

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**AT CHENNAI**

**(APPELLATE JURISDICTION)**

**Company Appeal (AT) (CH) (Ins) No.250/2024**

**In the matter of:**

**M/s. Imperial Coastal Infra**  
**(Formerly M/s. Coastal Engineering Constructions)**

A registered partnership firm rep. by

Mr. K. Subba Raju,

S/o. Mr. K.V. Satyanarayana Raju,

Managing Partner,

Plot No. 45A, Santosh Nagar Colony,

Mehdipatnam, Hyderabad – 500028,

Telangana, India

**... Appellant**

**V**

**1. Liquidator, IVRCL Limited (Under Liquidation)**

``MIHIR`` 8-2-350/5/A/24/1B

Road No. 2, Panchavati Colony, Banjara Hills,

Hyderabad – 500034, Telangana, India

**... Respondent No.1**

**2. IVRCL Limited (Under Liquidation)**

``MIHIR`` 8-2-350/5/A/24/1B

Road No. 2, Panchavati Colony, Banjara Hills,

Hyderabad – 500034, Telangana, India

**... Respondent No.2**

**3. Government of Andhra Pradesh**

Represented by the Principal Secretary,

Transport, Road & Buildings Department,

A.P. Secretariat,

Velagapudi, Andhra Pradesh

**... Respondent No.3**

**4. Superintending Engineer**

**R & B Circle,**

Srikakulam,

A.P. – 532001

**... Respondent No.4**

**Present :**

For Appellant : Mr. CVK. Reddy & Mr. GMK. Raju, Advocates  
For Respondents : Mr. Nirav Shah, Senior Advocate  
For Mr. K. Nithyavendhan, Advocate for R1 & R2

**J U D G M E N T**  
**(Hybrid Mode)**

**Per : Jatindranath Swain, Member (Technical):**

1. The Appellant has filed the instant appeal under section 61(1) of IBC 2016 challenging the impugned order dated 20.02.2024 passed by learned NCLT Hyderabad in IA No.1654/2023 in CP(IB) No. 294/7/HDB/2017. In the said application IA No. 1654/2023, the Appellant had prayed for a direction to the Liquidator, Respondent-1 herein to transfer to him, Rs.41,36,033/ with interest @18% from 05.01.2022 till the date of payment and Rs.84,725/, being the income tax deducted at source in running account bills which was not remitted with the income tax department. The said application has been dismissed by Ld. NCLT vide the impugned order.

2. Brief facts of the case are that in 2012, Respondent-2 IVRCL Limited, the corporate debtor (to be referred hereafter as CD), was awarded a contract for construction of ROB at Palasa in Srikakulam district by Respondent-3 (Government of Andhra Pradesh) and thereafter, it signed an agreement (herein after called main contract) with Respondent-4 on 25.10.2012 for a contract price of Rs.20,07,76,826/-. On 02.01.2013, the CD entrusted the same contract on

back-to-back basis to the appellant by entering into an agreement (B2B contract). The terms of the said contract were that the scope of the work and other terms and conditions would be the same as those in the main contract, the appellant was to furnish performance security for an amount of Rs.50,07,700/- for the main contract, he was obligated to procure and supply material, labour, plant and machinery and complete the work as per the scope of the main contract and handover the same to the principal employer (Government of Andhra Pradesh). It was also agreed between the appellant and the CD (IVRCL), Respondent-2 herein, that the consideration of the contract will be shared between them in the ratio of 96% and 4% respectively, that all risks, profit and loss, compliances, damages are to be borne by the appellant and Respondent 2 (CD) will be entitled to 4% of the total consideration of the main contract as its margin with no risk and no investment. The appellant furnished the required performance bank guarantee, procured required materials and mobilised necessary plant & machinery, and labour in pursuance of performing the main contract and started executing the contract. The main contract was foreclosed by the principal employer, Respondent-3 and Respondent-4 in 2019 due to reasons of non- acquisition of land by them for the project. The value of the work completed at the time of foreclosure was Rs.3,95,01,199/-.

3. Meanwhile, Ld. NCLT vide its order 23.02.2018 admitted the CD, IVRCL Limited into Corporate Insolvency Resolution Process (CIRP).

