

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 285 of 2018

IN THE MATTER OF:

Jharkhand Bijli Vitran Nigam Ltd.

...Appellant

Vs

IVRCL Ltd. (Corporate Debtor) & Anr.

....Respondent

Present:

**For Appellant: Mr. Navin Kumar, Mr. Himanshu Shekhar,
Mr. Aabhas Parimal, Mr. Jamnesh Kumar and
Mr. Sharat Kumar, Advocates.**

**For Respondent: Ms. Niraj Kumar and Mr. Shashank Agarwal,
Advocates for R-1.
Mr. Sutanu Sinha, RP.**

ORDER

03.08.2018: On 11th July, 2018, when the matter was taken up, following order was passed:

“11.07.2018-- The question arises for consideration in this appeal is whether a counter claim can proceed during the period of ‘Moratorium’ while the Adjudicating Authority (National Company Law Tribunal) allowed the ‘Corporate Debtor’ to pursue the claim before the Arbitral Tribunal.

2. According to the Appellant, the question of determination of counter claim during the period of ‘Moratorium’ should have been decided by the Adjudicating Authority without leaving it open to be decided by the Arbitral Tribunal.

3. Let notice be issued on Respondents by speed post. Requisite along with process fee, if not filed, be filed by 13th July, 2018. If the Appellant provides the e-mail address of the Respondents, let notice be also issued through e-mail.

Post the case 'for admission' on 3rd August, 2018.

4. During the pendency of this appeal and the proceedings before the Adjudicating Authority, the Arbitral Tribunal will proceed with the claim and counter claim of the parties and may record appropriate order of award, but keep it in a sealed cover till the decision of this Appellate Tribunal."

2. Learned counsel appearing on behalf of the Resolution Professional submits that they have no objection if the counter claim decided by the Arbitral Tribunal.

3. As the claim of the Corporate Debtor can be determined only after determination of counter claim made by the Appellant in the same very arbitral proceeding and if counter claim or part of it is set off with the claim made by the Corporate Debtor, we are of the view that both the claim and the counter claim of parties should be heard together by the Arbitral Tribunal in absence of any bar under Insolvency and Bankruptcy Code, 2016.

4. However, on determination, if it is found that the Corporate Debtor is liable to pay certain amount, in such case, no recovery can be made during the period of moratorium.

5. The appeal stands disposed of with aforesaid observation. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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