

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No.403 of 2018.  
In CP (IB) No.294/07/HDB/2017  
Under section 60(5) of the IB Code, 2016

*In the matter of M/s. IVRCL Limited.*

**Between:**

M/s. SBL Construction Private Limited  
(CIN: U00500DL2005PTC138838)  
Regd. Office: N-34, Lower Ground Floor,  
Kalkaji, New Delhi – 110 092.  
Rep. by its Chief Executive Officer,  
Sri. Nardev Singh.

....Applicant/  
Claimant

**And**

M/s. IVRCL Limited,  
Rep. by the Resolution Professional,  
Mr. Sutanu Sinha, BDO Restructuring,  
Advisory LLP, Nos.201 & 202, II Floor,  
Manbhum Jade Towers, MCH No.6-3-1090/A/12 & 13,  
Somajiguda, Hyderabad – 500 082,  
Telangana.

... Respondent/  
Resolution Professional

**Date of order: 01.04.2019.**

Counsels/Parties present.

For the Applicant/Claimant:

Mr. M.Anil Kumar, Advocate.

For the Respondent/Resolution Professional:

Mr. Nirav Shah & Mr.Alay Razvi, Advocate.

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**PER: K. ANANTHA PADMANABHA SWAMY,**  
**MEMBER JUDICIAL**


**O R D E R**

1. The present Application IA No.403/2018 in CP(IB)No.294/7/HDB/2017 is filed seeking the following relief :-
  - The Resolution Professional is directed to admit the entire claim of the Applicant filed on 15.03.2018.
  - The Resolution Plan adopted by the Resolution Professional and Committee of Creditors must ensure that the entire claim due to Applicant are paid in full with no deductions what so ever.
2. That, the Applicant Company herein after referred as Claimant, Respondent Company / Resolution Professional herein after referred to as Respondent.
3. That, the Respondent Company entered into an agreement dated: 17-08-2013 with Central Public Works Department (for short CPWD)for construction of academic cum residential campus for IIT Bhuvaneswar at Argul. Part of the said work being construction of 4 Nos. school buildings (G+3) including water supply, sanitary installation , drainage, internal electrical installation and telephone LAN was entrusted to the claimant by the subject sub-contract agreement dated 04-12-2013.During the course of execution of work and on termination of agreement by the CPWD, disputes were raised between the parties. To resolve the same both parties are agreed to go for arbitration.
4. That, prior to execution of the said sub-contract agreement, a letter of intent was issued on 26-09-2013 by the Respondent. Duration of the sub-contract was 22 months from the letter of intent i.e.,

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upto 22-07-2015. Out of the total work valued at Rs.148,92,61,288/-, the value of work entrusted to the claimant was Rs.74,81,02,562/-. The sub-contract agreement in the absence of a specific provision therein made all the terms of the main agreement with CPWD applicable and binding. Broadly the relevant terms are as follows:

- a). Payment in respect of works entrusted to the Claimant shall be released within 7 to 10 days of receipt of corresponding payment by the Respondent from CPWD.
  - b). Respondent is not liable to pay interest in the event of any delay in releasing the payment to the Claimant.
  - c). The Respondent shall be entitled to retain 5% of the gross bill amount from each bill as security deposit.
  - d). The Claimant shall submit unconditional and is irrevocable performance bank guarantee equivalent to 2.5% of the contract value i.e. Rs.1,87,02,564/-.
  - e). The Claimant shall strictly adhere to milestones and priority fixed by CPWD.
  - f). The rates payable to Claimant are 5.50% below the rates quoted by Respondent with CPWD.
  - g). In the event of termination of main contract by CPWD, the Respondent shall also terminate the subcontract.
  - h). The subcontractor shall be liable to bear all liquidated damages as defined in special conditions of contract laid down in main contract.
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5. That, in spite of CPWD extending some of the time lines, both the Claimant and Respondent could not complete respective portion of work within the time. Ultimately CPWD terminated the main contract on 13-05-2015. In view of the termination of the contract by the main contractor, the sub-contract was also terminated on 03-06-2015. As on the date of termination of contract, the Claimant claimed for the work executed by them for Rs.49.56 crores.
6. It is further submitted that, when both parties raised disputes then both the parties agreed to refer the matter to the arbitral proceedings and the arbitral proceedings have commenced on 14.04.2016. In the course of proceedings, the claimant submitted its claim along with supporting documents. The claimant raised total claim of Rs.26.02 crores. Some of the claims were modified/ reduced to some extent during the course of the proceedings./ The Respondent submitted counter with documents in support thereof and also raised a counter claim for Rs.858.10 lakhs. The Hon'ble Arbitrator after considering all the issues raised by both the parties passed award on 11.08.2017, and awarded along with interest at 14% p.a. from 14.04.2016 to till the date of realization for an amount of Rs.6,25,02,676/- plus security deposit amount of Rs.1,98,00,117/- aggregating to a total amount of Rs.8,23,02,793/-.
7. It is submitted that against the award, the Respondent filed C.O.P.No.250/2017 before the XXIV Addl. Chief Judge-cum-Commercial Court, City Civil Court, Hyderabad and the same is still pending before the Hon'ble Court.





