

SL. No.2

**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 23.11.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/66/2022
NAME OF THE COMPANY	NCC Ltd
NAME OF THE PETITIONER(S)	Akash Electrotek Engineering Pvt Ltd
NAME OF THE RESPONDENT(S)	NCC Ltd
UNDER SECTION	9 of IBC

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

CP(IB) No.66/09/HDB/2022
U/s. 9 of IB Code, 2016

In the matter of:

M/s. Akash Electrotek Engineers Pvt Ltd.,
Neel Metal Wali Gali,
Near JBM Gate No.2, Sector-36,
Khandasa Mahommadpur Road,
Gurgaon – 122 001.

....the Petitioner/
Operational Creditor

Vs

1. M/s. NCC Limited,
NCC House, Madhapur,
Hyderabad – 500 081.
2. M/s. Airport Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
Delhi – 110 003.

....the Respondents/
Corporate Debtor

Date of order: 23.11.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr. Prem Chhetri, Advocate

For the Respondent : Mr. Avinash Desai, Senior Advocate

Heard on : 12.10.2023

Per : Sanjay Puri

ORDER

1. This application is filed by M/s. Akash Electrotek Engineers Private Limited, being the Operational Creditor (**the Petitioner**) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. NCC Limited, (**Respondent-1**) and M/s Airport Authority of India, (**Respondent-2**) for the alleged default in discharging the debt that is due to the Petitioner.

The Application

2. The Petitioner is in the business of electrical works, installation of electrical equipment and supply of equipment etc. to its customers. In the year 2018, Respondent-2 had awarded a contract to Respondent-1 vide Agreement No.AAL/CHQ/ENGG(CIVIL)/LUCKNOW/NIBT/742 Dt.29/30.08.2018 for electrical work at Lucknow Airport. Thereafter, in February 2019 Respondent-1 appointed the Petitioner as Specialized Agency, to conduct certain electrical works out of aforesaid Agreement with the consultation and approval of Respondent-2 vide Agreement No.NCC/AIRPORT LUCKNOW/5045&5046/18-19 dated 27.02.2019¹ and accordingly a Tripartite Agreement was executed between the Petitioner, Respondent-1 & Respondent-2.
3. In accordance with the Tripartite Agreement, Respondent-1 was obligated to make payment to the Petitioner upon the completion of electrical works, with the endorsement of Respondent-2. The Applicant was required to participate in all meetings convened by Respondent-2 and adhere to any instructions or directives issued periodically.
4. Meanwhile, the Airport Authority of India (Respondent-2) commenced the privatization process for specific airports and released a public bid

¹ Pages 39 to 50 of the Application (Annexure - A1)

for the privatization of Lucknow Airport. Consequently, M/s. Adani Group emerged as the Successful Bidder, and on 02.11.2020, Lucknow Airport was officially handed over to M/s. Adani Group for future management, construction, and development. Thereafter, M/s. Adani Group actively engaged in all meetings related to both Civil and Electrical Works, providing instructions to the Petitioner as necessary.

5. The assertion is that the Petitioner accomplished 95% of the total assigned work from Respondent-1 to the utmost satisfaction of the Respondents, including M/s. Adani Group. However, despite numerous requests, payment for the bills submitted at various stages for the completed work was not forthcoming. The contention is that, given its role as the primary party, it was the responsibility of Respondent-2, including M/s. Adani Group, to settle the outstanding amount owed to the Petitioner in the event that the main Contractor, i.e., Respondent-1, failed to do so.
6. The Petitioner communicated with Respondent-2 through a letter dated 25.09.2021², requesting the release of an amount totaling Rs 1.68 crore as against the Invoice dated 12.07.2021³, which was the outstanding sum for the completed electrical works. A subsequent reminder letter, dated 08.10.2021, was also sent to Respondent-2 in that regard.
7. Subsequent to this, on 12.10.2021⁴, Respondent-2 addressed an email to M/s. Adani Group, copying the Petitioner, requesting them to investigate the matter. In response, M/s. Adani Group sent an email on 16.10.2021 to the Petitioner and CC to Respondent-1, acknowledging the complaint and indicating that it had been forwarded to the relevant authorities for appropriate action. Despite

² Pages 70 to 75 of the Application (Annexure - A4)

³ Pages 51 to 69 of the Application (Annexure - A2 & A3)

⁴ Pages 77 to 78 of the Application (Annexure - A5)

these communications, neither Respondent-1/Respondent-2 nor M/s. Adani Group fulfilled the outstanding payment to the Petitioner.

