

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
SPECIAL BENCH BENGALURU**  
*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)*  
**(Through web-based video conferencing platform)**

**IA No.131of 2022 in  
CP (IB) No.154/BB/2017**  
U/s 42 and 60(5) of I&BC, 2016  
R/w Rule 11 of NCLT Rules, 2016

**In the matter of:**

**Shri Ravindra Beleyur**

Liquidator, Deepak Cables India (Ltd),  
Having office at "Shreevathsa"  
428, 19B Cross, 3<sup>rd</sup> Block,  
Jayanagar, Bengaluru -560011

... Applicant

**Versus**

**Karnataka Power Transmission  
Corporation Limited**

Kaveri Bhavan,  
Bengaluru -560009 ... Respondent

**Order delivered on:14<sup>th</sup> December, 2023**

**Coram:**

1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**Present/Counsels Present:**

For the Applicant/Liquidator : Shri Ullasa.B.C, PCS  
For Respondent : Shri Sriranga.S, Sr. Counsel

**ORDER**

**Per: BENCH**

- 1) This instant application is filed by the liquidator of Deepak Cables (India) Ltd., under Section 33(5) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) read with Rule 11 and 13 of the NCLT Rules seeking a permission from this Tribunal to initiate appropriate legal proceeding against the respondent either by way of arbitration or any other appropriate legal proceeding and a direction to refer the dispute in relation to 163 projects to Arbitration.
- 2) On the perusal of the incumbent application, the following facts are relevant to the issue in question and is produced herein:
  - (a) Vide order dated 23.08.2018 passed by this Tribunal, the corporate debtor i.e., Deepak Cables (India) Ltd, was admitted to corporate insolvency resolution proceedings as per Section 7 of the IBC. Thereafter, this Tribunal in IA No. 270 of 2019 vide order dt.04.07.2019 appointed the applicant i.e. Mr. Ravindra Beleyur as the liquidator of CD, while ordering for the liquidation of the CD.
  - (b) The applicant made a public announcement on 12.07.2019 to invite the claims from stakeholders setting the last date for submissions of claims as 3.08.2019. Thereafter, a committee of stakeholders was set out according to regulation 31A which was filed before this Tribunal on 20.09.2019.
  - (c) It is submitted that the CD as a contractor entered into 163 different purchase agreements with the respondent M/s Karnataka Power Transmission Corporation Limited (“KPTCL), a wholly owned undertaking of Government of Karnataka, for supplying and laying of underground cables for transmission of electricity and construction of electricity substations and transmission lines as a part of different projects operating within the State of Karnataka. KPTCL being a wholly owned undertaking of the Government of Karnataka is a licensee of transmission of electricity having its electricity substations and transmission lines spread across the state according to the provisions of the Electricity Act, 2003. The purchase orders were governed exclusively by the terms and conditions of the contract.

- (d) It is submitted that the respondent originally submitted its claim for Rs. 179.78 crores vide its letter dt. 07.08.2019 with the Registrar. The claims were related to liquidated damages and penalties for delay in completion of the project on the part of the CD. However, due to the delay in submission of the claim, the liquidator/applicant rejected the claim of the respondent, due to which the Respondent approached this Tribunal seeking condonation of delay in filing claim petition which was allowed vide order dt.23.10.2019 in I.A. No. 424 of 2019.
- (e) Pursuant to the order of this Tribunal dt.23.10.2019 in the above-mentioned I.A., the Respondent submitted the claim to the liquidator. However, the applicant/liquidator has rejected the claims of the respondent on account of non-compliance of the various queries raised by the liquidator at the time of the admission of claim along with the objection that such a claim does not fall into the purview of operational debt. Thus, the liquidator/applicant initially passed interim orders and subsequently vide a final order dt.09.03.2021 the liquidator rejected the claims of the respondent.
- (f) The Respondent in pursuance of rejection of claims challenged the decision of the liquidator and filed an application i.e., I.A. 111 of 2021 in this Tribunal against the rejection of claim which is pending adjudication.
- (g) Additionally, the applicant has also issued 149 demand notices calling upon the respondent to pay the amounts determined by the applicant/liquidator in terms of Regulation 35 read with Regulation 23 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations. However, the respondent in its reply to the demand notices has stated that the amounts claimed by the applicants are (a) barred by limitation or (b) not determined to be adjudicated in the manner known to law; (c) the Applicant cannot be a judge of his own case.
- (h) It is submitted that some of the purchase orders provide a dispute resolution mechanism by way of arbitration and many of the purchase orders mention the jurisdiction for dispute resolution mechanism to be with the competent courts of Bengaluru.
- (i) The liquidator submits that as per Section 33(5) IBC, the applicant needs to obtain the leave of this tribunal for initiation legal action against the Respondent for recovery of the amounts due to it due to which the Applicant has preferred this application for permission from

this Tribunal to adjudicate dispute vide arbitration or by way of an appropriate proceedings.