Subsequently, on failure of the CIRP, Ld. Adjudicating Authority ordered liquidation of the aforesaid CD on 26.07.2019 and appointed Mr. Sutanu Sinha as its liquidator, who then started taking necessary action for liquidating the CD per the provisions of I&B Code,2016. As far as the main contract was concerned, the payment for the works done by the appellant on behalf of the CD was made from time to time by the principal employer on running bill basis till the said contract was foreclosed. The final bill was cleared by Respondent-4 on 29.12.2021 in which a net amount of Rs.52,24,049/- was paid to the CD after statutory deductions in respect of income tax and other deductions. However, from the said amount, the liquidator passed on an amount of Rs.9,78,779/- only to the appellant instead of paying 96% of the said amount as per the terms of B2B contract entered between him and the CD. When the appellant approached the liquidator for the payment of the balance amount, the liquidator informed him that the rest of the amount pertained to work done during pre-CIRP period and it will be paid to him as per Section 53 of IBC on submission of the claim. Aggrieved by this the appellant filed the application IA No.1654/2023 before the learned NCLT, which rejected the said application. Aggrieved by the same, the appellant has filed the instant appeal.

4. The appellant had submitted before NCLT that as per the terms of the back-to-back (B2B) contract entered with the CD, he has to invest and perform the main contract as per the terms of the contract, all materials and construction

services have to be provided by him, the total value of contract when paid shall be shared between him and the CD in the ratio of 96% and 4% respectively, the payment to him shall be transferred within seven days by the CD after receipt of payment from the principal employer and an amount of 7.5% of the value of work executed will be retained as a security deposit while making payments through running bills. On that basis, the applicant had proceeded to execute the work with earnest intention, but the work was foreclosed and on 29.12.2021 and the final bill was settled by the principal employer and a net amount of Rs.52,24,049/- was paid to the CD after deduction of TDS and other statutory deductions. Therefore, the applicant was entitled for an amount of Rs.51,14,812/- after deducting the margin of CD whereas he was paid only Rs.9,78,779/- and Rs.41,36,033/- was held back. The appellant submitted that as per the terms of the B2B contract, the amount becomes due to be paid to him on 05.01.2022, seven days after the money was released by the principal employer (Respondent-4), and hence it cannot be an amount due prior to commencement of CIRP because CIRP commenced on 23.02.2018. He had further contended that as per the contract he is entitled for 96% of the share of the payment made by the principal employer, the Government of Andhra Pradesh, and therefore, he is the owner of the said amount and not the CD, that since income tax was also deducted in respect of those amounts, the amount belongs to him, and that since he is the owner of the money amounting to Rs.41,76,902/-, the said amount cannot be made to be the part of the liquidation estate. Moreover, since

an amount of Rs.84,725/- has also been deducted as income tax and the same has not been remitted to the income tax department, that amount also belongs to him and it may be paid to him and therefore the liquidator may be directed to transfer to him the amounts of Rs.41,36,033/- & Rs.84,725/- along with interest @ 18%. In the said application, he had also requested Ld. Tribunal to direct the liquidator to assign contractual rights as the Respondent is under liquidation.

5. Countering this, the liquidator had submitted before the NCLT that the work was foreclosed at Rs.3,82,63,754/-, that certain payments have been received prior to commencement of CIRP and the amount due to the appellant from the said amounts has been paid strictly as per the terms of B2B contract. He had further stated that after the CD was admitted into CIRP on 23.02.2018, a payment of Rs.52,24,049/- has been received, admittedly the share of the appellant from the said sum of Rs.52,24,049/- is Rs.51,03,748/- as stated by the appellant and that since certain portion of the work for which the payment has been received, was done prior to initiation of CIRP against the CD, the entire amount of Rs.51,03,748/- cannot be paid to him as per the provision of section 14 of the code. He had also submitted that for the work done prior to CIRP, the appellant is only entitled to file its claim along with the proof of the same and the said claim will be dealt with, in accordance with section 53 of the Code because any payment made to him outside the provisions of section 53 of the code would amount to giving a preferential treatment, which is violative of the

objective of the code. He has further stated that as the CD has received the security deposit back from the principal employer, he will release the same to the applicant, but the amount of Rs.14,29,141/- being the escalation cost pertaining to the works done in the pre-CIRP period will be paid in accordance with section 53 of the code.

