

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 2279 of 2024

[Arising out of the Order dated September 25, 2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Indore Bench) in TP 47 of 2019 [CP(IB) No. 187 of 2019]

IN THE MATTER OF:

Rahee Jhajharia E to E JV

Through its Authorised Representative
Mr. Sushil Aggarwal
Having registered office at:
Flat No. 1C, First Floor, 4 Ho Chi,
Minh Sarani, Kolkata – 700071

...Appellant

Versus

MB Power (Madhya Pradesh Ltd.)

Having Registered Office At:
Laharpur Jaithari Anuppur,
Madhya Pradesh – 484330

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Rakesh Kumar, Mr. Ankit Sharma and Ms. Preeti Kashyap, Advocates

For Respondent :

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

That the present Appeal is being preferred under Section 61 of the Insolvency & Bankruptcy Code, 2016 (for short the “Code”) against the impugned order dated 25.09.2024 passed by the National Company Law Tribunal, Indore Bench (for short “Adjudicating Authority”) in TP 47 of 2019 [CP(IB) No. 187 of 2019] filed under Section 9 of the Code. The petition was

dismissed primarily on the ground of no privity of contract between the Appellant and the Respondent-MB Power with respect to the operational debt.

Submissions of the Appellant:

2. As contended by the Appellant- RAHEE JHAJHARIA E TO E JV (Rahee in short), the matter pertains to a railway contract awarded by the Respondent, in relation to its project located in Jaithari, Anuppur District, Madhya Pradesh. The Appellant had filed a petition under Section 9 of the IBC, 2016 for the recovery of an operational debt amounting to Rs. 16,08,00,000 (Rupees Sixteen Crores Eight Lakhs). The Appellant contends that there was indeed a privity of contract between the Appellant and the Respondent, the petition was wrongly dismissed.

3. It is contended by the Appellant that the Respondent-MBPMPL had created SPV for the project in the name of Hindustan Thermal - EPC (HTEPCCPL)¹, which is another group company of the Moser Baer group. The Respondent and Hindustan Thermal - EPC are part of the same Moser Baer group.

The Appellant highlights several key events and documents to substantiate the claim of privity of contract between the Appellant and Respondent and that the Respondent was the ultimate beneficiary of the project. Some of these events and documents are as highlighted below:

Date	Events
04.02.2012	Tender process was initiated by the Respondent

¹ Names used interchangeably: Hindustan Thermal – EPC or HTEPCCPL or Hindustan Thermal

29.05.2012	Bid document issued by the Respondent vide bid document no MBPMPL/Railway siding/ANP/2012/1001(Pg 405-406 of the present Appeal)
21.04.2012	<u>Letter of intent</u> issue by MBPMPL (Pg 1740-1745 of the present Appeal)
09.05.2012	Kick of meeting held between Appellant and the Respondent (Pg 1746-1748 of the present Appeal)
29.06.2012	The Respondent issued <u>letter of acceptance</u> in favour of the Appellant for the aforesaid tender. (Pg 1755-1765 of the present Appeal)
	Work order email by the Respondent to the Appellant (Pg 1768 of the present Appeal)
17.01.2015	Possession of exit line was given by the Respondent to the Appellant
29.03.2013	Amendment of Bank Guarantee of the Appellant by the Respondent via email (Pg 1770 of the present Appeal)
29.06.2012	Purchase order raised by MBCPL with mention of Respondents references (Pg 1451-1460 of the present Appeal)
03.04.2013 and 02.01.2014	Letter of credit of Rs 14.96 Lakhs issued by the Respondent in favour of Appellant (Pg 1772 &1777 of the present Appeal)
28.07.2014 & 09.09.2014	Inspection certificate issued by RDSO & RITES to and in the name of the Respondent (Pg 1795-1797 of the present Appeal)
24.07.2014	Email sent by Bhaskar Shukla, GM of Respondent to the Appellant for confirming of release of Rs 2.26 Crores payment (Pg 1538 of the present Appeal)
02.08.2014	Materials purchased for the project by the Respondent, like invoice dated 02.08.2014 (Pg 1803 of the present Appeal)
01.07.2015	Respondent sent an email to the Appellant for expediting the work (Pg 1602-1608 of the present Appeal)
25.05.2018	Email by the Respondent to the Appellant for providing payment reconciliation for making payment (Pg No. 1805 of the present Appeal)

