

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 481 of 2020

[Arising out of order dated 20.04.2020 in M.A./25/KOB/2020 in IBA/38/KOB/2019 passed by the National Company Law Tribunal, Kochi Bench]

IN THE MATTER OF:

M/s Albanna Engineering LLC.

Post Box- 7323, Dubai, United Arab Emirates;
Having its Project Office at XIV/98M
MNB Business HUBFL Room No.3, Ambattu
Ambalamugal P.O., Pin- 682302;
Rep. by its Power of Attorney Holder,
Sreekumar S.
S/o late P. Sankarannair, aged 56 years
H.B.47, Panampilly Nagar, Kochi-682036.

...Appellant

Versus

1 M/s Sanghvi Movers Limited

Regd Office: Survey No. 92
Tathwade, Taluka – Mulsi, Pune
Maharashtra State – 411033.

**...Respondent
Operational Creditor**

2. MNB Nair (A proprietorship concern),

Represented by Mr. M.N. Balakrishnan,
Having office at: Ambattu,
Ambalamugal,
Ernakulam,
Kerla – 682302.

**...Respondent
Operational Creditor**

3. Kerala Metal Distributors (A proprietorship concern),

Represented by Mr. CKN Nair,
Having office at: XL-3647,
Musliam Street,
Ernakulam, Kochi,
Kerala – 682035.

**...Respondent
Operational Creditor**

4. Brothers Engineering (A proprietorship concern),

Represented by its partner Mr. Ummer P.V.,
Having office at: Brothers Arcade,
Opp. SNDP Mandir, Kuzhikkadu,
Kochi,
Kerala – 682302.

...Respondent

Operational Creditor

- 5. M/s Albanna Engineering (India)**
Private Limited,
Represented by its Ex-Director
Mr. Matthew Kavalam,
XIV 305 A4(4) 3E, Noel Focus,
Seaport – Airport road
Chittethukara, CSEZ P.O.,
Kakkanad,
Kerala – 682037. **...Respondent
Corporate Debtor**
- 6. M/s Punjab National bank,**
Represented by its Chief Manager,
Having office at ARMB Circle Office,
Eranakulam,
Kerala – 682011. **...Respondent**
- 7. Committee of Creditors**
Of Albanna Engineering (India)
Private Limited,
Represented by Mr. Vinod Balachandran (RP),
Having his office address at 70/1909,
Ashoka Road,
Kaloor, Kochi,
Kerala – 682017. **...Respondent
COC**
- 8. M/s Bharat Petroleum Corporation Limited**
Represented by its Executive Director
Having office at Kochi Refinery,
Ambalamugal,
Eranakulam District,
Kerala – 682302. **...Respondent**
- 9. ICICI Bank Ltd.,**
3rd Floor, Emgee Square,
Padma Junction,
M.G. Road,
Kochi, Kerala State – 682035 **...Impleaded Respondent**
- 10. CITIBANK N.A.,**
Fort House, 4th Floor,
224, DN Road,
Unit-1, Fort, Mumbai,
Maharashtra State – 400001. **...Impleaded Respondent**

Present: -

For Appellant: Mr. Santosh Paul, Sr. Advocate along with Mr. Karthik S.D. and Mr. John Mathwe, Advocates.

For Respondent: Mr. Shiv Kumar Suri, Mr. Shikhil Suri and Ms. Shilpa Saini, Advocates for Respondent Nos. 1 to 4.

Mr. Vinod Balachandran, Advocate for RP and R-6.

Mr. Pranoy Harilal, Advocate for R-8.

Mr. Arpit Gupta, Advocate for ICICI Bank.

Mr. Rajesh Gautam, Advocate for PNB & RP.

O R D E R

The present Appeal has been filed by the Appellant - M/s Albanna Engineering LLC through its Power of Attorney holder of the Appellant Company aggrieved and dissatisfied by order dated 20.04.2020 passed by the National Company Law Tribunal, Kochi Bench, in M.A./25/KOB/2020 in IBA/38/KOB/2019 whereby and where under Ld. Adjudicating Authority passed following orders read as under:

- i. The Respondent No. 4, i.e. BPCL is directed to invoke both the bank Guarantees immediately provided by the parent company of Corporate Debtor, i.e., Albanna Engineering LLC, and to keep the proceeds in an interest-bearing fixed deposit with itself in the name and style of “Bharat Petroleum Corporation Limited – Account Albanna Engineering” until further orders.
- ii. The Respondent No. 4, i.e., BPCL is hereby directed to produce the original receipt of such deposit before the Registry of this Tribunal.
- iii. The Registry is directed to communicate this order to Albanna Engineering LLC, Albanna Engineering (India) Private Limited, Bharat Petroleum Corporation Limited and all other applicants by email.

Accordingly, MA/25/KOB/2020 in IBA/38/KOB/2019 is disposed of.

2. Heard the Learned Counsels for the Parties.
3. From the perusal of the record it appears that once 'Corporate Insolvency Resolution Process' was initiated against the Albanna Engineering (India) Private Limited –Corporate Debtor under orders dated 25.10.2019 passed by NCLT, Kochi Bench pursuant to Application under Section 9 of the Insolvency and Bankruptcy Code 2016 (for short IBC) filed by 'Sanghvi Movers Limited'- Operational Creditor and others Respondents (herein).
4. The records also reveal that the 'Sanghvi Movers Limited'- Operational Creditor – Respondent No. 1 filed one M.A. No. 25 of 2019 in CP No. IBA/38/KOB/19 on 09.03.2020 in which cause title reveals that one M/s Albanna Engineering (India) Private Limited represented through Ex-Director Mr. Mathew Kavalan, XIV 305 A4(4) 3E, Noel Focus, Seaport Airport Road, Chittethukara, CSEZ PO, Kakkanad, Cochin-682037 was arrayed as Respondent No. 1 – Corporate Debtor along with other Respondents.
5. After hearing both the parties' impugned order dated 20.04.2020 was passed.
6. Learned Counsel for the Appellant during the course of argument and Written Submissions stated that the Appellant (herein) is a Foreign Company incorporated overseas in the United Arab Emirates (UAE) with limited liability and is also having its project office at Ambalamugal, Ernakulam District, Kerala State. The Respondent, M/s Bharat Petroleum Corporation Ltd. (BPCL) invited global tenders for the execution of
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Mechanical Works of VGO HDT Unit and DHDT Unit for Integrated Refinery Expansion Project (IREP) at Kochi Refinery, Kerala in the year 2014.