6. After hearing both sides, the learned adjudicating authority came to the conclusion that the issue involved in the instant application is as to whether the amount claimed by the applicant is for the work done during pre-CIRP period or post-CIRP period, that as per the records, the amounts of Rs.14,29,141/- and Rs.27,47,761/- on account of escalation cost and security deposits respectively are for the work done during the pre-CIRP period, that section 14(1)(b) prohibits transferring, encumbering, alienating or disposing of by the CD, any of its assets or any legal right or beneficial interest therein, during the CIRP period and therefore, any dues pertaining to pre-CIRP period will have to be treated as operational debt and the same has to be claimed by the appellant in accordance with the provisions of section 53 of I&B Code,2016. The adjudicating authority further observed that the action of the liquidator withholding the payment of Rs.41,76,902/- is correct and that, the applicant is therefore required to submit his claim in Form-C. With the said observation, learned NCLT proceeded to dismiss the application.

7. The appellant during the hearing before this Appellate Tribunal has submitted that there are no disputes between the CD and the appellant in the performance of back-to-back contract and the amount due to be paid by the respondent-2 (CD) to the appellant and hence there is no requirement to refer the said issue for resolution to arbitration as provided under clause 29 of B2B agreement. He has further submitted that the contention of the respondent that the amount of Rs.41,76,902/- pertains to the work done prior to commencement of CIRP is not correct and it should not be treated to be an operational debt. He has submitted that he has made all investments, including provision of security & performance bank guarantee, supply of men and material, supply of plant & machinery and all other resources and performed the contract. As per the B2B agreement, the amount paid by the Respondent-4 (principal employer) is to be shared in the ratio of 96% and 4% between him and the CD. Therefore when Rs.52,24,049/- was released to CD as the final payment, which too got released because of his efforts and liaisons, he was entitled to receive Rs.51,03,748/-, being 96% of the said amount. But he was only paid Rs.9,26,846/- instead of Rs.51,03,748/-, which is against the terms and conditions of B2B contract and also against the provisions of section 36(4)(a) of IBC. He has contended that when the contract was awarded to him by the CD on back-to-back basis, along with all risks and investment, he is the owner of 96% share of the consideration being paid under the main contract to the CD by the principal employer. He has contended that since the CD has deducted income tax at source (TDS) in respect

of the security deposit returned by the principal employer and the amount paid towards cost escalation for the work done prior to CIRP commencement date, the net amount after such deductions should automatically belong to him because the tax has been deducted on his behalf and therefore, the same cannot be made part of the liquidation estate of the CD. Accordingly, he has stated that he being the owner of this amount, there is no requirement to file claim under Form-C and that, by the very nature of back-to-back contract, 96% of the awarded amount is an asset belonging to him and therefore it cannot be made part of the liquidation estate and instead should be treated as a third-party asset under the provisions of section 36(4)(a) and should be transferred to him.

8. He has also attempted to argue that the work undertaken under the main contract is one single infrastructure project and even though the payment has been made in stages, no differentiation can be made between the work done before the commencement of CIRP and the work done after the commencement of CIRP, because respondent-2 and the appellant have decided to continue the contract after commencement of CIRP. He has submitted that in an infrastructure contract, the payments are made under running bills to reduce the working capital requirement of the contractor, that by no stretch of imagination, each bill can be said to represent a distinct item of work and therefore, there is no basis for segregating the dues into pre-CIRP and post-CIRP categories. Further, since the work was foreclosed in 2019, which was after the

commencement of CIRP, it has to be construed that the execution of the project continued during the CIRP period also and in that case, the entire amount due to him from the payment received on account of the said project should be included in the CIRP costs and be paid to him. He has further contended that learned adjudicating authority has erred in concluding that there is nothing on record to substantiate the contentions of the appellant that the amount claimed by him is for the works undertaken by him after commencement of CIRP and therefore it cannot be paid as CIRP cost and that, it pertains to the pre-CIRP period for which the appellant is required to submit its claim in Form-C, that such conclusion was arrived at without discussing the provisions of the Code and the Regulations of IBBI in the context of his specific averments and therefore it may be set aside.

9. On the other hand, the liquidator has contended that the balance amount of Rs.41,76,902/- (consisting of Rs.27,47,761/- being the security deposit and Rs.14,29,141/- being the escalation costs) were not released to the appellant as it pertained to work executed during pre-CIRP period and they have to be dealt with strictly in accordance with the provision of IBC, that for the work executed during pre-CIRP period, the appellant is entitled to file his claim with proof in accordance with the provisions of the Code, and the said claim will be paid to him in accordance with Section 53 of the Code. He has further contended that in view of the moratorium imposed under Section 14 of the Code, any transfer,

encumbrance, alienation, or disposal of assets, legal rights, or beneficial interest of the CD is prohibited and if the payment as requested for in the instant case is done, the same will amount to preferential treatment. However, he has also submitted that the security deposit of Rs.27,47,761/- has been received by the CD and the same will be released to the appellant shortly, but the escalation cost of Rs.14,29,141/- shall continue to be treated as operational debt and will have to be addressed under the framework of section 53 of the code. Continuing in the same vein, he has stated that the findings of Ld. NCLT in the impugned order are correct, legally sound, and in accordance with the facts and law applicable to the case, and therefore, the appeal ought to be dismissed.

