

IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH

KOLKATA, COURT- I

I.A. (IB) No. 1832/KB/2019

In

C.P. (IB) No. 45/KB/2018

An Application under the IBC, 2016

IN THE MATTER OF:

Indian Overseas Bank

...Financial Creditor

Versus

D C Industrial Plant Services Private Limited

...Corporate Debtor

AND

An Appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

NPGC Limited

...Appellant

Date of Pronouncement: 03.07.2026

CORAM:

Rekha Kantilal Shah, Member (Technical)

Bidisha Banerjee, Member (Judicial)

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APPEARANCE:

Ms. Pooja Chakraborti, Adv.] For the Petitioner
Mr. Mohit Dey, Adv.]
Mr. Rohit Das, Adv.] For Respondent No. 2/Intervenor
Ms. Kishwar Rahman, Adv.]
Mr. Vishesh Pandey, Adv.]
Ms. Sanjana Nandi, Adv.] For Erstwhile Liquidator

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O R D E R

Per: Bidisha Banerjee, Member (Judicial)

1. The Court convened through hybrid mode today.
2. Heard the Learned Counsels appearing for the parties.
3. The instant appeal, I.A. (IBC) No. 1832/KB/2019 in C.P. (IB) No. 45/KB/2018, has been filed challenging the e-mail dated 4.09.2019 of the Liquidator rejecting the claims of the appellant arising from two contracts awarded by the appellant to DC Industrial Plant Services Private Limited (hereinafter referred to as the 'Corporate Debtor' or 'DCIPSPL'), and seeking *inter alia* for the following reliefs-

"(b) This Learned Tribunal be pleased to pass an order setting aside the decision of the Liquidator in rejecting the claims of the Appellant herein;

(c) This Learned Tribunal be pleased to direct the Liquidator to consider and accept the claims of the Appellant herein amount to Rs. 71,33,65,128/- Rupees Seventy One Crore Thirty Three Lakh Sixty Five Thousand One Hundred and Twenty Eight only) as an "other creditor" of the Corporate Debtor herein in terms of Regulation 20 of the Liquidation Regulations."

4. BRIEF BACKGROUND:

- 4.1 The Appellant NPGC Ltd. had awarded two contracts to the Corporate Debtor both dated 14.05.2013 bearing Contract No. CS-0370-162C-2-FC-COA-0015 and Contract No. CS-0370-162C-2-SC-COA-0016.
- 4.2 The Corporate Debtor D.C. Industrial Plant had been engaged for the design, engineering, procurement/manufacture, shop fabrication, assembly, inspection and testing manufacturer's works, type testing, packing, supply to site of all equipment/materials and mandatory spares and transportation and installation services including Structural works, covered under Ash Handling and Ash water Recirculating System Package for

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Nabinagar Super Thermal Power Project (3x660 MW) as per Bidding Documents No. CS-0370-162C-2. The Corporate Debtor had agreed to such engagement upon and subject to the terms and conditions of the General Conditions of Contract (hereinafter referred to as 'the GCC') and Special Conditions of Contract (hereinafter referred to as 'the SCC').

- 4.3 The Appellant alleges that the Corporate Debtor failed to complete a substantial portion of the supply and installation works contemplated under the Project within the contractually prescribed completion date and constantly sought for extension of time. The last extension granted by the Appellant was on February 19 2019, till December 31, 2019.
- 4.4 The Appellant further alleges despite repeated intimations and requests by the Appellant, urging the Corporate Debtor to complete the work and the supply, the Corporate Debtor failed to complete supply and installation works of the Project.
- 4.5 The total principal claimed by the Applicant from the Corporate Debtor amounts to a sum of Rs. 71,33,65,128/- (Rupees Seventy-One Crore Thirty Three Lakh Sixty Five Thousand One Hundred and Twenty Eight) in the following manner:-

