

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 26 of 2018

(Arising out of Order dated 16th January, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in MA 17/2018 in CP No. 1139/I&BP/NCLT/MAH/2017)

IN THE MATTER OF:

**Monnet Ispat & Energy Ltd. ...Appellant
Resolution Professional for the Corporate Debtor)**

Vs

**Government of India,Respondent
Ministry of Coal**

Present:

For Appellant: Dr. U.K. Choudhary, Mr. S.N. Mookherjee, Mr. Debjal Banerji and Mr. Arun Kathpalia, Senior Advocates with Ms. Anne Mathew, Mr. Nishant Anand, Mr. Vishnu Sharma, Mr. Himanshu Vij, Ms. Aswathy Mena and Ms. Goutami Budhapriya, Advocates.

For Respondent: Mr. Sanjib Kumar Mohanty, Senior Panel Central Govt. Counsel and Ms. P.S. Chandralekha, Advocate.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Pursuant to an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) filed by the 'State Bank of India'- ('Financial Creditor'), the 'Corporate Insolvency Resolution Process' was initiated against 'Monnet Ispat & Energy Ltd.'- ('Corporate Debtor').

2. Much before filing of the application under Section 7, the Government of India, Ministry of Coal, reached 'Coal Mines Development and Production Agreement' dated 2nd March, 2015 with the 'Corporate Debtor' and vesting order 104/18/2015/NA dated 23rd March, 2015 was issued in favour of the 'Corporate Debtor' in respect of Gare Palma IV/7 Coal Mine at Karwahi, Teh, Tomnar, Dist-Raigad, Chattisgarh (hereinafter referred as "the Mine").

3. After initiation of the 'Corporate Insolvency Resolution Process', the Government of India, issued notice dated 30th December, 2017 for termination of 'Coal Mines Development and Production Agreement' dated 2nd March, 2015 and vesting order 104/18/2015/NA dated 23rd March, 2015.

4. The 'Resolution Professional' of 'Monnet Ispat & Energy Ltd.' challenged the letter of termination dated 30th December, 2017 issued by the Government of India, Ministry of Coal, on the ground that it is against the provisions of Section 14 of the 'I&B Code' whereunder 'Moratorium' has been declared by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai.

5. It was submitted that during the period of 'Moratorium', the right vested with the 'Corporate Debtor' cannot be taken away by the Government of India.

6. The Adjudicating Authority, Mumbai Bench, Mumbai, by impugned order dated 16th January, 2018, considered as to whether or not the

termination order dated 30th December, 2017, is hit by Section 14 of the 'I&B Code' and on hearing the parties held that the said letter is not violative of Section 14(1)(d) of the 'I&B Code'. The Adjudicating Authority has also noticed that the Government of India is incurring an estimated loss of revenue of Rs. 314.3 crores to the State Exchequer annually, which was the reason for the Central Government to terminate the 'Coal Mines Development and Production Agreement'.

7. For determining the issue, it is desirable to refer the relevant documents, including the 'Coal Mines Development and Production Agreement' dated 2nd March, 2015, which reads as follows:

**“THE COAL MINE DEVELOPMENT AND
PRODUCTION AGREEMENT BY AND BETWEEN
THE PRESIDENT OF INDIA AND M/S MONNET
ISPAT & ENERGY LIMITED IN RESPECT OF
GARE PALMA-IV/7 COAL MINE”**

This Coal Mine Development and Production Agreement is made by and between following:

PARTIES:

1. The President of India, acting through the Central Government represented by the Nominated Authority appointed under Section 6 of the Coal Mines (Special Provisions) Ordinance, 2014) read with Coal Mines (Special Provisions) second Ordinance, 2014 (the **“Nominated Authority”**).

2. Monnet Ispat & Energy Limited incorporated in India under the Companies Act, 1956 with corporate identify number L02710CT1990PLC009826, whose registered office is at Monnet Marg, Mandir Hasaud, Raipur, Chattisgarh- 492101, India and principal place of business is at Monnet House, 11 Masjid Moth, Greater Kailash Part

II, New Delhi- 110048, India (the “**Successful Bidder**”).

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5.3. The Mining Lease

5.3.1. Pursuant to Section 8(4)(b) read with Section 8(8) of the Ordinance, the Successful Bidder shall become entitled to the mining lease with respect to the Coal Mine (the “**Mining Lease**”) to be granted by the State Government upon issuance of the Vesting Order.

5.3.2. The Successful Bidder shall promptly upon issuance of the Vesting Order make an application to the State Government for grant of a Mining Lease in the name of the Successful Bidder.”

8. The ‘Coal Mines Development and Production Agreement’ dated 2nd March, 2015 shows that the President of India acting through the Government of India reached the agreement with ‘Monnet Ispat & Energy Ltd.’- (‘Corporate Debtor’), the ‘Corporate Debtor’ being the successful bidder. The conditions for vesting has been shown in Clause 3 which is subject to compliance of all the eligibility conditions, payment of upfront amount in installments and furnishing of performance security etc. Completion of vesting condition and notice has been shown therein.

9. Post vesting obligations have been shown in Clause 5 which includes payment of the upfront amount in installments. At Clause 5(3), it is mentioned that ‘the Mining Lease’ pursuant of Section 8(4) (b) read with Section 8(8) of the Ordinance, the Successful Bidder shall become entitled to the mining lease with respect to the Coal Mine to be granted by the State Government upon issuance of the Vesting Order.

10. The copy of the Vesting Order dated 23rd March, 2015 shows that the coal entitlement was for one or other plant of the 'Corporate Debtor' but there is nothing on the record to suggest that mining lease has been issued by the State Government(s) in terms of the provisions as mentioned in the 'Coal Mines Development and Production Agreement' dated 2nd March, 2015.

11. It is not being made clear whether in terms of the agreement total amount has been paid by the 'Corporate Debtor' or not.

12. Section 14 of the 'I&B Code' relates to 'Moratorium'. Clause (d) of sub-section (1) of Section 14 reads as follows:

“14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

13. In the present case, as we find that the vesting of the Coal Mines is not complete in absence of any agreement with the State Government in respect to the mines in question, we hold that the 'Resolution Professional' on behalf of the 'Corporate Debtor' cannot claim that pursuant to lease the mines are under occupation or in possession of the 'Corporate Debtor'.

14. The Government of India by its letter dated 13th April, 2017 issued show cause notice to the 'Corporate Debtor' before issuance of the termination letter dated 30th December, 2017 i.e. much prior to initiation of the 'Corporate Insolvency Resolution Process' (18th July, 2017). The 'Corporate Debtor' having failed to act in terms with the said show cause. If the order of cancellation have been passed by the Government of India on 30th December, 2017, it cannot be held to be in violation of Section 14(1)(d) of the 'I&B Code'.

15. In view of the aforesaid findings, no interference is called for against the impugned order dated 16th January, 2018. The appeal is dismissed. Interim order passed by this Appellate Tribunal on 8th February, 2018 is vacated. It will be open to the Respondent- 'Government of India' to accept any bid and to create third party interest with regard to mines in question which were earlier allotted vide 'Coal Mines Development and Production Agreement' dated 2nd March, 2015 to the 'Corporate Debtor'. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

30th November, 2018

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