

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT  
CHENNAI**

**(APPELLATE JURISDICTION)**

**Comp App(AT)(CH) (Ins) No.274/2023**  
**(IA Nos. 845, 846, 847, 848 of 2023)**

**(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)**  
**(Arising out of the Impugned order dated 25.05.2023 in I.A. No. 239 of**  
**2022 in CP(IB)/154/BB/2017, passed by the ‘Adjudicating Authority’,**  
**National Company Law Tribunal, Bengaluru Bench)**

**In the matter of:**

**M/s. Teestavalley Power Transmission Ltd.**

Through its Authorized Signatory

B-2/1A Safdarjung Enclave,

Africa Avenue, New Delhi – 110 029

**...Appellant**

**V**

**Mr. Ravindra Beleyur**

**Liquidator of M/s. Deepak Cables (India) Ltd.**

#48/3, 2<sup>nd</sup> Floor, 1<sup>st</sup> Main, 2<sup>nd</sup> Cross,

Royan Circle, Chamarajpet,

Bengaluru – 560 018

**...Respondent**

**Present:**

For Appellant : Mr. Vidhan Vyas, Advocate  
Mr. Saurabh Mishra, Advocate

**ORDER**  
**(Virtual Mode)**

**23.08.2023:**

**IA/846/2023**

Heard Mr. Vidhan Vyas, Learned Counsel appearing for the ‘Appellant’/‘Petitioner’/ in IA No.846 of 2023 in Comp App. (AT) (CH) (Ins) No.274 of 2023 (Condone Delay Application).

1) According to the ‘Petitioner’/‘Appellant’, the ‘Impugned Order’ in I.A./239/2022 in CP (IB)/154/BB/2017 was passed by the ‘Adjudicating Authority’/‘National Company Law Tribunal, Bengaluru Bench, on 25.05.2023 and the ‘Limitation period’ for preferring an ‘Appeal’ had lapsed on 24.06.2023.

2) The reason for delay in preferring the instant ‘Appeal’ as projected by the ‘Petitioner’/‘Appellant’ in IA/846/2023 in Company Appeal (AT) (CH) (Ins) No.274 of 2023 is that the ‘Petitioner’/‘Appellant’ Learned Counsel was suffering from high fever from 22.06.2023 to 29.06.2023 and further that the ‘Tribunal’ was closed due to ‘Summer Holidays’ till 02.07.2023.

3) Further, it is represented on behalf of the ‘Petitioner’/‘Appellant’ that the instant ‘Appeal’ was inadvertently preferred before the Principal Bench, National Company Law Appellate Tribunal, New Delhi on 03.07.2023 but in reality, the instant ‘Appeal’ is to be preferred only before the National Company Law Appellate Tribunal, Chennai Bench.

4) In this process, there has occasioned a delay of 12 days in preferring the instant ‘Appeal’ (after the expiry of 30 days

5) Considering the fact that the ‘Appeal’ was filed on 06.07.2023 before the ‘Office of the Registry’ through ‘e-filing process’ and keeping in mind of the fact that the ‘Petitioner’/‘Appellant’s Learned Counsel was suffering from fever from 23.06.2023 to 29.06.2023 etc. this ‘Tribunal’ by taking a lenient and liberal view extends its ‘Judicial arm of generosity’ in condoning the delay of 12 days in question and allows the I.A.No.846 of 2023 in Comp. App. (AT) (CH) (Ins) No.274 of 2023 without costs.

### **CA (Ins) 274 of 2023**

1) Heard the Learned Counsel Mr. Vidhan Vyas appearing for the ‘Appellant’/‘Petitioner’ in Comp. App (AT) (CH) (Ins) 274 of 2023 (At the Admission Stage itself).

2) The Learned Counsel for the ‘Appellant’ submits that the ‘Appellant’/‘Petitioner’ on being dissatisfied with the ‘Impugned Order’ dated 25.05.2023 in IA No.239 of 2022 in C.P. (IB) No.154/BB/2017 [Filed under Section 42 and 60(5) of IBC, 2016 R/w, Rule 11 of the NCLT Rules, 2016] has preferred the instant Company Appeal (AT) (CH) (Ins) No.274 of 2023 before this ‘Tribunal’ as an ‘Aggrieved person and submit that the ‘Impugned Order’ suffers from serious legal infirmity in the ‘eye of Law’.