**3)** The Learned Counsel for the respondent filed in its objection/written submission inter alia contenting the following:

- (a) The Respondent submits that it appointed the CD as a contractor for supplying and laying of underground cables and construction of electricity substations and transmission lines for which various agreements were executed between the Respondent and CD pertaining to 163 projects in the State of Karnataka. Additionally, the respondent avers that during the course of execution of the project work, certain disputes arose between the Respondent the CD under the contract whereby the CD did not fulfil its obligations as envisaged in those agreements which has led to a delay in commissioning of project works and the same disputes are pending adjudication.
- (b) The Respondent submits that during the stage of liquidation, the applicant cannot seek initiation of fresh proceedings as the disputes in respect of projects are currently pending before various tribunals and court which pertains to projects forming part of the 163 total projects. Thus, reference to arbitration for existing pending disputes between the Respondent the CD is barred by law. Additionally, the liquidator has only filed the instant application for referring the 163 projects for arbitration. However, the liquidator has also issued 149 demand notices for payment from the respondent.
- (c) The Respondent submits that after the initiation of CIRP against the CD, the Resolution Professional vide letters dt.03.05.2019 intimated the Respondent about the initiation of CIRP and directed to pay the amount of Rs2,68,94,66,298/- reflected as receivables in the books of the Corporate Debtor. After the appointment of liquidator, the same claims were reiterated by the liquidator/applicant vide letter dt.30.07.2019. The Respondent has rejected the claims of the liquidator vide letter dt.01.08.2019 and 07.08.2019 and informed the CD that in fact the CD is liable to pay a sum of Rs.179.98crores and the said claim is raised on interim basis subject to confirmation by field officers.
- (d) It is submitted that, due to the delay in filing the proof of claim by the Respondent, the applicant/liquidator rejected the claim pursuant to which the Respondent approached this Tribunal in I.A. No. 424 of 209 whereby the condonation of delay was allowed. The Respondent, as per

the orders of this Tribunal has filed the proof of claim for a sum of Rs. Rs.267,69,96,000 crores/- (after revision) as due and payable by the CD after setting-off the amount payable by the Applicant to the CD, only with respect to 26 projects out of 163

- (e) It is submitted that the applicant/CD in its books of account has recorded certain claims against the Respondent for the remaining projects for which the applicant/liquidator has filed the instant petition, which pertains to retention amount and liquidated damages, which were withheld and deducted by the Respondent on account of non-completion or delay in the completion and commissioning of the projects. The Respondent submits that while filing the above claim against the CD, it has already deducted the amount as alleged by the Liquidator on account of non-completion or delay in completion and commissioning of the projects. Additionally, such alleged amount claimed by the liquidator pertains to a period prior to three years.
- (f) It is submitted that the Respondent informed the liquidator that the amounts claimed by the CD are not reflected in its books of accounts as the claims of the respondent are on account of penalty/liquidated damages and risk and cost arising due to non-completion/shot closure of project by the CD and since the claims are based on estimates and not yet finalised as per the settled Generally Accepted Principles (GAAP), the transactions can only be recorded in the books based on occurrence of an event as per contractual agreement between the parties.
- (g) It is submitted that the liquidator has rejected the claims of the respondent without application of mind for want of proof vide letter dt.27.04.2020 and stated that the claims of the respondent are not admissible. Additionally, the applicant/liquidator has only granted two weeks time to the respondent for filing the proof of claims.
- (h) The Respondent vide letter dt.12.06.2020 reiterated that as per the Accounting Principles it could not have recorded the claims in its books of accounts and as per Regulation 25 of the Liquidation Process Regulations, 2016 requested the Applicant to adjudicate the claims as per the regulation. Thereafter, the officers of the respondent have personally met the liquidator and acknowledged the accounting principles being adopted and agreed that the Liquidator would assign a person to visit all the offices of the Respondent throughout the State of Karnataka and verify the books of accounts and documents of the Respondent and reconcile the statements with that of the CD.

