## NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

### (APPELLATE JURISDICTION)

# Company Appeal (AT) (CH) (Ins) No.96/2024 (IA No.265/2024)

(Arising out of the Impugned Order dated 07.12.2023 passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench in C.P.(IB)
No.180/9/HDB/2022)

#### In the matter of:

K. Lakshma Reddy H. No. 3-10-212, Reddy Colony, Hanamkonda - 506001, Warangal, Telengana.

... Appellant

 $\mathbf{V}$ 

Telangana State Rajiv Swagruha Corporation Limited 7th Floor, West Wing, Gaganvihar, M.J. Road, Nampally, Opp. Gandhi Bhavan, Hyderabad - 500001, Telangana.

...Respondent

#### **Present:**

For Appellant :Ms. Deepika Murali, Advocate

## ORDER (Hybrid Mode)

#### 01.04.2024:

1. The 'Appellant'/'Petitioner'/'Operational Creditor', as an 'Aggrieved person', has preferred the instant 'Appeal', (AT)(CH)(Ins) No.96 of 2024, in

- respect of the 'Impugned Order' dated 07.12.2023 as rendered, in CP(IB)No.180/9/HDB/2022 by the 'Adjudicating Authority'/'Tribunal'.
- 2. Earlier, the 'Adjudicating Authority/Tribunal' National Company Law Tribunal, Hyderabad Bench-II while passing the 'Impugned Order' in CP(IB)No.180/9/HDB/2022 on 07.12.2023 (filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, by the 'Appellant'/'Petitioner'/'Operational Creditor') among other things, at paragraph 33, had observed the following:-
  - 33. "Therefore, no enhancement has been given for steel and cement work. At the same time, it is required that progress of work etc. shall be basis for price adjustment which should have been approved by the competent authority. Thus, it is to be approved by the respondent that the bills have been raised on the basis of G.o.Ms.No.35 and the conditions of this letter have been fulfilled by the applicant, However, no such bill has been produced by the applicant to show that such demand was raised with the respondent. He has straight away filed tabulation sheet indicating the payment to be made on the basis of revised rate as per G.O.Ms.No.35, which calculation is also imaginary as no supporting document has been filed. The onus to prove that such type of work as given in the tabulation sheet at pg.387 to 421 was done by the applicant, but there is no such evidence. Hence, the loss to the applicant is not crystallized. This Authority exercising summary jurisdiction cannot determine the claim amount and initiate the corporate insolvency resolution process."

and resultantly, dismissed the said 'Company main Petition', finding no merits.

3. Assailing the correctness, validity, propriety and legality of the 'Impugned Order' dated 07.12.2023, as passed by the 'Adjudicating Authority/Tribunal' National Company Law Tribunal, Hyderabad Bench-II in CP(IB)No.180/9/HDB/2022 on 07.12.2023, the Learned Counsel for the 'Appellant'/'Petitioner' contends that the 'Impugned Order' is an erroneous one and the same is not valid in the 'eye of Law', because of the fact that the 'Adjudicating Authority'/'Tribunal' had not taken into account, the points raised by the 'Appellant'/'Petitioner', in a 'proper' and 'real perspective' concerning the controversies involved.

