

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

Company Appeal No.101 of 2018

CP (IB) No.294/7/HDB/2017

In the matter of:

Jharkhand Bijli Viltran Nigam Ltd.

Regd Office at Engineerilng Building,
HEC, PO & PS – Dhurwa, Ranch,
Jharkhand.

Applicant

Vs

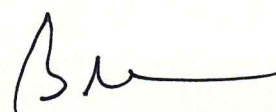
1) IVRCL Limited (Corporate Debtor)

Represented by Sutanu Sinha
Interim Resolution Professional for IVRCL,
IP Registration No.IBB/IPA-003/IP-N00020/
2017-18/10167,
Registered Address:
Floor-4, Duckback House, 41,
Shakespeare Sarani, Kolkatta – 700 017.

Address for Correspondence:
BDO Restructuring Advisory LLP,
Nos.201 and 202, 2nd Floor,
Manhhum Jade Towers,
MCH No.6-3-1090/A/12 and 13,
Somajiguda,
Hyderabad 500 082. : **Respondent No.1/
Corporate Debtor**

2) State Bank kof India,

Regd. Office at
State Bank Bhavan,
Madame Cama Road,
Mumbai – 400 021
Rep.by Mr. T.G. Vijayakumar, AGM
CAG Branch, Ozone Commercial Complex,
2nd Floor, 6-3-660,
Punjaguttta Main Road,
Hyderabad 500 082. : **Respondent No.2/
Financial Creditor**



Date of Order:08.05.2018.

C O R A M:

Hon'ble Shri Bikki Raveendra Babu, Member Judicial

Counsels / Parties present:

Counsel for the Applicant : Mr. Ajit Kumar along with Mr. Ajit Kumar along Mr. M.V. Praveen Mr. Naveen Kumar & Mrs. Aparajitha Bhardwaj.


Counsel for Respondent / Resolution Professional: Mr. Padmaja Kaul, Advocate.

Per: Shri Bikki Raveendra Babu, Member Judicial

O R D E R

1. **Jharkhand Bijli Vitran Nigam Limited** filed this Application U/s 60(5) of the Insolvency and Bankruptcy Code 2016, with a prayer to declare that the letters of the IRP dated 30.03.2018 and 07.04.2018 written to the Arbitral Tribunal are illegal and contrary to the Moratorium declared by this Court dated 23.02.2018.
2. The facts that led to the filing of this Application are as follows:

The State Bank of India (Financial Creditor) triggered the Corporate Insolvency Resolution



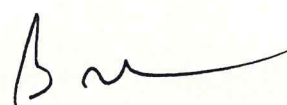
Process in respect of IVRCL Limited (Corporate Debtor). This authority by its Order dated 23.02.2018 made in CP(IB) No.294/7/HDB/2017 admitted the petition filed by the Financial Creditor and imposed Moratorium Under Section 13 of the Code for the purposes mentioned Under Section 14 of the Code.

3. The Applicant Company and IVRCL Limited (IVRCL) entered into three contracts for the purpose of execution of works under the Rural Electrification Packages to be carried out in the Palamau, Garhwa, and Latehar Districts of Jharkhand. In connection with those contracts certain disputes arose between the Applicant Company and IVRCL Limited. The disputes were referred to an Arbitral Tribunal. IVRCL Limited filed claim statement in the Arbitration Proceedings on 16.08.2018 claiming an amount of Rs.202,88,66,000/- (Rupees Two Hundred and Two Crores, Eighty Eight Lakhs, Sixty Six Thousand only) for Garhwa district District claim, Rs.174,92,04,000/- (Rupees One Hundred and Seventy Four Crores, Ninety Two Lakhs, Four Thousand only) for Latehar district claim and



Rs.275,76,51,000/- (Rupees Two Hundred and Seventy Five Crores Seventy Six Lakhs, Fifty One Thousand only) for Palamau district.

