* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 01st JULY, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 345/2021 & I.A. 15190/2021**

MBL INFRASTRUCTURES LIMITED .....Petitioner

Through: Ms. Anusuya Salwan, Mr. Bankim Garg, Ms. Nikita Salwan, Mr. Rachit Wadhwa, Advs., for Petitioner (MBL Infrastructure Ltd.)

versus

MS PILE FOUNDATION COMPANY .....Respondent

Through: Mr. Rajiv Ranjan Dwivedi, Mr. Vishal, Advs., for Respondents

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The challenge in the present Petition being O.M.P. (COMM) 345/2021 is to the Award dated 26.07.2021 passed by the Ld. Sole Arbitrator in Arbitration Case No.159/2014.

2. The facts, in brief, leading to the filing of the present Petition are as under:

i. The Petitioner is a Public Limited Company engaged in the business of Civil Engineering Project works, having operations across India and having undertaken and executed several projects on a pan-India basis.

ii. The Respondent is a partnership firm having its office at 29/1, Savitri Nagar, near Sheikh Sarai, Phase-1, New Delhi – 110017.

iii. It is stated that National Highway Authorities of India ("**NHAI**"), by way of a Letter of Award bearing No.NHAI/30050/EPC/Digha Bridge/24218 dated 22.12.2011, awarded to the Petitioner the work titled "*Construction of approaches to Rail-cum-Road Bridge across river Ganga at Digha Ghat near Patna from Km. 0.00 (Km. 6..8 of NH-98) to Km. 12.343 (start point of Rail-cum-Road Bridge) and Km. 0.00 (end point of Rail-cum-Road Bridge) to Km. 5.703 (at Chhapra Bypass) in the State of Bihar*" for a total contract value of Rs.211,10,51,638/-. The commencement date of the project was fixed as 11.02.2012, with a stipulated completion period of 30 (thirty) months, ending on 11.08.2014.

iv. It is further stated that, pursuant to the aforesaid Letter of Award, a formal agreement in respect of the said project was executed between the Petitioner and NHAI on 10.01.2012.

v. It is stated that on 31.05.2012, the Respondent approached the Petitioner for the execution of a portion of the piling works and, on the same date, submitted its quotation for the said work.

vi. It is further stated that the Petitioner thereafter issued a work order No.MBL/NH/RD/BH/1/WO/02 dated 13.06.2012 in favour of the Respondent for "*Execution of Bored CAST-IN-SITU concrete Pile Foundation for the proposed Bridge Location at Digha Ghat, Patna on Piece Rate basis*" (*hereinafter referred to as* "**the contract**") for a total contract value of Rs. 4,03,72,500/-. Under the terms of the work order, the Respondent was required to complete the assigned work within a period of 06 (six) months.

vii. It is stated that the Respondent encountered financial difficulties and failed to mobilise the requisite manpower, machinery and materials in accordance with the contractual obligations. Consequently, the Petitioner, by way of financial assistance, released a sum of Rs. 4,50,000/- through Cheque No.6368880 dated 30.07.2012.

viii. It is further stated that the Petitioner handed over a hindrance-free site to the Respondent on 09.11.2012 for execution of its scope of work under the work order. The Petitioner also ensured timely supply of steel, Ready Mix Concrete ("**RMC**") and other necessary materials, and duly fulfilled all its contractual obligations to facilitate uninterrupted progress of the work.

ix. It is stated that the Respondent was inadequately prepared to execute the assigned work. The bar bending schedule for the test pile was submitted only on 09.11.2012, and the Respondent failed to timely mobilise its resources at the project site. It is further stated that the hydraulic pile rig machine and other equipment brought to the minor bridge site remained in dismantled condition for a considerable period and could not be assembled for execution of the test pile, with the hydraulic rig becoming operational only on or about 28.11.2012.

x. It is stated that the Petitioner extended all necessary assistance to the PFC within the stipulated timelines and, notwithstanding the Respondent's repeated contractual breaches, honoured the first Running Account ("**RA**") Bill raised by the Respondent. The Petitioner also permitted the mobilisation of PMR, despite the same not forming part of the contractual specifications, solely to facilitate the progress of the project and assist the Respondent.