- 4. The Learned Counsel for the 'Appellant'/'Petitioner' submits that the erstwhile Andhra Pradesh Rajiv Swagruha Corporation Limited, now M/s. Telangana State Rajiv Swagruha Corporation Ltd. had invited tenders for the competitive bidding for carrying out construction of 57 Intrinsic (B-Type) Duplex Houses (in 200 Sq. Yards) (East facing 27 Nos & West facing 30 Nos) including infrastructure facilities for "Akshaya" Colony at Kundanpally (V), Ramagundam (M) in Karimnagar District under Rajiv Swagruha Scheme (Package II).
- 5. It is the version of the 'Appellant', that based on the 'Tender', the 'Appellant'/'Corporate Debtor' took part in the 'Competitive Bid Process' and after having satisfied with all the necessary requirements, had participated in the 'Bidding Process', the 'Appellant', emerged as 'Successful Bidder', in the 'Tender' and entered into an 'Agreement' with the 'Corporate Debtor', [vide No.13/APRSCL/DT/2009-10 dated 29.10.2009], for carrying out construction of 57 Intrinsic (B-Type) Duplex Houses (in 200 Sq. Yards) (East facing 27 Nos & West facing 30 Nos.) including infrastructure facilities for "Akshaya" Colony at Kundanpally (V), Ramagundam (M) in Kariminagar District under Rajiv Swagruha Scheme (Package II).
- 6. The 'Appellant', had procured the construction materials, and arranged 'Labour', 'Rollers', 'Tippers', J.C.B's, Technical Engineers, Supervisors, etc., in order to begin the work on time and meet the deadlines, as prescribed in the 'Original Agreement' dated 29.10.2009. But, before the 'Appellant', could 'commence construction', over the 'Allotted Land', the 'Forest Department', intervened, claiming, that the said 'Land' is under the possession and ownership of the 'Forest Department'. Also that, due to the interference, from the 'Forest Department', the work had to be stalled, and the same, was intimated to the 'Chief Engineer of 'Corporate Debtor', in writing [vide RE.No.114 of 2009, dated 21.08.2009].

- 7. Continuing further, it is contended, that because of the 'Dispute', between the 'Corporate Debtor' and the 'Forest Department', the 'construction work', was to put to a 'complete halt', from the beginning itself, and that the 'issue of ownership', was resolved, only after a year, and hence, the 'Land', was handed over to the 'Appellant', to 'resume work', only during December, 2010.
- 8. The Learned Counsel for the 'Appellant', refers to Clause 1.2 in the 'Original Agreement' to the effect that "The Contractor should not execute any component work without obtaining the working drawings. Any work done without drawing shall be at the contractor's responsibility only". Moreover, according to the 'Appellant', it had paused the construction work and resumed the same only on receipt of the **Drawings** from Corporate Debtor through Memo No.RS/RMG/Designs/162/2010 dated 09.09.2010 but the same was subsequently revised multiple times including the entering into 'Newer Agreements', with 'revised scope of work'. In this regard, additional delays in resuming the construction work as the finalised construction drawings as per the 'Newer Agreement' with revised scope of work were not given by the 'Corporate Debtor' on time.
- 9. The crystalline stand of the 'Appellant', is that on completion of the 'first milestone', in terms of the 'Original Agreement' dated 29.10.2009, submitted the 'First Bill' to the 'Corporate Debtor', in the year 2011, reflecting the extent of work, in hopes of getting the proportionate payment processed. However, the 'Corporate Debtor' had not responded to the submission of the 'First Bill' by the 'Appellant'. Considering the fact that the 'Appellant' was bound by the 'timelines', stipulated under the 'Original Agreement' dated 29.10.2009, the 'construction work' was continued in 'Good Faith' and hoping that the 'payment' will be processed, shortly thereafter.

- 10. The Learned Counsel for the 'Appellant', brings to the notice of this 'Tribunal' that subsequently a 'Supplementary Agreement', to the 'Original Agreement', was also, got executed, between the 'Corporate Debtor' and the 'Appellant', on 28.02.2011, that construction of 'Entrance Gateway', to 'Akshaya Gated Community', with an 'approximate value of work' at 'INR 4,37,020/- and the 'Conditions' of the 'Original Agreement', were adopted 'verbatim'. In effect, in between the 'Corporate Debtor' and the 'Appellants', 'Five Supplementary Agreements', in all, were entered into, between the year, '2011 and 2015'.
- 11. The Learned Counsel for the 'Appellant', points out that the 'Corporate Debtor', had approached the 'Appellant', to revise the 'Ambit of work', as agreed, as per the terms and conditions of 'Original Agreement', dated 29.10.2009, and another 'Supplementary Agreement', was entered into, on 05.03.2011, whereby the original construction work of 57 "intrinsic" (B-type) Duplex Houses (200 sq. yds. each) was revised to construction of 21 "intrinsic" (B-type) Duplex Houses (200 sq. yds. Each) with reduced approximate value of work at INR 2,26,60,953/- and an additional work of construction of 42 "basic" Duplex Houses (150 sq. yds. each) and 21 "civic" independent houses (100 sq. yds. each) with approx. value of work at INR 3,86,05,812/- and thereby revising the total approx. value of work to INR 6,12,66,765/-. As a matter of fact, this 'Agreement' also adopted the 'conditions', prescribed in the Original Agreement, owing to the 'Revision', being limited to only the 'scope of work'.
- 12. After the 'scope of work' being 'Revised', the 'Appellant', had resumed 'construction work', according to the 'newly executed Agreement', and as the work was progressing, the 'Second Bill' was raised by the 'Appellant', in compliance with the 'terms', of the 'Original Agreement'.

