

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.14

IA/677(AHM)2021 in CP(IB) 611 of 2019

Order under Section Rule 11 of NCLT,2016

IN THE MATTER OF:

Archon powerinfra India Pvt Ltd
V/s
Enoch Infrabuild LLP

.....Applicant

.....Respondent

Order delivered on ..27/04/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules,2016 with consent of other Member.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
DIVISION BENCH
COURT-1**

**IA No. 677 of 2021 in
CP (IB) No.611/7/NCLT/AHM/2019**

In the matter of :

Archon Powerinfra India Private
Limited
(Erstwhile Known as SKP Buildcon
Pvt. Ltd.)

Having Registered Office at:
Shop No. 3, Vinayak Complex,
Vinayak Bunglows, Nr Sola
Railway Crossing, Sola Road,
Ghatlodiya, Ahmedabad-380061

...Applicant/Org. Corporate Debtor

Versus

Enoch Infrabuild LLP

Having Registered Office at:
614, Shilp Arista, Opp. Armeida,
Sindhu Bhawan Road,
Ahmedabad, Gujarat-380054

...Respondent/Org. Financial Creditor

Appearance:

Mr. Arjun Sheth, Advocate for the Applicant.
Mr. Ketan M Parikh, Advocate for the Respondent.

Order Reserved on : 22.03.2022.
Order Pronounced on : 27.04.2022.

**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Kaushalendra Kumar Singh (Technical)**



ORDER

[Per: Madan Bhalchandra Gosavi, Member (J)]

1. The main application i.e CP(IB) No. 611 of 2019 is filed under Section 7 of IBC, 2016 by M/s Enoch Infrabuild LLP to initiate CIRP of M/s Archon Powerinfra India Private on the ground that the Corporate Debtor committed default in paying the debt of Rs. 1,85,00,000/- as a financial debt.
2. IA No. 677 of 2021 is filed by Corporate Debtor bringing on record certain documents in defence. That, Applicant claims to be Financial Creditor on the basis of sub-contract agreement in between the Applicant and the Corporate Debtor (then known as M/s SKP Buildcon Pvt. Ltd.) dated 24.08.2017 and further settlement arrived at in between them recording in minutes of meeting dated 16.03.2018 whereby by and where under the Corporate Debtor agreed to pay amount of Rs. 1.85 Crore to the Applicant. According to the Applicant, the amount allegedly recoverable from the Corporate Debtor is the financial debt within the meaning of Section-5(8) of IBC, 2016. Since, the Corporate Debtor committed default in paying amount as agreed, its CIRP be initiated.
3. As against this, the Corporate Debtor came with the defence that it is not payable any amount to the Applicant as claimed because the amount disputed in commercial suit pending in the Court at Ahmedabad and in arbitration proceeding. It is further contended that the said amount cannot be a financial debt



within meaning of Section 5(8) of IBC. Hence this application under Section 7 is not maintainable.

4. We perused the pleadings. We have gone through the evidence and materials on record. We heard learned counsel of both parties at length.
5. The Application is filed for initiation of CIRP of the Corporate Debtor under Section 7 of IBC alleging that the Corporate Debtor committed default in paying the financial debt of Rs. 1.85 crore as per the terms of settlement reduced in writing as per minutes of meeting dated 16.03.2018, whereas the Corporate Debtor firstly disputing the fact that any amount is payable to the Applicant, further contended that even otherwise the amount claimed cannot fall within the definition of financial debt under Section 5(8) of IBC. In order to ascertain the fact whether the debt amount (though disputed) can be said to be financial debt, we have to take note of original transaction in between the parties.
6. It is not in dispute that Indian Oil Corporation of India Ltd (IOCL) has engaged the services of the Corporate Debtor to carry construction work of its New Plant Shed, Allied Civil Structural and Enabling works at LPG Bottling Plant at Budge Budge, West Bengal. The Corporate Debtor in turn gave sub-contract to carry said civil work to the Applicant (Annexure-A is a contract between Corporate Debtor and IOCL).
7. In a contract between IOCL and the Corporate Debtor, one of the