8. The Hon'ble National Company Law Tribunal passed an order appointing an Interim/Resolution Professional for the Respondent Company. The Interim Resolution Professional has called for the claims from the creditors of the Respondent Company. Accordingly, the claimant has filed claim in the prescribed proforma under the Insolvency and Bankruptcy Code on 15.03.2018.
9. The claimant has several times approached and contacted the office of the Resolution Professional whether their claim was admitted or rejected, but no information was furnished by them till date. When the claimant personally went to the office of the Respondent/ Resolution Professional and requested him to furnish the list of creditors admitted by the Resolution Professional, he informed that, the list of creditors will be available on the website. Immediately, the claimants has verified the website and found the list of creditors as on 20.04.2018 in Sl.No.1225-M/s.SBL Construction Pvt. Ltd/Claimant, amount claimed (INR) and under verification column an amount of Rs.11,02,21,297/- was shown and second list was published and it was made available in the website on 29.05.2018 in SL.No.1225 the claimant name was shown for an amount of Rs.8,56,44,618/- in column of "claim amount" and "Amount under verification in INR" column same amount was shown. Third list was published in the website on 30.06.2018, in that "Column" "Claimed amount in INR" was shown as Rs.8,56,44,618/- and "admitted amount in INR" was shown as Rs.4,04,64,835/- and in another column i.e. "Amount in INR not admitted" an amount of Rs.4,51,79,783/- was shown. Fourth list

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was published in website on 03.08.2018 showing the list of creditors in that the claimed (Claimant) was shown as Rs.8,56,44,618/- but in the admitted amount column was shown as “-” and in verification column the same amount was shown as Rs.8,56,44,618/-

10. In this regard, the claimant humbly submitted that, the Resolution Professional has not issued any notice to the claimant while adjudicating or deciding the claim of the claimant.
11. It is submitted that the Resolution professional can't sit over the Arbitration award. The award passed by the Arbitrator is binding on the Resolution Professional. The award was passed after hearing both the parties and the Arbitrator after going through the documents submitted by both the parties come to a conclusion that the Respondent Company is liable to pay an amount of Rs.8,23,02,793/- plus interest till the date of realization to the claimant. The Resolution Professional has failed to verify the claim in accordance with the rules prescribed under the Insolvency and Bankruptcy Code and the Contract Act. The Resolution Professional has not even given any observation or remarks in the admitted column published in the website. It is also duty of the Resolution Professional to inform to the claimant either by way of e-mail or by way of order to the claimant whether the claim was accepted or rejected. Before verification of the claim, it is the duty of the Resolution Professional to give notice to the Claimant even that also was not done by the Respondent. Till date, the Resolution Professional has not given its observations on our claim dated 15.03.2018. In addition the Resolution Professional has been

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unfairly denied an opportunity to participate at the time of verification. He has completely violated the natural justice.

