

SL. No.3

**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 03.10.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/550/2021 in CP(IB) No.294/7/HDB/2017
NAME OF THE COMPANY	IVRCL Limited
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	IVRCL Limited
UNDER SECTION	7 of IBC

**ORDER**

**IA (IBC)/550/2021**

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

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

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

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

**I.A. No.550 of 2021 in**  
**C.P. (IB) No. 294/7/HDB/2017**

**In the matter of**

**State Bank of India, Financial Creditor**  
**vs.**  
**M/s IVRCL Limited, Corporate Debtor**

**Between:**

M/s Meja Urja Nigam Pvt Ltd,  
Meja Thermal Power Project,  
Post-Kohdhar, Dist. Allahabad,  
Uttar Pradesh – 212 301

....Applicant

Vs.

Mr. Sutanu Sinha,  
Liquidator of M/s IVRCL Limited,  
Mihir, 8-2-350/5/a/24/1B, Road 2,  
Panchavati Colony, Banjara Hills,  
Hyderabad – 500 034.

....Respondent

**Date of Order: 03.10.2024**

**Coram:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)  
Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsel present:**

For the Applicant : Mr Avinash Desai, Senior Advocate  
For the Respondent : Mr Nirav Shah & Mr Alay Razvi, Advocates

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. In March 2012, M/s IVRCL Ltd, the Corporate Debtor (**CD**) was awarded a works contract by the Meja Urja Nigam Pvt Ltd, a subsidiary of NTPC Ltd (**Appellant**), for a total consideration of Rs 289.76 crores. The contract was set to be completed by December 2016, following an extension granted in January 2016. However, in September 2016, “due to extremely poor performance” of the CD, the contract was terminated by the Appellant.
2. In September 2017, the CD raised a final bill of Rs 126.93 crores for the work completed under the contract. This bill was subjected to the Appellant's inspection and examination, and the CD deployed a team for joint measurement and inspection of the work.

In the meanwhile, the CD was admitted into the Corporate Insolvency Resolution Process (CIRP) in February 2018.
3. Pursuant to inspection and examination in July 2019, the Appellant accepted a reduced claim of Rs 11.29 crores only against the CD's final bill of Rs 126.93 crores for the project. Additionally, the Appellant raised a claim of Rs 1089.13 crores against the CD.
4. In the same month, July 2019, the liquidation of the CD was ordered, and a liquidator was appointed. The Liquidator then advised the Appellant to file its claim under IBC, which was done by the Appellant on 15.04.2020.

5. As it was filed beyond the due date mentioned in the public announcement, the Respondent Liquidator rejected the Appellant's claim. Aggrieved by the decision of the Liquidator, the Appellant filed IA No. 800 of 2020 which was allowed<sup>1</sup> by this Authority and the respondent was directed to consider the Appellant's claim on merits.
6. In compliance with the directions of this Authority, the respondent Liquidator is stated to have considered the claim of the Appellant on merits, and rejected the same on 02.02.2021 by citing his reasons. The present application is against the rejection of the Appellant's claim by the respondent, where a direction has been sought for admission of the claim of Rs 1235.71 Crores.
7. In his counter, the Respondent Liquidator has reiterated the reasons for rejecting different claims laid by the Appellant altogether amounting to Rs 1235.71 Cores.
8. Both the Appellant and the Respondent Liquidator have presented their arguments and counterarguments regarding the rejected claims. Before proceeding further, it is necessary to refer to the relevant Sections of the IBC and applicable Regulations regarding claims by operational creditors and the responsibilities of the Liquidator in verifying such claims.

### **The Law**

9. Under **Section 35(1)(a)** of IBC<sup>2</sup>, the Liquidator is to "*verify claims of all the creditors*", and in this regard, the operational creditor

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<sup>1</sup> Order in IA No 800 of 2020 dated 18.09.2020.

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

under **Regulation 16(1)** of the Liquidation Regulations<sup>3</sup> is expected to “*submit its claim*” to the Liquidator and “*submit proof of claim*” in Form-C of Schedule II under **Regulation 17(1)**. Under **Regulation 17(2)**, the “*existence of debt due to an operational creditor*” may be proved on the basis of the record available with an information utility, or “*other relevant documents which adequately established the debt*”.

10. The Liquidator under **Regulation 23** “*may call for such other evidence or clarification as he deems fit from a claimant for substantiating the whole or part of its claim*” and “*shall verify the claims*” under **Regulation 30** and “***may either admit or reject the claim***”.

