

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

**M.A. 3392 OF 2019**

Under Section 60 (5) of Insolvency &  
Bankruptcy Code, 2016

Tata Consulting Engineers Limited  
**...Applicant**

In the matter of  
C.P.(IB) No. 2295/MB/2018  
American Express Bank Corp.  
**.... Financial Creditor**

Vs.

Sunil Hitech Engineers Limited  
**...Corporate Debtor**

***Order delivered on: 01/11/2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

***Appearances:***

For the Applicant : Mr. Prakash Shah, Advocate

For the Respondent :

**ORDER**

***Per: V.G. Bisht, Member (Judicial)***

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In  
CP (IB)2295/MB-1/2018

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1. This Application IA 3392/2019 was filed by M/s Tata Consulting Engineers Limited (“Applicant”) in the matter of M/s Suni Hi-tech Engineers India Limited [In Liquidation] (Corporate Debtor) under Section 60(5) of The Insolvency and Bankruptcy Code, 2016 ("Code"), for direction to the Liquidator Sh. Avil Menezes (“Respondent”) in the Liquidation process of Corporate Debtor to accept the claim of the Applicant relating to the refund of the amount of Rs. 56,80,000/-, along with interest, paid by the Applicant to prevent the invocation of the Bank Guarantee, and to accept the claim of the Applicant for the amount of Rs. 16,73,798/- towards the Invoice dated 22nd November, 2017, bearing Ref. No. 1719100023.
2. The Corporate Debtor was admitted to Corporate Insolvency Resolution Process vide Order dated 7.09.2018 passed by this Tribunal, after there being no concrete Resolution plan, even 270 days after this Bench having passed a CIRP Order, this Tribunal vide order dated 25.06.2019 allowed the Application for the Liquidation of the Company and appointed the Applicant as the Liquidator of the Corporate Debtor under the provisions of the Code.
3. The Applicant had provided its services for detailed engineering and project control support. In this behalf, it had raised the invoices in accordance with the terms of the Contract between the parties. The Corporate Debtor had promised to make payment under the invoices that had been raised but has failed to make payment till date, inspite of the Applicant having fulfilled their obligations.
  - 3.1. In lieu of Clause 5 of the General Conditions of Contract for Supply Conditions, the Applicant had also provided a Bank

Guarantee for an amount of Rs. 56,80,000/- (Rupees Fifty Six Lakhs, Eighty Thousand Only), which guarantee was extended from time to time as per the requests of the Corporate Debtor. By their letter dated 6th March, 2019, the Corporate Debtor sought to invoke the Bank Guarantee without providing any cause and in spite of the outstanding amounts payable by the Corporate Debtor to the Applicant. In order to prevent the invocation of the Bank Guarantee, the Applicant, under duress, made payment of Rs. 56,80,000/- (Rupees Fifty Six Lakhs, Eighty Thousand Only) to the Corporate Debtor, which amount has been wrongly retained by the Corporate Debtor.

3.2. After the Applicant provided all the drawings and upon reaching the final milestone for raising invoice, the Applicant raised its final invoice on 22.11.2017 as per the understanding between the Applicant and the Corporate Debtor, which invoice again is claimed to have been accepted by the Corporate Debtor without any demur or protest. Not a single letter/mail was addressed by the Corporate Debtor protesting or disputing any invoice or stating as to when long outstanding payment shall be released.

3.3. The Applicant filed its claims with the Liquidator on 24th July, 2019. The Liquidator by his email dated 3rd October, 2019, informed the Applicant that some of the claims of the Applicant had been rejected. Accordingly, the Applicant has filed the present Miscellaneous Application challenging the rejection of the claims of the Applicant, by the Liquidator.

4. The Respondent Liquidator has justified the action of the Resolution Professional invoking the Bank Guarantee bearing no. 04091GPER007718 dated 11.09.2018 contending that the RP invoked the Bank Guarantee since the Applicant had allegedly delayed in the submission of the drawing and design documents and allegedly failed to perform the contract in time, which in turn affected the contract performance of the Corporate Debtor with MAHAGENCO. The Guarantee was sought to be invoked vide letter dated 05.03.2019 addressed to Bank of Baroda by the RP that “Applicant has defaulted under the Contract and has failed to comply with the terms and conditions of the Contract”.

5. We have heard the Counsel and perused the material available on record.

5.1. We find that there are series of email communications from each side in relation to development of designs and none of such mail suggests any deficiency in the work of the Applicant, who had been forthright in modifying the design/drawings in accordance with the discussion between the parties. The Liquidator has not brought on record any substantive evidence that the invocation of Bank Guarantee by MAHAGENCO was attributable to deficiency in work on the part of the Applicant or any evidence suggesting that the Applicant failed to deliver what it was supposed to. We feel that the action of the Resolution Professional in invoking Bank Guarantee was a reaction to invocation of Corporate Debtor’s Bank Guarantee by MAHAGENCO. Accordingly, we do not hesitate to hold that the Applicant is entitled to refund of Rs. 56,80,000/-, being the

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amount of Bank Guarantee paid by it, alongwith the payment due in respect of Invoice dated 22nd November, 2017, bearing Ref. No. 1719100023.

6. In view of foregoing, we dispose of MA 3392 of 2019 as Allowed.

Sd/-

**Prabhat Kumar**  
Member (Technical)

Sd/-

**Justice V.G. Bisht**  
Member (Judicial)