

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 4 of 2017

IN THE MATTER OF

M/s. Raipur Power & Steel Ltd. & Ors. ... Appellant

Vs.

M/s. Tomorrow Sales Agency ... Respondent

Present: For Appellant:- S/Shri Abhinav Vashisht, Sr. Advocate, Mr Varun Jain, Mr Sourabh Gupta, Ms Priya Singh, Mr Abhishek Kumar, Mr Navin Kumar and Ms Pallavi, Advocates.

For Respondent:- Dr U.K. Chaudhary, Senior Advocate, Mr Deepak Biswas, Mr Himanshu Vij, Mr Manyusmer Singh, Mr Nishith Mishra, Mr Arjun Minocha and Mr Sourav Vig, Advocates

ORDER

3.03.2017 — Pursuant to yesterday's discussion, the Appellant has filed an affidavit and made the following statement:

- " 1. That I state that the Respondent has filed Company Petition (IB) No. 09 (PB) of 2017 before the National Company Law Tribunal at New Delhi (the Hon'ble Tribunal) claiming total amounting to Rs. 17,37,00,000/- against the Appellants. Further, the Principal Bench of the Hon'ble Tribunal vide its order dated 23.02.2017 has issued Insolvency Resolution Process against the Appellant No.1 Company, and the Appellants have moved the said appeal under section 61 of the IBC against the order.*
- 2. That I further state that with a view to fully liquidating the claim of the Respondent herein, and as discussed during the hearing before this Hon'ble Appellate Tribunal on 02.03.2017, the Appellant No. 1 company without prejudice to its rights and contentions, hereby agrees to*

pay the said amount of Rs. 17,37,00,000/-, being the claimed amount in two installments, in full and final settlement of the amount, which is the subject matter of the proceedings, so that the order dated 23.02.2017 passed by the Hon'ble Tribunal is set aside and matter is disposed off finally as mentioned below:

- i. Rs. 8,44,50,000/- vide seven Demand Drafts in favor of the Respondent on 30.02.2017.
 - ii. Rs. 8,68,50,000 /- on or before 30.03.2017 or on such date as directed by this Hon'ble Appellate Tribunal.
3. I am deposing this affidavit on behalf of the Appellant No. 1 company, being duly authorize to represent it in this matter.
4. I further say that this affidavit is without prejudice to the Appellants legal rights and contention as available under the provision of law. “

In terms of the affidavit, the Ld. Counsel handed over 7 demand drafts as detailed below:-

| Sl.no. | Demand Draft No. | Drawn on | Amount |
|--------|-----------------------------|--|-------------------|
| 1 | 012602 dated 2.3.2017 | Punjab National Bank, Industrial Area Branch, Ludhiana | Rs.67,00,000 |
| 2. | 001466 dated 2.3.2017 | HDFC Bank, Ludhiana Model Town Branch, Ludhiana | Rs.46,50,000/- |
| 3 | 001467 dated 2.3.2017 | HDFC Bank, Ludhiana Model Town Branch, Ludhiana | Rs.35,00,000/- |
| 4. | 455497 dated 2.3.2017 | SBI, Industrial Finance Branch, Ludhiana | Rs.3,25,00,000/- |
| 5 | 455503 dated 2.3.2017 | SBI, Industrial Finance Branch, Ludhiana | Rs.1,96,,00,000/- |

| | | | |
|----|-----------------------------|--|------------------|
| 6. | 455504 dated 2.3.2017 | SBI, Industrial Finance Branch, Ludhiana | Rs.1,40,00,000/- |
| 7. | 455505 dated 2.3.2017 | SBI, Industrial Finance Branch, Ludhiana | Rs.35,00,000/- |

Ld. Counsel for the Respondent accepts the drafts with clear terms that the amount will be adjusted towards the debt and it will never be refunded in favour of the Appellant. Ld. Counsel for the Appellant has no objection for the same.

The remaining amount of Rs.24,00,000/- (Rupees Twenty Four Lakhs only) which constitute 50% of the amount, should be paid on or before 6th March, 2017.

Insofar as rest of the 50% is concerned, i.e. Rs. 8,68,50,000 /- (Rupees eight crore sixty eight lakh fifty thousand only) the Appellant should pay the amount on or before 13th March 2017 failing which this Court may pass appropriate order.

In view of the fact that the Appellant has shown inclination to pay back the total dues and in terms of its suggestion has already paid approximately 50% of the amount, while we are not inclined to stay the impugned order dated 23rd February 2017 passed by National Company Law Tribunal, Principal Bench, New Delhi in CP No. (IB)-09(PB)/2017, allow 'Interim Resolution Professional' to function in consultation with the appellant company. Until further order, the day to day functioning of the company and its projects should not be stopped or suffer. No sale, lease or rent deed of any of the immovable property should be made.. The bank account if operated should be operated for day to day functioning of the company and its project. Payment of salaries and wages of the employees/workmen and others should be made. The

movable/immovable property be also not auctioned or sold or transferred outside the premises of the company.

As ordered above, the Interim Resolution Professional will consult Appellant for its day to day functioning but will not allow the appellant or its Directors to operate the bank accounts etc., or execute any agreement in respect of companies property.

On the next date this Court will consider the question as to whether the amount spent by the Respondents pursuant to impugned order passed by the Tribunal should be reimbursed by the Appellant or not.

Post the matter on 9th March, 2017.

(Justice S.J. Mukhopadhaya)
Chairperson

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