The term ‘claim’ is defined in **Section 3(6)** of IBC to mean

“(a) *a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*

b) *right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*”

and ‘debt’ is defined in **Section 3(11)** to mean

“*...a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*”

Definition of ‘operational debt’ is provided in **Section 5(21)** to mean

“*...a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

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<sup>3</sup> The IBBI (Liquidation Process) Regulations, 2016

11. A combined reading of these sections and regulations suggests that the right to payment or the right to remedy for breach of contract would give rise to a debt, existence of which once established, result in a claim that the liquidator has to admit the same. The operational creditor therefore must submit its claims with proof to establish its right to payment from the corporate debtor.
12. The Liquidator is then responsible for receiving and verifying these claims, during which he may request additional evidence or clarification from the operational creditor to substantiate the claim. After verification, the Liquidator may admit or reject the claim in whole or in part, as the case may be.
13. The act of verification of the claims has been considered by different benches of Hon'ble NCLAT/NCLT in the context of the Resolution Professional in a CIRP<sup>4</sup>, to state that in collating and verifying the claim submitted by a creditor, the duties and functions are administrative and not adjudicatory in nature, and that one has to prima-facie satisfy himself about that claim from the documents submitted<sup>5</sup>. The task is limited to confirming that the claims made are true and correct, without enquiring into the rights and liabilities of the parties<sup>6</sup>. Verification of claim is a process of establishing truth, accuracy or validity of the claim, and it is not meant to be passing judgement or making of a decision on the quantum of the claim<sup>7</sup>. This verification cannot be treated

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<sup>4</sup> Corporate Insolvency & Resolution Process

<sup>5</sup> Ome Prakash Verma v. Amit Jain, 2022 SCC OnLine NCLAT 491 (para 9)

<sup>6</sup> Ramakant Suryanath Pande v. CS Prakash K. Pandya, 2019 SCC OnLine NCLT 4814 (para 9-11)

<sup>7</sup> BMW India (P) Ltd. v. Sathiq Buhari, 2021 SCC OnLine NCLT 20952 (paras 17-21)

as an adjudicatory exercise<sup>8</sup>.

14. Upon verification, the Liquidator has the discretion to either accept or reject a claim. This discretion contrasts with the more limited authority granted to the Resolution Professional (RP) during the verification of claims in CIRP proceedings. The operating clauses of the respective Regulations are:

**Liquidation Regulation 30**

Verification of Claims

The liquidator shall verify the claims submitted within thirty days from the last date for receipt of claims and may either **admit or reject** the claim, in whole or in part, as the case may be.

**CIRP Regulation 13**

Verification of Claims

The interim resolution professional ... shall verify every claim ... as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon **maintain a list** of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

15. The distinction between the powers of the RP and the Liquidator has been explained by the Hon'ble NCLAT in the case of **Avil Menezes (Liquidator)**<sup>9</sup> by holding, that

*“for the purpose of liquidation, the liquidator has some special powers which are significantly different from those of the RP”*

and that

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<sup>8</sup> S.S. Natural Resources (P) Ltd. v. Ramsarup Industries Ltd., 2021 SCC OnLine NCLAT 583 (para 139)

<sup>9</sup> Avil Menezes (Liquidator) v. Tata Consulting Engineers Ltd. : (2024) ibclaw.in 344 NCLAT

*“while in the resolution phase, the submission of claims and verification thereof is with respect to primarily determining the eligibility to be a member of the Committee of Creditors, **under the liquidation process, the verification is done with the primary objective to determine the total amount of dues and priority thereof to be paid out of the liquidation estate.**” (emphasis supplied)*

The Liquidator is thus responsible for determining the actual dues to be paid from the proceeds of liquidation. Consequently, claims must pertain to specific payable amounts—whether fixed or variable, disputed or undisputed, legal or equitable, secured or unsecured, or arising from a judgment—rather than assumed, uncertain, or hypothetical claims.

16. Rejection of the Appellant’s various claims by the Liquidator is to be considered, keeping in view the above legal position:

**Claim No.1**

17. This claim pertains to Owner Issued Material (OIM) provided by the Appellant for the project to be executed by the CD, which remained unutilized and was not returned to the Appellant. According to the Appellant, OIM reconciliation was to occur at regular intervals, but the CD failed to conduct it, both before and after the contract's termination. Based on the reconciliation statements prepared by the Appellant, the total recoverable amount is computed to be **Rs 19,98,92,676.**
18. The Respondent Liquidator of the CD has not disputed that some of the material was left at the CD’s project site and could not be returned. However, it is asserted that the OIM remained at the project site which was secured by the Appellant by using agencies

like CISF etc. Moreover, it is claimed that this unutilized material fell within permissible wastage limits.