- 13. Indeed, the 'Corporate Debtor', had partially processed and effected payments from the 'First Bill', raised by the 'Appellant' on 20.03.2011. However, there was 'no mention of reasons', for 'non-processing' of the 'pending payments'. However, 'in Good Faith', the 'Appellant', had continued the construction work and even though, the 'rate of construction materials', had sky rocketed, 'Standard Schedule of Rates' (SSR) were not Revised, in terms of the 'Government order' dated 30.01.2009.
- 14. The Learned Counsel for the 'Appellant' proceeds to point out, that the 'Managing Director' of the 'Corporate Debtor', had issued a 'Letter' on 19.10.2012, to the Erstwhile 'Government of Andhra Pradesh', bringing to light, 'serious financial crisis', faced by the 'Corporate Debtor', and because of the said reason, 'All Operations', came to a 'Cessation'. Based on the aforesaid Letter, the Government Order, in Go. Ms. No.11, was passed on 22.06.2013, whereby, the 'Government', took cognisance of the fact, that there was a 'serious case of mismanagement' that was plaguing the 'Respondent', leading to the 'Financial Crunch'. As such, certain 'relaxations' were granted to the 'Corporate Debtor' including sanctioning of a Loan, to an extent of Rs.105/-Crores, by the 'Government of Andhra Pradesh'. But, to the utter shock of the 'Appellant', Bills raised, till then, were kept pending.
- 15. It is represented on behalf of the 'Appellant', that subsequently the 'Corporate Debtor's Managing Director, had issued a letter dated 27.07.2013 to the 'Secretary of Govt., Housing Department' seeking permission to implement G.O.Ms. No.353 dated 30.01.2009 and accordingly, and also to adjust the price, as it was 'not feasible to complete the work', with the then settled, 'Standard Schedule of Rates'. In fact, the Secretary of Government, Housing Department based on the aforesaid 'Letter' had granted permission to implement the Government Order No.35 through Letter dated 08.07.2013. Later, the Managing Director, APRSCL had issued Letter dated 17.09.2013, to all the Contractors permitting/offering the

'unsold dwelling Units/Flats' in lieu of 'settlement of dues', in kind and for the 'Price Adjustment/Escalation', in the 'ongoing projects', based on G.O. Ms. No.35 dated 30.01.2009. But the fact of the matter is, that the 'Appellant', had not opted for any form of payment, in kind.

- 16. When all the 'Bills', as it was raised by the 'Appellant' were pending, the Chief Engineer of 'Corporate Debtor' had issued a 'Letter', dated 05.11.2013 to the 'Appellant', stating that the 'Original Agreement' dated 29.10.2009 was once again 'Revised' and restricted to the 'construction of 18 intrinsic Houses', and '14 basic 'Duplex Houses' including 'development work', without entering into a 'New Agreement', to that effect, in view of poor demand from the prospective purchasers.
- As a matter of fact, later on, another 'Supplementary Agreement', was executed between the 'Corporate Debtor' and 'Appellant' on 13.12.2013 for 'Supply', 'Erection', 'Testing', 'Commissioning' and 'Maintenance of Transformers', HT & LT Cables, Panels, etc. for the 'external electrification' work, at 'Akshaya Township', at Ramagundam (V & M), Karimnagar District with approximate value of work at INR 11,42,229/- by duly adopting the 'Terms and conditions of Original Agreement', and thereby, 'extending, the period of completion', of the project, in accordance with the Clauses of the 'Original Agreement'.
- 18. In the interregnum, the 'State of Andhra Pradesh', was bifurcated into 'Telangana State' and the residuary 'Andhra Pradesh State'. After the 'Bifurcation', the 'office of the Managing Director of the Corporate Debtor', had issued a Letter, in October 2014 to the Secretary of Government, Telangana State Housing Department, Secretariat, Hyderabad seeking issuance of suitable orders, duly empowering the Corporation, to implement G.O. Ms. No. 35 T, R&B(R1) Department, dated 30.01.2009.

