

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION No.243 of 2016

ORDER:

This Company Petition is filed seeking winding up of the respondent-company on the ground that the respondent-company has failed to pay a sum of Rs.2,72,40,608/- for the supplies made by the petitioner-company.

2. The respondent-company approached the petitioner-company for supply of steam coal and coal products imported from Indonesia and the petitioner – company supplied the same to the respondent – company under various invoices. As on date, the Company Petition is at the stage of admission. While so, the other creditors initiated proceedings against the respondent-company invoking the provisions of the Insolvency & Bankruptcy Code, 2016 (for short, 'the Code') before the National Company Law Tribunal, Hyderabad Bench, Hyderabad.

3. Now, it is submitted by the learned counsel for the petitioner that the petitioner-company has filed their claim before the Interim Resolution Professional, appointed vide proceedings, dated 19.07.2017. As against the claim of the petitioner-company for a sum of Rs.4,83,00,343/-, the Resolution Professional had accepted only a part of the amount due to various creditors. As it is not clear from the filings of the Resolution Professional, the petitioner-company is unable to precisely state the exact amount admitted towards its claim. It is also submitted by learned counsel for the petitioner that as against disallowance of that portion of money, which was claimed by the petitioner-company, the petitioner has

right of appeal before the Adjudicating Authority, which is NCLT, in terms of Section 87 of the Code.

4. Section 5 sub-section (1) defines the 'Adjudging Authority'. The Adjudicating Authority for the purpose of Part-II means National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013.

5. As NCLT was not constituted in the year 2016, the present Company Petition came to be filed in month of June, 2016 and notices were served on the respondent-company. Though NCLT was constituted thereafter, in view of the pendency of the Company Petition before this Court, the petitioner could not move NCLT, in view of the pendency of the present Company Petition. Since the petitioner-company had filed its claim before the Resolution Professional and as against the decision of the Resolution Professional, disallowing any part of a claim, the petitioner has quick and effective remedy in terms of the Code, the petitioner can as well agitate its claim before NCLT. As the petitioner's Company Petition is pending before this Court, the benefit of Section 14 of the Limitation Act shall be available to the petitioner for filing an appeal before NCLT in terms of the Code.

6. Subject to above, giving liberty to the petitioner to approach the NCLT, the Company Petition is closed.

Miscellaneous petitions, if any, pending shall stand closed.

CHALLA KODANDA RAM, J

AUGUST 21, 2018

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Date:21.08.2018

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