

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



M/S S.S. ENGINEERS VS. HINDUSTAN PETROLEUM CORPORATION LTD. & ORS

Brief Facts

The present appeal is against a judgment order passed by NCLAT allowing company appeal filed by the respondent HPCL & setting aside the order passed by NCLT admitting an application filed by the appellant as operational creditor, for initiation of the CIRP against HPCL Biofuels Ltd. (HBL) wholly owned subsidiary of HPCL. The NCLAT directed the NCLT to close the proceedings for CIRP initiated against HBL.

The Appellant and HBL entered into a contract agreement pursuant to tenders floated by HBL for enhancing the capacity of the Boiling Houses. Purchase Orders were issued by HBL to the Appellant for the work on a turnkey basis, The Appellant raised invoices in respect of the purchase orders. HBL, through mails, disputed any liability of payment alleging that Appellant had been violating the terms of the purchase order and backing out from its commitments causing huge losses to HBL as it had to procure materials from other vendors. The Appellant allegedly also raised invoices for material that were not supplied and that did not renew its Bank

Guarantee and delivered poor quality materials.

While all this was communicated to the Appellant by HBL, the latter issued Form C to the Appellant. The Appellant issued a Legal Notice for invocation of arbitration, followed by Demand Notice under section 8 of the BC. HBL disputed the claim. Nonetheless, the Appellant filed an application for initiation of CIRP against HBL. The NCLT was of the opinion that even if all the amount disputed by HBL is taken into consideration, the amount due to the Appellant shall exceed Rs. 1 Lakh (threshold limit under section 4 of IBC at the relevant time). Moreover, since HBL awarded new work orders to the Appellant subsequently, it meant that all the disputes relating to the contract were resolved. Further, NCLT also underlined the fact that HBL had also issued Form C.

Decision

The Appellate Tribunal was of the view in the Adjudicating Authority (NCLT) committed a grave error of law by admitting the application of the Operational Creditor, even though there was a pre-existing dispute as noted by the Adjudicating Authority. The NCLAT held that the execution of the contract work being on a lumpsum turnkey basis, the Appellant contractor was responsible for the entire execution of the work, as per specifications and to the satisfaction of HBL. On completion of the work, the Appellant contractor was to give notice of such completion to the site in charge, who would inspect the work and furnish the Appellant contractor with a Completion Certificate indicating defects, if any, in the contract work and the date of completion of the contract work.

Referring to the letter dated 11.08.2013 of HBL to the Appellant, the NCLAT found that it was the case of HBL that the Appellant, as contractor, had delayed the performance of its obligations in terms of the contract. In the aforesaid letter, HBL enumerated the lacuna and lapses of the Appellant in the performance of the contract and the various breaches of contract committed by the Appellant and also made a categorical assertion that till 31.07.2013, there was no amount outstanding from HBL to the Appellant. Rather there was a recovery from the Appellant.

The appeal is dismissed. Needles to mention that the appellant may avail such other remedies as may be available in accordance with law including arbitration to realise its dues, if any.

Link of the Order

<https://ibbi.gov.in/uploads/order/b8f32fbb695df3f382fffa73f4c39455.pdf>



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