



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

IA (I.B.C) No. 2460/MB/2024

in

CP (IB) No. 697/MB/2021

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016]

CREDIBLE ENGINEERING CONSTRUCTION PROJECTS LIMITED

[CIN: U40109TG1999PLC032786]

Registered Office: Plot No. 32, Sagar Society

Road No. 2, Banjara Hills

Hyderabad-500034, Telangana.

....Applicant

V/s

PATEL ENGINEERING LIMITED

[CIN: L99999MH1949PLC007039]

Registered Office: Patel Estate

V Road, Jogeshwari (West)

Mumbai-400102, Maharashtra.

....Respondent

IN THE MATTER OF:

CREDIBLE ENGINEERING CONSTRUCTION

PROJECTS LIMITED

...Operational Creditor

V/s

PATEL ENGINEERING LIMITED

...Corporate Debtor

Pronounced: 04.04.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant: PCS Devangi Kariya a/w. Adv. Y. Suryanarayana

Respondent: Sr. Adv. Ashish Kamat a/w. Adv. Kunal Mehta, Adv. Prerana Wagh, Adv. Prangana Barua, Adv. Swarupini Srinath i/b. Crawford Bayley & Co

ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

IA (I.B.C) No. 2460/MB/2024

1. BACKGROUND

1.1 This Interlocutory Application, IA (I.B.C) No. 2460/MB/2024 (IA) has been filed on 13.05.2024, by Credible Engineering Construction Projects Limited, the Applicant/Operational Creditor (OC), under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 11 of the National Company Law Tribunal Rules, 2016, for allowing it to produce certain documents stated in the IA, which, according to the Applicant/OC, are relevant in adjudicating the CP(IB) No. 697/MB/2021 (Main Application), filed by the Applicant against Patel Engineering Limited, the Respondent/Corporate Debtor (CD).

1.2 The Applicant/OC filed the Main Application, against the CD under Section 9 of the IBC for an alleged default of Rs.50,80,98,477/- (Fifty Crore Eighty Lakh Ninety-Eight Thousand Four Hundred Seventy-Seven Rupees), which included the amount of Rs.14,96,74,446/- as interest calculated at the rate of 24% per annum. The said default was based on CD's failure to make payments to the Applicant/OC as per the Sub-Contract Agreement dated 25.09.2014 and Takeover Agreement dated 31.03.2018. relating to the civil works project for

Koteshwar Hydro Electric Project at Koteshwarpuram, Tehri Garwhal District, Uttarakhand (Project).

- 1.3 Both the Applicant/OC and the Respondent/CD are engaged in the business of infrastructure construction. It is submitted that to obtain the civil works contract of the Project from Tehri Hydro Development Corporation India Limited (THDC India Limited), the Applicant/OC and the Respondent/CD entered into the Sub-Contract Agreement dated 25.09.2014. As a part of the Sub-Contract Agreement, the Respondent/CD used to raise the work orders on the Applicant/OC from time to time, based on the approvals from THDC India Limited.
- 1.4 It is submitted that the Applicant/OC had completed 78.90% of the civil works in the Project by 25.10.2017, pursuant to which the Applicant/OC and the Respondent/CD executed a Takeover Agreement dated 31.03.2018, wherein the Respondent/CD was to take over the remaining execution of the Project and complete the same on its own as well as make payments of all the dues payable to the Applicant/OC. However, the Respondent/CD failed to make payments to the Applicant/OC despite completion of the remaining portions of the Project and issuance of reminder notices dated 30.01.2019; 23.05.2019; 16.07.2019; 29.07.2019 and 28.08.2019 by the Applicant/OC.
- 1.5 Due to CD's failure in clearing the outstanding dues, the Applicant/OC issued the demand notice dated 01.06.2020, under Section 8 of the IBC, seeking payment of Rs.35,84,24,031/- along with interest from the Respondent/CD. However, the Respondent/CD denied its liability citing pre-existing dispute *vide* its reply notice dated 14.09.2020, and later issued a demand notice to the Applicant/OC on 01.03.2021, demanding payment of Rs. 55,74,95,047/-.



1.6 Since the Respondent/CD failed to make any payment after the issuance of demand notice, the Applicant/OC filed the Main Application on 01.07.2021. The date of default in Part-IV of the Main Application is not expressly mentioned but the Applicant/OC contended that the default occurred against the execution of the Sub-Contract Agreement dated 25.09.2014 and the Takeover Agreement dated 31.03.2018.

