

SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 14.12.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/353/2021 in CP (IB) No.294/7/HDB/2017
NAME OF THE COMPANY	IVRCL Limited
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	IVRCL Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/353/2021

Orders pronounced, recorded vide separate sheets. In the result, application is disposed of.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

**IA No.353 of 2021 in
CP(IB) No.294/7/HDB/2017**

***[Application under Section 60(5) of the Insolvency &
Bankruptcy Code, 2016]***

Between :

M/s.Max Infra (I) Limited,
4th floor, Near YSR Statue,
Ayyappa Society, Mahapur,
Hyderabad – 500 081,
Telangana.

....Applicant

A n d

- 1. M/s.IVRCL Limited,**
(formerly known as M/s.IVRCL Infrastructure
& Projects Limited),
M-22/3RT, Vijay Nagar Colony,
Hyderabad – 500 057, Telangana,
Also, at “MIHIR”, 8-2-350/5/A/24/IB,
Road No.2, Panchavati Colony,
Banjara Hills,
Hyderabad – 500 034, Telangana.
- 2. Mr.Sutanu Sinha,**
Liquidator for IVRCL Limited,
Floor 4, Duck Back House,
41, Shakespeare Sarani, Kolkotta,
India – 700 017.
- 3. M/s.Konkan Railway Corporation Limited,**
Raigadh Bhavan, 8th floor,
Plot No.4, Sector 11, CBD Belapur,
Navi Mumbai,
Maharastra – 400 614.

....Respondents

Date of Order: 14.12.2023

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Applicant : Mr.Avinesh Desai, Sr.Counsel

For the Liquidator/

Respondent : Mr.Nirav Shah, Advocate

Heard on : 08.12.2023

Per: Rajeev Bhardwaj, Member (Judicial)

ORDER

1. The instant application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 has been filed by M/s.Max Infra (I) Limited (hereinafter referred as the **Applicant/Max Infra**) seeking the following reliefs :
 - a. The Liquidator may be directed to open a Current Account in the name of M/s.Max Infra – IVRCL JV, in any bank.
 - b. M/s.Konkan Railway Corporation Limited (hereinafter "KRCL"/Respondent No.3) be directed to make the payment under the Arbitral Award to the designated Current Account to be opened by the Liquidator.
 - c. The Liquidator upon receiving the amounts from KRCL. be directed to pay Rs.1,69,00,000/- which are the costs incurred in litigation, by the Applicant from the amount to be paid by KRCL under the Arbitral Award to the Applicant.

- d. The Liquidator be directed to pay Rs.2,83,05,760/- i.e., the 49% share from the amount remaining from the Arbitral Award after deducted the expenses incurred in litigation to the Applicant
2. M/s.Konkan Railway Corporation Limited (hereinafter referred as the Respondent No.3) had invited tender/bids for the construction of single line tunnels etc., on the Udampur-Srinagar-Baramullah Rail Link Project on 14.01.2004. M/s.IVRCL Limited (hereinafter referred as the **Corporate Debtor/Respondent No.1**) and M/s.UAN Raju Constructions Limited (presently Max Infra (I) Limited) had entered into an Memorandum of Understanding (MoU) for joint venture for the purpose of submitting the pre-qualification application document to tender issued by the respondent No.3.
- 2.1 The tender of M/s.Max Infra was accepted by the respondent No.3 on 12.02.2004.
- 2.2 As a result, the project was awarded to M/s.UAV Raju Constructions Limited and M/s.IVRCL Limited. Then both the parties entered into joint venture agreement on 22.03.2004, having share of 49% and 51%, respectively.
- 2.3 The name of M/s,UAV Raju Constructions Limited was changed to M/s.Max Infra (I) Limited on 25.01.2013.
- 2.4 On 30.08.2006, the M/s. Max Infra (I) Limited and M/s IVRCL Limited (for the sake convenience being refereed as **M/s.Max Infra/IVRCL JV**) entered into an Arbitration Agreement.
- 2.5 It is claimed that because of various violations of terms & conditions of the agreement, M/s.Max Infra/IVRCL JV had started an arbitration against the respondent No.3.

- 2.6 On 5th July, 2017, it was decided by M/s.Max Infra/IVRCL JV that the applicant through its Chairman & Managing Director, Dr.M.S.Phani Kumary Reddy would represent in the arbitration proceedings.
- 2.7 Finally, the Arbitral Tribunal on 09.11.2020 passed the award of Rs.4,52,05,760/- in favour of M/s.Max Infra/IVRCL JV.
- 2.8 Before passing the award by the Arbitral Tribunal, the Corporate Debtor went into Corporate Insolvency Resolution Process (CIRP) vide order 23.02.2018 in CP NO.294/7/HDB/2017 under Section 7 of the IBC, 2016 and then into liquidation under Section 33 of the IBC vide order dated 26.07.2019.
- 2.9 As the respondent No.1 has gone into liquidation, there is no active current account of M/s.Max Infra/IVRCL JV and in its absence, the respondent No.1 is unable to transfer the award amount. Thus, the liquidator is required to open a new current account in the name of M/s.Max Infra/IVRCL JV. The share of M/s.Max Infra/IVRCL JV is in the ratio of 49% and 51% respectively and therefore the award amount is required to be distributed after deducting the litigation expenses which were exclusively borne by the applicant. The amount which was spent by the applicant on litigations comes to Rs.1,69,00,000/-.
3. The respondent in reply has admitted the facts relating to the award of the contract of railway project by respondent No.3 to M/s.Max Infra/IVRCL JV, share of applicant and respondent in the joint venture, passing of award by the Arbitral Tribunal on 09.03.2020 and authorization given by M/s.Max Infra/IVRCL JV to the applicant to pursue litigation before the Arbitral Award.

