

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 06.06.2024 AT 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>CP(IB) No.316/9/HDB/2020</b>
<b>NAME OF THE COMPANY</b>	<b>Alaknanda Hydro Power Company Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Bharat Heavy Electricals Ltd (BHEL)</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Alaknanda Hydro Power Company Ltd</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

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

**CP (IB) No. 316/9/HDB/2020**

*(Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (AAA) Rules, 2016)*

**In the matter of:**

Bharat Heavy Electricals Limited,  
BHEL House, Siri Fort,  
New Delhi -110049.

...Applicant/  
Operational Creditor

**Vs**

M/s. Alaknanda Hydro  
Power Company Ltd.,  
Paigah house, 156-159,  
Sardar Patel Road, Secunderabad,  
500003.

...Respondent/  
Corporate Debtor

**Date of order: 06.06.2024**

**Coram:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Appearance:**

For Applicant : Mr. DVAS Ravi Prasad, Advocate  
For Respondent : Ms. Rubaina S Khatoon, Advocate  
Heard on : 18.04.2024

**[PER: Sanjay Puri]**

**ORDER**

1. This Company Petition is filed on 16.09.2020 by Bharat Heavy Electricals Limited (**BHEL**), the Operational Creditor (**OC**) seeking to initiate CIRP<sup>1</sup>

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<sup>1</sup> Corporate Insolvency Resolution Process

under Section 9 of IBC<sup>2</sup> read with Rule 6 of the applicable Rules<sup>3</sup> against M/s. Alaknanda Hydro Power Company Ltd., the Corporate Debtor (**CD**) who is alleged to have committed default in payment of the operational debt of Rs 69,61,71,824.

**Brief averments of the application**

2. It is averred that the OC and the CD have entered into a Supply Agreement<sup>4</sup> and Service Agreement<sup>5</sup> dated 31.05.2007. The OC was required to conduct design, engineering, quality surveillance, manufacturing, delivery, storage, erection, testing, commissioning and handover 4 x 8.50 MW capacity generating units and associated equipment for Shrinagar Hydroelectric Project in Uttarakhand comprising of 4 Units viz; Unit No.1, Unit No.2, Unit No.3 and Unit No.4. Subsequently, various Purchase Orders<sup>6</sup> between 17.01.2012 and 12.11.2015 were also placed by the CD on the OC for the Project. The Agreements along with the Purchase Orders are hereinafter collectively referred to as Contracts.
3. It is claimed that the OC has diligently performed its obligations under the Contract and all the equipment as required under the Contracts were successfully commissioned and handed over to CD on 23.04.2015 (Unit No.1), 02.05.2015 (Unit No. 3), 26.06.2015 (Unit No. 2) and 26.06.2015 (Unit No. 4). Since then, all the Units have been taken over by the CD and are under commercial operation.
4. It is averred that the CD failed to comply with the terms and conditions of Contract and defaulted in making payment for the Supplies and Services provided by the OC. It is contended that the CD owed an amount of Rs 53,57,27,727 to the OC with respect to unpaid invoices under the Contracts. With regard to the unpaid invoices, the OC is stated to have

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<sup>2</sup> Insolvency & Bankruptcy Code, 2016

<sup>3</sup> Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

<sup>4</sup> Pg No. 74-1129 of the Application

<sup>5</sup> Pg No. 1130-2231 of the Application

<sup>6</sup> Pg No. 2393-2422 of the Application

issued a Legal Notice<sup>7</sup> dated 17.02.2017 to CD calling upon to pay the outstanding amount within 14 days upon receipt of the Notice. However, the CD failed to make payment in 14 days.