S. No.	Claim Against	Amount (Rs.)
1.	<i>Advance outstanding (Rs. 2,26,21,314/- towards funding gap advance and Rs. 1,61,58,965/- towards outstanding against initial advance)</i>	3,87,80,279
2.	<i>Liquidated damages recoverable at the rate of 5% of the entire contract value</i>	9,45,00,000
3.	<i>Miscellaneous expenditure</i>	6,02,47,281
4.	<i>Additional structural 1416 MT</i>	1,55,24,847
5.	<i>Estimated Cost of completion of balance work</i>	44,03,97,876
6.	<i>Material (Structural Steel) issued on loan</i>	639,14305
	<i>Total</i>	71,33,65,128

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- 4.6 By an order dated 30.07.2018, this Tribunal admitted an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) filed by the Financial Creditor herein and directed the initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the 'CIRP) with regard to the Corporate Debtor.
- 4.7 The Appellant filed its proof of claim before the then Resolution Professional of the Corporate Debtor (hereinafter referred to as "the RP") as an "other creditor" under Form 'F' of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016 on 26.10.2018.
- 4.8 On or about 29.10.2018, the RP published an updated list of the Creditors of the Corporate Debtor on the website of the Corporate Debtor wherein the name of the Appellant was ommitted.
- 4.9 Thereafter, upon an application by the RP, this Tribunal passed an order dated 19.06.2019, whereby it was directed that the Corporate Debtor was to be liquidated and Mr. Ram Ratan Modi, the Respondent herein, was appointed as the Liquidator in this regard.
- 4.10 Thereafter, the Liquidator proceeded to publish the public announcement dated 21.06.2019 inviting the creditors and other stakeholders of the Corporate Debtor to file their proof of claims on or before 19.07.2019.
- 4.11 In pursuance thereof, the Appellant filed its proof of claim under Form 'G' in terms of Regulation 20 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 as an "other creditor".
- 4.12 The Liquidator rejected the said the claim of the Appellant on the ground that such debt has not crystallised due to the continued execution of the Project by the Corporate Debtor. The Liquidator

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also cited the order of this Tribunal dated 31.07.2019 wherein the **liquidation of the Corporate Debtor as a going concern has been ordered** in support of its decision to reject the claims of the Appellant.

- 4.13 Vide an order dated 16.04.2020, this Tribunal upheld the decision of the Liquidator and rejected the appeal of the Appellant. The Appellant thereafter preferred an appeal before the Hon'ble National Company Law Appellate Tribunal ("NCLAT") challenging the aforesaid order dated 16.04.2020, which was set aside and remanded back before this Tribunal, by the NCLAT on 27.03.2023 for de-novo hearing of the petition and fresh decision on merits, *inter alia* citing the following:

“30. ...This ‘Appellate Tribunal’ also notes that the ‘Adjudicating Authority’ did not consider even specific and determined claims such as advance outstanding, material/ miscellaneous expenditure etc, which could have been straight away verified. The ‘Adjudicating Authority’ rejected all the Claims without considering the ones that could have been proved. The ‘Adjudicating Authority’ ought to have examined the claims of the ‘Appellant’ and allow the ones that could be verified and consider the others on the basis of Regulation 25 of the Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016.”

“34. ...The claim of the ‘Appellant’ are covered under the provisions of Section 3(6) of the ‘Code’, and falls under the category of “other creditor” in terms of Regulation 20 of the Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016, therefore, has a right to be included in the List of Stakeholders’ of the Company in Liquidation as an ‘other creditor’. Section 3 (6) of the ‘Code’ is reproduced herein below:

"6. Claim means:

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(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.”

“35. This 'Appellate Tribunal' notes that in terms of Regulation No. 25 of the Insolvency And Bankruptcy Board Of India (Liquidation Process) Regulations, 2016 where the amount claimed by a claimant is not precise due to any contingency or any other reason, the 'Liquidator' shall may best estimate of the amount of the claim based on information available with him.”

“39. ...This 'Appellate Tribunal' observes that the 'Respondents' failed miserably to understand that he is required to transfer 'Assets & Liabilities', together and not 'Assets' bereft of 'Liabilities' when the 'Corporate Debtor' is being sold as a going concern i.e. the entire business, 'Assets & Liabilities' including all contracts. The Respondents' could not have excluded the genuine claims of the 'Appellant' while entering into the 'MoU'.”