12. At the further outset, the RP submits that the present Application ought to be dismissed in entirety as the same is not maintainable in law. The RP submits that there are disputes pending in respect of the Applicant's claim, which fact has clearly been admitted by the Applicant in his Application itself.
13. The RP most humbly and respectfully submits that the present Application is not maintainable as the Hon'ble Tribunal does not have the jurisdiction to decide on the merits of the claim filed by any Creditor. The jurisdiction of the Tribunal under section 60(5) of the Code to decide on any claim made by or against the Corporate Debtor can only be invoked once the claim of the claimant has been rejected by the Resolution Professional. However, in the present case, the claim of the Applicant is not even a claim as the same is pending determination before a court of law.
14. In any case, as per section 18(b) of the Code, it is the RP who is duty bound to receive and collate all the claims submitted by the Creditors to him, pursuant to the public announcement made under section 13 and 15. As per regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016("CIRP Regulations"), the Resolution Professional can call upon the Operational Creditor to prove the existence of the debt which the said Operational Creditor seeks to claim in the Corporate Insolvency Resolution Process on the basis of an order of a court of Tribunal that has adjudicated upon the non-payment of a debt, if any.

15. The RP states that on March 14, 2018, the Applicant filed its claim in Form B("Claim Form") as prescribed under CIRP Regulations. The basis of the claim filed by the Applicant was an award dated August 11, 2017("Arbitral Award") passed by the Ld.Arbitrator in the Arbitration dispute raised by the Applicant under the Sub-Contract Agreement dated December 04, 2013.
16. The Applicant has also mentioned in the Claim Form that on December 13, 2017, the Corporate Debtor has filed a C.O.P.No.250 of 2017 against the Arbitral Award before the Hon'ble XXIV Additional Chief Judge-cum-Commercial Court, City Civil Courts at Hyderabad("ACJ Court"). Further, in para 11 at page 6 of the Application, the Applicant has clearly admitted the said C.O.P. is pending.
17. In view of the pendency of the said petition before the ACJ Court at Hyderabad, the RP is not in a position to admit the claim filed by the Applicant as the debt which is being claimed by the Applicant still remains undetermined.
18. Once the debt is finally determined by the appropriate court or authority and the same attains finality, only then the RP would be in a position to either admit or deny the claim of the Applicant.
19. heard both the sides and perused the material on record.
20. The point for consideration is whether the rejection of claim of the Applicant/Claimant by the RP is right or not?
21. It is an admitted fact that the claimant holds and award passed in his favour to the tune of Rs. 8.23 Crores together with interest @ 14% P.a from 14.04.2016 till the date of realization on Rs. 6.25 Crores. The award came to be passed by the Learned Arbitrator

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appointed with the consent of parties in terms of the Arbitration clause contained in the agreement entered between the parties.

22. It is also a fact that the said award is under challenge before XIV Additional chief judge cum Commercial Court in C.O.P No. 250/2017 and the same is pending adjudication solely on the ground that the award is under challenge the RP has disallowed the Claim of the Applicant. Nevertheless, the pertinent point here is in view of the Moratorium U/s 14 of IB Code, in respect of Corporate Debtor, the Appeal pending before XIV ACJ court, Hyderabad, is also stalled until the period of CIRP. The claim submitted by the Applicant is based on a valid and legally issued award under the Arbitration and conciliation Act, 1996 hence, RP is not right in rejecting legally tenable claim of the Applicant. In such circumstances, the RP is hereby directed to admit the claim of the Applicant subject to the condition that the Applicant/claimant submit an irrevocable undertaking by way of Affidavit to the effect that he will place back the amount if in case, the Appeal relating to Arbitration proceeding is decided against Applicant's favour.

23. With the above observation, the Application is disposed of.



**K.ANANTHA PADMANABHA SWAMY**  
**MEMBER JUDICAL**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No.404 of 2018.  
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Under section 60(5) of the IB Code, 2016

*In the matter of M/s. IVRCL Limited.*

**Between:**

M/s. SBL Construction Private Limited  
(CIN: U00500DL2005PTC138838)  
Regd. Office: N-34, Lower Ground Floor,  
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Sri. Nardev Singh.

....Applicant/  
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**And**

M/s. IVRCL Limited,  
Rep. by the Resolution Professional,  
Mr. Sutanu Sinha, BDO Restructuring,  
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Manbhum Jade Towers, MCH No.6-3-1090/A/12 & 13,  
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Telangana.

... Respondent/  
Resolution Professional

**Date of order: 01.04.2019.**

Counsels/Parties present.

For the Applicant/Claimant:

Mr. M.Anil Kumar, Advocate.

For the Respondent/Resolution Professional:

Mr. Nirav Shah & Mr.Alay Razvi, Advocates.