5. It is averred that the CD vide an email on 11.05.2018<sup>8</sup> had admitted the debt of Rs 43,14,90,332. This was later restated as Rs 43,10,03,098 vide letter dated 16.04.2019<sup>9</sup>. when the CD failed to pay even the admitted amount, the OC on 24.08.2019 issued a Demand Notice<sup>10</sup> under Section 8 of IBC to the CD demanding payment of Rs 83,51,08,582 which included interest of Rs 29,93,80,855 till 31.07.2019.
6. The CD vide a reply<sup>11</sup> dated 04.09.2019 offered to settle the matter amicably. Thereafter, the CD made payments of 20 Crores in four instalments of 5 Crores each on 14.10.2019, 14.11.2019, 17.01.2020 and on 11.02.2020. It is submitted that the CD after 11.02.2020 did not make any payment to OC and thus committed default in repaying the operational debt amount<sup>12</sup> of Rs 69,61,71,824 (after excluding Rs 20 Crores paid till then). This comprised of Rs 33,57,27,727 towards unpaid invoices and interest of Rs 36,04,44,097 calculated up to 31.07.2020. Hence this application.

### **Counter reply**

7. It is stated that the CD to operate 330 MW Srinagar Hydroelectric Project, invited competitive bids for execution of the Electro Mechanical works for the project. The OC as the Successful Bidder entered into Agreements for Supplies and Services dated 31.05.2007, where scope of work was defined under each Agreement. Further, the OC agreed to complete the work within 46 months from the date of 'Notice to Proceed' i.e. 15.07.2007.

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<sup>7</sup> Pg No. 2483-2488 of the Application.

<sup>8</sup> Pg no. 2492-2493 of the Application

<sup>9</sup> Pg No. 2512 of the Application

<sup>10</sup> Pg No. 2526 - 2537 of the Application

<sup>11</sup> Pg No. 2538-2542 of the Application

<sup>12</sup> Details on Page 2448 of the Application

8. It is averred that the OC despite availing extension of time did not complete even one out of four generating turbines by 2013. Due to the negligence of OC in completion of work in time, the CD issued a letter<sup>13</sup> dated 10.03.2013 informing the OC about the cost overruns suffered by the project due to non-completion of works in time.
9. It is contended that the OC also failed to fulfil the obligations under the Purchase Orders issued by the CD for restoration of damaged equipment in the power house of the project, ultimately the same were completed in the month of March, 2015.
10. It is stated that the total amount of Rs 83,51,08,582 shown as due payable by the CD, comprises Rs 53,57,27,727 as the principal amount and Rs 29,93,80,855 as interest thereon. It is argued that the sum of Rs 53.57 Crores claimed by the OC as principal amount, only Rs 43.10 Crores pertained to the invoices raised under the Agreements. The balance Rs 10.47 Crores was in respect of certain spares, under standalone Purchase Orders which were not connected with the Agreements, and some missing invoices.
11. It is submitted that after numerous discussions with the OC, **the entire principal amount of Rs 53,57,27,727 was paid**<sup>14</sup> by the CD during the pendency of the present application. So far as the claim of interest of Rs 29,93,80,855 is concerned, it is claimed that the OC had agreed to reconciliation of the interest component, as the Agreements do not contemplate the same. The amount claimed towards interest by the OC is therefore disputed, as the CD never acknowledged the same.
12. It is contended that, since the OC has not fulfilled the obligations under the said contracts, severe financial loss has been caused to the CD due to time over run, rise in cost of materials and generation loss.
13. It is argued that the current petition is not maintainable, citing the

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<sup>13</sup> Page 18-20 of the Counter Reply

<sup>14</sup> Pg 44 of the Counter reply.

dispute regarding the delay in work execution and failure to fulfill obligations, as indicated in the letter of 26.12.2011<sup>15</sup> and Minutes of the Meeting dated 26.03.2015<sup>16</sup>. It is further submitted that the CD raised issues with respect to the work of OC vide letters<sup>17</sup> dated 30.12.2014, 10.03.2015 and 11.08.2015. These issues were also discussed with the OC as recorded in the Minutes of Meeting<sup>18</sup> dated 26.03.2015.