- 19. It is the clear cut case of the 'Appellant' that when the 'Bills', submitted by him, were pending, 'for payments' yet the 'Government' approving 'price adjustments', he submitted a 'Representation' to 'Chief Minister' and the 'Minister of Housing Department', stating all the facts, relating to the situation, and hardships faced by the 'Appellant', due to the negligence of 'Corporate Debtor' and requested, to pass suitable orders in directing the authorities of 'Corporate Debtor', to clear his unpaid Bills. Also, that a Letter dated 22.08.2017, was issued by the Minister for Housing, Law and Endowments, Government of Telangana to the VC and Housing Commissioner of Telangana State Housing Board, requesting the 'Authorities of 'Corporate Debtor' to examine the 'pending Bills' due for payment and to clear as per 'Eligibility of Agreement', immediately.
- 20. It comes to be known that another 'Supplementary Agreement', was executed between the 'Corporate Debtor and the 'Appellant', on 20.06.2015 at 'Akshaya Township' at Ramagundam (V&M), Karimnagar District with approximate 'value of work' at INR 75,86,513.92/- by duly adopting the 'Terms and Conditions', of the 'Original Agreement', entered into, on 29.10.2009, and thereby extending the period of completion of the project in accordance with the clauses of the Original Agreement. In fact, the 'Last Supplementary Agreement' was entered into between the parties and without any extensions, 'all the works', were completed in the month of September 2015, and were duly informed to the 'Corporate Debtor'.
- 21. According to the 'Appellant', as the 'Original Agreement', vide its Clauses 42.1 and 42.4.1, the 'payments', will be made to the 'Contractor', would be based on the 'Measurements' recorded, in the 'Measurement Books', by any officer of the Department of the 'Respondent' at various stages of the work, being completed and the payment, will be made under a 'Certificate', to be issued, at reasonably frequent intervals by the EE/General Manager of the Respondent. In this connection, it is pointed out on behalf of the 'Appellant', that it is not mandated

as per the 'Original Agreement' that Bills/Invoices, ought to be raised on the Respondent, to 'effect payment' and that the 'Appellant', as per Clause 54 of the 'Original Agreement' had already submitted the 'Final Accounts', to the Respondent. The Respondent had failed to issue 'certificates' at 'reasonably frequent intervals', which in turn, had an effect, on 'payment', to the 'Contractor', 'for the work completed'.

- 22. Viewed in the aforesaid documents, according to the 'Appellant', in spite of issuance of several reminders, the 'Corporate Debtor', had not made 'stipulated payments', to the 'Appellant'. Therefore, the 'Operational Creditor'/ 'Appellant'/'Petitioner' was constrained to issue 'Demand Notice dated 02.02.2022 (under Section 8 of Insolvency and Bankruptcy Rules, 2016) calling upon the 'Corporate Debtor' to 'make payments', of such 'Outstanding Dues' as against the 'Demand Notice' dated 02.02.2022. A 'Reply Notice' dated 08.03.2022 was issued by the 'Corporate Debtor' denying the fact, that there was any 'crystallised debt', payable at all, in the first instance and that 'all payments' were completed, in the year, 2014.
- 23. The Learned Counsel for the 'Appellant'/'Petitioner'/'Operational Creditor', points out before this 'Tribunal', that the contention of this 'Tribunal'/'Court' that the 'Appellant' had invoked Section 9 of the IBC Code, 2016 by filing the CP(IB)No.180/9/HDB/2022 on the file of the 'Adjudicating Authority'/'Tribunal', seeking permission to initiate 'Corporate Insolvency Resolution Process' against the 'Respondent', owing to the 'unpaid dues'. The Respondent, the main 'Company Petition', preferred to the 'Appellant'/'Petitioner'/Operational Creditor', had filed a 'Response/Reply/ Counter' besides other things, raising 'objections', that the 'Bills', are barred by limitation and that the 'Original Agreement' is a 'Lumpsum contract', and therefore, the 'Appellant' being a 'Contractor' is not entitled to the 'SSR', reviewed by the 'Government', from time to time, because of the fact, that all payments were