xi. It is stated that by 12.05.2014, the Respondent had completed only 32 out of the 42 piles required for the minor bridge and had failed to execute any piling work at the remaining structures, eventually abandoning the project. It is submitted that such abandonment constituted a breach of the contract and resulted in substantial losses and damages to the Petitioner.

xii. It is stated that disputes arose between the parties in consequence thereof, and the matter was referred to arbitration, wherein Mr. G.R. Jain was appointed as the Sole Arbitrator to adjudicate the disputes.

xiii. It is stated that the learned Arbitral Tribunal entered upon Reference on 12.05.2014.

xiv. The claims made by the Respondent/Claimant before the learned Sole Arbitrator are extracted below for reference and the same reads as under:

> *"Claim No.1: A sum of Rs. 1,75,000/- being the loss of turnover for the period between 13.12.2012 to 18.03.2014 for the prolonged period/extended period of stay at site by Claimant*
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> *Claim No.2: A sum of Rs. 2,57,33,000/- on account of idling of staff & machinery from 13.06.2012 to 21.04.2013 & 20.07.2013 to 05.03.2014.*
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> *Claim No.3: A sum of Rs. 58,50,000/- being the loss of profit on the balance work remained unexpected due to breaches, lapses, delays and defaults committed by Respondent.*

Claim No.4: A sum of Rs. 75,00,000/- on account of financial monetary & business loss pegged at Rs. 5 lacs per month for 15 months.

Claim No. 5: A sum of Rs. 40,00,000/- by way of damages on account of mental agony & harassment caused by Respondent failure to give possession of site for starting the work till date.

Claim No. 6: Pre suit, pendentilite and future interest 18% p.a. on claim no. 1 to 5.

Claim No. 7: A sum of Rs. 5,00,000/- being the cost of Arbitration."

xv. The Petitioner raised counter-claims based on the non-performance of the contract by the Respondent/Claimant. The said counter-claims are extracted below for reference and the same reads as under:

"Counter Claim No.1: A sum Rs 8,88,393.00 paid in excess than the due payments against the work done and other payments permitted under the work order.

Counter Claim No.2: An amount of Rs 32,67,939/-, on account of Difference in cost of material to be purchased for completion of the balance work.

Counter Claim No.3: An amount of Rs 57,94,610/-, on account of Difference in cost of material to be Consumed in the works of Pedestals, sub Structure and superstructure over the foundation works awarded to the claimant.

Counter Claim No.4: An amount of Rs. 1,17,18,270.00 on account of supervising the work including overheads.

> *Counter Claim No.5: An amount of Rs 2,24,75,500.00, on account of non utilization of Batching Plant and other connected machinery & equipment, subsequently required for completing the balance work."*

xvi. It is further stated that during the pendency of the arbitration proceedings, RBL Bank Ltd., a creditor of the Petitioner, filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") being Company Petition No.170/KB/2017 before the NCLT, Kolkata. The said Application was allowed, and Corporate Insolvency Resolution Process ("**CIRP**") was initiated against the Petitioner with effect from 30.03.2017, along with the declaration of a moratorium and public announcement as stated in Section 13 of IBC.

xvii. It is stated that a Resolution Professional was appointed, who issued a public announcement inviting claims from creditors of the Petitioner, and 13.04.2017 being the last date for submission of claims.

xviii. In the meanwhile, the Petitioner filed an Application dated 24.07.2017 before the Arbitral Tribunal for adjournment of the proceedings in lieu of the Order dated 30.03.2017 passed by the NCLT, Kolkata. Thereafter, *vide* Order dated 30.12.2017, the Arbitral Tribunal kept the arbitral proceedings in abeyance till the completion of the Debt reduction process.

xix. Pursuant thereto, a Resolution Plan was submitted before the NCLT, Kolkata on 18.04.2018 and was duly approved by the Adjudicating Authority.

xx. It is further stated that on 16.08.2019, the NCLAT upheld the approved Resolution Plan and dismissed the appeals preferred by certain creditors challenging the same, whereupon the Resolution Plan attained finality and was made effective from the date of approval by the Adjudicating Authority. It is stated that these developments were duly brought to the notice of both the Arbitral Tribunal and the Respondent.

xxi. It is stated that the Arbitral Tribunal rendered its Award dated 26.07.2021 in Arbitration Case No. 159/2014.

xxii. The learned Sole Arbitrator recorded that both parties had unequivocally stated that they did not intend to lead oral evidence, and that the dispute would be decided solely on the basis of the documents placed on record.

xxiii. The learned Sole Arbitrator also undertook an examination of the terms of the agreement between the parties and emphasized that the rights and obligations of the parties must strictly emanate from the contractual provisions.

xxiv. It was further observed by the learned Sole Arbitrator that contractual clauses must be interpreted in a harmonious manner, and no clause ought to be read in isolation or in a manner that renders other provisions redundant.

xxv. The learned Sole Arbitrator, upon examining the respective claims arising out of the contract, held that the claims of the Respondent/Claimant against the Petitioner were still under adjudication before the Arbitral Tribunal. It was observed that such claims would attain the status of a 'debt' only upon the

Claimant succeeding in arbitration and upon an award being passed and published in its favour. Until such stage, the claims could neither be treated as admitted nor fall within the ambit of the IBC.

xxvi. The learned Sole Arbitrator took note of the fact that the Petitioner had initiated proceedings before the NCLT under the framework of the IBC. It was further observed that the disputes between the parties had arisen prior to the initiation of such proceedings and pre-dated the year 2016, whereas the approach to NCLT was made subsequently.

xxvii. The learned Sole Arbitrator further clarified that the initiation of insolvency proceedings does not, by itself, operate as a bar to arbitral proceedings. it was further observed that once a claim crystallizes into a debt, it may be pursued before the NCLT in accordance with law.

xxviii. The learned Sole Arbitrator also observed that the arbitral proceedings cannot be kept in abeyance indefinitely on account of parallel proceedings before the NCLT, and declined to permit such proceedings to obstruct or impede the continuation of arbitration.

xxix. It was also specifically noted that the proceedings before the NCLT had advanced substantially, culminating in the approval of a resolution plan.

xxx. The learned Sole Arbitrator thereafter proceeded to adjudicate the disputes between the parties, including the claims preferred by the Respondent/Claimant and the counter-claims raised by the

Petitioner. Upon such adjudication, the learned Sole Arbitrator awarded a sum of Rs.39,58,150/- in favour of the Respondent/Claimant and a sum of Rs.11,80,712/- in favour of the Petitioner. After adjusting the amount awarded under the counter-claims, the net amount awarded in favour of the Respondent/Claimant worked out to Rs.27,77,438/-, together with simple interest at the rate of 9% per annum from the date of the Award until realization.

3. The preliminary objection raised by the learned counsel for the Petitioner is that the learned Arbitral Tribunal lacked the jurisdiction to adjudicate upon the claims preferred by the Respondent/Claimant and to render the impugned Award, as the Petitioner had been subjected to insolvency proceedings under the IBC during the pendency of the arbitral proceedings, which ultimately culminated in the approval of a Resolution Plan by the NCLT, Kolkata. It is further contended that by virtue of Section 31(1) of the IBC, upon approval of the Resolution Plan by the Adjudicating Authority, the same becomes binding on the Corporate Debtor, its creditors, employees, members, governmental authorities and all other stakeholders, thereby extinguishing all claims not forming part of the approved Resolution Plan.

4. The question raised by the learned Counsel for the Petitioner as to whether the dues payable to a creditor can survive post the Resolution Plan or not is no longer *res integra* and stands settled by authoritative pronouncements of the Apex Court in Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, **(2021) 9 SCC 657** and Electrosteel Steel Limited (Now ESL Steel Limited) v. Ispat

Carrier Private Limited, **(2025) 7 SCC 773**.

