

**IN THE NATIONAL COMPANY LAW TRIBUNAL
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**I.A. (IB) No. 72/CTB/2020
Connected with
CP (IB) No. 593/KB/2017**

**CORAM: 1. Ms. Sucharitha R. (J)
2. Shri Satya Ranjan Prasad (T)**

**In the matter of:
INSOLVENCY AND BANKRUPTCY CODE, 2016.**

**In the matter of:
An application under Section 33 (5) and 60 (5) of the Insolvency and Bankruptcy Code, 2016 and under Rule 11 of the National Company Law Tribunal Rules, 2016.**

-And-

**In the Matter of:
State Bank of India, having its Head Office situated at State Bank Bhawan,
Madam Cama Road, Mumbai – 400 021.**

... .. Financial Creditor

-Versus-

**M/s. Coastal Projects Ltd., having its Registered Office situated at Plot No. 237,
2nd Floor, Bapuji Nagar, Bhubaneswar, Khurda, Odisha – 751 009.**

... .. Corporate Debtor

-And-

In the Matter of:

Mr. Ravi Shankar Devarakonda, Liquidator for the Corporate Debtor i.e., M/s. Coastal Projects Ltd. residing at D – 602, Prestige St. Johnwood Apartment No. 80, Tavarakere Main Road, Chikka Adugodi, Bangalore – 560 029.

... .. **Applicant/Liquidator**

-Versus-

1. **National Projects Construction Corporation Ltd.**, a Govt. of India undertaking, represented by its Chairman -cum- Managing Director having its Registered Office situated at: Raja House 30 – 31, Nehru Place, New Delhi – 110 019.
2. **The Zonal Manager**, National Projects Construction Corporation Ltd., North-East Zone, Guwahati at: House No. – 10, Housing Colony, Rangamancha Path, Rukmini Nagar, Kamrup Metropolitan District, Guwahati – 781 006, Assam.

... .. **Respondents**

Counsels appeared for the Petitioner (s):

1. Mr. Saswat Kumar Acharya, Adv.

Date of pronouncement of Order: 02nd day of March, 2021.

ORDER

Per Ms. Sucharitha R., Member (J):

1. This application is filed under Section 33 (5) and 60 (5) of the Insolvency and Bankruptcy Code, 2016 (hereafter referred as “the Code”) and under Rule 11 of the National Company Law Tribunal Rules, 2016 by

Sd

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Mr. Ravi Shankar Devarakonda, Liquidator (hereafter referred as “Applicant/Liquidator”) seeking reliefs in this application are as follows: -

“A. Pass an order granting leave to the applicant to proceed with the Writ Petitions bearing WP (C) 1958 of 2020, WP (C) 2056 of 2020, WP (C) 2057 of 2020 & WP (C) 2060 of 2020 before the Hon’ble Gauhati High Court;

B. Pass an order granting leave to the applicant to proceed against the respondent NPCC pursuant to Clause 76 of the Contract by invocation of the Arbitration Clause, and consequent/further legal remedies as available to the applicant under the provisions of the Arbitration and Conciliation Act, 1996; and

C. Pass any other order (s) as may be deemed fit and proper by this Hon’ble Tribunal in the facts and circumstances of the case.”

2. The applicant states that this application is being filed seeking approval of this Adjudicating Authority for continuation and initiation of legal proceedings by the Liquidator in accordance with proviso of Section 33 (5) of the Code against the respondent (NPCC).

Sd

Sd

3. Further, the applicant states that he was not able to obtain permission of this Adjudicating Authority before filing the Writ Petitions bearing WP (C) 1958/2020, WP (C) 2056/2020, WP (C) 2057/2020 & WP (C) 2060/2020 before the Hon'ble Gauhati High Court due to, with no time to lose, and under the imminent threat of losing a huge amount of money, had to urgently approach the Hon'ble Gauhati High Court against the arbitrary and unilateral invocation of the Bank Guarantees and forfeiture of the security deposit challenging the illegal action of the respondents in the aforesaid Writ Petitions.

2. As per Section 33 (5) of Insolvency and Bankruptcy Code, 2016 a suit or other legal proceeding may be instituted "with prior approval of the Adjudicating Authority" the same is reproduced below: -

"(5) Subject to Section 52, when a Liquidation Order has been passed, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor.

Provided that a suit or other legal proceeding may be instituted by the Liquidator, on behalf of the Corporate Debtor, with the prior approval of the Adjudicating Authority."

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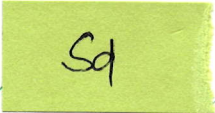
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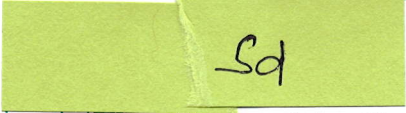
4. As per the above regulation, the Liquidator ought to have obtained prior permission of this Adjudicating Authority before filing Writ Petition/case. However, for the reason stated above, the Liquidator has failed to do so.

5. In Misc. A. No. 60/CTB/2019 connected with CP (IB) No. 593/KB/2017. The ex post facto prayer was passed for the Liquidator and this Adjudicating Authority vide Order dated 16.01.2020 had allowed the application.

6. This Liquidator has failed to follow the terms of the Regulations. Hence, this copy of the order shall be forwarded to the Insolvency and Bankruptcy Board of India for information and necessary action. Hence, in the interests of natural justice, the relief sought for by the applicant is hereby allowed.

7. Accordingly, this IA (IB) No. 72/CTB/2020 connected with CP (IB) No. 593/KB/2017 is **ALLOWED**.


Shri Satya Ranjan Prasad
Member (T)


Ms. Sucharitha R.
Member (J)

Signed on this, the 02nd day of March, 2021.

Santosh_P.S.