29.12.2017	Completion certificate issued by the Respondent that the Appellant has completed the project under the supervision, control instructions and without any dues of the Respondent with signatures of all authorised signatories such as PE, CCM & Plant Head of MBPMPL. (Pg. No. 1804, 1806-1809 of the present Appeal)
23.10.2018	Reminder sent by the Appellant to the Respondent for clearing of the outstanding invoices, following various more reminders. That the Respondent on 23.10.2018 replied to the said reminder sent by the Appellant and raised frivolous objections (Pg 863-885 of the present Appeal)

4. Basis above events and the documents, which were executed by the Respondent-Corporate Debtor-MB Power, it indicates that the Respondent was the beneficiary of the project. It not only actively participated in the execution of the contract and also issued various letters/communications. The AA has failed to take note of these events with respect to the Respondents' complicity in the work contract. The privity of contract thus exists between the Appellant-OC-Rahee and the Respondent.

5. The Appellant contends that the letter of intent issued on 21st April 2012, stated that the contract would be executed through its subsidiary/sister company. The said letter is at Page No. 1743 of the APB. The relevant portion states that: *"The detailed order covering all the terms & conditions shall be issued to you shortly. The Order may be issued from any of our subsidiary/sister company."*

6. Furthermore, the Letter of Award issued by Hindustan Thermal on 29.06.2012 acknowledges the ongoing relationship between the Appellant and the Respondent, thereby reinforcing the existence of a contract between the parties and referring the previous communication that has taken place

between the Appellant and the Respondent. The same is being reproduced herein below: (Pg 1451-1460 of the present APB)

“This is with reference to our above Enquiry, your techno-commercial offer and subsequent discussions we had with you. We, Moser Baer Constructions Private limited, MBCPL (hereinafter referred as “EPC Contractor”) are pleased to place Letter of Award (“LOA”) on M/s Rahee-Jhajharia-EtoE JV (hereinafter referred as “Contractor”), a Consortium between M/s Rahee Infratech Limited, M/s Jhajharia Nirman Private Limited and M/s E to E Transportation Infrastructure Private Limited with M/s Rahee Infratech Limited as Lead Member as per the following terms and conditions.”

7. Additionally, the Balance sheets for the financial years 2014-15 and 2015-16 of the Respondent reflect the financial involvement in the project, further confirming its ownership and participation. These financial details are summarized as follows:

Area of Investment	2014-15 (Amount in Crores)	2015-16 (Amount in Crores)
Capital Work in Progress	98.63	27.49
Work in Progress	41.52	3.32
Rent	0.19	-
Expenses	0.51	-

8. The Appellant had also referred to definitions of IBC, 2016 for the operational debt that clarifies that it is regarding the supply of the goods and services from the operational creditor. In the present case, the services were availed by the Respondent from the Appellant. This statutory reference cannot be overlooked, while looking into the privity of contract relationship between the parties.

9. The Appellant claims that there was a clear privity of contract between the Appellant and Respondent, and also relies on the following Section 3 (6)²

of the IBC Code. The Appellant had further submitted that even otherwise there is no requirement to have a formal contract in case of operational debt as mentioned in Section 5(21)² of the Code. Even though it may be required in a case of financial contract in a petition under Section 7 of the IBC, 2016, but such is not the case in case of operational debt. The Respondent-Corporate Debtor-MB Power is covered as per the definition of the Corporate Debtor in terms of Section 3(8)³ of the Code which means a corporate person who owes or debt to any person. Further, in terms of Section 3(6)⁴ of the IBC, 2016, the petition can also be filed in case of breach of a contract.

10. The Appellant submits that the AA's finding that by merely issuance of invoices by the Respondent for payments via Hindustan Thermal - EPC absolves the Respondent of liability was incorrect. The Respondent, being a part of the same corporate group, remains responsible for the debt incurred under the contract, regardless of the involvement of a subsidiary. The Appellant had also demonstrated that it is the Respondent, who had funded entire project and is ultimately the beneficiary of the assets. It was the Appellant, who was acting as per the instructions of the Respondent.