“42. This 'Tribunal', relevantly points out that it is not expressing its opinion on the merits' or demerits' of the case, and hence, remits back the case to the 'Adjudicating Authority' (Tribunal), with directions to look into all factual and legal aspects and decide the "Petition' Denovo, on 'merits', by providing, 'adequate opportunity' of 'Hearing', to the respective "Parties', and also, by adhering to the "Principles of Natural Justice'. It is reiterated that the 'Adjudicating Authority', shall decide on the 'merits' of the main "Petition', in a "Fair, just', in a Dispassionate Manner', by passing a Speaking Reasoned Order' (in qualitative and quantitative terms)”

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- 4.14 In the meanwhile, DCIPSPL was sold to Karanveer Singh Yadav Enterprises Private Limited (hereinafter referred to as "KSYEPL"), a prospective bidder, had expressed interest in purchasing DCIPSPL as a going concern, and subsequently emerged as the successful bidder, by being the only participant of the E-Auction of DCIPSPL that was held on 11.02.2021 and deposited the Earnest Money Deposit (EMD) of Rs. 3,00,00,000/- (Rupees Three Crores only). Thereafter, the Liquidator issued a Letter of Intent ("LoI") to KSYEPL on 15.02.2021.
- 4.15 A Memorandum of Understanding ("MoU") was entered into by and between the Liquidator and KSYEPL on 11.08.2021 granting operational control of DCIPSPL to KSYEPL. In terms of the said MoU, all the previous expenses, claims, tax liabilities and liabilities of all kinds, including such expenses and liabilities before CIR Period, during CIR Period and Liquidation Period prior to handover of Operational Control **shall not be of the Successful Bidder (KSYEPL) and shall not be met from receipts of the Corporate Debtor (DCIPSPL) which are received after the date of the Operational Control being handed over to Successful Bidder (KSYEPL).**
- 4.16 The aforesaid MoU was approved by this Tribunal vide an order dated 13.08.2021, in I.A. (I.B.C.) No. 494/KB/2021 in the instant C.P. (IB) No. 45/KB/2018. In the said order, this Tribunal *inter alia* directed that the assurances given by both sides in the MoU to each other shall be treated as assurances given to this Tribunal and both sides shall be bound by the same.
- 4.17 **The entire sale consideration was paid by KSYEPL to the Liquidator** on 2.11.2021 after adjusting the EMD and participation amount. In the aggregate, KSYEPL paid a total sale consideration of Rs. 30,00,00,000/- (Rupees Thirty Crores only) plus interest of Rs. 35,47,070/- (Rupees Thirty-Five Lakhs, Forty-Seven Thousand and Seventy only).

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- 4.18 Thereafter, the Liquidator issued a Certificate of Sale on 30.12.2021, in favour of KSYEPL (hereinafter, referred to as the "Sale Certificate"), which was amended through an addendum dated 14.01.2022.
- 4.19 In terms of Clause 7 of the Sale Certificate, KSYEPL became, in an unqualified manner, the sole, legal and beneficial owner of DCIPSPL, with all rights, titles and entitlements to DCIPSPL, free and clear of all encumbrances and/or liabilities, of any nature, whatsoever. Further, KSYEPL further got all the rights, title and interest over whole and every part of DCIPSPL, including but not limited to its assets and contracts **free from security interest, encumbrance, claim, counter claim or any demur.**
- 4.20 Thereafter, the Liquidator handed over physical possession of the immovable properties along with the original title documents, movable properties, books and records of DCIPSPL and original Assumed Contracts.
- 4.21 The addendum to the Sale Certificate was executed on 14.01.2022 to enable DCIPSPL to participate in any new or fresh bids, tenders, contracts or work orders and to execute them by using the credentials of DCIPSPL.
- 4.22 Further, vide an order dated 28.01.2022, this Tribunal directed the RoC to change the status of DCIPSPL from "under liquidation" to "Not applicable", to enable DCIPSPL, under KSYEPL, to participate in the Tender Process under Notice Inviting Tender dated 24.12.2021 issued by BHEL in respect of the Panki Thermal Power Station Kanpur, Uttar Pradesh.
- 4.23 Subsequently, the Liquidator distributed the amount received from KSYEPL amongst the Stakeholders as per Section 53 of the IBC, and submitted his Final Report as per Regulation 45 of the Liquidation Process Regulations on 2.03.2021 and Form H, i.e., Compliance Certificate under Regulation 45(3) of the Liquidation Process Regulations dated 17.02.2022.