clauses was that the Corporate Debtor shall not appoint any sub-contractor and shall not assigned the said work to the sub-contractor or else contract will be terminated. It appears that breach of that clause the Corporate Debtor gave sub-contract to the Applicant and resultantly IOCL cancelled the contract itself. The Corporate Debtor filed writ petition in Calcutta High Court against the IOCL. However, Hon'ble High Court did not entertain that writ petition. We are not concerned with the dispute in between the IOCL and the Corporate Debtor. We are concerned with the fact whether the amount, if any, payable by the Corporate Debtor to the Applicant arising out of and payable under the sub-contract can be the financial debt? With certainty we answer this question in the negative. Both the Corporate Debtor and the Applicant relied on minutes of the meeting dated 16.03.2018. We have gone through them. They refer sub-contract dated 24.08.2017 executed in between the Applicant and the Corporate Debtor. The minutes further go on mentioning that the Corporate Debtor had diverted the funds of Rs. 1.85 cores (without paying the same to the Applicant as per the back to back sub-contract). The Corporate Debtor agreed to pay interest at the rate of 18% per annum to the Applicant.

8. We have noted relevant portion of minutes of meeting and it is stated therein that "*Sub-contract Agreement dated 24.08.2017 for the project of construction of plant building, structural & other allied works at LPG B/P, Banka (Bihar)-Work Order No.-LPG/ENG/PT-360/16/SKP*". It has further been mentioned that "*Archon Powerinfra Private Limited (Corporate Debtor) informed*



and agreed that they have diverted fund of Rs. 1.85 crores from the total fund invested by Enoch Infrabuild LLP (Applicant) and RA Bills bearing no. 3 to 7 of Budge Budge Project to other projects or for other purpose of Archon Powerinfra Pvt. Ltd. and the said amount shall be further reconciled and confirmed with books of accounts and project site records on or before 25.03.2018.

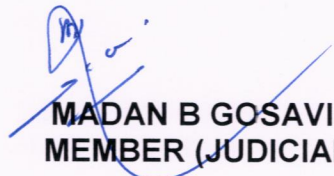
9. Upon perusal of above contention in minutes of meeting, we fail to understand how the amount payable by the Corporate Debtor (though it is disputed) arising out of and on the basis of sub contract to carry civil work for IOCL on behalf of Corporate Debtor could become financial debt? Only because it is mentioned in minutes of meeting that the Applicant invested amount in the project by itself does not make the amount as financial debt. The very nature of transection in between the parties as noted above makes the amount payable as operational debt and certainly not a financial debt. This application under Section 7 of IBC is not maintainable.
10. Besides this at one point of time and by letter dated 30.07.2018 (Annexure-D in IA No. 677 of 2021), the Applicant informed the Corporate Debtor that it has entered into sub contract with the Corporate Debtor to carry civil work for IOCL.
11. It appears to us that the transection in between the parties was a sub contract in between the Applicant and the Corporate Debtor. The Corporate Debtor though receives some bill amount from IOCL did not part with the Applicant its due share. Hence the dispute arose and it was settled by meeting dated 16.03.2018.



12. As per minutes of meeting dated 16.03.2018, the Corporate Debtor agreed to pay some amount to the Applicant but very nature of transection under which the amount was agreed to pay, was the amount payable toward services provided by the Applicant to the Corporate Debtor by way of sub contract. Such amount does not fall in category of the financial debt. We are not expressing any opinion whether the amount claim could be the operational debt or not or it was a joint venture in between both the parties, we simply hold the amount as claimed herein cannot be a financial debt and hence this application filed under Section 7 of IBC for initiation of CIRP of the Corporate Debtor is not maintainable and the same stands rejected.
13. Accordingly, IA No. 677 of 2021 in CP (IB) No.611/7/NCLT/AHM/2019 is not maintainable and stands rejected.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)


MADAN B GOSAVI
MEMBER (JUDICIAL)

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