² **Section 5(21): operational debt** means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

³ **Section 3(8): "corporate debtor"** means a corporate person who owes a debt to any person;

⁴ **Section 3(6): "claim" means--**

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

11. It is contended that the Respondent has availed services from the Appellant and is, therefore, liable to pay the outstanding operational debt. The Respondent has invested funds in the project which is evident from the balance sheets of the Respondent for the year ending 31.03.2015 and March 2016. The same is reproduced herein below:

Area of Investment	2014-15 Amount invested (in crores)	2015-16 Amount invested (in crores)
Capital Work in Progress	98.63	27.49
Work in Progress	41.52	3.32
Rent	0.19	-
Expenses	0.51	-

12. The Respondent-Corporate Debtor-MB Power has admitted that it is the owner of the project. In the reply filed by the Respondent, it indicates itself as the owner of the project which is reproduced herein below: -

"It is submitted that the employees of the Corporate Debtor who was principal employer were also monitoring the project progress and some correspondences were done with the Applicant by the Corporate Debtor's employees. **That the Corporate Debtor is the owner hence all these assets are part of its books.**"

Not even that, the balance sheet of the Respondent-Corporate Debtor-MB Power Respondent-Corporate Debtor-MB Power was also reflecting the reference of the work contract being awarded to the Appellant. All such events have been completely overlooked by the Adjudicating Authority, while deciding on the issue of the privity of contract.

13. The Appellant-OC-Rahee claims that the Respondent-Corporate Debtor-MB Power was acting as a guarantor for releasing of the payment of Hindustan Thermal in terms of the work completion certificate issued with its

co-signature indicating the outstanding amount. Therefore, it cannot be said that there was no privity of contract between the Appellant and the Respondent.

14. The AA has failed to consider the judgment of Hon'ble Supreme Court of India in ***Arcelormittal India Private Limited vs. Satish Kumar Gupta & Ors. reported in (2019) 2 SCC 1*** in which the principles had been laid down that the corporate veil can be lifted in the cases related to the Code. The Appellant, submits that it's the Respondent who owes an amount of Rs.16.08 Cr. to the Appellant. If the Corporate Veil of Hindustan Thermal - EPC is pierced, it will be found that the Respondent is the ultimate beneficiary.

15. The Code is evolving on day to day basis. The AA cannot shut its eyes in such cases where the beneficiary of the project is evading the liabilities on technical grounds and whereas the beneficiary of the contract can definitely be liable for the payments to the creditor. Merely on technical issue, the beneficiary cannot be allowed to evade from its financial responsibility/obligation.

16. During the proceedings before the AA, the Appellant elucidated the structural dynamics of the Moser Bear Construction (P) Ltd. group. This structure, comprising of subsidiary companies, has been used by the Respondent group to obfuscate and evade their legitimate debts in default.

17. In the facts of the circumstances, the appellant prays to set aside the impugned order dated 29.05.2024.

Submissions of the Respondent:

18. Basis the materials placed in the APB, we note the submissions of the Respondent as before the AA in the proceedings are noted herein.

19. The Purchase Order with Reference No. MBCPL/MP/LOA/RS/12-13/10006 and also the work order MBCPL/MP/WO/RS/12-13/10006 was issued to the Appellant by Hindustan Thermal - EPC for supply, erection, testing and commissioning of equipments/ material/ accessories for complete/ Composite Railway Siding from Jaithari Railway Station of Bilaspur Division to Anuppur Project Site including Road Bed, Major and Minor Bridges, Buildings works, Tracks/Rails supply, Signaling and Telecom and Overhead Electrification and associated equipment for the safe completion of the project for 2 x 600 MW Anuppur Thermal Power Plant at Anuppur District, Madhya Pradesh. All the invoices were issued by the Appellant to Hindustan Thermal only. The CD and Hindustan Thermal Respondent No.2 are separate legal entities. The CD has neither issued any purchase order / work order to the Appellant. Even the Appellant has never raised any invoice upon the CD for the alleged payments of its outstanding dues. Therefore, filing of the present application under Section 9 of the IBC against the CD is nothing but a sham exercise of the Appellant to illegally and which itself and cost of the CD.

20. The letters dated 09.10.2018 and 23.10.2018 written by Hindustan Thermal - EPC show that there is an existence of dispute between the Appellant and the Hindustan Thermal. The Appellant had initially issued a

notice under Section 8 to Hindustan Thermal - EPC and thereafter issued an under Section 8 of the Code to the CD and thereafter filed the application under Section 9 of the IBC. From the records, it is seen that Hindustan Thermal - EPC vide their letter dated 09.10.2018 and 23.10.2018 denied the allegations levelled against Hindustan Thermal - EPC and on the contrary claimed that the appellant is liable to pay an amount of Rs. 20.10 crores (approx.) to Hindustan Thermal - EPC towards compensation in terms of purchase and work orders executed between them. Thus, there exists a dispute between the appellant and Hindustan Thermal - EPC. Section 8 and thereafter Section 9 filed by the Appellant against the CD is nothing but an afterthought. This was done upon realising that the Appellant cannot initiate Section 9 proceedings against Hindustan Thermal - EPC.