allegedly made back in the year 2014, itself. The 'Appellant' had filed a 'Rejoinder' [to the 'Respondent's 'Reply'] before the 'Adjudicating Authority'/'Tribunal'.

- 24. At this juncture, a mere perusal, of the 'Demand Notice', dated 02.02.2022, issued by the 'Appellant'/'Petitioner'/'Operational Creditor', addressed to M/s. Telangana State Rajiv Swagruha Corporation Ltd. indicates that the 'Operational Debt' was Rs.1,80,27,927/-(Rupees One Crore Eighty Lakhs Twenty Seven Thousand Nine Hundred and Twenty Seven only) after excluding, 'interest due' on it. The 'Appellant'/'Petitioner', in the said 'Notice', had requested the 'Respondent', to 'unconditionally repay' the 'unpaid Operational Debt', 'in default', in full, within ten days, from the date of receipt of the 'Notice', failing which, the 'Appellant' shall initiate a 'CIRP' process.
- 25. The 'Respondent/Corporate Debtor' represented by its Managing Director, had issued a 'Reply', to the Learned Counsel for the 'Appellant', (who issued Demand Notice) dated 08.03.2022 inter alia, mentioning that the 'alleged' claim of Rs.1,80,27,927/-is exfacie, 'false', 'incorrect' and never admitted to the due(s) by it and further the mere request of consideration of the 'Representations' of the 'Appellant', will not 'Ipso Facto' 'presume', the existence of the alleged 'Debt'.
- 26. It is not out of place for this 'Tribunal', at this stage, to make a pertinent mention that the 'Respondent'/'Corporate Debtor', had categorically mentioned that the alleged claim by the 'Respondent/Corporate Debtor', is not susceptible to the jurisdiction under Insolvency and Bankruptcy Code, 2016 and the 'claim' is 'untenable' both on 'Facts and Law'. Also that the purported claim for Rs.1,80,27,927/- is 'exfacie', 'barred by limitation' and being an afterthought, having received the alleged amount due as early as possible on 21.08.2014. As such, it is the stand of the 'Respondent'/'Corporate Debtor' in the 'Reply' Notice dated 08.03.2022 that the 'Appellant', is 'estopped', to raise 'any further claim', on any count, after long lapse of time and the 'claim' is 'unwarranted'.

- 27. However, the contention taken by the 'Respondent'/'Corporate Debtor', in the 'Reply' Notice dated 08.03.2022, is that the 'Final Bills' of the 'Appellant' are not in tune with the Agreement's terms and conditions dated 29.10.2009 and further, the 'Respondent'/'Corporate Debtor' 'had paid all the dues' and nothing remains to be paid, in regard to 'any further sums'.
- 28. In so far as the 'Supplementary Agreement' dated 20.06.2015, is concerned, the Respondent had come out with a 'plea' that the same, is merely to extend the time, only to enable the 'Appellant', to 'complete the undertaken work', the same will not extend the 'Limitation period'.
- 29. As far as the Letter being addressed to the Chief Minister dated 03.12.2014, this 'Tribunal' relevantly points out that, the said 'Letter' will not supersede/override, the 'Contractual Agreement', or even, the 'Provisions of the Insolvency and Bankruptcy Code, 2016', in the considered opinion of this 'Tribunal'.
- 30. Moreover, even assuming, that the letter addressed to the Chief Minster dated 02.12.2014, which the 'Appellant' is relying upon, will come to his aid, it is pointed out by this 'Tribunal', that the 'Appellant' had issued a 'Demand Notice' on 02.02.2022 u/s 8 of the Insolvency and Bankruptcy Code, 2016 and that the 'main Company Petition' was filed on 09.05.2022, the same is barred by limitation.
- 31. In this connection, this 'Tribunal' significantly points out that the Insolvency and Bankruptcy Code, 2016 is not a 'Debt Enforcement Procedure'. Indeed, the proceedings of the Insolvency and Bankruptcy Code, 2016 are 'summary in nature' and that 'claims', within its purview, are not determined, like that of regular Civil Suits, being filed in 'Law Courts'.
- 32. When the 'Respondent'/'Corporate Debtor' has come out with a 'Reply' that sum of Rs.2,43,800/-, was paid in excess, which is liable to be adjusted, against the 'Security Deposit' etc. and further that in the 'instant Case,

