unny &
Nida K., Advocates for Respondents.

For Respondents 3, 4, 6 & 8: Mr. Arvind Kr. Gupta, Ms. Heena George & Ms. Shivani Sharma, Advocates for R-3, 4, 6 & 8.

(J U D G E M E N T)

[Per; Shreesha Merla, Member (T)]

1. Aggrieved by the Order dated 29.05.2020 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Indore Bench at Ahmedabad, Court – I), in I.A. – 212/2019 in I.A. 458/2018 in TP 161/2019 in CP (IB) 19 of 2017, preferred by M/s. Vitol S.A. seeking to intervene in the proceedings filed by the Liquidator of the ‘Corporate Debtor’ vide I.A.458/2018, which was filed by the Liquidator seeking clarification as to whether he is allowed to scrutinise and investigate the transactions executed by the Directors of the ‘Corporate Debtor’ beyond two years prior to the date of ICD and also to see the relevant documents from the Promoters. Learned Adjudicating Authority, by the Impugned Order dated 29.05.2020 rejected the prayer for impleadment on the ground that there was no provision in the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as ‘The Code’) that enabled ‘Operational Creditors’ other than those who trigger the CIRP to be impleaded as parties and the same was already decided by the Adjudicating Authority vide Order dated 06.11.2017 in I.A.230/2017.

2. It is the case of the Appellant/Applicant that there is an established case of fraud committed by the suspended Board of Directors of the ‘Corporate Debtor’ and placed reliance on the International Arbitration Award dated 11.01.2011

against the ‘Corporate Debtor’ which was made enforceable by the Hon’ble Bombay High Court vide Order dated 15.09.2014. It is also submitted that by Order dated 29.09.2016, the Division Bench of the Hon’ble Bombay High Court upheld the Order of the Single Bench holding that the ‘Corporate Debtor’ has indulged in Fraudulent Transaction of his business undertakings to defeat the Rights of Creditors. Learned Counsel argued that this is further supplemented by the findings of the Interim Forensic Report prepared by M/s. KPMG, the Forensic Auditors. It is argued that the Appellant is a proper and necessary party as it has a vested right in the present proceedings being the single largest Creditor of the ‘Corporate Debtor’. The Appellant has complete knowledge of all the Fraudulent activities committed by the ‘Corporate Debtor’ and hence their impleadment is absolutely necessary.

3. Learned Counsel for the Director Mr. Amardeep Singh Bhatia vehemently argued that Vitol S.A. is a necessary party nor proper party and that the submissions made by them in their Application have no bearing on the issues raised in this Appeal and that there is no provision in the Code that enables the Creditors other than those who trigger the CIRP to be impleaded as a party and therefore the Adjudicating Authority has rightly rejected their Application.

4. Learned Counsel for the Appellant/Applicant relied upon the following Judgements in support of his contentions:

- *‘The State of Andhra Pradesh & Anr.’ Vs. ‘T. Suryachandra Rao’*¹.

¹ (AIR 2005 SC 3110)

- *'Bhaurao Dagdu Paralkar' Vs. 'State of Maharashtra & Ors.'*².
- *'Kaledonia Jute & Fibres Pvt. Ltd.' Vs. 'Axis Nirman and Industries Ltd. & Ors.'*³.
- *'Ramesh Hirachandra Kundanmai' Vs. 'Municipal Corp. of Greater Bombay & Ors.'*⁴.
- *'Aditya Kumar Tibrewal' Vs. 'Om Prakash Pandey & Ors.'*⁵.
- *'Phoenix Arc Pvt. Ltd.' Vs. 'Spade Financial Services Ltd. & Ors.'*⁶.
- *'Institute of Chartered Accountants of India' Vs. 'Price Waterhouse & Anr.'*⁷.

5. Respondents 3, 4, 6 & 8 have also submitted that the Hon'ble Supreme Court in a catena of judgements has laid down that at an Interlocutory Stage, no such relief shall be granted beyond the scope of the main suit.

6. It is significant to mention that the execution of an Arbitral Award passed in favour of Vitol S.A. by the Hon'ble Bombay High Court, has been challenged and is pending before the Hon'ble Supreme Court by way of **Civil Appeal No. 5694/2018**.

7. We do not find any illegality in the observation of the Learned Adjudicating Authority that there is no provision in the Code, with respect to impleadment of any Creditor apart from the Creditors who have triggered the

² (2005) 7 SCC 605

³ (2021) 2 SCC 403

⁴ (1992) 2 SCC 524

⁵ 2022 SCC OnLine NCLAT 142

⁶ (2021) 3 SCC 475

⁷ (1997) 6 SCC 312

CIRP. Needless to ad, the Appellant is at liberty to pursue other legal remedies, if so advised.

8. For all the aforementioned reasons, we do not find it a fit case to discuss the elaborate Judgements filed by the Counsel for the Appellant in support of his argument regarding ‘fraud’ and ‘forgery’. For the ongoing reasons, this Appeal is dismissed accordingly. No Order as to costs.

**[Justice Anant Bijay Singh]
Member (Judicial)**

**[Ms. Shreesha Merla]
Member (Technical)**

**Principal Bench,
New Delhi
28th November, 2022**

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