21. Respondent has been wrongly described as the CD by the Appellant and the appellant has also wrongly described itself as the Operational Creditor of the answering respondent. There exists no such relationship of the Debtor- creditor between the Appellant and the Corporate Debtor.

22. The Appellant has placed on record forged and fabricated ledger account as regards the Corporate Debtor. Same invoice number as well as cheque number for identical amount cannot be for two separate companies i.e. Corporate Debtor and Hindustan Thermal - EPC. Neither any invoices were raised in the name of the CD nor any payment has been made by the CD against any of the invoices as stated in the ledger account annexed as Annexure A-2 deals with the company name "Moser Baer power (MP) Limited"

(Moser Baer). As per records of the Registrar of Companies, there is no such company existing by the said name and the CD is a distinct entity as compared to the said name.

23. The Appellant does not fall in the category of OC of the CD as per the definition provided under Section 5(20) r/w 3(23) of the Code. The Appellant is a Special Purpose Vehicle (SPV) and SPV is an association of the person and does not fall within the definition of the OC as provided in the code. Therefore, the application was legally itself untenable.

24. Appellant is not an operational creditor of the CD in terms of Section 5(20) r/w Section 5(21) of the Code also.

25. Default in the payment of the outstanding dues by the CD is a sine qua non for initiating any proceeding under Section 9 of the IBC. The default can only take place when invoices raised by the OC to the CD is not paid. Since no invoices were raised by the Appellant upon the CD. The present application under Section 9 is illegal.

26. A demand notice can be submitted either in Form No. 3 or in Form No.4 as per the Rule 5(1) of the Insolvency and Bankruptcy Application to Adjudicating Rules, 2016. However, both the forms cannot be issued simultaneously. In this case, both forms have been issued, therefore, the petition itself needs to be dismissed on this ground.

Appraisal

27. Heard the counsel of the Appellant and have also gone through the material on record.

28. Brief issue before us is whether the dismissal of Section 9 Petition under the Code by the Adjudicating Authority on the ground of non-existence of privity of contract between the Appellant and the Respondent is correct or not.

29. The claim of the Appellant-OC-Rahee is that the Corporate Debtor-MB Power is liable to pay the outstanding amount to the Operational Creditor for the following reasons:

- a) Letter of Creditor/ Letter of intent-/ letter of acceptance/ Bid document and work order received from Hindustan Thermal - EPC at the behest of the Corporate Debtor.
- b) Bank Guarantee was issued by the Appellant-OC-Rahee in the name of the Corporate Debtor-MB Power.
- c) Third party supervision and quality control for the assigned task was done by the either the Indian Railway or RITES organisation, who further addressed the work status to the Corporate Debtor-MB Power.
- d) Several invoices were raised to the Hindustan Thermal - EPC at the behest of the Corporate Debtor-MB Power.
- e) Several emails exchanged between the Appellant-OC-Rahee and the Corporate Debtor-MB Power for the assigned work.
- f) Various letters sent by Hindustan Thermal - EPC at the behest of the Corporate Debtor-MB Power for the assigned work.

30. The Appellant had attempted to persuade us that it is the Respondent-MB Power, who had invited bids, issued LOI, issued bank guarantee, issued LC for material, held meetings with the Appellant during entire execution of project, issued completion certificate, asked for reconciliation of payment, arranged material for projects and funded entire project and was ultimately beneficiary of the assets and it was the Appellant, who was acting as per the instruction of the Respondent-MB Power.

31. Per contra the Respondent-MB Power in the proceedings before the NCLT had filed a Reply in which the following grounds were taken to controvert the Section 9 Petition were taken:

- a) There was no Privity of Contract between the Appellant and the Respondent.
- b) The Appellant has referred to a false and fabricated ledger.
- c) The Appellant has no locus to file the Petition against the Respondent.
- d) The Appellant is not eligible to file Petition under Section 9 of the Code.

32. From the materials on record, we delve deeply in the case and find that initially the Appellant had sent Form 3 Demand Notice⁵ to the Hindustan Thermal - EPC on 05.11.2018 for 92 invoices. Vehemently denying, Hindustan Thermal - EPC sent a Reply to the Demand Notice to the Appellant on 14.11.2018 and also raised counter claim and dispute. Basis this Reply the Appellant withdrew the Demand Notice on 05.12.2018 and called it a “Redundant Notice”.