8. According to the Petitioner it had come to know that Respondent-1 had already received the specified payment from the Airport Authority for the work carried out by the Petitioner on various dates. This information was allegedly concealed by Respondent-1. It is further contended that the Respondents did not raise any dispute concerning the work completed by the Petitioner, indicating that the pre-bills submitted by the Petitioner were genuine and bonafide.
9. Subsequently, on 28.10.2021, the Petitioner dispatched a Demand Notice⁵ to the Respondents, seeking payment of Rs 1,68,21,880 along with accrued interest. Despite the issuance of the Demand Notice, the Respondents did not fulfill their obligation to settle the outstanding amount owed to the Petitioner.
10. However, a reply letter dated 13.11.2021⁶ was received from Respondent-1. According to the Petitioner, in this letter Respondent-1 disputed the amount specified in the Pre-Bills for the first time. Additionally, Respondent-1 raised a claim of Rs 23,34,585 on false and frivolous grounds.
11. It is emphasized that the Respondents failed to remit the admitted sum of Rs 1,68,21,880 to the Petitioner, as evidenced by their lack of response to the emails dated 25.09.2021 and 08.10.2021⁷. Despite numerous requests, reminders, and personal visits, the Respondents did not fulfill their obligation to settle the outstanding amount, leading to the initiation of the present Petition.

⁵ Pages 25 to 32 of the Application (Annexure – 1)

⁶ Pages 33 to 38 of the Application (Annexure – 1)

⁷ Pages 70 to 76 of the Application (Annexure – 4)

Respondent's Counter:

12. In the counter filed by Respondent-1, all the allegations presented in the Petition were categorically denied. Respondent-1 additionally argued that, given the existence of a dispute between the Petitioner and Respondent-1, the present Petition was subject to dismissal. The claim made by the Petitioner was characterized as baseless and malicious, with Respondent-1 asserting that it had no obligation to pay the alleged debt of Rs 1,68,21,880.
13. Citing section 3(7) of IBC, it is argued that the Airports Authority of India (AAI), being a Statutory Body created under the Airports Authority of India Act, 1994, and supervised by the Directorate General of Civil Aviation, Ministry of Civil Aviation, Government of India, does not qualify as a Corporate Person. Additionally, it is contended that a single application under Section 9 of IBC is not maintainable against two different Corporate Debtors. Therefore, the petition should be dismissed on this ground alone, it is claimed.
14. Finding fault with the Demand Notice issued under Section 8 of IBC, it is claimed that it has to be accompanied with the list of documents which forms the basis of the claim along with Invoice. It is pointed out that the undated Form-3 Demand Notice issued by the Petitioner did not contain any documents for the alleged debt except some vague Excel sheets on computation of the due amount.
15. Furthermore, it is asserted that the present Petition is subject to dismissal due to the existence of pre-existing disputes that arose well before the receipt of the undated Demand Notice by Respondent-1 on 03.11.2021. It is claimed that through a reply letter dated 13.11.2021, disputes between the Petitioner and Respondent-1 were explicitly communicated to the Petitioner. These disputes were deemed to be pre-existing and had originated from the alleged deficit and incomplete services provided by the Petitioner.