- (i) However, due to the COVID-19 pandemic, the liquidator vide email dt.20.10.2020 informed the respondent that he is unable to delegate an employee for the visit and extended the time till 15.12.2020. The liquidator by email dt.30.10.2020 has informed the Respondent that he is required to adjudicate the claim taking into consideration the documents prescribed under Regulation 17(2) of the Liquidation Process Regulations and that deputing a staff would be a futile exercise.
- (j) The liquidator has issued interim orders dt.14.11.2020 separately for some of the projects and granted two weeks time to reply to the interim order. Thereafter, the liquidator has passed interim orders for other projects in tranches. It is pertinent to note that the CD was given 163 projects for execution and for each project the liquidator has passed an interim order in tranches and has mechanically upheld the claims of the CD against the respondent's claim, without application of mind and rejected the claims of the Respondent in respect of all the projects.
- (k) The Respondent filed I.A. No. 67 of 2021 for removal of liquidator in this Tribunal whereby this Tribunal ordered the liquidator to consider the claims filed by the Respondent on merits vide order dt.17.03.2021. However, during the pendency of the above mentioned I.A. the liquidator rejected the claims of the Applicant for 26 projects wherein the CD is liable to pay the amounts and with respect to other projects, the liquidator has allowed the claims of the CD vide order dt.09.03.2021. The liquidator in the same order has computed a sum of Rs.56,92,000/- as payable to the Applicant in respect of Project no.116 on his own and has also imposed the cost of Rs.5,00,000/- by stating that the Claims brought before the Liquidator for adjudication are frivolous in nature.
- (l) Aggrieved by the above order, the respondent has additionally filed an I.A. No.111 of 2021 under Section 42 of the IBC which is pending adjudication. The Respondent also states that during the pendency of I.A. No.111 of 2021, the liquidator has issued 149 demand notices claiming various amounts from the Respondent and the Applicant has replied to each demand notice which has been rejected the claims allegedly owed by the Respondent by also stating that even if Liquidator's claims are to be accounted for, the CD under liquidation would still be liable to pay a sum of Rs.159,90,85,000/-
- (m) Therefore, the Respondent prays that since a year has passed after the rejection of claims of the respondent and issuance of demand

notices by the liquidator, the liquidator has filed the instant application and the averments in the instant petition are not only false and misleading but is also filed to stall the liquidation proceedings and keep the respondent in a lurch.

- 4) Heard the learned counsels for both the parties. We have carefully perused the pleadings of the parties and the extant provisions of the Code and the law.
- 5) The instant application has been filed under section 33 (5) of the IBC by inter alia seeking the permission from this Tribunal so that the Liquidator may be able to file appropriate legal proceedings or initiate arbitration for the dispute between the CD and the respondent. The prayer of the applicant/liquidator is primarily arising out of various pending disputes between the parties at several legal forums which have not yet settled, and there are multiple claims and counter-claims by both the parties. Due to the non-admission of claims by the parties, the matter is not reaching a finality due to which the liquidator seeks permission of this Tribunal to refer all the 163 disputes for Arbitration. Additionally, the liquidator seeks to initiate legal proceedings against the respondent with the leave of this Tribunal as per Proviso to Section 33(5) of the Code.
- 6) From the material available on record and the documents perused, this Tribunal observes that the liquidator of the CD was appointed by this Tribunal vide order dt.04.07.2019 in I.A. No. 270 of 2019 in CP (IB) 154 of 2017. The CD had undertaken to complete the projects by supplying and laying of underground cables, and construction of electricity substations across the State of Karnataka. As per the submissions, the parties entered into 163 different projects in respect of the following circles in Karnataka:

- i. Bengaluru Transmission
- ii. Tumkur Transmission
- iii. Hassan Transmission
- iv. Mysore Transmission
- v. Bagalkote Transmission
- vi. Kalburji Transmission

