

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA/587(CHE)/2021

in

IBA/787/2020

*(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of the National Company Law Tribunal, Rules, 2016)*

In the matter of **Call Express Construction (India) Pvt Ltd**

Call Express Construction (India) Pvt Ltd.,
Represented by its Director,
Mr. P.K. Ramesh,
20 Poes Road, 1st Street,
Teynampet,
Chennai – 600 018.

... Applicant

1. BIR Hotels Private Limited,
13, Sardar Patel Marg,
Allahabad,
Uttar Pradesh – 211 001.
2. Charu Sachdev,
D/o. Ashok Sachdev,
D-29 South Extension, Part II,
New Delhi – 110 049.
3. Hans Sachdev,
S/o. Ashok Sachdev,
D-29 South Extension, Part II,
New Delhi – 110 049.
4. Priya Sachdev,
D/o. Ashok Sachdev,
D-29 South Extension, Part II,
New Delhi – 110 049.
5. Harpreet Sachdev,
D/o. Ashok Sachdev,
D-29 South Extension, Part II,
New Delhi – 110 049.
6. Pee Empro Exports Private Limited,
Having its Registered Office at

G-6, Vaikunth, 82-83, Nehru Place,
New Delhi – 110 019.

7. Subhash Chander Sachdev,
Son of Late C.L. Sachdev,
R/o. D-29, South Extension, Part II,
New Delhi – 110 049.

8. CTC Geo Technical Private Limited,
Having its Registered Office at
Punjab Bhawan, 1st Floor,
10 Vishnu Digamber Marg,
New Delhi – 110 002.

... Respondents

Order Pronounced on 0nd^h May 2022

CORAM:

JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicants : Mr.U.K.Choudry ,Sr. Advocate
Mr.J.R.Jayant, Advocate

For Respondents: Mr.P.H.Arvind Pandian, Sr.Advocate
Mr.Alishan Naqvee, Advocate

ORDER

***Per:* JUSTICE (RETD) S.RAMATHILAGAM,**
MEMBER (JUDICIAL)

The above application has been preferred by Call Express Construction (India) Pvt Ltd., Represented by its Director Mr.P.K.Ramesh under 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 seeking to set aside the ex-parte order dated 05.04.2021, in IBA/787/2020 passed by this Tribunal.



2. It was submitted by the Learned Sr. Counsel for the Applicant that the 1st Respondent herein had filed the main IBA/787/2020 under Section 7 of IBC, 2016 against the Applicant.

3. It was further submitted that during March 2021, the Applicant's relative Mrs. Veronica Alexis Jeyaraj, who is living along with Applicant was tested COVID positive and the applicant was advised by the doctors to be in self-quarantine. In the meantime, the applicant has received the notice from this Tribunal regarding IBA/787/2020. As the Applicant was in self-quarantine, he had informed his Counsel Mr. J. R. Jayant to represent on his behalf before this tribunal on 05.04.2021.

4. It was further submitted that the Counsel Mr. J. R. Jayant checked and found that the case was listed as item No.1 in Court-I cause list at the 2 pm hearing on 05.04.2021, so the Counsel had not checked the cause list of Court-II. When the Counsel tried to represent in video conference hearing before the Court-I at 2 pm, the matter was not called. With the confusion, the Counsel had checked the cause list of Court-II and found that the case was also listed in Court-II as Item No.3 at 10.30 a.m. hearing.

5. Pursuant to that the Counsel rushed to registry and found that the case was heard in Court-II at 10.30 am and was set *ex-parte* due to the non-appearance of the Respondent. It was further



submitted that the Counsel's absence at the hearing was due to genuine confusion and sought to set aside the ex-parte order passed by this Tribunal.

