

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**COURT - 2**

ITEM No.302

IA/261(AHM)2023 in CP(IB) 20 of 2020

**Proceedings under Section 60(5) IBC**

**IN THE MATTER OF:**

Gulf Engineering And Consultancy Services Private Limited .....**Applicant**  
Vs.

Anuj Bajpai Liquidator Of Anwasha Engineering And Projects .....**Respondent**  
Limited

**Order delivered on: 04/07/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

SD/-

**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

SD/-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT No.2**

**IA 261/NCLT/AHM/2023  
IN  
CP (IB) 20/7/NCLT/AHM/2020**

[An Application filed under Section 60(5) of the Insolvency and Bankruptcy Code]

**In the matter of:**

Gulf Engineering and Consultancy Services Pvt. Ltd.  
301, Plot No. C-7, Pushpak CHS Ltd  
Sector-9, Airoli  
Navi Mumbai- 400708 ...Applicant

Versus

Mr. Anuj Bajpai Liquidator of  
M/s. Anwasha Engineering & Projects Limited  
Having Address at:  
708, 7<sup>th</sup> Floor, Raheja Centre,  
Nariman Point, Mumbai- 400021 .... Respondent

**Order pronounced on 04/07/2024**

**Coram:**

**MRS. CHITRA HANKARE,  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

For the Applicant : Mr. Raju Kothari Adv.  
For the Liquidator : Mr. Rahul Gaikwad, Adv.  
Mr. Monaal Davawala, Adv.  
Liquidator in person: Mr. Anuj Bajpai

For the FC : Mr. Jaimin Dave, Adv. a.w.  
Mr. Hirva Dave, Adv.  
For the Income Tax: Ms. Bhumi Gandhi, Adv. for  
Ms. Maithali Mehta, Adv.  
For successful buyer: Mr. Chaitanya Joshi, Adv.

**Per: Bench**

**J U D G E M E N T**

1. An Interlocutory Application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 for seeking certain directions against liquidator of Anwasha Engineering and Projects Limited.
2. Brief facts of the case are as under :
  - i. The Applicant is in the business of Mechanical and Civil Contractor, entered into an agreement with Anwasha Engineering & Projects Limited (hereinafter referred to as the “the AEPL” ) for fabrication, welding, NDT, PWHT, erection, installation, hydro testing and commissioning, civil work, back to back basis of mounded bullet at BPCL Jansi site SJ-243 inviting for value of 27999999 and subsequently vide minute of meeting dated 04.11.2019 and letter of intent dated 11.12.2019 for a cumulative value of Rs. 10,60,78,985/-. The part order

was awarded of Rs. 2,79,99,999/- vide LOI dated 15-07-2019.

- ii. The Original basic value of the contract entered between AEPL and BPCL was for Rs. 13,25,98,410/- + tax which was given to the Applicant by AEPL at the rate of 20% less of the original contract basic value i.e. Rs. 10,60,78,728/-.
- iii. That the duration of contract awarded to AEPL was for nine months which ought to have been started by them in May, 2019 due to certain reasons, the work of installation was started in November, 2019 and completed by the Applicant on 15.03.2021 which was certified on their letterheads by AEPL as well as BPCL.
- iv. During the pendency of the project, AEPL filed petition under Section 9 of the IBC, 2016 for recovery of the dues which was admitted vide order dated 25.01.2021 and appointed Shri Sachin Bhatt Bhatt as IRP. Later on, the IRP was replaced by Shri Anuj Bajpai vide order dated 20.04.2021.
- v. That the Applicant was providing services of erection and such other services vide letter of intent dated 11.12.2019 to AEPL and hence, were not covered as

operational creditor and/or financial creditor as it was an on-going contract and the money for work completed on running account basis was being received from BPCL. That the amount from BPCL would be deposited in the amount of AEPL and deducting 20% of AEPL profit, the amount will be immediately transferred to the account of the Applicant by AEPL.

- vi. During the operation of the agreement applicant issued various invoices. The payments against said invoices were made by AEPL and also by RP. It is also stated that RP has released the payment of Rs. 89,20,354/- on 11.02.2021 towards the invoice No. 20-21/RA 17 dtd. 31.12.2020. The invoices were raised before commencement of CIRP.
- vii. The Applicant issued various e-mails for recovery of outstanding dues. It is submitted that AEPL has made certain payments after deducting TDS.
- viii. It was brought to the notice of the RP/Liquidator that AEPL has not deposited the tax amount and not remitted to Govt. treasury.
- ix. The amount of Rs. 92,31,501/- was unpaid by AEPL from the Applicant's account. It is submitted that the

amount of receipt issued by BPCL to the Applicant through AEPL was only to facilitate the arrangement and hence the amount received from BPCL towards the contract cannot be asset of AEPL and hence, the amount so received from BPCL which is lying in the account of AEPL cannot be distributed amongst the creditors of the AEPL.

- x. It is submitted that RP/Liquidator has credited an amount of Rs. 1,67,750/- on 25.01.2023 without any intimation. The Applicant vide e-mails dated 25.01.2023 & 31.01.2023 has inquired from the Liquidator regarding the nature of payment, however, no reply has been received. The Respondent RP/Liquidator has failed to perform his duties hence, this application.
3. The RP has filed its Affidavit-in-Reply clarifying the allegations levied on him. In response to the reply filed by the RP, the Applicant has also filed its Affidavit –in-Rejoinder.
4. The stated dispute, if any is covered under Arbitration Act as per clause 19 of the work order. Further, the Respondent has stated that the applicant had issued a letter dated 11.05.2022 towards full and final settlement/no-dues to the Respondent under the head of Letter of Indemnity, wherein the Applicant

stated that all the dues of the Applicant is settled full and final and also indemnified the Respondent and other officers of the Corporate Debtor from any damages etc. Also the Respondent had transferred an amount of Rs. 1,67,750/- on 25.01.2023 in lieu of the TDS deducted.

5. In view of the above observations, we pass following order.

**ORDER**

IA No. 261 of 2023 in CP(IB) 20 of 2020 is rejected and stands disposed of.

**SD/-**

**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

**SD/-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**

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