

## **Parent company liable to repay dues of its wholly owned subsidiary: NCLT Kochi**

**Overview:** *When it is found that a wholly owned subsidiary does not have any assets to its name for the purpose of CIRP, any properties, including any claims or interests of its parent company will be said to be the assets of the wholly owned subsidiary for the purpose of the CIRP. The above principle would not be applicable as a straight-jacket formula but will be applicable on a case to case basis. In the present case the relationship of principal and agent was applied as the contract was procured by the parent company whereas the work was to be carried out by the subsidiary company.*

### **Facts:**

In the year 2014, Bharat Petroleum Corporation Limited (**BPCL**) invited global tenders for a project in Kerala. M/s Albanna Engineering LLC (**AEL/parent company**), a company incorporated in UAE, submitted a bid for the same, which was accepted by BPCL. AEL issued bank guarantees in favour of BPCL, and vide an agreement of sub-contract, appointed its subsidiary M/s Albanna Engineering India Pvt. Ltd. (**AEIPL/Corporate Debtor**) to carry out the work. The Corporate Debtor further appointed service providers and material suppliers to carry out the work. However, the Corporate Debtor defaulted in repaying their dues.

One of the service providers and material suppliers, M/s Sanghvi Movers Limited (**Operational Creditor**) moved an application before NCLT, Kochi bench to initiate CIRP against the Corporate Debtor, which was admitted vide Order dated 25<sup>th</sup> October 2019. Once the Committee of Creditors was set up and resolution was underway, it came to light that the Corporate Debtor had no assets or securities to its name for the purpose of resolution.

Thereafter, the Operational Creditor filed an application before the NCLT Kochi praying for directions to BPCL to invoke the bank guarantees against AEL and use the proceeds thereof for the CIRP of the Corporate Debtor.

### **Findings of the Tribunal:**

The Tribunal found that the Corporate Debtor is a 100% subsidiary of AEL. The Tribunal found it fit to pierce the corporate veil relying upon the principles laid down in *State Bank of India vs. Videocon Industries Limited (VIL) & Ors., State of U.P. and others (MA/2385/2019 in C.P.(IB)-02/MB/2018 dated 12.02.2020 of NCLT, Mumbai Bench), State of U.P and other Appellants vs. Renusagar Power Co. and others Respondents reported in (1988) 4 SCC 59, Arcelomittal India (P) Ltd. vs. Satish Kumar Gupta reported in (2019) 2 SCC 1.*

The Tribunal relied on the principle, "where a statute itself lifts the corporate veil, or where protection of public interest is of paramount importance, or where a company has been formed to evade obligations imposed by the law, the court will disregard the corporate veil. Further, this principle is applied even to group companies, so that one is able to look at the economic entity of the group as a whole."

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The Tribunal observed that the management, shareholding and ownership was same for both the companies and depending on the facts of the present case, there existed a clear principal and agent relationship, as the main contract was procured by the parent company and the subsidiary company was the sub-contractor. The companies were intermingled and interlaced to a great extent. Since the Corporate Debtor did not have any assets, it was impossible for the debts to be recovered. Hence, both companies were to be treated as one single economic entity for the purpose of the CIRP. Hence, the Tribunal held that the assets and properties, including any claim, interest therein, of the parent company held through its wholly owned subsidiary will have to be said to be the property of the said subsidiary, for the purpose of the CIRP.

The Tribunal thus held that the bank guarantees issued by AEL in favor of BPCL could be invoked by BPCL and its proceeds used for CIRP. The Corporate Debtor had no worthwhile assets to its name to fall back on and since it is a wholly owned subsidiary, the parent company cannot escape its obligations of repaying the dues of the Corporate Debtor.<sup>1</sup>

**-Saumya Brajmohan, Senior Associate & Mallika Joshi, Associate**

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<sup>1</sup> Sanghvi Movers Ltd.& Ors. v M/s Albanna Engineering (India) Pvt. Ltd. [(MA/25/KOB/2020) in (IBA/38/KOB/2019)]