16. It is argued that Respondent-1 issued Work Orders No. NCC AIRPORT LUCKNOW/5045/18-19 dated 27.02.2019 and No.NCC/AIRPORT LUCKNOW/5046/18-19 dated 27.02.2019 for the supply, transportation, unloading, shifting, etc. Due to the Petitioner's failure to execute the work in a timely manner, the Work Orders were amended⁸ at the Petitioner's request to reduce the scope of work. Pursuant to the Work Orders, Respondent-1 released a mobilization advance of Rs 23,00,000 on 23.03.2019 and Rs 3,00,000 on 15.06.2019 after obtaining corresponding Bank Guarantees from the Petitioner. However, despite receiving the mobilization advance, the Petitioner did not deploy the necessary manpower and materials to execute the work, leading to significant delays in the project.
17. According to Respondent-1, the Petitioner initiated work in March 2019, but consistent non-performance was observed throughout the project. The Petitioner was repeatedly notified about the delays and improper execution of work through numerous emails⁹ and in various meetings, with requests to expedite the work. However, the Petitioner failed to execute the project in accordance with the agreed-upon conditions, and the mobilization advance was not fully utilized. The lack of progress by the Petitioner had a detrimental impact on other civil works. In an email dated 03.05.2019, Respondent-1 specifically expressed dissatisfaction with the services provided by the Petitioner and its employees. Despite assurances to visit the site and rectify the defects, the Petitioner failed to follow through.
18. Additionally, through an email dated 16.05.2019, the Respondent notified the Petitioner that the solid bend materials utilized were rejected by the consultant due to quality issues. In response, the Respondent directed the Petitioner, via an email dated 16.05.2019, to promptly remove the rejected materials from the site. The Petitioner,

⁸ Pages 13 to 53 of the Counter (Annexure – R2)

⁹ Pages 54 to 199 of the Counter (Annexure – R3)

acknowledging the provision of defective materials, conveyed in an email dated 16.05.2019 that the issues were attributed to its supplier. Notably, the Petitioner did not contest the Respondent's decision to replace the materials at the Petitioner's risk and cost.

19. It is further stated that Respondent-1 informed the Petitioner via an email dated 29.07.2019 that rusted MS conduit, lacking proper painting, had been installed. Respondent-2, as the client/principal employer, rejected the conduit laid on zone-2 basement mezzanine slab. Respondent-1 requested the Petitioner to replace the rusted conduit and cease the use of deteriorated materials. Allegedly, the Petitioner did not take corrective measures. The purported inaction of the Petitioner resulted in significant reputational damage for Respondent-1, along with financial losses incurred for correcting and rectifying the incomplete and defective work.
20. As per Respondent-1, the Petitioner invoiced for purported work without obtaining any certification. Despite requests, the Petitioner delayed participating in joint verification, allegedly due to non-compliance with the work orders. In emails dated 01.10.2019 and 07.10.2019, the Petitioner was urged to deploy a B.Tech. Engineer with 10 years of experience to address site issues. However, the Petitioner did not assign the necessary technical personnel as requested.
21. According to submissions, in an email dated 29.11.2019, the Petitioner was notified about the subpar quality of work at the site and was directed to enhance the work quality. However, the Petitioner allegedly failed to take corrective measures. The delays attributed to the Petitioner were reportedly documented in the minutes of the meeting dated 03.12.2019¹⁰. Moreover, in an email dated 11.07.2020, the Petitioner was apprised of defective works, and in an email dated

¹⁰ Pages 200 to 204 of the Counter (Annexure – R4)

06.08.2020, it was communicated that bill processing hinged upon the submission of a GST Invoice and an extension of the expired mobilization Bank Guarantee. Regrettably, the Petitioner did not submit the GST Invoice or extend the mobilization Bank Guarantee. Owing to the Petitioner's repeated failures to mobilize essential manpower and materials, Respondent-1 was compelled to assign the work to another agency to meet client targets. This action was communicated to the Petitioner in an email dated 06.01.2021.