**PER: K. ANANTHA PADMANABHA SWAMY,**  
**MEMBER JUDICIAL**

**O R D E R**

1. The present Application bearing IA No.404/2018 is filed by the Applicant/Claimant i.e., M/s. SBL Construction Private Limited against the Resolution Professional of the Corporate Debtor i.e., M/s. IVRCL Limited U/s. 60 (5) of the Insolvency and Bankruptcy Code, 2016, inter-alia seeking direction to the Resolution Professional to release the Bank Guarantee No.0016/20-12-2013 dated 13.11.2013 for an amount of Rs.1 Crore.
2. It is submitted that Central Public Works Department (herein after referred as (CPWD) (Main Client) awarded the work of construction of IIT Campus to M/s. IVRCL Ltd/Respondent herein, with a condition that the work was to be completed within a time period of 22 months from the date of start of work i.e., 26.09.2013 to 25.07.2015, at a cost of Rs.149 Crores and out of the same, work of Rs.74.81 Crores was subcontracted to M/s. SBL Construction Pvt Ltd., i.e., Applicant herein vide Letter of intent dated 26.09.2013.
3. It is submitted that Applicant worked to the extent of Rs.46.98 Crores i.e., 62.80% (46.98/74.81x100) only could be completed out of Rs.74.81 Crores because of serious breaches of contract committed by the Respondent such as below:
  - a) Non release of due payments/bizarre delay in release of payments.
  - b) Delay in handing over of sites.
  - c) Delay on account of non-availability of details relating to finishing items and services.
  - d) Delay in overall completion on Account of delay in completion of services such as Air-conditioning. Firefighting & lifts being executed by services contractors under the direct supervision of CPWD/IVRCL and the Applicant had nothing to do with the same.



- e) Delay on account Non sanction of extra/substituted items and non-release of any payment against the same.
- 3) It is submitted by the Applicant that the damages caused to them by IVRCL as follows:
  - i) Loss of overheads in the original period of contract Rs.2.80 Crores (approx.).
  - ii) Loss of profit in the original period of contract Rs.2.25 Crores.
  - iii) Loss due to unrecovered advances Rs.55.00 lakhs.
  - iv) Loss due to unutilized materials laying at site Rs.60.00 lakhs.
  - v) Loss due to under-utilization of Steel & shuttering material Rs.31.00 lakhs.
  - vi) Loss due to under-utilization of P & M Rs.38.00 lakhs.
  - vii) Loss due to under-utilization of site overheads such as site office, hutment stores etc., Rs.5.00 lakhs.
  - viii) Loss of reputation Rs.3.7 Crores i.e., 85% of value of Contract i.e., Rs.74 Crores.
  - ix) Interest in delayed payment of Rs.48.00 lakhs.
  - x) Hire charges, depreciation on centering and shuttering materials from March 15.
  - xi) Hire charges, depreciation on P & M from March 15 where after no work was done due to non-release of due payment by the defendant.
  - xii) Cost of transportation of material rendered surplus by illegal termination of contract.
  - xiii) Idling of department labor from March 15 to June 15.
  - xiv) Expenditure on Temporary hutments during the extended period of contract.
- 4) It is submitted by the Applicant regarding events leading to Extension of P.B.G by Six Months are as follows:
  - I) CPWD terminated the contract of Respondent on 30.05.2015.
  - II) As per Clause No.14 of contract between Applicant and Respondent stood automatically terminated.



