
**Jeevagan Narayana Swami Nadar Suspended Director Of Sinnar Thermal
Power Limited Vs Union Of India & Ors.**

**Civil Writ Petition No. 16884 Of 2022, Civil Miscellaneous Application No. 53497,
53498 Of 2022**

Court: Delhi High Court

Date of Decision: Dec. 9, 2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 – Section 9, 14, 14(1)(a), 14(1)(b), 14(1)(c),
14(1)(d)#Arbitration and Conciliation Act, 1996 – Section 34

Hon'ble Judges: Prathiba M. Singh, J

Bench: Single Bench

Advocate: Vikas Singh, Venkatesh, Bharath Ganga Dharan, Jayant Bajaj, Kartikay Trivedi,
Pallavi Saigal, Sidharth Nigotia, Suraj Das Guru, Sandeep Mahapatra, Kaushal Jeet Kati,
Anupam Lal Das, Chandrashekara Chakalabbi, Anshul Rai, D. Girish Kumar, Anupam Jain,
Kailash Sharma

Final Decision: Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.

2. The Petitioner - Jeevagan Narayana Swami Nadar, who is a suspended Director of Sinnar Thermal Power Limited (hereinafter
referred to as "STPL") has

filed the present petition seeking relief against South Eastern Coalfields Limited/Respondent No.3 (hereinafter
referred to as "SECL"). The grievance of the

Petitioner is with respect to the letter dated 22nd November, 2022, by which show cause notice was issued by SECL, as to why
the Fuel Supply

Agreement dated 3rd September, 2013, executed between STPL and SECL (hereinafter referred to as "FSA"), ought not to be
terminated and consequential

forfeiture of the security deposit ought not to be resorted to.

3. The said FSA was for the supply of 27,16,000 tonnes of coal for four units of the Petitioner's Nasik Thermal Power Project, Sinnar, Dist. Nasik

(Maharashtra). Various bank guarantees for a total sum of approximately Rs.25 crores were furnished in terms of the FSA. However, for various

reasons which are not relevant for the present purposes, there was a delay in the formal commissioning of the plant.

4. In the meantime, the Ministry of Power was also considering solutions to solve the problems in the power sector. At the same time, owing to a

petition filed by M/s Shapoorji Pallonji Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC"), the NCLT,

vide order dated 19th September, 2022 initiated insolvency resolution proceedings against STPL and a Resolution Professional (hereinafter "IRP")

was also appointed. Vide the said order, a moratorium has also been declared by the NCLT qua STPL.

5. Thereafter, in an appeal filed before the NCLAT, the following order was passed on 26th September, 2022:

" Issue notice. All Respondents are represented by learned counsel who accept notice. Let reply be filed by the Respondents within three

weeks.

List this Appeal on 04.11.2022.

Shri Ramji Srinivasan, learned senior counsel for the Appellant submits that the proceedings for initiation of Arbitration were already

initiated before filing of Section 9 application, which statement is disputed by learned counsel for Respondent No.1. Mr. Ramji Srinivasan

further submits that against the award dated 22.04.2022, application under Section 34 of the Arbitration and Conciliation Act has already

been filed in the High Court which is pending consideration. He further submits that in the minutes of meeting held on 02.05.2022 and

06.05.2022, the Ministry of Power is already taking steps to start commissioning of the plant and he has referred to minutes at Sl. No. 4.4.5.

In view of the above submission, we are of the view that IRP in pursuance of the impugned order may not take any steps and it shall be open

for the Appellant to participate further with the Ministry of Power in continuation of the earlier minutes of meetings.

6. In this background of the insolvency resolution proceedings involving the Petitioner's company, and the Petitioner receiving the show cause

notice alleging various breaches of the FSA, the prayer in this petition is for the show cause dated 22nd November, 2022 to be quashed.

7. Today, it has also been brought to the Court's notice that post the filing of this writ petition, SECL has terminated the FSA on 8th December,

2022 and has forfeited the security deposit of Rs.21,24,99,840/-. Ld. Counsel for the Petitioner highlights that the amount of the bank guarantee

invoked is different in the invocation letter sent to the Petitioner and that sent to the banks on 8th December, 2022, which cites the amount of

Rs.23,40,60,400/-.

8. At the outset, Mr. Dass, Id. Counsel for Respondent No.3, doubts the maintainability of the present petition considering that the IRP has not

authorized the filing of such a petition. He also contends that there is no territorial jurisdiction of this Court, inasmuch as the only relief sought is

against SECL, which is located in Bilaspur, Chhattisgarh and under the FSA, the jurisdiction clause states the contractual disputes would be subject to

the jurisdiction of courts in Bilaspur. He further submits that if NCLAT has stayed the insolvency resolution proceedings vide the order dated 26th

September, 2022, then the moratorium against actions such as invocation of bank guarantees against the Petitioner, would not be applicable.

9. On the other hand, Mr. Vikas Singh, Id. Sr. Counsel, along with Mr. Venkatesh, Id. counsel appearing for the Petitioner, submits that STPL

Director can maintain the present petition in view of the order passed by the NCLAT on 26th September, 2022, which has clearly observed that the

resolution professional would not take any steps with regard to the company. It is further submitted that owing to the moratorium which is operating in

favour of the Petitioner, the subsequent invocation of the bank guarantees ought to be restrained inasmuch as the same would be contrary to the

moratorium order under Section 14 of the IBC.

10. Heard. The moratorium order of the NCLT dated 19th September, 2022 reads as under:

"27. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Adarsh Sharma to meet

out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of

receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted

for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

28. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the

provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest

therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any

action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(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.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a

similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period."

11. The above order is in two parts - One is the appointment of the interim resolution professional and the other is the application of moratorium under

Section 14 of the IBC. The NCLAT order extracted above primarily directs the RP not to take any steps, but the moratorium itself has not been

stayed by the NCLAT. Therefore, the said order only concerns the first part of the NCLT decision extracted above. In view thereof, the moratorium

would continue to apply even qua the forfeiture of the security deposit.

12. Accordingly, it is directed that invocation of the bank guarantees shall not be given effect to by the banks till 4th January, 2023. If an application

before the NCLT is filed by the Petitioner by the said date i.e., 4th January, 2023, the protection granted qua encashment of the bank guarantees shall

continue till the date of first listing before the NCLAT. It is reiterated that the banks shall not encash the bank guarantees and if the same have been

encashed, the amounts shall not be disbursed to SECL. This shall be subject to any order that may be passed by NCLT in the application to be filed by

the Petitioner.

13. With these observations, the present petition, along with all pending applications is disposed of.