14. It is asserted that the CD had undertaken to pay the admitted amount of Rs 43.10 Crores in instalments and the remaining amount of Rs 10.47 Crores a part of principal amount was to be reconciled by the parties. Further, the amount of Rs 29.90 Crores being claimed as interest was disputed and parties agreed to reconcile the same on mutual terms. It is further stated that there is a pre-existing dispute with respect to certain amount of the principal and the entire amount claimed towards interest.
15. It is submitted that the OC was aware that it was not entitled to claim any interest amount, which have been disputed by the CD. The CD had addressed this issue in its reply<sup>19</sup> dated 04.09.2019 to the Demand Notice.

### **The Decision**

16. We have heard the Counsels and perused the documents on records. This application under section 9 of IBC has been filed as the CD was stated to have defaulted on payment of the operational debt of Rs 69,61,71,824 payable to the OC. Brief facts leading to this application are recounted as follows.
17. The OC is a public sector undertaking and it is India's largest engineering and manufacturing enterprise in energy and infrastructure. The CD which is involved in generation of electricity was proposing to develop a

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<sup>15</sup> Annexure B-2 of the Counter Application

<sup>16</sup> Annexure B-3 of the Counter application

<sup>17</sup> Annexure B-10 of the Counter Application.

<sup>18</sup> Annexure B-11 of the Counter Application.

<sup>19</sup> Page 2538-2542 of the Application

Hydroelectric Project on the Alaknanda River in Uttarakhand, and engaged the OC after competitive bidding for design, engineering, quality surveillance manufacture, delivery, storage, erection, testing, commissioning and handing over of 4 x 82.5 MW capacity generating units and associated equipment. Subsequently, on 31.05.2007 the OC and the CD entered into the 'Supply Agreement' and the 'Services Agreement' (**The Agreements**) in this regard.

18. The work of Hydroelectric Project commenced on 15.07.2007 and numerous Purchase Orders were placed by the CD and Supplies made and Services provided by the OC in the following period. Corresponding Invoices were raised by the OC and the payments made by the CD under the Contracts. Some of the Invoices however remained unpaid.
19. In February 2017, the OC sent a Legal Notice<sup>20</sup> in respect of the unpaid Invoices amounting to Rs 50.33 Crores. This amount was later revised<sup>21</sup> to Rs 53.34 Crores, and again changed<sup>22</sup> to Rs 53.76 Crores. Besides the principal amount of Rs 53.76 Crores representing the outstanding Invoices, the OC also demanded interest on delayed payments.
20. With no payment against the unpaid Invoices forthcoming, the OC on 24.08.2019 sent a Demand Notice<sup>23</sup> in Form-3 under Section 8 of IBC demanding a sum of Rs 83,51,08,582 comprising the principal amount of debt of Rs 53,57,27,727 and interest thereon of Rs 29,93,80,855.
21. Pursuant to the receipt of Demand Notice under Section 8 of IBC, the CD admitted<sup>24</sup> to the debt of Rs 43.10 Crores and also made payment<sup>25</sup> of Rs 20.00 Crores till 11.02.2020. When the CD did not pay the remaining amount of Rs. 23.10 Crores of the admitted debt, present petition was filed on 16.09.2020 claiming Rs 69,61,71,824 as outstanding debt which

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<sup>20</sup> Pg 2483 to 2488 of the application

<sup>21</sup> Pg 2491 of the application

<sup>22</sup> Pg 2494 of the application

<sup>23</sup> Pg 2526 to 2537 of the application

<sup>24</sup> Pg 2512 of the application

<sup>25</sup> Pg 2618 of the application

included interest of Rs 36,04,44,097 calculated till 31.07.2020.

