

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 213/2025

IN THE MATTER OF:

**Mr Amier Hamsa Ali Abbas Rawther,
Liquidator of LSML Private Limited,
R094, SBIOA Unity Enclave,
Mambakkam PO, Chennai 600127**

...Appellant

VERSUS

**Chairman Cum Managing Director,
NLC India Limited,
Corporate Office, Neyveli PO,
Cuddalore Dist.
Tamil Nadu - 607 801**

...Respondent

Present:

For Appellant : Ms. Jayanthi K Shah, Advocate

For Respondent : Ms. Ancy, Advocate

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

1) The Appellant herein was an Applicant, to IA(IBC)/1618/CHE/2024, as it was preferred in CP(IB)/25(CHE)2022, before the Learned NCLT, Chennai. In the IA thus preferred by the Appellant, he had sought the following prayers: -

*“Direct the Respondent to pay Rs. 40,98,41,115.76
towards:*

*i) Substation Maintenance charges of Rs.2,49,74,700
incurred the Corporate Debtor on behalf of the
Respondent for evacuating power produced by the
windmills of the Respondent; Performance Bank*

Guarantee of Rs.40.00.000 by the Respondent after the contract ii) The unauthorized invocation of the period expiry and during the liquidation process of the Corporate Debtor;

iii) Retention amount of Rs.33.25 Crores of the Project Contract Amount by the Respondent despite completion of the project; and

iv) The unpaid invoices aggregating to issued by the Corporate Debtor to the Respondent for the O & M Contract. Rs.4,83,66,415:76 were issued by the Corporate Debtor to the Respondent for the O & M Contract.

B. To Pass any other order/orders that this Hon'ble Tribunal may deem fit and proper.

C. To direct the Respondent to pay a sum of Rs 50,000/- towards the cost of this Application.”

2) During the course of the argument, what has been reflected from records and arguments is that the Appellant submits that there had been an execution of a contract for a project on 15.11.2013, between the NLC India Ltd. and LSML (India) Pvt. Ltd. pertaining to the erection, commissioning, testing and subsequent operation and maintenance of 34 units of 1.5 mw wind turbine generators, at Kaluneer Kulam, in the state of Tamilnadu, that the maintenance clause under the contract, was for a period of 5 years, which would be covering the warranty period too, in that on account of failure on the part of the Respondent NLC India Ltd in fulfilling the covenants of the contract and their financial

commitments including timely release of payment for the work done the Appellant could not pay its suppliers and creditors and defaulted on its credit obligations leading to insolvency and subsequent liquidation of the Corporate Debtor (CD).

3) Owing to non-fulfilment of certain contractual obligations by the Respondent and also because of force-majeure condition, the Corporate Debtor suffered financial loss, which consequently affected the payment schedule to the suppliers of the Corporate Debtor leading to the default committed by the Corporate Debtor, on its credit obligations. This resulted into initiation of the insolvency process; a moratorium was declared by an order of 14.10.2022, by an order as it was passed in CP(IB)/25(CHE)2022, appointing the Resolution Professional. As no resolution plan was approved, liquidation of the Corporate Debtor was ordered on 12.10.2023 and the liquidator was appointed. The Appellant is the second liquidator, appointed on 30.11.2023.

4) After taking over, the Appellant identified certain receivables from the Respondent and sent notice for payment of the said amount to the Respondent. As per his submission and as per the notice sent, the total amount receivable from NLC India is Rs.40,98,41,115.76 and as the Respondent denied to pay the same, the Appellant filed an Application vide IA/1618/2024 before Learned NCLT, Chennai.

5) The said application was taken up for consideration before the Learned Tribunal and the Tribunal after observing that the Respondent has stated that

nothing is payable to the Corporate Debtor as per the terms of the contract, that the amount claimed by the Appellant is disputed and that the issue raised is a triable issue which cannot be denied by it having summary jurisdiction, dismissed the Application giving liberty to the Appellant to approach appropriate forum for recovery of the claims thus raised.

6) The Learned Tribunal while considering the aforesaid application being, IA(IBC)/1618/CHE/2024, taking into consideration that since no other dispute is pending consideration, coupled with the fact that as per records no amount was payable to the appellant/applicant besides that since no proceedings were pending consideration, except for IA(IBC)/1618/CHE/2024, as preferred by the present Appellant, which was an attempt made to enforce upon the contractual obligations, arising from the contract dated 15.11.2013, which contained an Arbitration Clause. Though the copy of contract is not on record in the Appeal but the Learned Counsel for the Appellant has submitted that the dispute pertaining to the maintenance charges, arises out of the work executed under the terms of the contract and that as per the admission of the Appellant, since, the contract contained an Arbitration Clause, which provided for the disputes redressal forum to be agitated before the arbitrator to be appointed in accordance with the process contemplated under the contract. The Tribunal observed that since it was a triable issue, which engages consideration of fact and which could only be settled after establishment of the liability of payment of maintenance charges and other claims raised by him, which requires determination, it may not

be falling to be considered within the ambit of the provisions of the I&B Code.

The contentions of Learned Adjudicating Authority cannot be faulted because: -

- i) The forum under the I&B Code, is not a forum, which could be abused to be resorted to as a substitute to the determination and recovery of dues.
- ii) The terms and conditions as agreed between the Appellant and the Corporate Debtor was governed by the terms of the contract, which contained within it an Arbitration Clause, and therefore the appropriate recourse which would be available to the Appellant, would be to approach the appropriate forum as agreed between the parties under the terms of the contract.
- iii) Since the amount is disputed and it requires submission of elaborate evidence for the establishment of the claims thus raised, it can only be decided by the forum as agreed between the parties.

7) Hence, the Tribunal concluded that the relief sought for in the interlocutory application may not be tenable under the I&B Code, and that, for redressal of the grievances qua the relief claimed in the said application the Appellant will have to approach the designated forum for a resolution of the said dispute between the parties and hence the Tribunal had rightly after considering the contention, has observed that the application would not lie before it and rather the Appellant should resort to the proceedings, as available to him, in accordance with law, and agitate his grievances by approaching before the appropriate forum for the

recovery of the alleged amount due to be paid as prayed for in the relief clause as IA(IBC)/1618/CHE/2024. The logic, which has been assigned by the Tribunal for rejecting the IA seems to be absolutely justified for the reasons given above that the proceedings under the I&B Code is not a recovery proceeding and that too for the recovery of an amount which is disputed and arising out of contractual obligation contained in the terms of contract, which itself provided a mechanism for redressal of the dispute by agitating the same before the Arbitrator. Hence, the reason, which has been given in the Impugned Order does not suffer from any error which could call for any interference by this Appellate Tribunal in exercise of its appellate jurisdiction under Section 61 of I&B Code. The Company Appeal lacks merit and the same is dismissed.

8) All pending interlocutory applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30.04.2025
RO/MS/RS