3) The ‘Appellant’ is an ‘Interstate Transmission Licencee’ (a Company registered under the Companies Act, 1956, is a Govt. of Sikkim Enterprise) that apart, the ‘Appellant’ is a ‘Joint Venture’ of M/s. Teesta Urja Limited (“TUL”), a Govt. of Sikkim Enterprise, having 69.08% stake and M/s. Powergrid Corporation of India Limited (“PGCIL”), a Govt. of India Enterprise having 30.92% stake in the ‘Appellant Company’.

4) According to the ‘Appellant’, it had implemented 215 KM 400 kV D/C transmission line form Teesta – III HEP, Sikkim to District Kishanganj, Bihar (“Project”); as a part of ‘Master Plan for evacuation of power of Hydro Electric Project’ in the State.

5) It comes to be known that the ‘Contracts’, for construction of Project was awarded to the Consortium of M/s. Deepak Cable (India) Limited (“Corporate Debtor” or “DCIL”) and M/s. Abir Infrastructure Private Limited (“Consortium” or “DCIL-APIL JV”) in two separate packages viz. Tower Package A-1 and A-2 through Notification of Award dated 18.11.2009 with schedule time period for completion to be 23 months from the date of ‘Notification of Award’.

6) Indeed, on 22.02.2010 a ‘Contract Agreement’, was entered into between the ‘Appellant and DCIL-AIPL JV’ and that the total value of the ‘Subject Contracts’ was Rs.317,50,97,602 and that the ‘Contract’, was amended on 10.05.2010. Later, the total value of the ‘Subject Contract’, was enhanced to Rs.334,30,99,502.

7) It transpires that it was found that there was remote possibility of completion of transmission line by the Consortium in commensurate with the commissioning of Teesta – III Hydro Electric Project and that a ‘Default Notice’ dated 09.05.2014 was served upon the ‘Consortium’. Furthermore, because of the fact that the ‘Consortium’ had failed to take remedial measures for achieving the desired progress of works for ensuring ‘timely completion of the Project’, the ‘Appellant’ terminated the subject contract through a ‘Termination Letter’ dated 30.05.2014 as per the clause no. 36.2.2 of the General Conditions of the Contract and subsequently the ‘Contracts’, for balanced works of the Project, were awarded to new Contractors at the risk of cost of DCIL/AIPL JV/Consortium.

8) It is brought to the fore that on 25.07.2014, the ‘Appellant’ appointed its ‘Nominee Arbitrator’ and claimed Rs.517 Crores and that two ‘Nominee Arbitrators’, appointed the ‘Presiding Arbitrator’ during September, 2014.

9) In this connection, the Learned Counsel for the ‘Appellant’ points out that the issue of ‘Termination of Contract’ was dealt with by the Hon’ble Single Bench and Division Bench of Hon’ble High Court of Delhi in its order dated 03.09.2014 in Petition No. OMP No.557 of 2014 & I.A. No. 10888 of 2014 and Judgment dated 15.09.2014 passed in Appeal No. FAO (OS) No. 397 of 2014 and 398 of 2014 respectively it is observed as under:-

*“Para – 145. The legal position which can be summarized ..... The dispute between the parties to the underlying contract has to be decided at the*

*civil forum i.e. a civil suit if there exists no arbitration clause in the Contract or before the Arbitral Tribunal if there exists an Arbitration Clause in the Contract.....”*

10) The Learned Counsel for the ‘Appellant’, advancing his argument contends that the ‘Impugned Order’ passed by the ‘Adjudicating Authority’/‘Tribunal’ is liable to be set side because of the fact that the same is quite contra to the order dated 18.01.2022 passed by the Principal Bench of this ‘Tribunal’ in Comp. App (AT)(Ins) No.28 of 2022 between M/s. Teestavalley Power Transmission Ltd. Vs M/s. Abir Infrastructure Pvt. Ltd. Through its RP and wherein, under similar circumstances, it was clarified that if any ‘arbitration proceedings’ results in any award to and in favour of “TPTL”, then it would be open for TPTL to avail such remedies as available in ‘Law’, for execution of such award, thereby meaning, that the claims raised by ‘TPTL’ had not been extinguished and are subject to final ‘Adjudication of the Arbitral Tribunal’.

11) It is a version of the ‘Appellant’ that the ‘Adjudicating Authority’/ ‘Tribunal’ had committed an error, in dismissing the application filed by the ‘Appellant’ although specifically recording the factum of pendency of ‘Arbitral Proceedings’.

