

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency)No.360 of 2019**

**IN THE MATTER OF:**

**Radha Mohan Khandelwal**

**.....Appellant**

**Vs.**

**Rajdhani Trading Company**

**.....Respondent**

**With**

**Company Appeal (AT) (Insolvency)No.420 of 2019**

**IN THE MATTER OF:**

**Radha Mohan Khandelwal**

**.....Appellant**

**Vs.**

**Rajdhani Trading Company**

**.....Respondent**

**Present :**

**For Appellant: Mr. Priyanshu Upadhyay, Mr. Abir Sumesh, Advocates**

**For Respondents: Mr. Manish Kr. Choudhary, Mr. Ashutosh Kumar, Mr. Ali Sardar Zaidi, Advocates for R-3**

**O R D E R**

**01.10.2019** - 'Rajdhani Trading Company' ('Operational Creditor') filed an application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) for initiation of 'Corporate Insolvency Resolution Process' against M/s. Romesh Power Products Pvt. Ltd. It is alleged that the Adjudicating Authority ('National Company Law Tribunal'), Jaipur without notice to the 'Corporate Debtor' passed ex-parte order dated 20<sup>th</sup> December, 2018 admitting the application u/s 9, leading to filing of Company Appeal (AT)(Ins.) No. 420/2019.

**Company Appeal (AT) (Insolvency)No.360 of 2019**

The Appellant, shareholder of M/s. Romesh Power Products Pvt. Ltd. having come to know of the same, file a petition for review and recall of the order which had been passed ex-parte, which has also been rejected by the Adjudicating Authority by impugned order dated 21<sup>st</sup> February, 2019 and for which Company Appeal (AT) (Insolvency)No.360 of 2019 has been filed. In this background, two appeals have been preferred by the Appellant challenging the aforesaid two orders.

Earlier, when the matter was taken up, learned counsel for the Appellant submitted that 'M/s. Rajdhani Trading Company Pvt. Ltd.' at the instance of the 'Corporate Debtor' made supplies to 'South Bihar Power Distribution Company Ltd.' It was informed that 'South Bihar Power Distribution Company Ltd.' had agreed to pay the dues of the supplier, "M/s. Rajdhani Trading Company Pvt. Ltd.'('Operational Creditor')

The aforesaid fact has not been noticed by the Adjudicating Authority and impugned order of admission was passed on 20<sup>th</sup> December, 2018.

Learned counsel appearing on behalf of the Appellant relied on the letter issued by 'South Bihar Power Distribution Company Ltd.' in support of its claim to suggest that the work was performed for rural electrification in Bihar and therein it was stated that vendors will be paid by 'South Bihar Power Distribution Company Ltd.' The letter contained in Memo No. 6177 dated 5<sup>th</sup> October, 2018, copy of which was forwarded to 'M/s. Romesh Power Products Pvt. Ltd.'('Corporate Debtor') has been enclosed, an extract of which is as follows:-



**SOUTH BIHAR POWER DISTRIBUTION COMPANY LIMITED**

Regd. Office: Vidyut Bhawan, Bailey Road, Patna-800021  
A Govt. of Bihar Undertaking

CIN No. U40109BR20125GC018890

Letter No. : \_\_\_\_\_ Patna, dated \_\_\_\_\_  
From : S-XIII/RE/RGGVY/Project-I/2012/16  
To : Birendra Prasad,  
Chief Engineer, Project -I (Rural)  
M/s Chadalavada Infratech Ltd.,  
SBH Colony, Srinagar Colony, Hyderabad.  
Subject : Completion of Lakhisarai, Sheikhpura, Jehanabad and Arwal districts/projects under  
RE-DDUGJY 12<sup>th</sup> Plan by October, 2018.  
Ref. (i) NIT no. 104/PR/SBPDCL/2014 & 105/PR/SBPDCL/2014.  
(ii) LOA no. 5470, 5471, 5472, 5473, 5474, 5475, 5476 & 5477 all dated 29.11.2014.  
(iii) This office letter no. 655 dated 18.03.2017 for Lakhisarai district.  
(iv) This office letter no. 656 dated 18.03.2017 for Jehanabad district.  
(v) This office letter no. 1003 dated 18.04.2017 for Sheikhpura district.  
(vi) This office letter no. 1004 dated 18.04.2017 for Arwal district.  
(vii) This office letter no. 5000 dated 03.08.2018.  
(viii) This office letter no. 5167 dated 16.08.2018.  
(ix) M/s Romesh Power letter no. 10016 dated 29.09.2018.

Sir,

The work of rural electrification of Lakhisarai, Sheikhpura, Jehanabad and Arwal districts under RE component of Deendayal Upadhyaya Gram Jyoti Yojna (Erstwhile Rajeev Gandhi Grameen Vidyutikaran Yojna) 12<sup>th</sup> Plan have been awarded to you vide letter under reference (ii). Your proposal for subletting of left over work of Lakhisarai, Jehanabad, Sheikhpura and Arwal districts under RE-DDUGJY 12<sup>th</sup> Plan to M/s Romesh Power Products Pvt. Ltd., Jaipur have been accepted vide reference under (iii), (iv), (v) & (vi).