22. The assertion is made that the Petitioner failed to pay wages to its workers and employees. Consequently, Respondent-1 received a letter dated 20.10.2020 from the Labour Court (letter no. 8990-95/LR-PW-62/2020), in which Mr. Girijesh Chandra Pandey and 16 other laborers claimed outstanding wages. This leads to the claim that the Petitioner not only abandoned the work but also abandoned its own employees/workers¹¹. Despite not completing the work, the Petitioner submitted a pre-final bill for Rs 74,70,198.62 without valid justification and supporting documents. It is argued that the pre-final bill lacks factual basis as it does not accurately represent the work completed by the Petitioner.
23. The Respondent Respondent-1 vide emails dated 25.08.2021 and 31.08.2021 reportedly disputed the pre-final bill issued by the Petitioner, as it was allegedly false and incorrect and invited the Petitioner for verification. Upon enquiry and cross-verification of the documents submitted for work executed by the Petitioner, it is claimed that a lot of work was not completed. It is stated that as per the joint records & inspection reports, after re-verification of measurements in presence of the Petitioner, the Respondent Respondent-1 had checked and certified pre-final bill till 30.09.2021.¹² It is claimed that the Petitioner is due to pay Rs 23,34,585 to the Respondent-1. After

¹¹ Pages 205 to 211 of the Counter (Annexure – R5)

¹² Pg 212-361 of the Counter (Annexure-R6)

invoking the mobilization Bank Guarantees¹³, the Respondent-1 had filed a suit before the concerned court¹⁴ against the Petitioner. The Petitioner, it is claimed, has sought to initiate CIRP against Respondent-1 with a malafide intention by relying upon its own created pre-final bill, which was never accepted by the Respondent-1.

24. In its counter reply Respondent-1 has also disagreed with charging of interest @18% per annum along with the principal alleged debt of Rs 1,689,21,880. It is contended that the Petitioner has failed to file any documentary evidence to prove the existence of the interest mentioned in Part-IV of the Petition. Hence, it is claimed that the interest @18% per annum mentioned in Part-IV of the Petition does not exist and levied only with a malafide intention to arm-twist and coerce the Respondent. Hence, the present Petition is liable to be dismissed.

Petitioner's Rejoinder:

25. The Petitioner, in the rejoinder, reiterated the contents of the application and refuted all the statements made in the counter filed by Respondent-1.

The Written Submissions:

26. Both parties were granted the liberty to submit written submissions within a week by the order dated 12.10.2023. Subsequently, Respondent-1 filed its written submissions on 01.11.2023, along with a memo requesting condonation of the delay in filing the written submissions, and this request was granted. The written submissions largely reiterate the contents of the counter.

The Decision:

27. Having heard arguments from both counsels and examined the records from both parties, it is established that the Petitioner, functioning as a sub-contractor to Respondent-1, assumed

¹³ Pg 362-365 of the Counter (Annexure-R7)

¹⁴ Pg 366-375 of the Counter (Annexure-R8)

responsibility for specific electrical tasks within a project at Lucknow Airport, commissioned by Respondent-2. A tri-partite contract involving the Petitioner, Respondent-1, and Respondent-2 was entered into. As per the agreement, Respondent-1 was mandated to make payments to the Petitioner upon the satisfactory completion of different stages of work undertaken by the Petitioner.

28. According to the Petitioner, it consistently fulfilled the assigned tasks and submitted multiple invoices at different stages of the project. The Petitioner alleges that the Respondents did not make timely payments for the billed amounts. Furthermore, the Petitioner claims to have successfully completed 95% of the designated work, having submitted various invoices, including the "Pre-Final Bill" on 12.07.2021, yet the Respondents have not settled the outstanding payments.
29. Being the main party it [was] the duty of Respondent-2 to pay the due amount, the Petitioner has asserted in their application. The Petitioner had therefore written to Respondent-2 on 25.09.2021 and requested for release of Rs 1.68 crores which was due, and also sent a reminder on 08.10.2021. Respondent-2 on their part sent an email on 12.10.2021 to Adani's, their successors in the project, who in turn reverted to the Petitioner on 16.10.2021 with a copy marked to Respondent-1, stating that they had noted the complaint and forwarded the same to the concerned authorities for action. The lament of the Petitioner is that nothing came out of this correspondence and the Respondent Corporate Debtors (Respondent-1 & R-2) have not paid its dues.
30. On 28.10.2021, the Petitioner proceeded to issue a Section 8 notice to both Respondent-1 and Respondent-2, demanding payment for what it characterizes as "unpaid operational debt."