5. The precise issue that has been raised before the Apex Court was considered in Ghanshyam Mishra (*supra*), and the same reads as under:-

> *"**2.** The short but important questions, that arise for consideration in this batch of matters, are as under:*
>
> ***2.1.** (i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the I&B Code")?*
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> ***2.2.** (ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?*
>
> ***2.3.** (iii) As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?"*

6. The aforesaid issue has been answered in Ghanshyam Mishra (*supra*) in the following manner:-

> *"**102.** In the result, we answer the questions framed by us as under:*
>
> ***102.1.** That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the*

corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution 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.

***102.2.** The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.*

***102.3.** Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”*

7. In the said case, the Apex Court reiterated that upon approval of a resolution plan under Section 31 of the IBC, all claims not forming part of the resolution plan stand extinguished. The Apex Court further held that any arbitral award rendered in respect of such extinguished claims is incapable of enforcement and cannot survive the approval of the resolution plan. The Apex Court emphasized that the IBC overrides all inconsistent proceedings and that continuation of arbitral adjudication in respect of claims extinguished by operation of the approved resolution plan would defeat the very object of the insolvency framework. The Court specifically held that once the claim itself stands extinguished, the adjudicatory forum loses

jurisdiction to continue proceedings in relation thereto.

8. The said issue has been again quoted with approval in Electrosteel Steel Limited (*supra*) wherein the Apex Court has held as under:-

> *"**71.** Insofar as the second and third issues are concerned, it is by now well settled that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, all claims which are not part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this Court in Essar Steel [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443 : (2020) 219 Comp Cas 97] had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant. Insofar as the resolution plan is concerned, the resolution professional, the Committee of Creditors and the adjudicating authority noted about the claim lodged by the respondent in the arbitration proceeding. However, the respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration, etc. shall be settled at nil. Therefore, it is crystal clear that insofar as claim of the respondent is concerned, the same would be treated as nil on a par*

with the claims of the top 30 operational creditors.

72. *Lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the resolution plan by the adjudicating authority. Moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications. View taken by the High Court cannot be accepted in the light of the clear cut provisions of the IBC as well as the law laid down by this Court. In view of the resolution plan, as approved, the claim of the respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under Section 47CPC. View taken by the High Court that because the appellant did not challenge the award under Section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of Section 47CPC, is wholly unsustainable.”*

9. Applying the aforesaid principles to the facts of the present case, it is evident that CIRP against the Petitioner was initiated by order dated 30.03.2017 passed by the NCLT, Kolkata. Consequent thereto, a moratorium under Section 14 came into operation and a public announcement under Section 13 was issued inviting all creditors to submit their claims before the Resolution Professional. The Respondent/Claimant, whose contractual claims were already in existence and had admittedly arisen prior to commencement of CIRP, was required to lodge its claims before the Resolution Professional in accordance with the statutory scheme

of the IBC. Thereafter, a Resolution Plan came to be approved by the Adjudicating Authority and attained finality upon affirmation by the NCLAT. Once such resolution plan was approved, only those claims which formed part of the Resolution Plan could survive and all other claims stood extinguished by operation of law.

10. From a bare reading of the law laid down by the Apex Court shows that it is not just the debt but any claim against a company which undergoes CIRP and once a Resolution Plan is approved by the Committee of Creditors and the Adjudicating Authority puts a seal of approval on the Resolution Plan, the award does not sustain and therefore deserves to be set aside only on this ground.

11. The reason given by the learned Arbitrator that since the debt has not been crystallized during the arbitration proceedings, the arbitrator can still proceed ahead to decide the issue is completely contrary to the law laid down by the Apex Court.

12. In spite of the aforesaid statutory developments, the learned Sole Arbitrator proceeded to adjudicate the claims of the Respondent/Claimant on the premise that the claims had not yet crystallized into a debt and therefore fell outside the ambit of the IBC. Such reasoning cannot be sustained in law.

13. In view of the above, the Award dated 26.07.2021 is set aside.

14. The Petition is disposed of. Pending applications, if any, also stands disposed of.

SUBRAMONIUM PRASAD, J

JULY 01, 2026
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