- III) As per Clause No.1 of the main contract between Respondent and CPWD purpose of Performance Bank Guarantee was to ensure performance of the contract.
- IV) When the contract is terminated nothing is to be performed against the contract and hence no P.B.G is required. In this connection attention is invited to the letter No.SBL/RA Bill/IIT Works/BBSR/2015 dated 20.09.2015.
- V) Notwithstanding the above, Respondent has asked for the extension of P.B.G No.BOM1340/BG No.0016/2012-13 dated 13.11.2013 for Rs.1.00 Crores for six months. The Applicant reluctantly extended the B.G upto 25<sup>th</sup> March 2016.
- VI) The Respondent wrongly informed the bank that work is yet to be completed Refer the Letter No.4 dated 29.08.2015.
- VII) Work had been indeed completed as Respondent had asked the Applicant to give final measurement vide letter No.IVRCL/HO/IIT-BBSR/SBL/2015-16/001 dated 03.06.2015.
- 5) It is submitted that overall acts lastly done by CPWD dated 15.05.2015 fall within the jurisdiction of this Tribunal.
- 6) It is submitted that the Hon'ble Arbitrator in the award passed and stated that *"the Respondents contents that Clause 01 of the main contract provides that in the event of sub-contract being terminated or rescinded performance bank guarantee shall stand forfeited. As found above, the reason for non-performance of the claimant is mainly attributable to the Respondent. Hence, the Respondent can't take undue advantage of its lapse."* And further said in Para 36 at Page No.32 that *"the Respondent is liable to refund the security deposit of Rs.1,98,00,117.05ps"*
- 7) It is submitted that the Applicant requested this Adjudicating Authority, the balance of convenience is also totally in favor of the Applicant i.e., SBL Construction Pvt Ltd., and sought direction to the Resolution Professional to release the Bank Guarantee No.0016/20.12.2013 dated 13.11.2013 for an amount of Rs.1 Crore. This Adjudicating Authority in CP (IB)

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No.294/7/HDB/2017 appointed Mr. Sutanu Sinha as Resolution Professional (RP) for IVRCL. In response to the invitation of claims by the IRP, the Applicant Company has filed its claim before the IRP (i.e) on 15.03.2018 against the Respondent Company for an amount Rs.11.02,21,297/- as on 23.02.2018 and the same was acknowledgment by the IRP.

- 8) It is submitted by the RP that the present Application had been filed with incorrect particulars and lacks in clear understanding of the law as well as the facts and ought to be dismissed as the same is not maintainable in law. He submits that there are disputes pending in respect of the Applicant claim which had been admitted by the Applicant in his other Application bearing IA No.403/2018 in CP (IB) No.294/7/HDB/2017.
- 9) It is submitted by the RP that the Applicant had mentioned in the Claim form that on 13.12.2017, the Corporate Debtor had filed a C.O.P No.250/2017 against the Arbitration Award before the Hon'ble XXIV Additional Chief Judge Cum Commercial Court, City Civil Courts At Hyderabad. On 14.03.2018, the Applicant filed its claim in Form B as prescribed under CIRP Regulations. The basis of the claim filed by the Applicant was a Sub-Contract Agreement dated 04.12.2013 executed by the Applicant with the Corporate Debtor who obtained the Bank guarantee which is the subject matter of the dispute in the present Application.
- 10) It is further stated that the Applicant had its claims on the basis of an award dated 11.08.2017 (Arbitration Award) passed by the Learned Arbitrator in the arbitration dispute raised by the Applicant under the said Sub-Contract Agreement.
- 11) It is submitted by the RP that in para 11 at Page 6 of IA No.403/2018, the Applicant had clearly admitted that the said C.O.P was pending which is against the Arbitration Award passed under the Sub-Contract Agreement. Accordingly, the RP submits that the present Application of the Applicant is liable to dismissed with cost.



- 12) Heard both the sides and perused the record.
- 13) The point for consideration is whether the Applicant is entitled to release of the Bank Guarantee No. 0016/20-12-2013 dated 13.11.2013 for an amount of Rs. 1 Crore?
- 14) In a connected Application i.e., 403 of 2018 filed by the very same applicant herein. the claim of the Applicant is based on the Arbitration award referred to in this Application (Annexure A-18) has been ordered to be admitted subject to the undertaking to the effect that he will place back the amount if in case, the Appeal relating to Arbitration proceeding is decided against Applicant's favour.
- 15) Further, in para 46,47 & 48 of the said Award it has been held that the Respondent (Corporate Debtor) cannot seek performance Bank Guarantee of Rs. 1 Crore, however, since the Arbitral Award is under challenge, it is hereby directed that the Respondent herein shall not invoke the Bank Guarantee No. 0016/20-12-2013 dated 13.11.2013 until the final outcome.
- 16) It is made clear that this Application shall stand allowed in case the Applicant succeeds in the Appeal.
- 17) With the above observations, the present Application is disposed of.

  
**K.ANANTHA PADMANABHA SWAMY**  
**MEMBER JUDICAL**