4. The Applicant raised a counter claim before the Arbitral Tribunal against IVRCL for an amount of Rs.2,746.5 Crores (Rupees Two Thousand Seven Hundred and Forty Six Point Five Crores only) in respect of all the three contracts on a combined basis. Arbitration proceedings are pending before the Arbitral Tribunal and is at the stage of recording evidence. It is stated in the Application that the claim and counter claim are inter linked and the evidence both documentary and oral is common. According to the Applicant if the claim and counter claim are separately dealt with prejudice would cause to the interest of the Applicant Company. While so, this authority imposed moratorium under Section 13 of the Code for the purposes mentioned in section 14 of the Code, in a petition filed by SBI in respect of IVRCL. On 05.04.2018 IVRCL produced the Order of the Tribunal declaring Moratorium along with the letter of the Respondent dated 30.03.2018 requesting Arbitral Tribunal to proceed with the



claim filed by the Corporate Debtor stating that there is no bar as per IBC to proceed with the case filed by the Corporate Debtor. Thereafter, the RP issued another letter dated 07.04.2018 requesting the Arbitral Tribunal to continue the proceedings for both the claim and counter-claim on the ground that it is in the interest of the Corporate Debtor IVRCL. Applicant Company during the hearing before the Arbitral Tribunal raised objection that the letters issued by the IRP are illegal and are contrary to the Moratorium issued by this authority. Arbitral Tribunal relying on the letters issued by the IRP rejected the objections of the Applicant Company and has passed an Order dated 07.04.2018. That necessitated the Applicant Company to approach this authority Under Section 60 (5) of the IBC Code

5. The RP filed a reply stating that in the interest of Corporate Debtor he addressed a letter dated 30.03.2018 to the Arbitral Tribunal for continuation of the claim of the Corporate Debtor. In view of the submissions off the Applicant before the Arbitral Tribunal, that counter claim and claim are inter linked and therefore proceedings should be



discontinued in respect of both, the RP in the interest of Corporate Debtor gave letter dt. 07.4.2018 to continue the proceedings in respect of claim of the Corporate Debtor and a counter claim of the Applicant. The Arbitral Tribunal rejected the contention of the Applicant herein and passed an order on 07.04.2018 for continuation of the Arbitration proceedings. It is stated by the RP in the counter that counter claim filed by the applicant company in the arbitration proceedings is a proceeding against the Corporate Debtor and therefore it may not be continued. RP requested this Tribunal to clarify that no orders may be passed by the Arbitral Tribunal in respect of the Counter claim. RP also stated that applicant can file claim before him under the provisions of the IB Code.

6. The short point that need determination in this Application is whether letters dated 30.03.2018 and 07.04.2018 addressed by the Resolution Professional to the Arbitral Tribunal are in accordance with the provisions of the IB Code and Moratorium Order passed by this Authority.



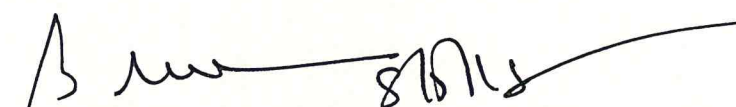
7. This Authority imposed Moratorium Under Section 13 of the IB code for the purposes mentioned in Section 14. Section 14 of the Code says after the imposition of moratorium no proceedings can be filed or proceed against the Corporate Debtor. Counter claim filed by the Applicant before Arbitral Tribunal is covered by the moratorium order. Coming to the claim filed by the Corporate Debtor in the Arbitral Tribunal is not covered by the moratorium order. However, it is for the learned Arbitral Tribunal whether to continue with the claim of the Corporate Debtor or not depending upon the facts of the case.
8. It is for the Arbitral Tribunal to take an independent view whether the claim and counter claim can be separately proceeded with or not. It is for the Arbitral Tribunal to take a decision whether the claim of the Corporate Debtor can be proceeded with in view of the fact that the counter claim is covered by the Moratorium Order during CIRP period. It is not for this authority to decide whether Arbitral Tribunal can proceed with the claim filed by the Corporate Debtor or not. It is made clear that Resolution Professional by writing



the letter dated 07.04.2018 he has acted contra to the Moratorium Order passed by this Authority in respect of counter claim filed by Applicant during CIRP period.

9. The letter dated 07.04.2018 issued by the Resolution Professional asking the Arbitral Tribunal to proceed in respect of counter claim of Applicant herein is against the Moratorium Order. The Resolution Professional at best can only ask the Arbitral Tribunal to proceed with the claim filed by the Corporate Debtor.
10. In view of the above discussions, it is held that the letter dated 07.04.2018 issued by the Resolution Professional to the extent that Arbitral Tribunal can proceed with the counter claim filed by the Applicant is held to be non-est. It is for the Arbitral Tribunal to take a decision whether it can proceed with the claim of the Corporate Debtor or not depending upon the facts of the case.

The Application is disposed off accordingly.


BIKKI RAVEENDRA BABU
Member Judicial