

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Insolvency) No. 552 of 2018

IN THE MATTER OF:

Mr. Raghu Rama Krishna Raju

...Appellant

Versus

Gandhar Oil Refinery (India) Ltd.

...Respondent

Present:

For Appellant :

**Mr. Amit Sibal, Senior Advocate assisted by
Mr. Aniridh Wadhwa and Mr. Bharagav Thali,
Advocates**

For Respondents :

**Ms. Mitali Daryani and Mr. Anush Raajan,
Advocates for Respondent No. 1**

**Mr. Nakul Sachdeva and Mr. Aakarshan Sahay,
Advocates for Respondent No. 2**

**Mr. C.A. Sinha, Ms. Sonali Khanna and Ms. Sylona
Mohapatra, Advocates for 'Committee of Creditors'**

**Mr. Goutham Shivshankar and Sourabh Agarwal,
Advocates for impleaded respondent**

**Mr. Sanjay Bajaj, Advocates for 'Financial
Creditors'**

Me. Nakul Sachdeva, for RP

**Mr. Chitranchul Sinha and Ms. Sonali Khanna,
Advocates for 'CoC'**

With

Company Appeal (AT)(Insolvency) No. 553 of 2018

IN THE MATTER OF:

Mr. Raghu Rama Krishna Raju

...Appellant

Versus

Gandhar Oil Refinery (India) Ltd.

...Respondent

Present:

For Appellant : **Mr. Amit Sibal, Senior Advocate assisted by
Mr. Aniridh Wadhwa and Mr. Bharagav Thali,
Advocates**

For Respondents : **Ms. Mitali Daryani and Mr. Anush Raajan,
Advocates for Respondent No. 1**

**Mr. Ashish Prasad and Mr. Sanyam Saxena,
Advocates for R.P.**

**Mr. Goutham Shivshankar and Sourabh Agarwal,
Advocates for impleaded respondent**

**Mr. Sanjay Bajaj, Advocates for 'Financial
Creditors'**

ORDER

30.01.2019 In both the appeals as the appellant/shareholder is common and common question of law is involved, they were heard together and disposed of by this common order.

2. 'M/s. Gandhar Oil Refinery (India) Limited' (Operational Creditor – respondent in '*Company Appeal (AT)(Insolvency) No. 552 of 2018*') filed an application under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiation of 'corporate insolvency resolution process' against 'M/s. Ind Barath Power Gencom Limited' (Corporate Debtor) which was admitted by the impugned

order dated 7th September, 2018 is under challenge in '*Company Appeal (AT)(Insolvency) No. 552 of 2018*'.

3. Another application under Section 9 was filed by 'M/s. Gandhar Oil Refinery (India) Limited against M/s. Ind-Barath Thermal Power Limited (the other Corporate Debtor) in '*Company Appeal (AT)(Insolvency) No. 553 of 2018*' and it was also admitted by the impugned order dated 7th September, 2018.

4. Learned counsel appearing on behalf of the appellant(s) submits that there are 'pre-existing dispute' in both the cases and thereby the application(s) under Section 9 were not maintainable. It is further submitted that the appellants are settling the claim with '*M/s. Gandhar Oil Refinery (India) Limited*' in both the appeals.

5. Learned counsel appearing on behalf of the 'Operational Creditor' while disputed the ground taken by the learned counsel for the appellant that there is a 'pre-existing dispute' and submitted that the parties have settled the claims in both the appeals.

6. 'Resolution Professional' in both the appeals have appeared, filed their affidavits giving details of the steps taken by them and the fee and cost incurred by them. The 'Committee of Creditors' in both the appeals has also appeared.

7. From the record we find that there is a pre-existing dispute in respect of '*M/s. Ind-Barath Power Gencom Limited*' (Corporate Debtor) of '*Company Appeal (AT)(Insolvency) No. 552 of 2018*'. In the said case, demand notice under Section 8(1) was issued on 30th October, 2017 but prior to the same, the 'Corporate Debtor' had issued a notice to the 'Operational Creditor' for act of deceit and dispute on the outstanding dues', which reads as follows:

IND-BARATH POWERGENCOM LIMITED

Corporate Office
New No. 20 / Old No. 129,
Chamiers Road, Nandanam,
Chennai - 600 035, Tamil Nadu
Phone : 044-2434 6711 to 14
Fax : 044-2434 6715
E-mail : chennai@ibpil.com
CIN : U40109TG2005PLC046960



To

Date:27.09.2017

M/s. Gandhar Oil Refinery India Limited,
18th Floor,DLH Park,
S.V.Road,Goregaon (W),
Mumbai -400062

NOTICE FOR ACT OF DECEIT AND DISPUTE ON THE OUTSTANDING DUES

It is to our shock, we have come to know during due diligence process undertook by us in the past three months that your company have supplied inferior quality fuel in mala fide intention to incur losses to our company and our group companies.

This act has deceived us, the faith and trust we had on your company and fuel supplied to us. As the case is we hereby decree that cargo supplied by you for the period 2013-2017 is under mala fide intention to make more profits and incur losses to us by fudging all the reports pertaining to the cargo supplied has been either breached or tailor made to deceive us. Thus, we serve you this notice.

We also strongly believe that all cargo supplied by you till date and its reports are fudged and must be audited for its authenticity to ascertain the value of the losses incurred to us. The final claim amount payable by you for your act of deceit shall be communicated to you at the earliest once the detailed vigilance audit is completed.

Hence, we completely deny the outstanding payable to you as per the books of accounts pending vigilance enquiry. Also we have claims on the payments made to you earlier on the fudged supplies. We strictly warn you not to indulge in malpractices to camouflage the enquiries.