10. We have heard the parties and have gone through the documents submitted. The issues to be determined in the instant appeal are two-fold:

a) Whether, in the context of a back-to-back contract (B2B contract) between the corporate debtor and the sub-contractor, the dues payable to the sub-contractor by the corporate debtor from out of the payment received / to be received from the principal employer will constitute to be an asset owned by a third-party (sub-contractor in this case), which is in possession of the corporate debtor within the framework of section 36(4)(a)(i) of IBC?

(b) When an infrastructure project is being executed by a corporate debtor through a sub-contractor under a back-to-back contract and it is continued during the CIRP period, can the amount relating to the work done prior to CIRP

differentiated from the amount relating to the work done after the commencement of CIRP for the purpose of making payment to the sub-contractor?

We will endeavour to answer these issues in the following paragraphs.

11. It is seen that the facts of the case are not disputed, that is, there was a back-to-back contract between the appellant and the corporate debtor, that the consideration from the main contract was to be shared in the ratio of 96:4 between the appellant and the corporate debtor and that the investment for the project and all the project-related risks are to be borne by the appellant. Neither party has mentioned about any dispute between them with regard to execution of the main contract and the ratio in which the consideration arising out of it will be shared. Prior to receipt of the amount, which is the subject matter in the instant appeal, 8 running bills have been paid by the principal employer to respondent-2 and respondent-2 has made the corresponding payment to the appellant. In this also, there is no dispute which is claimed by the appellant and not denied by the respondent/liquidator. The terms and conditions of the B2B contract has also not been denied or controverted by the liquidator. The liquidator in the counter filed by him, has also accepted that the security deposit amount of Rs.27,47,761/- has been received by the CD and will be released to the appellant shortly (para-6 of the counter). However, the respondent continues to insist that the amount of Rs.14,29,141/- being the escalation cost is a pre-

CIRP due and therefore it has to be settled in accordance with the waterfall mechanism under section 53 of IBC.

12. Now coming to the question of whether the dues of the appellant constitutes a third-party asset in the hands of the corporate debtor, it will be useful to examine the provisions of section 36 of IBC where the liquidation estate and the third party assets that are to be kept outside the liquidation estate have been dealt with. Section 36 of IBC is extracted hereunder:

**36. Liquidation estate. -**

*(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.*

*(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.*

*(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -*

*(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;*

*(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;*

*(c) tangible assets, whether movable or immovable;*

*(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;*

*(e) assets subject to the determination of ownership by the court or authority;*

*(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;*

*(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;*

*(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and*

*(i) all proceeds of liquidation as and when they are realised.*

*(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -*

*(a) assets owned by a third party which are in possession of the corporate debtor, including -*

*(i) assets held in trust for any third party;*

*(ii) bailment contracts;*

*(iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;*

*(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and*

*(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;*

*(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;*

*(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;*

*(d) assets of any Indian or foreign subsidiary of the corporate debtor; or*

*(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.*

As per sub-section (1) above, the liquidator shall form an estate of the assets mentioned in sub-section (3), and as per sub-section (2), he shall hold the said liquidation estate as a fiduciary for the benefit of all creditors. Sub-section (3) describes what shall comprise liquidation estate assets. It includes any asset over which the CD has ownership rights, including all rights and interest therein as evidenced in the balance sheet of the CD or in an information utility or in records of a registry or in any depository recording securities of the CD, or by any other means as may be specified by IBBI, including shares held in any subsidiary of the CD. The assets above may or may not be in possession of the CD, including encumbered assets; they may be tangible assets, there may be intangible assets (including intellectual property, securities, financial instruments, insurance policies, and contractual rights) or they may be assets subject to the determination of ownership by the court or the authority. Sub-section (4) enumerates, what shall not be included in the liquidation estate assets. Clause (a)(i) of the sub-section (4) of Section 36 of I & B Code, 2016, will be of particular interest in the instant case. It states that assets held in trust for any third party shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.