the 'Appellant'/'Petitioner'/'Operational Creditor' had not disputed the fact that he had received all payments and without no due(s) are liable to be paid, according to the 'Respondent'/'Corporate Debtor', then it cannot be said, by any stretch of the 'claim of payment' imagination that being effected 'Respondent'/'Corporate Debtor', can said to be an illusory or imaginary one. Also that 'Disputed Claims', between the parties, as seen from the 'Reply Notice' dated 08.03.2022 of the 'Respondent'/'Corporate Debtor', to the 'Demand Notice' dated 02.02.2022 of 'Appellant'/'Operational Creditor'/'Petitioner', latently and patently indicates that there are factual pre-existing disputes, that exists between the 'parties' which require, letting in of elaborate, oral and documentary evidence by examining witnesses on their side, etc.

33. In regard to the plea that the 'Appellant's 'operational debt' is over and above Rs.1 crore and the same, has to be paid by the 'Respondent'/'Corporate Debtor', it is to be pointed out that in the instant 'Case', the 'Respondent'/'Corporate Debtor' prior to the filing of the 'Company Petition', by the 'Appellant'/'Operational Creditor', had raised the dispute among other things, stating that 'no amount is due'. When that be the fact situation as stated supra, and also on going through the 'Impugned Order' passed by the 'Adjudicating Authority'/'Tribunal' dated 02.02.2022 in CP.(IB)/180/9/HDB/2022, 'Tribunal' comes to a resultant conclusion, that the main Company Petition (IB) 180/9/HDB/2022, filed by the 'Appellant'/'Operational Creditor' is 'per se' 'not maintainable'. Furthermore, according to the 'Appellant', the loss to him, 'was not also, crystalised' etc. this 'Tribunal' is left with no option, except to come to a 'cocksure conclusion', that the 'Adjudicating Authority'/'Tribunal', had in a 'summary jurisdiction' under 'Insolvency and Bankruptcy Code', had rightly turned down the plea of 'Appellant'/'Operational Creditor' to discharge, the 'claim sum' and initiate 'CIRP' process.

34. One cannot remain in oblivion to a candid fact that in a Petition under

Section 9 of the Insolvency and Bankruptcy Code, 2016, it is not for the

'Adjudicating Authority'/'Tribunal' to determine the exact amount due, by

quantifying it, with 'mathematical precision'.

35. In view of the fore goings, this 'Tribunal' keeping in mind, the

divergent contentions, advanced on either side, taking note of the surrounding facts

and circumstances of the instant case, unhesitatingly holds that the 'Impugned

Order' dated 07.12.2022, passed by the 'Adjudicating Authority'/'Tribunal', in

dismissing the main Company Petition, is free from any legal flaws. Viewed in that

perspective, the instant 'Appeal', sans merit.

36. In fine, the main Company Appeal (AT) (CH) (Ins) No.96 of 2024,

filed by the 'Appellant'/'Operational Creditor'/'Petitioner', is 'Dismissed' at the

threshold (Admission stage itself). No costs. Connected pending I.A. No.265 of

2024 (for Additional Documents) is closed.

[Justice M. Venugopal] Member (Judicial)

[Justice Sharad Kumar Sharma] Member (Judicial)

> [Arun Baroka] Member (Technical)

SE/TM