31. In response, on 13.11.2021, Respondent-1 contested the 'Pre-Bills' submitted by the Petitioner and, in turn, raised a claim against the Petitioner amounting to Rs 23,34,585. The Petitioner asserts that these disputes were raised by Respondent-1 for the first time and contends that the claim of Rs 23,34,585 was made on false and frivolous grounds.
32. The Petitioner, referencing its letters of 25.09.2021 and 08.10.2021 addressed to AAI, expressed surprise that the Corporate Debtor (i.e., Respondent-2) had not paid the admitted amount of Rs 1,68,21,880, as indicated by their lack of response to the aforementioned emails.
33. From the above averments it is clear that the main grievance of the Petitioner is against Respondent-2 (AAI). Apparently, Respondent-1 (NCC) has been impleaded, as according to the Tripartite contract, it was to make payments to the Petitioner at different stages on completion of work for Respondent-2 (AAI). In fact, Section 8 Notice in Form 3 mentions AAI as the first Respondent and NCC Ltd as second.
34. It has rightly been pointed out by Respondent-1 in its counter reply that AAI (Respondent-2) being a statutory body created under Airport Authority of India Act, 1944, does not come under the definition of 'corporate person' under Section 3(7) of IBC. Therefore, proceedings under IBC could not have been initiated against them. Considering that AAI is the main party against whom the Application is directed, it suffers from a fatal flaw by impleading AAI as the defaulting Corporate Debtor.
35. Another contention, about filing of single application against two different Corporate Debtors, being not maintainable, is also not without merit. Without specifying who actually is responsible for the debt incurred, the Application is rendered ambiguous and thus liable for rejection.

36. The next contention of NCC Ltd (Respondent-1) revolves around the faulty Demand Notice sent by the Petitioner in Form-3. According to Respondent-1, this Notice lacked inclusion of any invoices and failed to provide a basis for the alleged operational debt. While the Petitioner attached printouts of Excel sheets¹⁵ purportedly outlining the computation of the amount due, no GST invoices were included. In contrast, NCC Ltd (Respondent-1) submitted its own computation, also through printouts of Excel sheets¹⁶, indicating some amount due from the Petitioner. The conflicting printouts create uncertainty regarding the debt owed to the Petitioner and raise questions about whether it can be appropriately considered under Section 9 of the IBC.
37. In their counter reply, Respondent-1 NCC Ltd has also raised the issue of existing disputes in relation to the work done by the Petitioner and its billing. In its counter, it has submitted copies of several emails¹⁷, where the work of the Petitioner was considered inadequate, insufficient or faulty. The quality and quantity of work done by the Petitioner has remained a sore point, as can be seen from these emails.
38. In the present proceedings, which are summary in nature, we are not to decide upon the disputes which existed between the parties. All we need to see is whether disputes in respect of goods or services existed, when the Demand Notice in Form-3 was sent by the Petitioner to Respondent-1 & Respondent-2.
39. The submission suggests that on 12.07.2021, the Petitioner had only issued "Pre Bills"¹⁸ in the form of a printout of an Excel sheet. This implies that the dues had not crystallized at that point and required

¹⁵ Pages 51 to 69 of the Application

¹⁶ Pages 212 to 224 of the Counter

¹⁷ Page 54 to 199 of the Counter

¹⁸ Part-III of Form-5 – on Page 20 of the Application

further reconciliation and adjustments. For this reason alone, the Petition need not be entertained.

40. Moreover, it is essential to acknowledge that the principal objective of the Insolvency and Bankruptcy Code (IBC) is not intended to be a tool for recovering disputed debts. Instead, its primary purpose is to facilitate the resolution of insolvency for corporate entities. Issues pertaining to non-payment for services rendered cannot be addressed through the initiation of insolvency proceedings under the IBC. In order to recover outstanding dues, if any, the Petitioner could have pursued legal recourse through the appropriate Civil Court, which possesses jurisdiction to determine the validity of the outstanding dues.

As a result, the Petition is dismissed.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

VL