6. In opposition to that the Learned Sr. Counsel appeared on behalf of the Respondent submitted that the notice of appearance dated 11.03.2021 clearly mentions the Court and time of the hearing and contended that the reason stated by the Applicant for non-appearance was unacceptable. It was further argued that the application has not been filed by the duly authorized representative of the Applicant and no document has been filed in the application to show Mr.P.K.Ramesh is an authorized representative of the Applicant Company. In view of the above, the Respondent contends that the Application is not maintainable and liable to be dismissed.

7. In the course of hearing this Tribunal vide order dated 14.09.2021, has permitted the Learned Counsel of the Applicant to file the copy of the Board Resolution which authorises Mr.P.K.Ramesh to file this application and the same was filed on 22.09.2021.

8. In the successive hearing the Learned Counsel for the Respondent contended that the Board Resolution filed by the Applicant is generic and not specific to this application. Further,



argued that the Board Resolution was passed on 07.02.2020 whereas this application has been filed on 13.04.2021 and the main case IBA/787/2020 was filed on 21.09.2021, so a resolution cannot be passed in anticipation of filing the above applications.

9. In reply, the Learned Counsel for the Applicant submitted that Mr.Ramesh and his wife are the only directors of the Applicant Company and they hold 98.97% of the shares moreover, Mr.Ramesh is only managing the day to day affairs of the company. Further, he had filed an affidavit dated 29.11.2021, with relevant documents and submitted that with the authorisation of the alleged Board Resolution the Applicant had filed a few applications in other fora and argued that in the same manner and the Board Resolution authorizes the Applicant to file this application.

10. The above submissions were also objected by the Learned Counsel for the Respondent that nowhere in the above-said affidavit show that the proceedings in the other fora have been filed in the strength of the alleged Board Resolution, further pointed out that the caveat application mentioned in the affidavit was signed by the Applicant only on 24.01.2020, prior to the alleged Board Resolution.

11. Having heard learned counsel for both the parties in detail. It appears that the resolution passed in the Board meeting held on

07.02.2020 has been filed in the course of the hearing by the order of this Tribunal dated 14.09.2021. It is apt to refer here that Section 424 of the Companies Act, 2013 extracted hereunder

"Section 424: Procedure before Tribunal and Appellate Tribunal:

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act 1[or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

*...
(c) receiving evidence on affidavits;
... "*

gives power to this tribunal to receive evidence on affidavits at any time of the hearing in the interest of justice.

12. Further, It can be seen from the resolution was passed in the Board meeting held on 07.02.2020, it was resolved as follows

"RESOLVED THAT the Board be and are hereby approved Mr.P.K.Ramesh to perform the following acts / deeds on behalf of the company:

- i. To make, execute and file Vakalatnama and to engage advocate, solicitors and/legal advisors to appear on behalf of the Company;*
- ii. To file caveats/ pleadings / affidavits before any authority / court / tribunal/forum/judicial/quasi-judicial authority.*

RESOLVED THAT Mr.P.K.Prakash, be authorized to generally take all necessary steps and do such acts, deeds and things as may be necessary on behalf of the company in this regard."



On reading the above resolution, makes clear that Mr.P.K.Ramesh is duly authorised to file this application on behalf of Call Express Construction (India) Pvt Ltd., and we are of the considered opinion that the present application is maintainable.

13. On a perusal of the documents placed on record it appears that the notice for appearance dated 11.03.2021, sent from the registry of this Tribunal was received by the Respondent on 15.03.2021. Further, we see that the application IBA/787/2020 was listed in the cause list of both the Court-I and Court-II of this Tribunal. It is the duty of the learned counsels to clear about the documents before making representation before the court and it shows negligence on the part of the counsel. However, we feel that the confusion caused to the Counsel is *bonafide* and in the interest of justice, this Tribunal is inclined to accept the reason stated by the Applicant for non-appearance as sufficient.

14. In view of the above discussion we hereby set aside the *ex-parte* order dated 05.04.2021 passed in IBA/787/2020. Accordingly, the application IA/587(CHE)/2021 stands **allowed**.

Registry is directed to list IBA/787/2020, on 02.06.2022.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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