22. During the pendency of the petition before this Authority, in March 2021 the CD is stated<sup>26</sup> to have cleared the entire outstanding amount i.e. Rs 43,10,05,558 which was the admitted amount and Rs 10,40,14,612 which was the reconciled disputed outstanding amount. Thus, the original sum of Rs 53.57 Crores representing the principal sum of unpaid invoices was paid by the CD to the OC after reconciliation. Interest claim on account of delayed payment of the aforesaid invoices is still being pursued by the OC through the present petition.
23. Going through the Agreement of Supply<sup>27</sup> and the Agreement of Services<sup>28</sup> and in particular Articles 4 & 5 of both Agreements, which are about 'Price and Payments' and the responsibility of the CD identified as 'Owner's Responsibility' in both the Agreements, we find that there was no stipulation of any interest payment with regard to the provision of Supplies or Services. The contract price under both these Agreements was stated to be "firm and free from any variations, till the end of contractual delivery period". The owner's i.e. the Respondent's responsibility was that it "shall make timely payments to the supplier [contractor] of all amounts due to the supplier [contractor]" under the respective Agreements.
24. We also notice that under the Agreements, the OC was to complete the work for all the four 'TG Units' within 46 months of the commencement date of 15.07.2007. That is, all Supplies & Services leading up to the execution of the project was to be completed by 15.03.2011. However for various reasons which have remained contentious between the parties, the Project could not be completed till much later and the Commercial Operation Date (COD) for the last generating unit occurred on 21.06.2015.
25. The latches and delays in execution of the project have been highlighted

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<sup>26</sup> Letter dated 27.04.2021 at Pg 44 of the counter reply

<sup>27</sup> Pg 74 to 1129 of the application

<sup>28</sup> Pg 1130 to 2231 of the application



through the letters<sup>29</sup> sent by the CD to OC on 26.12.2011 and 10.03.2015. The letters dated 30.12.2014, 10.03.2015 and 11.08.2015 sent by the CD to OC also show that there were differences between the parties about the delays in execution of the project and the late payments of the invoices raised.

26. It is a fact that there was a delay in execution of the project under the Agreements, and the agreed schedule could not be adhered to. It is also a fact that the CD missed making payments in respect of certain Invoices. Whether the delay in execution of the project can be attributed to the OC, and whether the payments missed by the CD can be attributed to such delay is a matter that requires deeper enquiry and analysis.
27. The communications between the parties before the Demand Notice under Section 8 was sent on 24.08.2019 clearly suggest issues relating to delays in commissioning of different units of the project and pending payments in relation thereto. A letter of 30.12.2014 from the CD to the OC notes “abnormal delays... in supplying materials and rectifications of defective materials” by the OC and “delay in releasing payments” by the CD. Minutes of the Meeting on 26.03.2015 also record “protracted discussions and deliberations” with regard to the delayed payments and the “issues leading to commissioning” of one of the units, and resolved to “hold meeting to discuss outstanding contractual issues”.
28. These communications show that there were plausible contentions on part of the CD with regard to deferring of payments on certain Invoices. Lending credence to these contentions is also the fact that the claim of outstanding sum with regard to the unpaid invoices kept changing and required reconciliation. The legal notice of February 2017 stated the sum to be Rs 50.33 Crores, which was revised to Rs 53.34 Crores, changed yet again to Rs 53.76 Crores and finally stating Rs 53,57,27,727 in Form-3 notice.

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<sup>29</sup> Annexure B1 & B2 of the counter reply

29. Ascertaining validity of CD's contentions regarding delaying/deferring payments on certain invoices would requires detail examination of voluminous records and correspondences between the parties. This Authority is not expected to carry out any such detailed enquiry. Here, we may refer to **Mobilox**<sup>30</sup> judgement where the Hon'ble Supreme Court has held in relation to Section 9 proceedings that;

*“all that the adjudicating authority is to see at this stage is whether there is a **plausible contention which requires further investigation** and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

This view has been reiterated by Hon'ble Supreme Court in the cases of **Sabarmati Gas Ltd**<sup>31</sup> and **Rajratan B Agarwal**<sup>32</sup> also, where again it has been unequivocally held that any “plausible contention requiring investigation” will constitute a dispute and if raised prior to the issue of section 8 notice, will result in rejection of Application under section 9 of the IBC.

