

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

**IA 332 of 2019 in/with
C.P.(I.B) No. 172/NCLT/AHM/2018**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.12.2020**

Name of the Company: Amplex Project Pvt Ltd
V/s
Parthiv Parikh RP For Jaihind Projects Ltd

Section 20 r.w 60(5) of the Insolvency and
Bankruptcy Code, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER
(Through Video Conferencing)

The order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 8th day of December, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 332 of 2019 in
C.P.(IB) No. 172/NCLT/AHM/2018

In the matter of:

Amplex Project Pvt. Ltd.
Through its Director:
Mr. Sanjit Kumar Saha,
Having its registered office at:
Chlorophyll Gargen,
22 G.C. Ghosh Road, Dumdum,
Nr. Patipukur Rail Bridge,
Kolkata, West Bengal-700048.

Applicant

Versus

Mr. Parthiv Parikh,
Resolution Professional of Jaihind Projects Ltd. (in CIRP),
Having its Registered Office at:
3rd Floor, Venus Atlantis,
Nr. Reliance Petrol Pump,
Nr. Prahladnagar Garden,
Anandnagar Road, Vejalpur,
Ahmedabad, Gujarat-380015.

Respondents

Order delivered on 08th December, 2020

Appearance:

Advocate, Ms. Natasha Dhruman Shah appeared on behalf of the Applicant.
Advocate, Mr. Akshat Khare appeared on behalf of the IDBI. Advocate, Mr.
Arjun R Sheth with Advocate, Ms. Krina Parekh with Mr. Dheeraj Garg
appeared on behalf of the RP.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Order

[Per: Ms. Manorama Kumari, Member (Judicial)]

- 1) The instant application is filed by the Applicant under section 60(5) of the
IB Code with the following prayers:

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a. To allow the present application.

b. To direct the RP of the Corporate Debtor Company to transfer/release the payment to the applicant by the RP in compliance of the Escrow agreement and in the light of the provisions envisaged under Section 20 r.w. Section 60(5) of the IB Code.

- 2) The Applicant submitted that it is a Private Limited Company incorporated and registered under the provision of Companies Act, 1956 and filed this Application through one of its Directors, Shri Sanjit Kumar Shah. The brief fact of the case is that JPL (hereinafter referred as Jaihind Project Ltd.) had submitted tender at the contract value of Rs. 17,13,71,662/- for Lot 1 and Rs. 20,67,18,372/- for Lot 2 in response to the Work Order No. F.16 (3)-ADB (SIPMIU-TRIP)/TD/2010/Pt-III/228 & 229 dated 26.09.2012 having total Work Order value of Rs. 37,80,90,034/-, which has been provided by State Investment Program Management and Implementation Unit, Directorate of Urban Development, Khadya Bhavan Pandit Nehru Complex, Agartala.
- 3) The work order is to execute Supply and Laying of Water Supply Distribution Pipeline and Allied works in Agartala City (South) Lot 1 and Lot 2. The said contract is accepted by the JPL as per the terms and conditions specified in letter of acceptance dated 26.09.2012.
- 4) Thereafter, Applicant has entered into arrangement and has mutually agreed and consented upon by the Applicant and the JPL (Corporate Debtor Company) by way of Memorandum of Understanding executed amongst themselves on 13.12.2012. It is further agreed by the JPL to draw the Performance Bank Guarantee (PBG) at the rate of 10% of the contract

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value directly to the end client, whereas, margin money 50% of the PBG value i.e. 1,89,04,502/- shall be deposited by the second party directly to the bank of first party which will be considered as security deposit to the first party against the work contract allotted to the second party along with the bank commission. The said MOU dated 13.12.2012 entered between the Applicant and JPL is annexed as Annexure-D at page no. 33 onwards.

- 5) The Applicant further submitted that 50% of the PBG value being the deposited amount shall be released after expiry of the PBG or completion of the contract, whichever is later. It is pertinent to state that the Bank Commission shall be paid directly by the applicant and will not form the part of Fixed Deposit. Pursuant to which, two FD for each Lot were opened, based on security deposit provided by the Applicant in the name of the JPL as follows:

a. For Lot no. 1 each FD was of Rs. 42,84,292/- whereas the total amount is Rs. 85,68,584/-

b. For Lot No. 2 each FD was of Rs. 51,67,960/- whereas the total amount is Rs. 1,03,35,920/-

- 6) The Applicant submitted that the Corporate Debtor(JPL) irrevocably authorized the Central Bank of India (Escrow Agent) to channelize the proceeds of the payments received from SIPMIU upon the execution of work as contemplated in the MOU by the Applicant and the Corporate Debtor Company. Pursuant to this, the escrow agent has maintained the escrow account bearing account no. 3543577273 as per the Escrow Agreement between the JPL, Applicant (APPL) and the Escrow Agent (CBI) dated 21.06.2016 (Annexure-E of the application).

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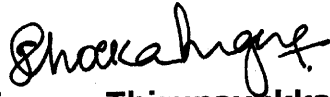
- 7) It is pertinent to mention herein that one of the Operational Creditor M/s SKE Projects Pvt. Ltd. has preferred an Application under section 9 of the IB Code seeking initiation of CIRP against M/s Jaihind Projects Limited (JPL), which said application was admitted by this Bench vide order dated 02.11.2018 and IRP was appointed, who constituted COC and accordingly, as per the provisions of IB Code and claims were invited.
- 8) It is further submitted by the Applicant that there are still Rs. 29,06,959/- lying in the Escrow Account. It is further submitted by the Applicant that the RP is duty bound to release the amount due to the Applicant. On receipt of the notice COC appeared and filed his objection. The learned lawyer of the COC submitted that Applicant is the subcontractor of one M/s SKE Project Pvt. Ltd. on whose instance the CIRP is initiated against Corporate Debtor i.e. Jaihind Pvt. Ltd. It is further submitted by the COC that JPL had submitted a tender being no. as AGT/WS/10-3/ICB/11/9 for Lot 1 at the contract value of Rs. 17,13,71,662/- and Rs. 20,67,18,372/- for Lot 2 in response to the Work Order No. F.16 (3)-ADB (SIPMIU-TRIP)/TD/2010/Pt-III/228 & 229 dated 26.09.2012.
- 9) Admittedly, the Applicant is the sub-contractor of one SKE Projects Pvt. Ltd. on whose instance the CIRP is initiated against the Corporate Debtor i.e. Jaihind Projects Ltd. Hence, if at all there is any claim, the Applicant has to put his claim before M/s SKE Projects Pvt. Ltd. and not before the other person. Moreover, M/s Jaihind Projects Ltd. was under CIRP and thereafter on receipt of the Resolution Plan the same is approved by this Adjudicating Authority. Further, the claim of the Applicant is of 2012, in

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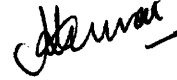
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view of the MOU entered between M/s SKE Projects Pvt. Ltd. and Applicant.

- 10) Under such circumstances, the Application is not only time barred but also not maintainable for want of locus standi as he is sub-contractor of SKE Projects Pvt. Ltd. Otherwise also, when the Resolution Plan of the Corporate Debtor is already approved by Adjudicating Authority, the instant application has become infructuous, hence dismissed.



Chockalingam Thirunavukkarasu
Member (Technical)



Ms. Manorama Kumari
Member (Judicial)

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