2. CONTENTIONS OF APPLICANT/OC

2.1 The Applicant/OC contends that due to oversight, it was unable to produce the certain additional documents which are very crucial in adjudicating the Main Application. The additional documents to be produced by way of the present IA, and the grounds for producing the same are as under:

Sr. No.	Particulars of Document	Relevance of Document
1.	Respondent's email dated 04.10.2017 to the Applicant (Annexure-1)	This shows the details of running account bills and cash flow calculation to determine the total amount payable to the Applicant/OC by the Respondent/CD
2.	Copy of letter dated 20.11.2017, along with excel sheet showing details of amounts paid by the	It serves as proof of service tax paid by the Applicant/OC and shows that the Respondent/CD



	Applicant/OC on year and month basis and e-receipts of Service Tax for the Financial Year (FY) 2016-17 (Annexure-2)	had reimbursed the difference amount of Rs.24,93,129/- to the Applicant/OC regarding Service Tax for the FY 2016-17.
3.	Copy of letter dated 20.01.2018, along with excel sheet showing details of amounts paid by the Applicant/OC on year and month basis and e-receipts of service tax for the FY 2017-18 (Annexure-3)	It serves as proof of service tax paid by the Applicant/OC and shows that the Respondent/CD has reimbursed the amount of Rs.8,11,983/- to the Applicant/OC regarding Service Tax for the FY 2017-18.
4.	Copy of invoices regarding amounts receivable from the Respondent/CD against GST on employees' salaries bills from October, 2017 to May, 2019 (Annexure-4)	These invoices assist in explaining the Applicant's claim regarding salaries based on the brief calculation in the Main Application.
5.	Copy of invoices regarding amounts receivable from the Respondent/CD against	These invoices assist in explaining the Applicant's claim regarding machinery



	Machinery Hire Charges from October, 2017 to March, 2020 (Annexure-5)	hire charges based on the brief calculation in the Main Application.
6.	Copy of the Applicant/OC's letter dated 10.05.2019, to TDHC India Limited regarding request for directing the Respondent/CD to release the outstanding payments and THDC India Limited's email dated 23.05.2019 for advising the Respondent/CD to release the outstanding payments in favour of the Applicant. (Annexure-6)	The said letter reveals the debt due to the Applicant/OC by the Respondent/CD, which was communicated by THDC India Limited as well.
7.	Applicant's email dated 29.06.2023 to the CD requesting it to release the Original Performance Bank Guarantee of Rs.2,59,00,100/- given by the Applicant/OC to THDC India Limited on behalf of the Respondent. (Annexure-7)	Since the Performance Bank Guarantee as well as discharge letter from THDC India Limited were released after the filing of the Main Application, the Applicant was unable to produce the same on record before this Tribunal.



2.2 It is further submitted that there were no mala fides by the Applicant/OC, as the aforesaid additional documents were already in the knowledge of the Respondent/CD. Therefore, no irreparable loss or grave injury to the interests of the Respondent/CD would occur in the event of taking these documents on record by this Tribunal by allowing the present IA.


3. CONTENTIONS OF RESPONDENT/CD

3.1 The present IA cannot be admitted since the proceedings of the Main Application has already reached at belated stage as evident from the orders dated 11.08.2023; 27.09.2023; and 02.03.2024 of this Tribunal. The Respondent/CD further denies the contention of the Applicant/OC that it had prior knowledge of the above additional documents.

3.2 Allowing of the present IA would help the Applicant/OC to alter the basis of the Main Application and overcome deficiencies, which were highlighted by the Respondent/CD during the hearing of the Main Application. Producing the additional documents by way of the present IA would only enable the Applicant/OC to obtain the benefit of its own wrong.

3.3 The Applicant/OC has failed to make its case for producing the additional documents despite having the access and/or possession of the same for most of the period of the proceedings in the Main Application. Merely giving excuse of inadvertent oversight does not justify the production of the additional documents as the Respondent/CD was deprived of its opportunity to give rebuttal of the same as it has already filed its Affidavit in Reply on 08.01.2022.

3.4 The additional documents are neither crucial in adjudicating the Main Application nor would it result in revealing any new relevant fact to determine



the debt and default. Some of the invoices produced in the present IA were not part of the Applicant's demand notice dated 01.06.2020 itself, while the letters related to THDC India Limited are mere irrelevant communications from a third party, which has no locus in the dispute between the Applicant/OC and the Respondent/CD.


3.5 The admission of the additional documents produced by the Applicant/OC would adversely affect the Respondent/CD's interest. This would amount to amending the Main Application by introduction of new material at a belated stage of proceedings, which is nothing but sheer abuse of law. Hence, the IA is only to be dismissed.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the Applicant and the Respondent.


