

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 1089 of 2020**

**In the matter of:**

**Siemens Ltd.**

**....Appellant**

**Vs.**

**Meenakshi Energy Ltd. Through its Resolution  
Professional & Ors.**

**....Respondents**

**Present:**

**Appellant:** Mr. Nakul Dewan, Senior Advocate with Mr. Sameer Jain, Mr. Suvigya Awasthy, Mr. Himesh Thakur, Mr. Karan Valecha, Ms. Neelu Mohan, Advocates.  
**Respondents:** Mr. Sumant Batra, Senior Advocate with Mr. Jash Shah, Mr. Yohaann Limathwalla, Mr. Divyam Agarwal, Ms. Niharika Sharma, Advocates for R1 & R2.

**ORDER**

**(Through Virtual Mode)**

**21.12.2020:** Application for invocation of Bank Guarantees under Section 66 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) was declined by the Adjudicating Authority (National Company Law Tribunal), Hyderabad, Special Bench, in terms of the order dated 11<sup>th</sup> December, 2020 impugned in this appeal on the ground that the Bank Guarantees had been invoked prior to commencement of Corporate Insolvency Resolution Process (CIRP) in regard to the Corporate Debtor.

The issue raised in this appeal by Mr. Nakul Dewan, Senior Advocate representing the Appellant is that the SLP against the order passed by the

Contd/-.....

Hon'ble High Court of Telangana has been dismissed as withdrawn in view of the fact that the Adjudicating Authority was seized of the matter but liberty was given to the NCLT to consider the matter under law. It is submitted that the Adjudicating Authority failed to appreciate that the order passed by the Hon'ble High Court of Telangana was during Moratorium being applicable which was in violation of Section 14 of the 'I&B Code' and the impugned order could not be sustained.

Referring to interim direction passed by the Adjudicating Authority, it is submitted by Mr. Nakul Dewan, Senior Advocate representing the Appellant that the amount of Bank guarantee should not be allowed to be utilized as it would have the effect of the appeal being rendered infructuous. This is opposed by Mr. Sumant Batra, Senior Advocate representing the Respondent Nos. 1 & 2 who submits that such money has been utilized to meet the cost of CIRP. In the given circumstances, we, as an ad-interim, deem it appropriate to direct that whatever money is left over, same shall not be utilized without the leave of this Appellate Tribunal till next date of hearing.

Issue notice upon Respondents. Notice on behalf of Respondent Nos.1 & 2 is waived and accepted by Mr. Sumant Batra, Advocate. No further notice need be issued to him. Reply affidavit may be filed by the Respondents within 2 weeks. Rejoinder, if any, be filed within 2 weeks thereof.

Let notice be issued upon Respondent Nos. 3 to 5. Appellant to provide mobile Nos./ e-mail address of the Respondent Nos. 3 to 5. Notice be issued through e-mail or any other available mode. Requisites along with process fee be filed within three days.

List the appeal 'for admission (after notice)' on 27<sup>th</sup> January, 2021.

**[Justice Bansi Lal Bhat]  
Acting Chairperson**

**[Justice Anant Bijay Singh]  
Member (Judicial)**

**[Dr. Ashok Kumar Mishra]  
Member (Technical)**

*AR/g*