13. In the instant case, as per the B2B PRW contract, the CD, IVRCL Limited has allocated the project work as awarded by the client/ Principal Employer of a value of Rs.20,07,76,826/-, on B2B PRW contract basis to

Coastal Engineering Constructions, subsequently renamed as Imperial Coastal Infra (appellant herein), in line with the terms and conditions contained in the main contract between the client and IVRCL (CD) and as per the terms and conditions contained in the B2B contract, with a margin of 4% to be paid to IVRCL on the gross value of the works executed on the rates specified in the main contract, which shall be deducted from the payments to be made to the appellant. Apart from the above, TDS, all direct and indirect taxes, cess, royalty, etc. as applicable under the main contract and as applicable to the B2B contract shall be deducted from the payments made to the appellant. Performance bank guarantee and other bank guarantees as specified in the main contract shall be submitted by the appellant for such amount specified in the main contract and will be kept valid up to such required period as specified in the main contract. It was further agreed in the said contract that the appellant shall mobilise the manpower, plant and equipment and construction material for the work and he shall furnish to IVRCL performance guarantee to the value of RSs 50,07,600/-. It was further agreed that payments in respect of the works executed shall be released to the appellant within seven days of receipt of corresponding payment of running account bills from the client/employer in line with the payment terms of the main contract, subject to statutory and other deductions, including IVRCL margin money and TDS applicable to the PRW contractor (clause 7 of the contract) and that the appellant shall be responsible to comply with the quality control, technical specifications, and the statutory requirements (clause

14-17 of the contract). It was further agreed that IVRCL shall not make any claim in profits, and at the same time will not be responsible to make good any losses whatsoever incurred by the appellant in the execution of this contract (clause 24 of the contract), and the appellant shall submit an indemnity bond favouring IVRCL, indemnifying it from all liabilities rising from this work, and that he shall be responsible for all the direct and indirect consequences, which IVRCL may have to suffer due to any default whatsoever in performing the obligations as stipulated in this agreement, in form of liquidated damages, suspension, cancellation of the main contract and invocation of performance guarantee (clause 31 of the contract). From the above, it is clear that the CD, IVRCL Limited has assigned all the risks and liabilities to the appellant and also given up his claims to the profits in the said project except his margin of 4% on the consideration/ payment to be received from the client / employer from time to time. It is also clear that the CD will have claim over only 4% of the payment received on account of running bills from the employer respondent-4 and that the rest 96% will be due to the Appellant.

14. It will have to be construed from the aforesaid conditions of the B2B contract that the Appellant is providing construction services to the employer / Respondent-3 on behalf of the CD and that he is not providing the services to the CD per se. Thus, whenever a running account bill is submitted by the CD to the client / employer, an asset in the form of receivables is being created, of

which 4% is owned by the CD and the remaining 96% is owned by the appellant as per the implication of the B2B contract between the CD and the appellant. Therefore, when a payment is released to the CD by the client / employer, it will have to be construed that 96% of the said amount will remain as an asset of the appellant in the hands of the CD till it is disbursed to the appellant as per the terms of the said contract. We are not inclined to agree with the claim of the liquidator that the dues to be paid to the appellant is an operational debt because operational debt arises when there is a claim in respect of the provision of goods and services to the corporate debtor. In the instant case, this scenario is absent. The CD in the instant case has not given the performance guarantee to the employer nor he has made any investment nor he has assumed any project risk and any possible liabilities that may arise from the execution of the project. The CD has categorically stated in clause 24 of the B2B contract agreement that it shall not make any claim in the profits and at the same time, will not be responsible to make good any losses whatsoever in the execution of the contract. Against this backdrop, the CD cannot claim to any amount more than 4% of the payments received or to be received from the employer and the remaining 96% will have to be considered as an asset of the appellant held in trust by the CD till it is paid to the appellant. We may consider this issue from another angle where the payment has not been received by the principal employer even though the work has been done and invoice has been raised. The question then arises as to whether the liquidator will admit his

claim? The answer will be in negative in light of the clause 7 of the B2B contract, because the Appellant has accepted in the contract that he will get the payment for the work done by him only when the payment is received from the principal employer. Can the Appellant file an application under section 9 of the Code against the CD in such a situation? Again the answer will be in negative because the defence will be that the debt has not arisen. Therefore, the value of services provided by Appellant and which are yet to be paid by the principal employer, will be an operational debt to the principal employer and not the CD. Accordingly the amount payable to the Appellant from out of the payment received from the principal employer will have to be considered as an asset of the Appellant held in trust by the CD and not as an operational debt owed by the CD to the Appellant.