3.1. However, it is submitted that the respondents No.1 & 2 are contemplating to challenge the arbitral award.

3.2 About the litigation expenditure of Rs.1,69,00,000/- claimed to have been spent by the applicant in pursuing litigation before the Arbitral Tribunal, it is submitted that this is not supported by any document and therefore such amount cannot be taken as amount spent by the applicant.

3.3 On the question of opening a separate bank account for the transfer of award amount, it is submitted that liquidation account maintained by the respondent No.3 is sufficient to receive the arbitral award amount and further there is no such provision either under the IBC or rules thereunder to open separate bank account.

4. We have heard learned counsels for both the parties and gone through the entire records.

4.1 Before adverting to the controversy in question, we would like to say that the plea of the respondent No.1 about filing of appeal against the order of the Arbitral Tribunal is not tenable as the limitation period has already expired in view of Section 34 of the Arbitration and Conciliation Act, 1996.

4.2 Coming to the short point involved in this IA, we need to go through the operative part of the award in para 210, which is reproduced below:

“As set out above, the respondent has been directed to refund the claimant the sums of Rs.1.90 crores under claim 32. The respondent is also directed to pay to the claimant the said sums of Rs.12,26,466/- under claim 33, the sum of Rs,1,22,41,376/- under claim 34 and the sum of Rs.1.27,37,918/- under claim 35. The respondent must repay/pay the above the amounts to the claimant within 2 months from the date of award. If the said sums or any part thereof remains unpaid at the end

of 2 months from the date of the award, then the same will carry interest at the rate of 12% p.a. from the date of the award till payment of realisation thereof.”

4.3 Thus, the total amount awarded in favour of M/s.Max Infra-IVRCL JV was Rs.4,52,05,760/-, which is to be divided between M/s.Max Infra and IVRCL JV in the share of 49% and 51%, respectively.

4.4 On the question of arbitration costs, M/s.Max Infra-IVRCL JV made a claim under Point Nos.13, 30 and 36 to the extent of Rs.10 lakhs, Rs.3 lakhs and Rs.15 lakhs, respectively. On this question, issue No.35 was framed by the Arbitral Tribunal:

“Whether either party is entitled to costs and if so in what number?”

5. In answer to issue No.35 (Claim No.13, Claim No.30 and Claim No.36), the Arbitral Tribunal recorded the following findings:

203. These three issues/claims can be taken together

204. Mr. S. C. Gupta submitted that due to non-settlement of the claims the Claimant had to take recourse to Arbitration. Mr. S. C. Gupta submitted that the Claimant had to incur an expenditure of Rs. 10 lakhs towards Arbitration Mr. S. C. Gupta submitted that the Claimant is entitled to be reimbursed this amount

205. Ms. Bhagalia submitted that Claim Nos. 13, 30 & 36 are all for cost of Arbitration Ms. Bhagalia submitted that the Contract is governed by the General Conditions of Contract of Northern Railway and Tender documents Ms. Bhagalia submitted that under Clause 64.6 of the Arbitration Agreement the costs of Arbitration are to be borne by both the parties equally. Ms. Bhagalia submitted that hence if the claim is allowed it will be in violation of the agreed terms of the Contract. Ms. Bhagalia submitted that hence the claim deserves to be rejected.

206. In our view, the expenses of the Arbitration namely expenses of the venue, travel and stay costs of the Arbitrators shall be shared equally by

the parties. Apart from that there will be no order as to costs of Arbitration. In other words, each party shall bear their own cost incurred by them.

