

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

**I.A.No.239 of 2022 in
C.P.(IB)No.154/BB/2017
Under Sections 42 and 60 (5) of IBC, 2016
R/w. Rule 11 of the NCLT Rules, 2016**

In the matter of:

M/s. Teestvalley Power Transmission Ltd - Petitioner

Versus

Mr. Ravindra Beleyur - Respondent
Liquidator of M/s. Deepak Cables (India) Limited,
R/o. at 48/3, 2nd Floor, 1st Main, 2nd Cross
Royan Circle, Chamrajapet,
Bengaluru - 560018

Order delivered on: 25.05.2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant in
I.A.No.239/2022 : Shri Ankur Gupta

For the Liquidator : Shri Ullasa B.C, PCS with
Shri Ravindra Beleyur, Liquidator

Per: T.Krishnavalli, Member (Judicial)

O R D E R

1. This Application has been filed by M/s Teestavalley Power Transmission Ltd. (TPTL) (Applicant), U/ss. 42 & 60(5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 against Mr. Ravindra Beleyur, Liquidator of Corporate Debtor (Respondent), seeking to set aside the impugned letter/order dated 29.01.2022 passed by the Liquidator; and, direct the claims raised by the Applicant against the corporate debtor shall be subject to outcome of pending arbitral proceedings between the Applicant and DCIL-AIPL JV.

2. Teestavalley Power Transmission Ltd. (TPTL) (hereinafter referred to as Applicant), is a joint venture between M/s Teesta Urja Limited (TUL) ("Government of Sikkim Enterprise") and Power Grid Corporation of India Limited ("PGCIL"). The Applicant is a Transmission Licensee, under relevant provisions of the Electricity Act, 2003, has been granted License by the Central Electricity Regulatory Commission, New Delhi for construction and erection of necessary infrastructure for transmission of power and to act and perform functions of a transmission utility.
3. The facts stated in the instant Application, as under:
 - i. Initially, this Adjudicating Authority has admitted C.P.(IB)No. 154/BB/2017 vide Order dated 23.08.2018, by initiating CIRP in respect of the Corporate Debtor, imposing moratorium etc. Thereafter, the Corporate Debtor was ordered to be liquidated by this Adjudicating Authority vide its Order dated 04.07.2019 and Shri Ravindra Beleyur was appointed as the Liquidator.
 - ii. It is submitted that the applicant has implemented the 215 Km 400 kV D/C transmission line from Teesta – III, Sikkim to District Kishanganj, Bihar (Project) as a part of the Master Plan for evacuation of power of the Hydro Electric Project in State of Sikkim. That the contracts for construction of the projects were awarded to consortium of M/s Deepak Cable (India) Limited (DCIL) and M/s Abir Infrastructure Private Limited (AIPL), in two separate packages namely, Tower Package A-1 and A-2 vide Notification of Award dated 18.11.2009. The contract clearly provided that the liability to complete the works under the subject contract shall be joint and several of both DCIL and AIPL.
 - iii. It is further submitted that the projects were awarded into two packages for two geographical terrain, one for hilly terrain and the other for plain terrain. The consideration payable by the applicant in respect of supply and services agreement of A1/01 and A1/02 was Rs. 108,39,99,596/- and Rs. 117,41,06,487/- respectively. The consideration for supply and services agreement for package 2 i.e. A2/01 and A2/02 was Rs. 54,97,41,986/- and Rs. 36,72,49,533/- respectively. Thus, the total value of the subject contracts was Rs. 317,50,97,602/-.

- iv. Further, by way of amendment dated 10.05.2010, the consideration for supplementary agreement to services agreement under package A1, i.e., A1/02, is Rs. 10,99,42,040/- and the consideration for supplementary agreement to services agreement under package A2, i.e., A2/02 is Rs.5,80,59,860/-. Thus, the total value of subject contracts was Rs. 334,30,99,502/-. That considering the progress of works of consortium, it was found that there was remote possibility of completion of transmission line by the consortium in commensurate with the commissioning of Teesta – III Hydro Electric Project, and accordingly a default notice dated 09.05.2014 was served upon the consortium.
- v. It is stated that the consortium had failed to take remedial measures for completing the projects therefore, through the letter of termination dated 30.05.2014, the contract was terminated. Thereafter, contracts for the project were awarded to new contractors at the risk & cost of DCIL-AIPL JV. That the issue of termination of contract was dealt with by the Hon'ble High Court of New Delhi vide judgment dated 03.09.2014 in OMP No. 557 of 2014 & I.A No. 10888 of 2014 and Judgment dated 15.09.2014 passed in Appeal No. FAO (OS) No. 397 of 2014 and No.398 of 2014.
- vi. On 03.06.2014, DCIL-AIPL JV invoked dispute resolution clause and appointed its nominee arbitrator by claiming an amount of Rs. 83 Cr. The Applicant vide its letters dated 31.07.2019 & 16.08.2019 requested DCIL-AIPL JV to inform their nominee Arbitrators for Appoint of Presiding Arbitrator of the Arbitral Tribunal and commencement of proceedings.
- vii. It is submitted that the balance work of project was completed at the further cost of Rs. 470.33 Crs. The entire project was commissioned in February 2109 by new contractors. After completion of pending and reconciliation works, the project was taken over from the new contractors and Taking Over Certificate (TOC) was issued to new contractors in July, 2019 and the performance of the project constructed by new contractors was observed during the Defect Liability period for six months, i.e. upto January 2020. After completion and satisfactory performance of the project, excess expenditure incurred by TPTL was computed as 470.33 Cr. towards risk and cost of ABIR.