⁵ Under section 8(2) of the Code

33. We also note that the invoices are not addressed to the CD-Respondent-MB Power, and are raised upon a company namely Moser Baer Construction Pvt. Ltd. (now renamed as Hindustan T-EPC), which is a different legal entity than the Respondent. A Demand Notice under Section 8 of IBC upon a Corporate Debtor basis the dues of a sister-concern/ group company cannot be held to be valid and an application basis such Demand Notice therefore cannot be accepted.

34. Separately, around the same time on 04.12.2018 the Appellant issued a fresh Demand Notice to the Respondent-MB Power for the same 92 invoices, which was refuted by the Respondent on 20.12.2018. The relevant paras of the Reply dated 20.12.2018 are extracted below:

“... ”

2. It is most respectfully submitted that from the perusal of the documents submitted by you, it is amply clear that a Purchase Order bearing Reference No. MBCPL/MP/LoA/RS/12-13/10006 (hereinafter referred to as the "Purchase Order") was issued to you by a Company by the name of Moser Baer Construction Private Limited (name changed to Hindustan Thermal- EPC Company. Private Limited (hereinafter referred to as the "HT EPCCPL")) for supply for equipment/material/accessories for complete Composite Railway Siding from Jaithari Railway Station of Bilaspur Division to Anuppur Project Site including Road Bed, Major and Minor Bridges, Buildings works, Tracks/Rails Supply, Signaling, & Telecom and Overhead Electrification and associated equipment for the safe completion of the Project for 2 x 600 MW Anuppur Thermal Power Plant at Anuppur District, Madhya Pradesh.

3. It is further relevant to mention herein that all the alleged invoices which are claimed to be due and payable in the notice under reply were also raised by you to HT EPCCPL. It is most respectfully submitted that our Client and HT EPCCPL are two separate legal entities. The alleged liabilities, if any, of HT EPCCPL can't be saddled on Our Client in absence of any specific undertaking by Our Client. It is stated that in the instant case neither any goods nor services being supplied to Our Client nor any invoices raised to our Client. Further even the ledger as appended with the Notice under reply also reflects payment by HT EPCCPL.

Thus no case can be made out against Our Client in absence of any debtor-creditor relationship between the parties herein.

4. It is most respectfully submitted that there is no privity of contract between our Client and your Client. It is submitted that our Client has neither issued any purchase order to your Client nor has your Client ever raised any invoice upon our Client for the alleged payment of its outstanding dues. Therefore, issuance of the Demand Notice under reply to our Client is nothing but a sham exercise of your Client to illegally enrich itself at the hands of our Client. It is submitted that not just your Client is trying to abuse the process of law but has also not informed you the above facts and has got the instant Notice under reply issued by you by distorting the original facts which is in grave violation of law.”

.....

7. It is also submitted without prejudice that to the limited knowledge of our client there is in fact “existence of dispute” between your Client and/HTEPCCPL and it is only because there is an existence of dispute between your Client and HT EPCCPL that you have manifestly issued the captioned notice to our Client just to illegally enrich itself by distorting true facts. Hence, issuance of the present notice is nothing but an afterthought with a view to illegally enrich your Client at the cost of our Client.”

(emphasis supplied)

35. Initially a Section 8 Notice was issued to the Hindustan Thermal - EPC, which was later on withdrawn and fresh Section 8 and 9 Notices were issued against the Respondent. We fail to understand that, on one hand the Appellant had raised invoices against Hindustan Thermal - EPC and then later on for unknown reasons it started proceedings under Section 8 against Respondent-MB Power for the same set of invoices. We are inclined to agree with Respondent that it is an afterthought. It is also seen that Hindustan Thermal - EPC vide their letter dated 09.10.2018 and 23.10.2018 had denied the allegations levelled against Hindustan Thermal - EPC and on the contrary claimed that the Appellant is liable to pay an amount of Rs. 20.10 crores (approx.) to Hindustan Thermal - EPC towards compensation in terms of purchase and work orders executed between them.

36. From the materials on record, we note that there is no privity of contract or any sort of Debtor-Creditor relationship between the Applicant and CD and also the quality issues and delay in completion of work as regards works executed by the Applicant was duly notified by Hindustan T-EPC to the Applicant in their letter dated 09.10.2018 and 23.10.2018, some of which are noted as below:

- Counter claim of Rs.1,44,78,749/- was made by Hindustan T-EPC on account of price variation.
- Debit note of Rs.5.95 Crores vide letter dated 03.07.2015.
- Demand of Rs.20,10,66,736/- was made by Hindustan T-EPC from the Applicant on 09.10.2018 itself.
- Letter dated 12.02.2014 issued by Hindustan T-EPC whereby the Applicant was notified that it had failed to its commitments in relation to the project.
- Letter dated 04.02.2016 issued by Hindustan T-EPC notifying the Applicant of delay in the project despite repeated assurances from the Applicant.