We shall not have any future business association with you or your companies for the fuel supplies to us.

For Ind-Barath Powergencom Limited,

Authorised Signatory

Regd. Office : Plot No. 30-A, Road No.1, Film Nagar, Jubilee Hills, Hyderabad - 500 096, Telangana, India.
Phones : 040-23553459, 23553460, 45451100, 45451101 Fax : 040-23607522, 23553462
E-mail : raghu@raghurama.com / hyderabad@ibpil.com


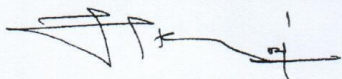
Power Plant : Keelavelayudhapuram Village, Pudur Pandiyapuram Panchayat, Mela Arasadi Post, Ottapidaram Taluk,
Tuticorin District - 628 002, Tamilnadu. Phone : 0461-2347157/58, Fax : 0461-2347159
Website : www.ibpil.com

For Ind-Barath Power Gencom Ltd.

Authorised Signatory

8. In other case, M/s. Ind-Barath Thermal Power Limited (the other 'Corporate Debtor) in 'Company Appeal (AT)(Insolvency) No. 553 of 2018' the

demand notice was issued on 25th October, 2017. However, prior to the same notice for act of deceit and dispute on the outstanding dues was issued by the 'Corporate Debtor' on 27th September, 2017, which reads as follows:

| | | |
|--|--|---|
| IND-BARATH THERMAL POWER LIMITED | Corporate Office : New No. 20 / Old No. 129, Chamiers Road, Nandanam, Chennai - 600 035, Tamil Nadu Phone : 044-2434 6711 to 14 Fax : 044-2434 6715 E-mail : chennai@ibpil.com CIN : U40101TG2007PLC052232 |  |
| To | Date: 27.09.2017 | 98 |
| <p>M/s. Gandhar Oil Refinery India Limited, 18th Floor, DLH Park, S.V. Road, Goregaon (W), Mumbai - 400062</p> | | |
| <u>NOTICE FOR ACT OF DECEIT AND DISPUTE ON THE OUTSTANDING DUES</u> | | |
| <p>It is to our shock, we have come to know during due diligence process undertaken by us in the past three months that your company have supplied inferior quality fuel in mala fide intention to incur losses to our company and our group companies.</p> | | |
| <p>This act has deceived us, the faith and trust we had on your company and fuel supplied to us. As the case is we hereby decree that cargo supplied by you for the period 2013-2017 is under mala fide intention to make more profits and incur losses to us by fudging all the reports pertaining to the cargo supplied has been either breached or tailor made to deceive us. Thus, we serve you this notice.</p> | | |
| <p>We also strongly believe that all cargo supplied by you till date and its reports are fudged and must be audited for its authenticity to ascertain the value of the losses incurred to us. The final claim amount payable by you for your act of deceit shall be communicated to you at the earliest once the detailed vigilance audit is completed.</p> | | |
| <p>Hence, we completely deny the outstanding payable to you as per the books of accounts pending vigilance enquiry. Also we have claims on the payments made to you earlier on the fudged supplies. We strictly warn you not to indulge in malpractices to camouflage the enquiries.</p> | | |
| <p>We shall not have any future business association with you or your companies for the fuel supplies to us.</p> | | |
| <p>For Ind-Barath Thermal Power Limited,</p> | | |
|  | | |
| <p>Authorized Signatory</p> | | |
| <p>Regd. Office : Plot No. 30-A, Road No.1, Film Nagar, Jubilee Hills, Hyderabad - 500 096, Telangana, India. Phones : 040-23553459, 23553460, 45451100, 45451101 Fax : 040-23607522, 23553462 E-mail : raghu@raghurama.com / hyderabad@ibpil.com</p> | | |
| <p>Power Plant : Pudiamputhur Road, Swaminatham Village, Ottapidaram Taluk, Tuticorin District, Tamil Nadu - 628 002. Website : www.ibpil.com</p> | | |

9. In view of the fact that there was a 'pre-existing dispute' in both the cases, we hold that the application preferred by '*M/s. Gandhar Oil Refinery (India) Limited*' against '*M/s. Ind-Barath Power Gencom Limited*' (Corporate Debtor) and '*M/s. Ind-Barath Thermal Power Limited*' (the other 'Corporate Debtor') were not maintainable. We accordingly set aside the impugned orders dated 7th September, 2018 passed by the Adjudicating Authority in the respective appeals. The parties having settled the matter, they are bound by the 'Terms of Settlement' and will act accordingly and it should be treated as a direction of this Appellate Tribunal. Insofar as other creditors are concerned, we are not expressing any opinion. They may act in accordance with law. The 'Committee of Creditors' of respective appeals are directed to decide the fee and resolution cost incurred by respective 'Resolution Professionals' preferably within two weeks and communicate to the respective 'Corporate Debtors'. The 'Corporate Debtors' will pay the cost and fees and the cost incurred for resolution process by respective 'Resolution Professionals'. If the cost have been paid to the 'Resolution Professionals' by the 'Committee of Creditors', as informed, then the 'Committee of Creditors' will inform the respective 'Corporate Debtors', the cost incurred towards the 'resolution fee' and 'resolution process' and the respective 'Corporate Debtors' will pay the amount to the 'Committee of Creditors' within 30 days thereof.

10. If any application of the 'Financial Creditor' or 'Operational Creditor' has been dismissed on the ground of these appeals, they may file a fresh application before the Adjudicating Authority, after notice to the 'Corporate Debtors' in view of the order passed by us.

11. Both the appeals stand disposed of with aforesaid observations and directions. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk/