

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1746 OF 2025**

Pingle Builders Private Limited .. Petitioner
Versus
Union of India .. Respondents

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Ms.Madhavi Nalluri i/b. Thodur Law Associates for Petitioner.
Mr.Y.S. Bhate a/w Ms. Smita Thakur for Respondent.

**CORAM : ALOK ARADHE, CJ &
BHARATI DANGRE, J
DATED : 6th FEBRUARY, 2025**

JUDGMENT:- (PER BHARATI DANGRE J)

1. The Petitioner, primarily engaged in the business of carrying out civil/ construction works, building and developing residential and commercial complexes, has approached this Court, being aggrieved by the action of the respondent, Union of India- Directorate General Married Accommodation Project, New Delhi, in cancelling the contract awarded to it on 9/06/2011, on the ground of delay in its completion by order dated 1/02/2018, and also being aggrieved by the issuance of fresh tender calling bids from eligible persons for completion of the incomplete work.

Heard learned counsel Ms. Madhavi Nalluri for the petitioner and Mr. Y.S. Bhate for the respondent.

Rule. Rule made returnable forthwith.

2. The Directorate General Married Accommodation Project, published a tender for construction of residential accommodation for defence personnel at Mumbai (Navy and Air Force) along with 'Instructions to Tenderer(s)' comprising of the general instructions and highlighting the scope of the work with an estimated cost of Rs.54.57 Crores. The documents contemplated that the tender shall be based on drawing, specifications, for which lumpsum shall be quoted by the tenderer in form of item rate.

The petitioner company engaged in construction business, participated in the tender and was awarded the work for contract amount of Rs. 44.37 Crores on 9/06/2011. According to the petitioner, it proceeded with the work in terms of the work order and was successful in finishing substantial portion of the work within stipulated timelines in the contract, but faced numerous difficulties which are entirely attributed by it to the respondent, the significant factors being:

- (i) Encumbrance free site was not made available by the respondent during the initial stages;
- (ii) Estimates prepared in respect of the subject contract were entirely unrealistic;
- (iii) Deviation orders for the subject contract not finalized;
- (iv) The ban on sand mining created acute shortage of sand and caused steep hike in its cost;

- (v) Imposition of additional restrictions on movement of men and materials within the work site;
- (vi) Significant number of drawings being introduced by the respondent, during the currency of execution of the project;
- (vii) Non-release of payments to the company despite completion of substantial work in respect of the subject contract.

3. The petition has highlighted the percentage of work carried out and proceed to state that the delay was entirely attributable to the respondent but on 1/02/2018 the petitioner received a communication informing that the contract awarded in its favour has been cancelled, and issuing directions to make an inventory of complete/incomplete items of works and materials, and further directing that the property on which the construction activity was being carried out shall be safeguarded until further orders.

4. The petitioner raise a grievance that the termination of contract by the impugned letter is a unilateral act and is based on false, frivolous and unsubstantiated grounds, and is in complete violation of the contract executed between the parties. The communication addressed to the petitioner assigned a cause for termination, by alleging that petitioner has failed to proceed with the work with due diligence with a result that the project is at stand still and is almost abandoned for a considerable period of time and despite various review meetings and commitments being

made to infuse materials and labour resources to expedite the project ,there was no progress.

5. Since the termination notice indicated that as per the contract condition no.1(c) of the General Conditions of Contracts, the work shall be completed by any other agency, at the risk and cost of the petitioner, who was allotted the contract for construction of dwelling units, a fresh tender was invited by the respondent for completion of balance work by publishing the tender on the site www.defproc.gov.in, and the present petition filed on 4/02/2025, raise a challenge to the termination of contract vide letter dated 2/02/2018 as well as the tender notice published by the respondent inviting fresh tenders for the unfinished work.

6. From the date of termination of the contract on 2/02/2018, till filing of the petition several events have transpired and the petition has highlighted the same in a sequential manner.

7. On account of the financial distress suffered by the petitioner company, one Soorajmull Baijnath Pvt. Ltd, set in motion the Corporate Insolvency Resolution Process (CIRP) alleging that Pingle Builders Pvt Ltd, a corporate debtor has committed default in making payment to the extent of Rs.9,30,05,085/- invoking Section 9 of the Insolvency and Bankruptcy Code, 2016. The National Company Law Tribunal, Mumbai on 19/07/2018, admitted the petition and imposed a moratorium under section 14, with effect from 19/07/2018, till

completion of the corporate insolvency resolution process or until approval of the resolution plan under sub-section (1) of Section 31 or passing of an order for liquidation of corporate debtor under Section 33, as the case may be.

Mr. Shrikant Zavar, was appointed as an Interim Resolution Professional (IRP) to carry out the functions as mentioned under the IBC.

8. The Resolution Professional filed an Interim Application No. 1506 of 2019 under Section 33 of the IBC, before NCLT Mumbai, on the ground that no resolution plan has been approved and the Committee of Creditors had unanimously decided to initiate liquidation proceedings against the Corporate Debtor.

The NCLT on 11/12/2020, allowed the application appointing Ms. Vandana Garg, as liquidator under Section 34 (1) of the Code, for conduct of the liquidation proceedings as envisaged under Chapter-III of the Code. She was conferred with the powers of the board of directors, key managerial personnel and other partners of the Corporate Debtor and a direction was issued by the tribunal to liquidate the Corporate Debtor and the personnel of Corporate Debtor were directed to extend all co-operation to the liquidator in conduct of the liquidation proceedings.

9. On 9/11/2022, an application was moved by the liquidator for taking the acquisition agreement dated 5/11/2021

executed between the applicant and Mr. Swapnil Wagchoure on record and in terms of the Acquisition Agreement, the entire business, undertaking activities and operation of the Corporate Debtor were transferred to Mr. Swapnil Wagchoure, proprietor of M/s. Swapnil Electrical and Contractors, on the date on which the agreement became effective.

10. The Acquisition Agreement is placed on record along with the petition at Exhibit-E, and it record that Mr. Swapnil Waghchoure carrying proprietary business of electric contract in Nashik has agreed to take over the business of the Corporate Debtor under liquidation as a going concern and it extended to all assets of the debtor including but not limited to current assets, deposits, loans and advances, secured to or available with the Corporate Debtor as also all statutory and regulatory approvals, license, agreements, permissions, clearances, registration, plant and machinery, utilities, vehicles, furniture, accessories and related infrastructure as well as all intellectual property and goodwill.

The agreement clearly recorded that in consideration of vesting of the Corporate Debtor in the Acquirer in terms of the agreement, the acquirer shall pay a sum of Rs. 32,00,000/- to the bank account specified by the liquidator and the existing directors of the Corporate Debtor shall be replaced by the new directors mentioned therein.

The agreement also contain a clause as regards Conduct Of Business Of The Corporate Debtor and it clearly contemplated that all the assets, rights, title, interest or obligations thereto shall continue to belong to and be vested in and managed by the Acquirer.

11. In the interregnum, when the petitioner was undergoing CIRP, the petitioner also approached the District Court at Nashik, by filing Arbitration Application No.4 of 2019, under Section 9 of the Arbitration and Conciliation Act, 1996, seeking redressal against the action of the respondent in cancelling the work contract vide order dated 31/01/2018, and seeking a restrain order from appointing any new agency/contractor to complete the balance work till the final adjudication of the arbitration proceedings. The district court on 13/08/2019 allowed the Interim Application restraining the respondent from not allotting the tender to any bidder, who has submitted the bid for completion of the work of construction of dwelling units at Colaba, Mankhurd, Kalina and Santacruz, in pursuance of the e-tender published on 17/07/2019, however, by judgment dated 10/02/2021, the District Judge Nashik, rejected the arbitration application by recording that no prima facie case or balance of convenience lies in favour of the applicant for any interim relief, as he can always apply for damages, if the contract was illegal contract, but on the other hand if the contract is stayed the respondent would suffer irreparable loss and damage since

construction of the dwelling units of Armed Forces would be further delayed, as it was to be completed in the year 2013, as per the work order dated 20/06/2011.

12. The learned counsel for the petitioner would submit that once the corporate debtor has been taken over by the acquirer, who admittedly is not a petitioner before us, it shall continue the action of raising a challenge to the cancellation order, and also the invitation of fresh tenders by the respondent for completing the unfinished work. The learned counsel would submit that the petitioner is entitled to participate in the fresh tender, in view of the fact that the petitioner company has been acquired as a going concern in liquidation pursuant to the execution of Acquisition Agreement, in accordance with relevant provisions of IBC, 2016 and therefore, she claim that the petitioner is entitled for the reliefs based upon the principle and law laid down in *Ghanshyam Mishra and Sons Pvt Ltd vs Edelwiss Asset Reconstruction Company Ltd*, (2021) 9 SCC 657.

13. In *Ghanshyam Mishra* (supra), the dominant object of Insolvency and Bankruptcy Code, 2016 was discerned, to be the revival of the Corporate Debtor, and make it a running concern and this contemplated a preparation of resolution plan based upon the out put of the Company of Creditors (COC). While analyzing the scheme contained in the Code, finality is attached to the resolution plan duly approved by the Adjudicating Authority under sub-section (1) of Section 31, by specifying that

the claims provided in the plan shall stand frozen and will bind the Corporate Debtor and its employees, members, creditors including the Central Government, any State Government or local authority, guarantors and other stakeholders. A clear position of law has emerged from the said decision to the effect that on the date of the approval of the resolution plan by the Adjudicating Authority, all such claims which are not part of the plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan.

The aforesaid decision revolves around the resolution plan and the finality attached to it under the Code and do not deal with the liquidation proceedings.

14. We really wonder as to how the principle in Ghanshyam Mishra, would come to the rescue of the petitioner as the petitioner has no legal existence as on date, as it has been replaced by M/s Swapnil Electrical and Contractors, who has entered into an agreement for sale of Corporate Debtor as a going concern under liquidation and the agreement is signed between the liquidator and Mr. Swapnil Wagchoure as a proprietor of M/s Swapnil Electricals and Contractors.

The said agreement is accompanied with the Schedules as regards the assets and liabilities of the Corporate Debtor and it clearly record that all the contracts in favour of the Corporate Debtor were terminated by the respective Government

Department prior to initiation of CIRP, and when the liquidator filed an appeal in the pending IBC proceedings, for revocation of the termination of contract and permission to execute it in favour of the Corporate Debtor, NCLT granted a stay on further action by the respective Government Departments in any of the concerned contract.

The Government Departments forwarded recovery notices of more than INR 100 Crore against the terminated contract, which was allowed to be dealt with subsequently. The acquirer empathizing with the situation of the operational creditor offered an amount of Rs. 25,00,000/- to the liquidator and with respect to the materials at site, it was recorded that in inspection, valuation, appraisal or any other process of determining the value and /or usability of the material was not undertaken by the liquidator/acquirer due to non-accessibility of defence site. The tribunal directed that the liquidator with respect to the recovery of material on site on the settlement appeal various government departments have issued in favour of Pingle Builders Pvt Ltd, a demand draft of Rs. 15,00,000/- .

15. In the wake of the aforesaid, we fail to appreciate the grievance raised by the petitioner and the reliefs sought in the petition in the wake of the aforesaid development as the petitioner now stand acquired by the acquirer and we do not intend to entertain the petition at its instance and grant any relief.

For the reasons recorded above, the petition is dismissed.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)