4.2 The sole issue to be determined in the present IA is its maintainability.

4.3 The Ld. Sr. Counsel for the Respondent/CD vehemently opposed the IA on the ground that allowing of the alleged additional documents to be produced by this IA would not only cause grave injury to the Respondent's interest but also ensure that the Applicant/OC gets the benefit of its own wrong. If the Applicant/OC wanted to submit the documents, it could very well have produced them at a very early stage of the proceedings. It is true that despite hearing of parties on 11.08.2023 and 09.02.2024, the Applicant/OC did not produce the documents. Be that as it may, on a perusal of documents in the present IA, we find that no prejudice would be caused if the Applicant/OC is allowed to produce them for the adjudication of the Main Application. The Respondent/CD's




contention regarding inordinate delay in production of aforesaid documents in the present IA cannot be accepted since the matter was not finally heard and reserved for orders on 11.08.2023 or on 09.02.2024 or on 16.02.2024. On 30.04.2024, the Main Application came to be listed before this Bench from Court-V on transfer. The present IA was listed for the first time before us on 21.06.2024 and we heard the same on 27.08.2024 and 30.08.2024. Records reveal that the OC had already filed the present IA on 13.05.2024. In view of the above, it cannot be said there was such an inordinate delay as to disqualify the OC from filing the IA. Further, since the documents mentioned in the present IA appear to be necessary in adjudicating the Main Application, mere allegations of inordinate delay cannot be allowed to deprive a party from submitting any evidence relevant to the present matter. We are of the considered opinion that a liberal approach should be made in allowing documents to be considered in evidence before final decision is arrived at. Otherwise, it would lead to prejudice. We, therefore, hold that every applicant to a proceeding has the right to adduce evidence to substantiate its case before the Tribunal. Disallowing a party to a proceeding to submit documents, which it believes to strengthen the case, would tantamount to miscarriage of justice. Although IBC proceedings are summary in nature, preventing a party from producing documents to be part of the matter is not in the interest of justice. Any issue relating to the valid claim of the Applicant/OC or pre-existing dispute or the Respondent/CD's liability towards the Applicant/OC could be proved/disproved only on the basis of documentary proof.

4.4 Further, there is no bar in law even to the amendment of pleadings in an application under the IBC. The Hon'ble Supreme Court's decision in *Dena Bank*



(Now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr., [Civil Appeal No. 1650 of 2020], has been reiterated in its recent judgment in *State Bank of India Assistant Manager Vs. India Power Corporation Limited.*, [Civil Appeal No. 8178 of 2023] that in the absence of any express provision which prohibits or sets a time-line for filing of additional documents, there is no bar to the filing of documents over and above those documents. The reasoning provided by Hon'ble Supreme Court in *Dena Bank (supra)* is also applicable to the Main Application filed under Section 9 of the IBC. The law on allowing amendment of pleadings or producing additional documents was also settled by Hon'ble Supreme Court in *B.K. Narayana Pillai Vs. Pararneswaran Pillai & Anr.*, [(2000) 1 SCC 712], wherein it was held that the amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation and technicalities of law should not be permitted to hamper the Courts in the administration of justice. All amendments of the pleadings should be allowed, which are necessary for determination of the real controversies. In the present IA, the Applicant/OC is not even asking for any amendment in the Main Application but only praying for furnishing of certain additional documentary evidence, which it thinks would substantiate its claim before the Tribunal. Further, the proposed additional documents do not alter the case of the Applicant/OC or substitute its cause of action with a new cause of action. The Hon'ble NCLAT, Chennai, in *M/s. Raj Television Network Limited Vs. M/s. Thaicom Public Company Limited.*, [Company Appeal (AT) (CH) (Ins) No. 325/2023 & IA No. 991/2023] also held that all amendments ought to be allowed if the twin conditions are satisfied (i) of not working injustice to other side; (ii) of being necessary, for the purpose of determining the real questions in controversy between the parties. We,



therefore, hold that a party should not be refused permission to submit additional documents, merely because of some negligence or inadvertence. In the present IA, it is seen that there was no specific time limit on the Applicant to produce any document before this Tribunal. In view of the above, we hold that no harm or injustice would be caused to the Respondent/CD if the Applicant/OC is allowed to submit additional documents. Hence, the additional documents can safely be taken on record.

ORDER

In view of the above discussions, the **IA (I.B.C) No. 2460/MB/2024**, filed by Credible Engineering Construction Projects Limited, Applicant/OC in CP (IB) No. 697/MB/2021 is allowed and the aforesaid documents are taken on record. However, liberty is granted to the Respondent/CD to rebut these documents by way of additional reply confining to the documents produced by the Applicant/OC.

With the above, **this IA is allowed and disposed of**. Let the Main Application, **CP (IB) No. 697/MB/2021**, be listed for further consideration on **21.04.2025**.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//