- viii. It is submitted that on 04.10.2019, the respondent issued an e-mail informing that the corporate debtor has gone into liquidation on 04.07.2019. On 14.02.2020, Applicant submitted its claims before the liquidator for the sum of Rs. 470.33 Cr against the corporate debtor. The Liquidator, rejected the claim on 17.02.2020 on the ground of delayed submission (i.e. after the prescribed period of 30 days from publication in Newspaper). Thereafter, the applicant filed I.A No. 210 of 2021 in CP (IB) 154/2017 seeking to condone the delay before this Tribunal. On 06.01.2022, this Tribunal condoned the delay in submission of claim before the liquidator. It is stated that the Applicant once again submitted the claim before the liquidator on 17.01.2022 and on 29.01.2022, the same was rejected against the corporate debtor since the claim was not yet crystallised and documents, as provided by the claimant do not adequately establish that amount payable is an undisputed claim payable by the corporate debtor.
- ix. It is submitted that vide letter dated 23.02.2022, the applicant gave a detailed explanation and clarification for considering the claims raised against the corporate debtor under the head, “**Contingent Liability**” and requested to reconsider the claim. However, the liquidator gave no response to the request made by the Applicant. Hence, aggrieved by the respondent decision the applicant approaches this tribunal.
- x. The Applicant stated that the order passed by the respondent is liable to be set aside as the same is in contradiction of the order passed by the Hon’ble NCLAT in Company Appeal (AT) (INS.) No. 28 of 2022, dated 18.01.2022 where it was clarified that, if arbitral proceeding results in any award in favour of TPTL then it would be open for TPTL to avail such remedies as available in law, for execution of such award.
4. The learned Counsel for the Respondent, has filed statement of objections dated 31.10.2022 and learned Counsel for the petitioner filed rejoinder dated 14.12.2022 is taken on record. Further, on 02.02.2023, this Tribunal directed the learned counsels to file brief synopsis along with the citations. In compliance to the order, the learned counsel for the Petitioner filed written submissions were filed vide D.No.772 dated 09.02.2023, it is stated that there was similar circumstances Hon’ble NCLAT at New Delhi in vide order dated 18.01.2022 in Company Appeal (AT) (INS.) No. 28 of 2022,

while adjudicating an Appeal filed by the Applicant challenging rejections of its claim against JV of the corporate debtor.

5. Further, the learned counsel for the respondent filed written submissions were filed vide D.No.956 dated 20.02.2023, it is explained that the respondent liquidator has sent a detailed letter intimating the reasons for rejection of the claim vide letter dated 29.01.2022. quoting from this letter, it is stated that the amount is shown as contingent assets in the notes to accounts whereas in the financial statements of TPTL for the year 2019-20 and 2020-21 it is mentioned as 'contingent liabilities', thus TPTL itself classified it under Contingent Liability because of the pending dispute resolution. Further, the claim of TPTL against DCIL has not yet crystallized, and the amount payable is not an undisputed claim payable by DCIL and placed the reliance on the NCLAT order dated 18.01.2022. In fact, the Arbitration process between JV partners had commenced in the year 2015, but the Arbitration proceeding is in the stage of the re-appointment of an Arbitrator. In view of there being no certainty as to the period of the conclusion of the arbitration process, it is not possible for the Liquidator to keep the claims alive for an uncertain period; since liquidation process under IBC was a time bound process.
6. Heard learned Sr. Counsel for the Applicant and for the Liquidator. We have carefully perused the pleadings on record by the respective parties.
7. In view of facts and circumstances and in light of the Hon'ble NCLAT judgment laid down in "Company Appeal (AT) (INS.) No. 28 of 2022" (Supra) held that the claim of the applicant is pending before the Arbitral Tribunal and it shall be open to Appellant to take such remedy as permissible under the law and impugned order shall not be come in his way in execution of Arbitral Award. Accordingly, this Tribunal is of the considered opinion that the liquidator had correctly rejected the Applicant's claim in view of the reasons given in the letter dated 29.01.2022; and the fact that liquidation was a time bound process. Therefore, the I.A No. 239/2022 is hereby dismissed. However, this order shall not preclude the applicant from pursuing other remedies in accordance with law, if so advised.

-Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd/-

**T. KRISHNAVALLI
MEMBER (JUDICIAL)**