19. It is undisputed that the contract with the CD was unilaterally terminated by the Appellant, after which the Appellant took control of the CD's project site. As stated by the Respondent, the site was secured by the CISF and other agencies of the Appellant. Therefore, unutilized material, if any, remained under the control of the Appellant, and the CD cannot be held liable for its return. This claim has rightly been rejected by the Liquidator.

**Claim No.2A**

20. The claim of **Rs 39,34,814** pertains to the under-insurance of the Contractor All Risk (CAR) Policy. It is alleged that this amount became payable to the Appellant due to the CD's failure to include the cost of insurance for Owner Issued Material (OIM), as required by the contract. However, the Respondent contends that the responsibility for insuring the OIM rested with the Appellant. Since the Appellant neither obtained a separate policy nor suffered any loss due to theft or damage of the material, the claim was rejected.
21. In our view, although the CD breached its contractual obligation, no valid claim arises as no insurance policy was purchased, and no material loss occurred. The mere failure to incur an insurance expense, without any resultant loss, does not justify a claim. Therefore, the Liquidator was correct in rejecting this claim."

**Claim No.2B**

22. This claim relates to a shortfall in the amount retained for royalty payments owed to the Government on materials such as sand

used in the work carried out by the Corporate Debtor (CD). According to the Appellant, the total royalty payable by the CD amounted to Rs 2,16,09,724, of which Rs 25,04,802 was retained by the Appellant from amounts due to the CD, leaving a balance of **Rs 1,91,04,922** to be paid by the CD.

23. It is evident that this claim does not pertain to any direct obligation of the CD towards the Appellant but rather concerns royalty payments owed to the State Government, for which liability has not yet arisen. Therefore, the Liquidator has rightly rejected this claim.

**Claim No.2C**

24. A sum of **Rs 5,00,000** has been claimed in relation to an accident that occurred at the CD's site in 2015. While the occurrence of the accident is not disputed, the Appellant has not demonstrated how the accident resulted in an expense or liability of the CD towards the Appellant. We find no error in the rejection of this claim.

**Claim No.3**

25. The CD had received an insurance claim of Rs 20,00,00,000 on account of collapse of an erected structure. For the restoration work, the entire structural steel was to be procured by the Appellant for a sum of Rs 11,30,00,000, which was paid by the CD. The Appellant has made a claim of balance amount of **Rs 8,70,00,000** out of the insurance money received by the CD.
26. The Appellant has pointed to certain clauses of the contract with the CD to state that the proceeds of claims of insurance should have been deposited with them. Once again, the amount claimed is not in the nature of any expense incurred on behalf of or for the

CD which could be treated as an obligation towards the Appellant. This claim has also been rightly denied by the Liquidator.

**Claim No.4**

27. This claim of **Rs 14,48,00,000** is in the nature of penalty or fine for delaying the project. It is the position of the Respondent that the delay occurred due to a force-majeure event which was beyond the control of the CD. The Appellant has contested the existence of any force-majeure event at any point of time.
28. That Unit-2 of the project had collapsed on 11.03.2015 is a fact. Delay in execution of the project by the CD due to the collapse is a matter of enquiry. Given these circumstances, any contractual obligation that may give rise to a right to payment remains uncertain. Thus, the Liquidator's rejection of this claim was justified.

**Claim No.5**

29. This claim of **Rs 116,10,32,733** under various headings, pertains to the works undertaken by the Appellant after the cancellation of the contract with the CD in September 2016. These works, awarded to several small agencies and M/s Simplex Infrastructure Limited, involved procurement of insurance policies, equipment rental, skilled manpower, and overhead expenses, including scrap collection.
30. The CD was not involved in any of these activities carried out post-cancellation. Furthermore, the CD was neither notified of the work being conducted nor given an opportunity to rectify any alleged deficiencies in its performance under the contract with the Appellant.

31. While the Appellant has submitted invoices and bills for the expenses incurred, no corresponding bills were reportedly issued in the name of the CD. Given these circumstances, the Liquidator's rejection of these claims was not unjustified

**Claim No.6A**

32. This claim of **Rs 28,62,76,266** pertains to unrecovered advances paid to the sub-agencies of the CD, which were carrying out various works based on running bills to be certified by the Appellant. These advances were reportedly provided to expedite payments to the sub-agencies and ensure the continuation of work. According to the Respondent, the amounts claimed have already been fully recovered by the Appellant through the encashment of Bank Guarantees held by them.
33. In the application, the details regarding the adjustment of advances against pending bills and the recovery through Bank Guarantees are not clearly substantiated, rendering this claim uncertain. Therefore, rejection of this claim is also in order..