- 7)** This Tribunal notes that the respondent had submitted the claim of Rs.282,92,81,000/- to the extent of only 26 projects out of 163 projects. In turn, the liquidator has not only rejected the claims of the respondent vide final order dt.09.03.2021 but also sent 149 demand notices to the respondent for payment of a sum of Rs.179.08 crores towards non-payment of dues/receivables towards the CD by the respondent. On the perusal of the outstanding claims under the title “Outstanding Claims as on 03.05.2019 as per the sheets furnished by Resolution Professional of M/s Deepak Cables India Limited” many of the claims for supply relate to the year 2003, 2005, 2006 and 2007 onwards; which are made part of the claims alleged by the parties under this liquidation process which only started in 2019.
- 8)** It is clarified from the submissions made by the parties that both the parties not only pursued their claims in different legal forums of the state of Karnataka, but were given sufficient time to do so. However, even after liquidation proceedings having been initiated against the CD on 04.07.2019, the parties submit that their claims and counter-claims are not yet settled and are still pending adjudication. Additionally, it is noted that although the instant application envisages arbitration for all 163 projects, however, as per the submission of the respondent, only 32 projects envisage dispute resolution mechanism. This Tribunal notes that this situation has created a deadlock which is not only adverse to the CD’s liquidation estate but is also indirect contravention with the implementation of strict timelines as per the Code.
- 9)** This Tribunal notes that the claims between the parties have been pending in various legal forums prior to the liquidation commencement date which are still pending adjudication. Further, despite giving multiple opportunities to settle the disputes between the parties through the course of liquidation proceedings for determination of default and consequently admission of debt, more than four years have passed and the parties have made no progress in admission of claims. As already stated here, the claims pertain to the year 2003 onwards, and multiple litigations are on ongoing for the disputes. Due to the claims and counter-claims, which relate to liquidated damages and penalties also, along with the regular outstanding payable due from the respondent, the possibility of overlapping and duplication is not ruled out. Vide order dt.17.03.2021 in I.A. No. 67 of 2021 this Tribunal had directed the liquidator to consider the claims filed by the Respondent on merits.

However, even after two years having passed since the above order of this Tribunal, the parties are still agitating their claims and counter-claims in this Tribunal and other legal forums but the matter is not getting resolved.

- 10)** This Tribunal notes that the proceedings under this Code have to be concluded in a time-bound manner and completion of liquidation is of paramount importance, but the claims have not been settled by the parties, since both the parties have not yet resolved the issue regarding their liabilities. Therefore, this amounts to a deadlock in the liquidation proceedings and the pending disputes if not adjudicated between the parties, the Liquidation process will be stalled indefinitely.
- 11)** Moreover, the respondent has submitted 163 claims against the respondent whereas the applicant has submitted 149 counter-claims against the respondent. The claims from both parties against each other has been rejected, even after giving direction to the liquidator to admit the claims on merits. The liquidator has contended that the reasoning has been provided for the rejection of claims but the same has been disputed by the respondent. The respondent further avers that the arbitration can only be initiated for 32 projects where the contract specifically provides for dispute resolution mechanism. Thus, for the claims pertaining to the remaining projects, the parties shall either amicably settle the dispute between them through a settlement deed or through mutually agreeing to refer the remaining projects to arbitration. It is pertinent to point out here that under IBC, there is only a summary jurisdiction with this Tribunal and such disputes for 163 projects/agreements, with multiple claims and counter-claims cannot be resolved by this Tribunal.
- 12)** Having considered the facts of the instant application, this Tribunal observes that, it will not be possible for this Tribunal to adjudicate upon the 163 claims and counter claims which are not yet settled between the parties and pertain to a period of over 20 years. Further, these claims already form the subject matter of arbitration Tribunals, and in multiple other litigations at various fora. This Tribunal notes that it is important for both the parties to find a mutually amicable solution to resolve their dispute. Therefore, we are inclined to accord permission under Section 33(5) of the Code to the Liquidator to refer for arbitration the pending claims in respect of the 32 projects

wherein there exists a Dispute Resolution Mechanism. For the other projects, the Liquidator is permitted to take appropriate steps as per law to resolve the matter through amicable settlement in the pending litigation. The Liquidator is directed to approach the Respondent for settling the mutual claims and counter-claims; and shall strive to bring finality to the Liquidation Proceedings in a time bound manner in the spirit of the Code and the Regulations.

**13) Thereby, the I.A. No.131 of 2022 is hereby disposed of.**

**-Sd/-**

**MANOJ KUMAR DUBEY  
MEMBER (TECHNICAL)**

**-Sd/-**

**T.KRISHNAVALLI  
MEMBER (JUDICIAL)**