Even after subletting of aforesaid work of M/s Chadalavada Infratech to M/s Romesh Power, no significant progress has been observed and hence, proposal for termination of sub-contracting submitted by you for Lakhisarai, Sheikhpura, Jehanabad and Arwal districts/projects, have been accepted vide reference under (vii).

During execution period, M/s Romesh Power had procured materials from several vendors on credit basis and full payment for the same has not been made as yet. Those vendors has also submitted representation for consideration of balance payment directly to them against the invoices of M/s Romesh Power.

Finalisation of village-wise schedule for joint measurement of electrical infrastructure created by M/s Romesh Power as your's sub-contractor in Lakhisarai, Sheikhpura, Jehanabad and Arwal district has been asked vide letter under reference (viii), after lapse of more than 45 days, the same has not been received. Vide letter under reference (ix) M/s Romesh Power has submitted request for restart of RE work in Lakhisarai, Arwal and Jehanabad.

PTO

South Bihar Power Distribution Co. Ltd.; Vidyut Bhawan, Bailey Road, Patna - 21.  
E-mail : ceresbndcl@gmail.com ; Phone : 7033291901

In light of request submitted by several vendors regarding release of amount due on account of M/s Romesh Power and undertaking submitted by M/s Romesh Power for payment of approximately Rs. 12 (twelve) crore to those vendors through SBPDCL. M/s Romesh Power may be allowed to complete the work in only those villages which was completed by M/s Romesh Power and document for the same has been handed over to Engineer-in-charge through you.

You are requested to ensure completion of new service connection to unconnected BPL household in Lakhisarai, Jehanabad, Sheikhpura and Arwal district by October, 2018. You are also requested to ensure balance payment of all vendors those have supplied materials in aforesaid project through you or your sub-contractor.


Yours faithfully,

Sd/-  
(Birendra Prasad)  
Chief Engineer, Project-1 (Rural)

Memo no. 6177

Patna, dated 05/10/18

Copy forwarded to M/s Romesh Power for information and necessary action. You are requested to ensure completion of all villages in consultation of Principal contractor, i.e. M/s Chadalavada Infratech which was completed and document for the same has been handed over to Engineer-in-charge by October, 2018 as committed by you. You are also requested to release the balance payment of vendors at the earliest.

  
(Birendra Prasad)  
Chief Engineer, Project-1(Rural)

Mr. Ashutosh Kumar, learned counsel appears on behalf of 'South Bihar Power Distribution Company Ltd.' (Respondent No. 3) accepts that the said Respondent agreed to pay the money to the 'Rajdhani Trading Company Pvt. Ltd.' ('Operational Creditor').

Mr. Nileshwar Singh, learned counsel appear on behalf of 'Rajdhani Trading Company Pvt. Ltd.' and submits that 1<sup>st</sup> Respondent 'Operational Creditor' has no objection if the amount is paid by the 'South Bihar Power Distribution Company Ltd.' He also requested to direct the Respondent to pay the cost of litigation.

Mr. Amol Vyas, Advocate appears on behalf of 'Resolution Professional' and submits that he had performed work for entire period and stated that he is entitled for a sum of Rs. 17 lacs including Resolution cost.

The Resolution cost has been made and fee is payable. For each month @Rs. 1,80,000/- fee is claimed and adding costs total Rs. 16,29,240/- is sought.

From the record, we find that 'Rajdhani Trading Company Pvt. Ltd.' ('Operational Creditor') had knowledged that 'South Bihar Power Distribution Company Ltd.' has ordered to supply to the 'South Bihar Power Distribution Company Ltd.' and it was also known that amount will be paid by the said Company ('South Bihar Power Distribution Company Ltd.'). The third Respondent, 'South Bihar Power Distribution Company Ltd.' has also stated that it was liable to pay the amount to the 'Operational Creditor'.

In the circumstances, we hold that the application u/s 9 was filed against M/s. Romesh Power Products Pvt. Ltd. with malicious intent for purpose other than the Resolution of Insolvency or liquidation of the 'Corporate Debtor' and in fact the application u/s 9 was not maintainable.

For the reason aforesaid, we set aside both the impugned orders dated 20<sup>th</sup> December, 2018 which was passed ex-parte and the order refusing recalling dated 21<sup>st</sup> February, 2019.

The 'Operational Creditor' will raise the bills and place it before the third Respondent ('South Bihar Power Distribution Company Ltd.' ) which after verification will clear the bills and pay the amount preferably within one month from the date of receipt of the claim.

In so far as the fee of the 'Interim Resolution Professional' / 'Resolution Professional' is concerned, we calculate it @ Rs. 1 lakh per month i.e. Rs. 9 lakhs for total period of 270 days and cost of Rs. 3,58,000/- as claimed by the 'Interim Resolution Professional' / 'Resolution Professional', i.e. total Rs. 12,58,000/- and additional amount of Rs. 30,000/- towards fee of the lawyers to appear twice before this Appellate Tribunal and round off the same @ Rs. 13,00,000/- to be paid after adjusting the amount, if any, already paid.

The amount of Resolution fee and costs as above is to be borne by the 'Corporate Debtor' and the 'Operational Creditor' equally i.e. 50.50% be paid to the 'Interim Resolution Professional' / 'Resolution Professional' within 30 days.

The appeal is allowed with aforesaid observations.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice A. I. S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

ss/gc