37. Thus, we find that there was a pre-existing dispute between the Appellant and Hindustan Thermal. Even though there is an issue of pre-existing dispute also, but the AA dismissed the Petition basis mainly on the maintainability of the petition. It will be worthwhile to note the relevant paras 13 to 15 which are as below:

“.....

13. Considering the above, the issue here is whether the application filed under section 9 of the Code against the respondent is maintainable or not. We find that the invoices were raised by the applicant in the name of group concern of the respondent i.e. Hindustan Thermal for an amount of Rs. 105,62,05,167/ out of which Hindustan Thermal made the majority payment leaving the outstanding amount to Rs. 16,08,00,632/-. Here, since the invoices were raised by the applicant against Hindustan Thermal, the payment (major) were received by the applicant from Hindustan Thermal and even the

Work Order was received by the applicant from Hindustan Thermal, then we fail to understand as to for what reason the applicant has filed the present application against the respondent instead of filing the same against Hindustan Thermal even after sending the demand notice under section 8 of the Code. Merely because the respondent tried to reconcile or settle between the applicant & Hindustan Thermal or merely because the work completion was signed by the respondent being the owner of the project does not entitle the respondent to be liable for the outstanding amount. There is no privity of contract between the applicant and the respondent.

14. Be that as it may, without going into any other details as to whether there is pre-existing dispute between the applicant and Hindustan Thermal; or, whether or not there was any delay in completion of the work by the applicant, we are of the considered view that the present application against the respondent is not maintainable and is liable to be rejected.

15. In view of the above, we pass the following order:

ORDER

The application TP 47 of 2019 [CP(IB) 187 of 2019] filed under Section 9 of the Code stand rejected and disposed of.”

(emphasis supplied)

38. We find that the Adjudicating has rightly concluded that since the invoices were raised by the Appellant against Hindustan Thermal - EPC, the majority payment was received by the Appellant from Hindustan Thermal - EPC and even the work order was received by the Appellant from Hindustan Thermal - EPC and the reasons for Appellant to file the Application against the Respondent were not understood. AA has also noted that merely because the Respondent tried to reconcile or settle between the Hindustan Thermal - EPC or merely because the work completion was signed by the Respondent, being the owner of the project does not entitle the respondent to be liable for the outstanding amount. Therefore, it did not find any privity of contract between the Appellant and the Respondent. We do not find any infirmity in the findings and the conclusions of the Adjudicating Authority.

39. The Appellant claims that Respondent is the ultimate beneficiary and therefore corporate veil of Hindustan Thermal - EPC needs to be lifted. In its support the Appellant has cited the judgment of ***Arcelor mittal India Private Limited (supra)***. We are not persuaded to agree with the arguments of the Appellant when we find pre-existing dispute as noted earlier. Presuming a hypothetical scenario that there was a privity of contract between the Appellant and the Respondent, we proceed to determine the prayer of the Appellant for Section 9 Petition. We find that the same set of invoices were used against Hindustan Thermal - EPC in the initial Demand Notice and later on they were used for issuing a Demand Notice and Petition against the Respondent-MB Power. The Appellant claims that the Respondent, being a part of the same corporate group, remains responsible for the debt incurred under the contract, regardless of the involvement of a subsidiary. Hindustan Thermal - EPC had raised counter claims and the dispute. We note that if a dispute and counter claim was raised by Hindustan Thermal - EPC, it will continue to remain a dispute for the same reasons as noted above for the Respondent-MB Power also as the ground situation remains the same. Therefore, even after presuming that there was privity of contract between the two parties, The Appellant will not get any support in the case. And the Petition, even if it was maintainable due to privity of contract, will have to be rejected basis pre-existing dispute.

40. In the facts and circumstances of the case, we find that the Application filed under Section 9 of the Code is not maintainable for there being no Debtor-Creditor relationship between the Appellant and the CD, the facts and

circumstances of the present case clearly establish that no invoices were raised by the Applicant to the CD, also no payments have been made by the CD to Applicant and as such there exists no privity of contract between the parties.

Orders:

41. As noted above, in the facts and circumstances of the case the Appeal is therefore, dismissed. The Appellant is at liberty to pursue remedies as available to him under applicable laws. No orders as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
March 26, 2025.**

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