6. It becomes clear from the perusal of the order of the Arbitral Tribunal that against the total claim of Rs.28 lakhs as arbitration costs, learned counsel of M/s.Max Infra-IVRCL JV has conceded that the claimant had incurred an expenditure of Rs.10 lakhs only towards arbitration.
7. In nutshell, the Arbitral Tribunal concluded that the expenditure of the venue, travel and stay costs of the arbitrator shall be shared equally by the parties and on other matters, both the parties were directed to bear their own costs incurred by them. Litigation expenses is also part of the arbitration costs. It was within the competence of the Arbitral Tribunal to award litigation costs as part of the arbitration costs but the Hon'ble Tribunal left it to the parties in view of their submissions.
8. The statement made by the counsel for the applicant that the applicant had incurred the expenses of Rs. 10 lakhs towards arbitration is relating to a fact and thus binding on the applicant. Here, we rely upon the decisions of the Hon'ble Supreme Court in *The Employees State Insurance Corporation versus Union of India (UOI) and Ors. (2022)11SCC 392 Himalayan Coop. Group Housing Society versus Balwan Singh (2015) 7 SCC 373* wherein it was held that while generally admissions of fact by counsel are binding, neither the client nor the court is bound by admissions as to matters of law or legal conclusion.
9. Conclusiveness of statement recorded in the order on the basis counsel's concession, can be agitated by inviting the attention of the Court/Authority which passed the order that such concession was wrongly recorded. Here we

may profitably refer to the decisions of the Hon'ble Supreme Court in *State of Maharashtra v. Ramdas Shrinivas Nayak and Anr. (1982) 2 SCC 463 and Bhavnagar University v. Palitana Sugar Mill Pvt. Ltd. and Ors., AIR 2003 SC 511*

10. Therefore, the applicant can't escape from the admission of its counsel before the Arbitral Tribunal that the maximum expenditure incurred on arbitration was Rs. 10 lakhs. Even the applicant has also failed to produce any evidence in support of the contention that Rs.1,69,00,000/- has been spent on litigation.
11. Hence, money spent on the venue, travel and stay costs of the arbitrators are to be shared equally by M/s.Max Infra-IVRCL JV with the respondent No. 3, but the total expenditure of the applicant on all counts including expenditure on litigation would not be more Rs.10 lakhs. After deduction of such expenses from the arbitral award, the remaining amount is to be distributed to M/s.Max Infra and IVRCL JV in the ratio of 49% and 51% respectively.
12. As far as opening of the separate account is concerned, the better course would be to transfer the amount to the account of the liquidator, who would finally distribute the award amount between the applicant and respondent No. 1 in the manner discussed above.
13. The application is accordingly disposed of.

Sd/-
SANJAY PURI
MEMBER (TECHNICAL)

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Sd/-
RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 14.12.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1761/2023 A (IBC)/947/2023 in MA No.2/2022 Contempt Petition (IBC)/2/2023 IA (IBC)/357/2023 IA (IBC)/1314/2023 IA (IBC)/455/2023 in CP(IB) No.294/7/HDB/2017
NAME OF THE COMPANY	IVRCL Limited
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	IVRCL Limited
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1761/2023

Present: Ld. Senior Counsel Mr. Avinash Desai for Mr. Amir Bavani for the Applicant.

Ld. Counsel Mr. Y. Suryanarayana for the Respondent.

For filing counter, **matter is adjourned to 10.01.2024.**

IA (IBC)/947/2023 in MA No.2/2022

Present: Ld. Senior Counsel Mr. Avinash Desai for Mr. Amir Bavani for the Applicant.

Ld. Counsel Mr. Y. Suryanarayana for the Respondent.

Pleadings are completed. Ld. Counsel for the Applicant prays for an adjournment on the ground that senior counsel has sustained injuries as he met with an accident. Prayer is allowed. **Matter is adjourned to 10.01.2024.**

MA No.2/2022

Present: Ld. Senior Counsel Mr. Avinash Desai for Mr. Amir Bavani for R1, R3 to R6.

Pleadings are completed. Ld. Counsel for the Respondent prays for an adjournment on the ground that senior counsel has sustained injuries as he met with an accident. Prayer is allowed. **Matter is adjourned to 10.01.2024.**

Contd..

(2)

IA (IBC)/357/2023

Present: Ld. Senior Counsel Mr. Avinash Desai for Mr. Amir Bavani for the Applicant.

Ld. Counsel Mr. GP Yash Vardhan for R3.

Ld. Counsel Mr. Avinash Alladi for R4.

Ld. Counsel Mr. Srikant Rathi for R5, R7, R8, R9, R12, R13, R19 to R22, R24 & R27.

Ld. Counsel Mr. Hemant Varshney for R6 and R11.

Ld. Counsel Ms. K. Srilatha for R23.

Ld. Counsel Ms. K. Srilatha for R23 wants to file Vakalath and counter and all the other respondents are directed to complete the pleadings, specially to file the counters. Otherwise, the opportunity to file counters shall be forfeited. **Matter is adjourned to 10.01.2024.**

IA (IBC)/1314/2023

Present: Ld. Senior Counsel Mr. Avinash Desai for Mr. Amir Bavani for the Applicant.

Pleadings are completed. Ld. Counsel for the Applicant prays for an adjournment on the ground that senior counsel has sustained injuries as he met with an accident. Prayer is allowed. **Matter is adjourned to 10.01.2024.**

IA (IBC)/455/2023

Present: Mr. Sutanu Sinha, Liquidator.

Ld. Counsel Ms. K. Srilatha for the Respondent.

Matter is adjourned to 15.12.2023.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)