12) In effect, the crystalline stand of the ‘Appellant’ is that the ‘Adjudicating Authority’/‘Tribunal’ should have directed that ‘maintainability of the claims’, raised by the ‘Appellant’ would be subjected to the outcome of the ‘Arbitral Proceedings’ between the parties. Furthermore, it is the stand of the ‘Appellant’ pendency of ‘Liquidation Proceedings’ against the ‘Corporate Debtor’ cannot legally extinguish claims or disputes between the parties which are pending ‘adjudication’ before the ‘Arbitration Tribunal’ or a ‘Court of Law’.

13) The other contention put forth on the side of the ‘Appellant’ is that the ‘Adjudicating Authority’/‘Tribunal’ had failed to appreciate that the ‘Arbitral Proceedings’ between the ‘Corporate Debtor’ and the ‘Appellant’ were pending from the year 2014. Insolvency Proceedings came to be initiated in the year 2018 and in fact, the ‘claims’ should have been made part of the ‘Liquidation Proceedings’ of the ‘Corporate Debtor’.

14) The Learned Counsel for the ‘Appellant’ brings it to the notice of this ‘Tribunal’ that the ‘Adjudicating Authority’/‘Tribunal’ had failed to appreciate that the ‘Learned Official Liquidator’ in effect through its order dated 29.01.2022 had unreasonably and erroneously usurped powers and the jurisdiction of the ‘Arbitral’/‘Tribunal’ and rejected the ‘Appellant’s claim on merits.

15) Added further, the ‘Submission’ of the Learned Counsel’s for the ‘Appellant’ is that the Order dated 29.01.2022, passed by the ‘Official Liquidator’ was upheld through an order dated 25.05.2023 by the ‘Adjudicating Authority’/‘Tribunal’ to the ‘Liquidator’ and factually result as a ‘Bar’ against the TPTL from initiating or continuation of any other legal proceedings against M/s. DCIL for recovery of its outstanding dues as per ‘Law’.

16) The Learned Counsel refers to the Order dated 18.01.2022 of the Principal Bench of this ‘Tribunal’ in the matter of M/s. Teestavalley Power Transmission Ltd. Vs. M/s. Abir Infrastructure Pvt. Ltd. Through its ‘Resolution Professional’ wherein at paragraphs 3 and 4 it is observed as under:

3. *“We are of the view that there is no ground to entertain this appeal challenging the order of the ‘Adjudicating Authority’.*

4. *We only observe that if the arbitration proceedings result in any award in favour of the ‘Appellant’, it shall be open to the Appellant*

*to take such remedy as permissible under the law and impugned order shall not be come in his way in execution of the Arbitral Award.”*

and dismissed the instant ‘Appeal’.

17) Be that as it may, this ‘Tribunal’, on going through the ‘Impugned Order’ dated 25.05.2023 in IA/239/2022 in CP(IB) No.154/BB/2017 passed by the ‘Adjudicating Authority’/‘Tribunal’ is of the considered view that the ‘Adjudicating Authority’/‘Tribunal’ based on the facts and circumstances of the instant case and also keeping in mind of the ‘Order’ in Company Appeal (AT) (Ins) No.28 of 2022 to the effect that if the ‘Arbitration Proceedings’ result in any award in favour of the ‘Appellant’, it shall be open to the ‘Appellant’ to take such remedy, as permissible under the law and the ‘Impugned Order’ shall not come in his way in execution of the ‘Arbitral Award’ came to the conclusion that the ‘Liquidator’ had correctly rejected the ‘Appellant’/‘Applicant’s claim by means of the reasons given in the letter dated 29.01.2022, considering the fact that the ‘Liquidation’ was a ‘time bound process’.

18) A mere glance of the ‘Impugned Order’ dated 25.05.2023 in IA/239/2022 in CP(IB) No.154/BB/2017 passed by the ‘Adjudicating Authority’/‘Tribunal’ unerringly points out that the ‘Appellant’ / ‘Applicant’ was permitted to pursue other remedies in accordance with ‘Law’ if so advised.

19) Looking at from any point of view, the instant Company Appeal (AT) (Ins) No. 274 of 2023 preferred by the ‘Appellant’/‘Applicant’ before this ‘Tribunal’ in respect of the ‘Impugned Order’ dated 25.05.2023 in I.A. No. 239 of 2022 in C.P. (IB) No.154/BB/2017 passed by the ‘Adjudicating Authority’ National Company Law Tribunal, Bengaluru is ‘Devoid of Merits’, and it fails.

20) In fine, the instant ‘Appeal’ (AT) (Ins) No. 274 of 2023 is dismissed. No costs. Connected pending IA Nos. 845, 847 and 848 of 2023 are closed.

**[Justice M. Venugopal]**  
**Member (Judicial)**

**[Dr. Alok Srivastava]**  
**Member (Technical)**

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