30. Undoubtedly, the issue of interest in the present case is connected to late payment of certain Invoices. While the Agreements between the parties required timely payments on the Invoices raised, there was no provision for interest to be charged for late payments, notwithstanding mention of interest charge on the Invoices raised. Also, the reasons for delayed payments have remained contentious even before issue of Demand Notice under Section 8 of IBC.

31. Moreover, a perusal of the unpaid invoices (payment in respect of which

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<sup>30</sup> Mobilox Innovations Private Limited vs. Kirusa Software Private Limited in Civil Appeal No. 9405 o 2017

<sup>31</sup>Sabarmati Gas Ltd vs. Shah Alloys Ltd (2023) 3 SCC 229 [p.256]

<sup>32</sup> Rajratan Babulal Agarwal vs. Solartex India Pvt Ltd (2023) 1 SCC 115 [p.150]

has been made now) reveals that the OC itself has been ambiguous about charge of interest on late payments. While some of the invoices raised by the OC however mentioned about charge of interest on late payments in the following manner,

“In case payment is not made within contractually agreed period or 30 days of the date of this invoice, whichever is later, interest @1% higher than the ruling Bank rate was mentioned as chargeable on the amount due”.

or

“Interest will be charged on payment not affected within thirty days of this debit note/invoice at the rate of 18% per annum or one percent higher than ruling rate charged to BHEL by bank on cash credit, whichever is higher”

some other did not mention any specific percentage of interest to be charged and merely stated that:

“Interest will be charged on payment not affected within 10 days”

or

“Interest on delayed payment, if any, will be charged as per contractual obligation”

or

“Interest on delayed payment will be charged, if applicable as per contract”.

Several other invoices made no reference whatsoever to any interest payable on the delayed payments.

32. Considering that the Agreements between the OC and the CD had no stipulation for charge of interest on late payments, and also that the OC has not charged interest on late payments in any uniform manner with several invoices having either no reference to the interest or merely referring to the contractual terms, which provided for no interest, the claim of the OC in this regard is not tenable.
33. Considering that the Agreements between the OC and the CD did not include provisions for charging interest on overdue payments, and further noting that the OC has not consistently applied interest charges on late payments—several invoices either omit any mention of interest or

merely reference contractual terms, which provide for no interest provisions—the OC's claim in this regard is not tenable.

34. The issue of interest payment in the context of section 9 was examined by NCLT Mumbai Bench in **Swastik Enterprise**<sup>33</sup> where it was held that the interest charged could be treated as actionable claim under IBC only when it is properly documents and agreed upon. The relevant part of the judgement is as below:

**“6.5** We have examined the facts of this case in the light of the legal position discussed hereinabove. As already observed, the charging of Interest on an outstanding Debt ought to be an Actionable Claim so that admissible under the eyes of Law. Claim of Interest is therefore within the ambits of an Actionable Claim which is enforceable under Law. At the cost of repetition, a claim is enforceable under Law if it is supported by cogent admissible evidence, therefore, **as far as the question of present controversy related to charging of Interest is concerned, the same is enforceable if it is properly documented and agreed upon. It is also necessary that the rate of Interest should also be agreed upon between the Parties.** In the present case, these basic requirements appear to be missing. Rather, the Petitioner had not established to the hilt the eligibility of claim of Interest.”

(emphasis supplied)

The above view has been upheld by the Hon’ble NCLAT vide its order dated 27.07.2018 by holding

“as we find that the principal amount has already been paid and as per agreement no interest was payable, the application under Section 9 on the basis of claims for entitlement of interest, were not maintainable.”

35. In the present case also, we find that interest on delayed payments was never part of the agreements signed between the parties, and even though the individual invoices mentioned about the charge of interest @1% more than the prevailing bank interest on delayed payments, this stipulation was never explicitly acknowledged by the Corporate Debtor.

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<sup>33</sup> Swastik Enterprises v. Gammon India Limited, 2018 SCC OnLine NCLT 9730

Now that principal amount on the unpaid invoices has been paid by the CD, the claim interest thereon cannot be entertained.

For the reasons as above, the application is dismissed.

**Sd/-**

**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

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