**Claim No.6B**

34. This claim of **Rs 6,80,560** is for rental payment related to the CD's use of the Appellant's accommodation. This has been contested by the Respondent, who asserts that the rent amount was already accounted for in the final bill raised by the CD. If this position is correct, the claim is no longer valid.

**Claim No.6C**

35. This potential claim of **Rs 20,00,000** is for litigation costs that the Appellant expects to incur as the principal employer in defending cases in Labour Courts and Industrial Tribunals related to the

retrenchment of workers by the CD. The Respondent has stated that the litigation concerning contract workers is still pending, and any award in favor of the workers will be directly payable by the CD. As both the Appellant and the CD are to pursue the litigation in their respective capacities as principal and immediate employers, each party is responsible for bearing its own legal expenses. Therefore, the Appellant's claim to recover potential litigation costs from the CD has rightly been rejected.

**Claim No.7**

36. The Appellant has claimed **Rs 183,00,00,000** on account of 'loss of goodwill. It is asserted that the CD's failure to commission the project on time led to a 'potential loss of revenue and profits,' which forms the basis for quantifying the loss of goodwill. The Liquidator has contested this claim by stating that the CD executed the work “dutifully and diligently” and the project was delayed due to collapse of Unit No.2 on account of earthquake, and that Unit was to be reconstructed by the CD. We find that the claim of the Appellant is based on the assumption of expected loss of profits and expected ROE (Return on Equity) thereon, and is completely hypothetical. The Liquidator has rightly rejected this hypothetical claim.

**Claim No.8**

37. Another loss of profit claim of **Rs 480,00,00,000** has been made on account of delay caused by the CD in execution of the project for the Appellant. Once again this loss of profit claim is hypothetical and based upon several assumptions and suppositions. The Liquidator was justified in rejecting this claim also.

**Claim No.9A**

38. This claim of **Rs 43,43,44,533** is stated to be the cost of retaining the Appellant's personnel on the project without redeployment due to delay in commissioning of the project to be executed by the CD. Rejection of this claim cannot be faulted upon, as the deployment of the Appellant's personnel was in their own hands, and nothing prevented from redeploying them at any other location. The cost of hiring the personnel at other locations unconnected with the project, cannot be fastened on the CD.

**Claim No. 9B & 9C**

39. The claims for **Rs 1,60,00,000** towards land rental and **Rs 2,01,32,592** for electricity charges relate to land and power provided to the CD free of cost during the extended project period. The Respondent has argued that no rental charges can be claimed, as the Appellant did not rent any land. Regarding electricity consumption, it is stated that the CD only used electricity proportionate to the work completed, and the cost of this electricity was deducted from the running bills by the Appellant. As the Appellant has not disputed the Respondent's assertions, these claims appear untenable and were rightly rejected."

**Claim No. 10**

40. The Appellant has made a lump-sum claim of **Rs 200,00,00,000** for potential third-party claims allegedly arising from the "poor performance" of the CD, for which the Appellant claims to have "compensated them in various forms." The Respondent argues that any claims from third parties related to the project are the responsibility of the Appellant, and the CD cannot be held liable

for such claims. As the Appellant has not clarified whether these third-party claims have been accepted or to what extent, such uncrystallized claims cannot be treated as the responsibility of the CD. The Liquidator was justified in rejecting such uncertain potential claims.

**Claim No. 11**

41. The Appellant has claimed **Rs 32,04,40,683** for transmission charges paid to PGCIL, alleging that these payments were incurred due to the CD's delay in completing the project, which left the Appellant unable to generate power. However, the Respondent contends that these charges were pre-commissioning fees payable by the Appellant to PGCIL for the transmission lines, unrelated to the CD's delay. As the Appellant has not refuted the Respondent's argument, and the contention appears valid, this claim does not hold."
42. To conclude, we find that the claims made by the Appellant before the Liquidator of the CD were mostly tentative, contingent, or potential claims, some of which are purely hypothetical and based on belabored presumptions. Rejection of these in the Liquidation proceedings cannot be interfered with. The Appeal filed in IA No. 550/2021 against the Liquidator's decision is therefore dismissed.

**Sd/-**  
**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**

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