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4.24 Vide an order dated 19.04.2022, **this Tribunal allowed the closure of the Liquidation Process in respect of DCIPS.**

5. It is pertinent to note the following submission of the Appellant:

“The Liquidator has rejected the claim of the Appellant on the ground that the Corporate Debtor shall remain a going concern even during the such liquidation period. However, such ground does not safeguard the Appellant from subsequent development in the liquidation process of the Corporate Debtor, where the Corporate Debtor does not receive bids for its assets being a going concern. Such circumstance is highly likely, owing to the failure of the Resolution Professional in successfully completing the CIRP process by selling the Corporate Debtor as a going concern. The very basic failure of the CIRP process was lack of interest in acquiring the Corporate Debtor as a going concern. The Liquidator therefore cannot reject the claim of the Appellant on the mere ground that such claim has not crystallized as on date, when there is a legitimate apprehension or possibility that such debt will crystallize during the pendency of the liquidation process.”

6. Learned Counsel Appearing for the Respondent Corporate Debtor points out that in I.A. (IBC) No. 294/KB/2022 in the instant C.P.(IB) No. 45/KB/2018, whereby this Tribunal was called upon to deal with and adjudicate the claims of the Kolkata Municipal Corporation for arrears of Property Tax and the Department of Land and Land Reforms for arrears of Land Revenue for previous periods, vide an order dated 18.05.2022, this Tribunal *inter alia* observed in para 15 that the main objective of the IBC should not be lost sight of in the instant case, the Corporate Debtor (DCIPSPL) has been sold as a going concern and is well functioning, in that, it is on its way to complete the projects left half-way by the previous management and is trying to turn the so-called Corporate Debtor (DCIPSPL) into a viable enterprise. Any past liabilities would burden the enterprise and may even push it back to the insolvency from which it has been successfully detected by the IBC.

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Further, in the same order, this Tribunal took note of Clause 17 of the Sale Certificate which reads as under:

“The Purchaser shall not be liable for any known or unknown, claimed or unclaimed, disclosed or undisclosed, seen or unforeseen tax liabilities or other liabilities/obligations/government dues/local authority dues/claims under any statute in force in relation to any period prior to 11.08.2021 including but not limited to any past tax litigations/statutory dues such as income tax, TDS, TCS, GST, Custom Duty & Octroi Tax, Local Taxes, Entry Tax, Sales Tax, CST, VAT, Service Tax, Excise Duty, Property Tax, Cess, Penalty, DGFT dues etc. which relate to the period prior to 11.08.2021. All such liabilities of the Corporate Debtor and its Business Undertaking which relate to the period prior to 11.08.2021 shall be extinguished as also mentioned in MoU Dated 11.08.2021 entered between the Liquidator and the Purchaser and approved by National Company Law Tribunal, Kolkata bench on 13.08.2021.”

ANALYSIS AND FINDINGS

7. The primary contention of the Appellant was that the fact of the Corporate Debtor remaining a going concern even during the such liquidation period did not safeguard the Appellant from subsequent development in the liquidation process of the Corporate Debtor, where the Corporate Debtor does not receive bids for its assets being a going concern. This Tribunal finds that the said apprehension is rendered wholly infructuous in the facts and circumstances of the present case. The Corporate Debtor has not only been successfully sold as a going concern to Karanveer Singh Yadav Enterprises Private Limited ("KSYEPL") vide the Sale Certificate dated 30.12.2021, but has also continued to perform its pre-existing contractual obligations under its new ownership and management. The entire sale consideration of Rs. 30,00,00,000/- (Rupees Thirty Crores only) has been duly paid by KSYEPL, the Liquidation Process has been formally closed, and the Corporate Debtor is now a functioning enterprise. In view of the

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aforesaid, the apprehension expressed by the Appellant stands completely extinguished and does not survive for consideration.

