

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-II**

IA. No. 1448/2022

In

CP(IB)No. 1832/MB/C-II/2017

**Application filed under section 33(5), r/w Section
35(1)(k) of the Insolvency & Bankruptcy
Code,2016 read with Rule 11 of National
Company Law Tribunal Rules, 2016 (Rules).**

Filed by

Mr. Abhijit Guhathakurta,

Liquidator of EPC Construction (India) Ltd.

...Applicant

In the matter of

IDBI Bank Ltd.

...Financial Creditor

Versus

EPC Constructions (India) Ltd.

...Corporate Debtor

Order Pronounced on: - 13.10.2023

Coram:

Anil Raj Chellan

Member (Technical)

Kuldip Kumar Kareer

Member (Judicial)

Appearances -

For the Applicant

: Adv. Shriraj Khambete

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. The present Interlocutory application is filed by the Applicant (Liquidator of the Corporate Debtor) under Section 33(5) and 60(5) of the Insolvency and Bankruptcy Code, 2016 (Code) r/w Rule 11 of the NCLT Rules, 2016 seeking approval of this Tribunal to invoke arbitration and institute related, ancillary/contingent proceedings on behalf of the Corporate Debtor against Matix Fertilizers and Chemicals Limited (hereinafter referred to as Matix) for recovery of the outstanding amount of approximately Rs. 322.71 Crores in lieu of work and supplies provided under the three distinct contracts for setting up fertilizer complex for production of ammonia and urea at Panagarh Industrial Park, Burdwan.
2. The Corporate Debtor and Matix entered into an exhaustive contract arrangement for three distinct work being the EPC contract dated 29.07.2010, Onshore Contract dated 29.07.2010 and Offshore Contract dated 20.08.2010. The said contracts also provided the mechanism in the event of dispute arising between the parties to be settled through Arbitration.
3. In view of the contractual arrangements, the work commenced on 11.12.2009 and was substantially completed on 31.03.2014 as the work was halted due to instructions given by Matix due to shortage of raw materials. However, the Corporate Debtor was not paid in full for the

work done and supplied activities and accordingly, a dispute in relation to the dues arose between the parties.

4. Pursuant thereto, an amount of Rs. 632.71 Crores is outstanding and payable under the contracts by Matix towards the Corporate Debtor. The Applicant had filed a similar application before this Tribunal seeking permission to initiate proceedings against Matix to recover the amount of Rs. 310 Crores and the said permission was granted by this Tribunal vide its Order dated 03.03.2022. Hence, for the remaining disputed amount of Rs. 322 Crores, the liquidator seeks approval from the Tribunal for recovery through arbitral proceedings.
5. The Applicant had made several attempts thereby calling upon Matix to pay the outstanding dues. The Applicant sent first demand notice dated 27.10.2018 but Matix failed to pay the outstanding dues. On the contrary, Matix has filed its claim against the Corporate Debtor under the contract. Hence Matix and the Corporate Debtor have disputes relating to the pending amount under the set of contracts.
6. Since the Corporate Debtor is undergoing liquidation process, the recovery of the said outstanding amount is essential for the effective liquidation of the Corporate Debtor.
7. The Applicant submits that the recovery of the said amount is an asset of the Corporate Debtor as it forms part of the liquidation estate as defined under Section 36 of the Code and hence cannot be left outside the liquidation estate.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT II

I.A. NO. 1448/MB/C-II/2022

In

C.P. (IB) No. 1832/MB/C-II/2017

8. In view of the foregoing facts and circumstances, and on perusal of the averments made in the Application, this Bench hereby permits the Applicant/liquidator to initiate Arbitral proceedings and related or ancillary or contingent proceedings against Matix Fertilizers and Chemicals Limited in respect of the EPC contract dated 29.07.2010, Onshore Contract dated 29.07.2010 and Offshore Contract dated 20.08.2010 for the recovery of the outstanding dues.

9. In view of the aforesaid observations, **IA 1448 of 2022 is allowed and disposed of.**

Sd/-

**ANIL RAJ CHELLAN
MEMBER TECHNICAL**

Sd/-

**KULDIP KUMAR KAREER
MEMBER JUDICIAL**