15. Implications of section 14(1)(b) of IBC will not be applicable in this case because the said provision is intended to ensure that the assets of the CD are not frittered away during the CIRP period and that all creditors are given equal treatment, subject to the provisions of IBC. In the instant case, the payment due will not constitute to be an asset of the CD because of the reasons extended above. In view of the above, the amount of Rs.41,76,902/- will continue to be the asset of the appellant as claimed by him and will not constitute to be part of the liquidation estate.

16. Regarding the second issue to be answered, it is seen that the liquidator has already paid Rs.9,26,846/- to the appellant from out of the amount received from the employer on the ground that the amount pertains to the work done during post-CIRP period. Payment for the work undertaken during the CIRP period is permitted so as to ensure that the CD is continued as a going concern because if payment is not made to the vendors, they will stop providing services and the projects under execution by the CD will come to a halt causing loss of revenue to the CD. If this be the case, then the entire project till its completion has to be considered as an activity being taken up during CIRP period and no differentiation can be made between pre-CIRP and post-CIRP portions of the project because the payments are made through running account bills, and if the payment of a bill pertaining to the work done prior to CIRP is not paid citing moratorium, then the vendor/ sub-contractor will not be able to take up subsequent work because of lack of finance. Therefore, if an infrastructure project is decided to be continued after commencement of CIRP and consequent imposition of moratorium, the entire project has to be construed, as if it is an activity taken up during CIRP and the sub-contractor bills will have to be treated as CIRP cost and paid accordingly, without treating them as operational debt to be settled in accordance with the provisions of section 53 of IBC. An example will help to clear this point. Supposing the CD has an operational plant and it is decided that the operation of the said plant has to be continued during CIRP period in the best possible manner so as to preserve the assets of the CD,

then the payment to the vendors have to be paid and be treated as part of CIRP costs. The same logic will apply in cases of liquidation where the liquidator is mandated to take such measures to protect and preserve the assets and the properties of the CD and to carry on the business of the CD for its beneficial liquidation. The relevant provisions are extracted below.

***35. Powers and duties of liquidator. -***

*(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -*

*(a) to verify claims of all the creditors;*

*(b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;*

*(c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;*

*(d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;*

*(e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;*

In the instant case, the project was continued post the commencement of CIRP. The CD was to receive 4% of the value of the payment to be received from the Government of Andhra Pradesh and hence obviously beneficial to the CD. Therefore, it was the duty of the liquidator to continue the project till its completion. To complete the same, he needs to pay the vendor for the pending bills, failing which the vendor / PRW contractor will not continue the work and the project will not be completed. Therefore, no differentiation should have

been made between the payment for the work done for pre-CIRP and post-CIRP works undertaken by the sub-contractor. (Appellant herein). The question is answered accordingly.

17. We also take note of the submission of the liquidator that he has received the security deposit of Rs.27,47,761/- and the same will be released to the appellant shortly.

18. In view of the above, it is held that the findings arrived at in the impugned order that the applicant (appellant herein) is required to submit its claim in Form-C for the claimed amount lacks merit. Accordingly, the impugned order is set aside and the liquidator is directed to pay the appellant, the withheld sum of Rs.41,76,902/-, as submitted by him.

19. The Appellant has also prayed for payment of interest on the same @18% per annum from 05.01.2022 (the date on which it fell due to be paid) till the date of its payment on the basis that he is a MSME unit and he is entitled for interest on the delayed payment of his dues. It is seen that there is no clause for payment of interest for delayed release of payment to PRW contractor as per clause 7 of B2B PRW contract entered into by the Appellant with the CD, Respondent-2. Charging of interest @18% is penal in nature. Nowhere in this case it is seen that the liquidator has intentionally denied the payment. He has withheld payment of the same under the premises that the said amount will fall to be an operational debt and in view of the operation of moratorium, it will have to be

paid as per section 53 of the Code after filing of the claim. Further, after passing of the impugned order, the liquidator could not have made the payment in any case. In that view, payment of interest @ 9% from 05.01.2022 till 20.02.2024 appears reasonable and accordingly, the liquidator is directed to pay the aforesaid amount with simple interest @ 9% from 05.01.2022 to 20.02.2024 (date of the impugned order).

Interlocutory Applications, if any, pending will also be closed.

**[Justice Sharad Kumar Sharma]**  
**Member (Judicial)**

**[Jatindranath Swain]**  
**Member (Technical)**

27/04/2026

SR/MS/AK