

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301

IA/690(AHM)2023 in CP(IB) 20 of 2020

Order under Section 33(5) IBC

IN THE MATTER OF:

Anuj Bajpai Liquidator Of Anwasha Engineering And Projects**Applicant**
Ltd.

.....**Respondent**

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/-

SD/-

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

CHITRA HANKARE
MEMBER (JUDICIAL)

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

**IA 690/NCLT/AHM/2023
IN
CP (IB) 20/7/NCLT/AHM/2020**

[An Application filed under Section 33(5) of the Insolvency and Bankruptcy Code]

In the matter of:

Mr. Anuj Bajpai
Liquidator of Anwasha Engineering & Projects Ltd.,
.... Applicant

Memo of the Parties

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

And

In the matter of :

Continental Piling and Excavation Pvt. Ltd.

... Applicant/ Financial Creditor

Versus

M/s. Anwasha Engineering & Projects Ltd.

... Respondent/Corporate Debtor

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 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.

Per: Bench

J U D G E M E N T

1. An Interlocutory Application is filed under Section 33(5) of Insolvency and Bankruptcy Code, 2016 for initiating legal proceedings against Gulf Engineering & Consultancy Services Pvt. Ltd.

Brief facts of the case are as under :

2. The Applicant is the Liquidator of the Corporate Debtor, appointed vide an order dated 13.01.2023. The Corporate Debtor was awarded a Purchase Order through Bharat Petroleum Corporation Ltd (“BPCL”) to undertake construction of MSV 3x300MT Mounded Storage Vessels, alongwith all the incidental and allied structural and civil works at the site of BPCL in Jhansi wherein the said project was to be completed within a period of nine months. The said project was sub contracted by the Corporate Debtor to one Gulf Engineering &

Consultancy Services Pvt. Ltd. by way of Work Order dated 30.11.2019.

3. According to the work order (for fabricating, welding, NDT, PWHT, erection, installation, hydrotesting and commissioning, civil work, moulded bullets) to Gulf Engineering was required to complete the said construction works within 9 months from the date of Letter of Intent executed between the Corporate Debtor and BPCL. Since Gulf Engineering could not complete the said project within the stipulated timelines, the Corporate Debtor was compelled to seek an extension of time from BPCL which was granted to the Corporate Debtor subject to recovery of liquidated damages as per the terms and conditions stipulated under the contract with BPCL.
4. That the Corporate Debtor suffered financial losses due to the delay and demur caused by the Gulf Engineering towards the completion of the said project. Therefore, the Corporate Debtor has time and again notified Gulf Engineering about the liquidated damages deducted by the BPCL. Despite the same, the Gulf Engineering continuously demanded monies from the Corporate Debtor and whereas liquidated damages are recoverable by the Corporate Debtor from Gulf Engineering.

5. The respondent has filed an application to claim an amount of Rs. 90,68,435.09/- from the Corporate Debtor via IA . Hence this application is filed to initiate legal proceedings against the Gulf Engineering to recover its dues payable to Corporate Debtor.

6. The Gulf Engineering has filed its reply stating that :

The on-going contract was started in November, 2019 and completed on 15.03.2021. The RP has made payment of Rs. 89,20,354/- on 11.02.2021, Rs. 64,80,555/- on 11.04.2022, Rs. 58,92,762/- on 11.05.2022, Rs. 1,67,750/- on 25.01.2023 during the CIRP and hence it is evident and admitted position that there was no dispute till 25.01.2023 and the dispute arise after thought to pass the liability of BPCL. After filing an application IA No. 261 of 2023 , RP /Liquidator has filed the instant application. It is states that the RP/Liquidator ought to have invoked arbitration proceedings in January, 2021 when he was appointed as RP, however, till May, 2023 the Liquidator does not take a stand of invocation of arbitration and made various communications and payments to the Applicant. The Liquidator is trying to safeguard the interest of BPCL and that is why the Liquidator has not contested the false claim of BPCL.

7. It is stated that the stage of invocation of Arbitration had gone and now it cannot be invoked. The RP/Liquidator has already reached the conclusion which is very clear from the reply of the notice dated 08.02.2023, wherein the liquidator has asked for an amount of Rs. 2,36,50,316/- from the respondent. It is to state that arbitration proceedings turns in favour of Applicant by way of an award, then how the liquidator would honour the award, hence, the application deserves to be dismissed.
8. Heard Ld. Counsels for both the sides.
9. There appears to be a claim and counter claim between both the parties.
 - a) A separate IA has also been filed by the respondent against the liquidator. As per the work order dated 30.11.2019 which is issued in favour of the respondent by the original CD, disputes if any are to be raised under the Indian Arbitration and Conciliation Act, 1996 and the place would be at Vadodara Gujarat. The amount is due as per the claim for damages on account of the execution of the sub contract to be done for the work pertaining to BPCL given as sub contract to the respondent on account of which the CD has suffered losses.

- b) Since the dispute is from the both sides and there needs to be a net settlement, the matter is to be settled through arbitration and on passing of the award the matter is to be placed before this Tribunal. The Liquidator as per Sec 33(5) of the IBC 2016 has to seek the approval of this Tribunal to file any legal suites and only on approval can file the same to recover such amount due claimed for the damages. However, during the delayed process, the respondent has filed a separate claim on the liquidator which has been filed as a separate IA.
- c) Since the referred contract where there is a dispute to claim damages, the RP has to appoint an Arbitrator under the Arbitration Act. This needs the approval, even though no name has been suggested. Or the RP has to prefer an appropriate course of legal action to recover his dues.
- d) Since there is an established amount of damage or loss to CD which has to be claimed, the liquidator has to be permitted to take necessary course of action. In this judgment passed in the matter before NCLAT in Reliance India Power Fund, Reliance Capital Vs Mr Raj Kumar Ralhan (CA(AT)(INS) No.318/2020), it has been emphasised that such permission is to be granted under

the provisions of the Act to enable the liquidator perform his duties. This is to be permitted in terms of Sec 33(5) and 35(1)(k) of IBC 2016.

e) Accordingly, we pass the following order:

ORDER

1. The liquidator is directed to take necessary course of action to recover the amount of dues through appropriate legal procedure within 1 month from the date of this order after taking necessary advice from SCC.
2. IA No. 690 of 2023 is allowed and stands disposed of.

SD/-

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

SD/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

vc