7. It is further submitted that the tenders submitted by the Appellant was accepted by the Respondent BPCL and Purchase Orders were issued to the Appellant. The estimated contract value of the works was Rs. 205,59,20,098/-

8. It is further submitted that the execution of the works the Appellant appointed its subsidiary, the Respondent No. 5 (herein) –M/s. Albanna Engineering (India) Private Limited, under an agreement as sub-contractor and carried out the works through them.

9. In the Reply Affidavit filed by Respondent No. 1 it is also annexed at page no. 22 of the Reply Affidavit the copy of the agreement has been brought on record.

10. It is submitted that the Appellant furnished two Bank Guarantees in favour of the Respondent No. 8. The appellant completed the works and submitted final pro-forma invoices in respect of both the works. On 01.01.2018, the Respondent No. 8 issued completion Certificates to the Appellant through its project management consultant M/s Engineers India Ltd.

11. It is further submitted that the Respondent No. 1 – Operational Creditor approached the NCLT, Kochi Bench, under Section 9(6) of the IBC and the NCLT, Kochi Bench vide order dated 25.10.2019 admitted the Application and declared moratorium, in the said proceeding the Appellant was not made party.

12. It is further submitted that the Respondent No. 1 to 4 have filed an Application bearing No. MA/25/KOB/2020, on 09.03.2020 under Section 60(5) of the IBC directing the Respondent No. 8 to invoke both the performance Bank Guarantees and sought for the amounts to be kept under the control of the Resolution Professional, in this Application as also Appellant was not made party and the impugned order was passed on 20.04.2020.

13. Learned Counsel for the Appellant referred to Annexure – A-1 at page 46 of the Appeal Paper Book. The Application filed by the Respondents (herein) submitted that cause title reveals that the Appellant (herein) was not arrayed a party in the Application and the order was passed behind the back in violation of principle of natural justice. So, it was submitted that the impugned order is fit to be set aside and the Appeal be allowed.

14. Learned Counsel for the Respondent No. 1 has also filed his Reply Affidavit in which he has opposed this submissions and further Written submissions filed on behalf of the Respondent No. 1 submitted that the Appellant and the Respondent No. 5 are a single economic entity or Respondent No. 5 is an alter ego of the Appellant, so it is not correct the impugned order was passed behind the back of the Appellant.

15. Learned counsel for the Respondent No. 6 - PNB has also filed his Written submissions and supporting the impugned order in which it is stated that the Adjudicating Authority has rightly passed the impugned order. It is further submitted that the Adjudicating Authority after lifting the 'Corporate Veil' and passed the impugned order. So, there is no merit in this Appeal and it is fit to be dismissed.

16. The Respondent No. 7 - CoC representing the Corporate Debtor- M/s Albanna Engineering (India) Pvt. Ltd. filed status report in which para 2 (i) reveals as follows:

“Since Corporate Debtor had absolutely no asset to meet any of its liabilities a Misc. Application No. MA/23/KOB/2020 was filed before the Hon'ble NCLT, Kochi Bench said Application was disposed off by the Hon'ble NCLT, Kochi Bench its order dated 13th March, 2020 wherein certain direction were passed against the Respondent No. 8 directing it not to pay any amounts due to the Appellant (approx Rs. 5.46 crores) till further orders from the Hon'ble Tribunal and also to consider impleading Appellant as a party. This has been complied with under MA/71/KOB/20 and the hearing is in progress.”

17. After hearing the parties, going through the records and Written Submissions filed on behalf of the Respondents, we find that the Appellant - M/s Albanna Engineering LLC has not a party in the impugned order (at page 46 of the Appeal Paper Book) passed by the Adjudicating Authority, NCLT, Kochi Bench and only M/s Albanna Engineering (India) Pvt. Ltd. made a party, so we are of the considered view that the impugned order cannot be sustained in the eye of law and natural justice has been violated. The impugned order dated 20.04.2020 passed by the Adjudicating Authority, NCLT, Kochi Bench order is hereby set aside. The matter is remitted to the Adjudicating Authority, NCLT, Kochi Bench to pass order:

i. Since the parties have already appeared before the Adjudicating Authority, no fresh notice is required to given them.

ii. Parties are directed to appear before the Adjudicating Authority on 15th April, 2021. Since the pleadings are complete, the Adjudicating
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Authority is requested to fix a date to hear the matter as fresh and disposed of the matter in accordance with law, within six weeks from 15th April, 2021.

iii. The time spent in pursuing the instant M.A. No. 25/KOB/2020 shall be excluded from the CIRP period.

18. From the perusal of the order sheet dated 19.05.2020 passed by this Appellate Tribunal it reveals that the Respondent Nos. 9 and 10 was directed to renew the Performance Bank Guarantees for a period of three months. They are further directed to renew the Performance Bank Guarantees for a period of six months from the date of passing of the order.

19. The Appeal is disposed of accordingly.

20. Registry is directed to send the copy of this order to the Adjudicating Authority, NCLT, Kochi Bench forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

17th March, 2021

R. N./ Kam. /