8. The Hon'ble NCLAT, while remanding the matter, observed that this Tribunal had erred in rejecting even those specific and determined claims of the Appellant which could have been straightaway verified and admitted. However, in this regard, this Tribunal considers it necessary to record an important threshold observation. All claims of the Appellant arise directly from and are inextricably linked to the performance of the two contracts bearing Contract Nos. CS-0370-162C-2-FC-COA-0015 and CS-0370-162C-2-SC-COA-0016 awarded by the Appellant to the Corporate Debtor. The said contracts were being performed by the Corporate Debtor at the time of filing of the proof of claim and continue to be performed by the Corporate Debtor under its new management till date. In these circumstances, permitting the Appellant to prefer and recover claims arising from the performance of contracts that are still being actively discharged would unfairly and unjustly prejudice the Corporate Debtor. It would, in effect, permit the Appellant to simultaneously receive the benefit of contractual performance and seek compensation for the very same performance, a position that is neither equitable nor sustainable in law.

9. The Hon'ble NCLAT observed that the claims of the Appellant are covered under the definition of "claim" in Section 3(6) of the Insolvency and Bankruptcy Code, 2016, which includes a right to payment, whether fixed, contingent, matured, unmatured, disputed or undisputed, as well as a right to remedy for breach of contract that gives rise to a right to payment. The Hon'ble NCLAT further observed that in terms of Regulation 25 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator was required to make the best estimate of any contingent claim where the amount is not precise. Having noted the said observations, this Tribunal is of the considered view that in the present case, the Appellant's entitlement, as it stood at the time of filing its proof of claim and as it stands even today, is fundamentally a **right to performance of the contractual obligations by the Corporate Debtor, and not a right to payment**. The contracts are being performed. No breach has

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been conclusively established. No final accounting has been undertaken. The right to payment, if any, will arise only upon the conclusion of the contracts and the final reconciliation of accounts between the parties. Until that stage is reached, the Appellant's claim has not crystallised into a "right to payment" within the meaning of Section 3(6) of the Code, and the invocation of Regulation 25 for making a best estimate cannot be stretched to cover what is, at its core, a right to performance that has not yet transmuted into a right to payment.

10. This Tribunal further notes that the discharge of the past contractual obligations of the Corporate Debtor is reflective of the fact that the past liabilities of the Corporate Debtor is not brushed off after being undertaken by the new management and ownership of KSYEPL. Hence, the NCLAT's observation of the liabilities to be transferred together with the assets stand affirmatively addressed in the present case.
11. Finally, this Tribunal observes that the principal objective of the Insolvency and Bankruptcy Code, 2016, is the resolution of distressed entities and their revival as viable enterprises, and any admission of uncrystallised and disputed past claims at this juncture would fundamentally undermine the going concern sale that has been successfully achieved in the present case, and would burden the reconstituted enterprise in a manner contrary to the spirit and intent of the Code. Hence, it is entirely consistent with both the principles of natural justice and the underlying scheme of the Insolvency and Bankruptcy Code, 2016, that the Corporate Debtor, and by extension its Purchaser, not be burdened with claims that had not been admitted or crystallised prior to the completion of the going concern sale. This position is rendered all the more compelling in the facts of the present case, where the Appellant is not a creditor left remediless, it is the very party that continues to receive, and stands to receive, the benefit of contractual performance from the Corporate Debtor against which it seeks to raise its claims.
12. This Tribunal is therefore of the considered view that the claims of the Appellant, in their entirety, cannot be entertained at this stage, and the

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instant **I.A. (IBC) No. 1832/KB/2019** in C.P. (IB) No. 45/KB/2018 is accordingly **dismissed**.

13. We further note that the company petition being C.P. (IB) No. 45/KB/2018 had already been disposed of on 19.04.2022 by this Tribunal and has still been wrongly running on this list as an undisposed petition. We hereby confirm that the said **C.P. (IB) No. 45/KB/2018 stands disposed of** absolutely and conclusively.

REKHA KANTILAL SHAH
MEMBER (TECHNICAL)

BIDISHA BANERJEE
MEMBER (JUDICIAL)

Order Signed on 03.07.2026

Bhatt, O. [LRA]