



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

Date of decision: 01st JULY, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 342/2021 & I.A. 14986/2021**

MBL INFRASTRUCTURES LIMITED

.....Petitioner

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

versus

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) 342/2021 is to the Award dated 26.07.2021 passed by the Ld. Sole Arbitrator in Arbitration Case No.158/2014.
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 on 03.09.2012, Haryana PWD (B&R) Sonipat Circle, issued a Letter of award bearing Memo No.4107 for the work titled “*Construction of four lane ROB at Rai Nahra Bahadurgarh Road level crossing No.21 on Delhi-Ambala Railway line in Sonipat Distt*”. Thereafter, *vide* Memo No.5185 dated 28.09.2012, instructions were issued to commence the work, fixing 12.10.2012 as the date of commencement and 11.10.2014 as the stipulated date of completion.
- iv. It is further stated that a formal agreement was executed between the Petitioner and Haryana PWD (B&R) Sonipat Circle on 09.10.2012, for the aforesaid work.
- v. Subsequently, the Petitioner issued Work Order No.MBL/ND/1728 dated 22.11.2012 in favour of the Respondent for “*Construction of Bored CAST-IN-SITU RCC Pile foundation for ROB at Rai Nehra Bahadurgarh road on Delhi-Ambala Railway line near KMP at Sonipat on Piece Rate basis*” (*hereinafter referred to as “the contract”*) on piece rate basis, governed by the terms & conditions along with Bill of Quantities (“**BOQ**”) forming part of the work order.
- vi. It is stated that the Respondent mobilized the Kelly machine in the month of February 2013, which was allegedly old, dilapidated and not in good working condition. It is further stated that the Respondent failed to arrange essential equipment such as a generator and hydra-crane until 14.02.2013 and eventually commenced work only on 19.02.2013.
- vii. It is stated that the Petitioner extended a mobilization advance to



- the Respondent on 25.03.2013. However, as the Respondent allegedly failed to carry out any effective work at the site, the Petitioner's Project Manager, *vide* email dated 30.03.2013, pointed out deficiencies in the execution of piling work, describing the same as improper and defective. It is further stated that owing to inadequate resources, outdated and defective rigs, and a negligent approach, the Respondent failed to make progress. The Project Manager also recommended termination of the work order with immediate effect.
- viii. It is stated that the Petitioner issued a further communication dated 03.07.2013 highlighting the unsatisfactory progress of work. It is further stated that on account of such delays attributable to the Respondent, the principal employer, namely Haryana PWD (B&R), imposed delay damages upon the Petitioner. The Petitioner also claims to have suffered losses due to prolonged idling of the site, which prevented execution of subsequent works pending completion of foundational piling by the Respondent.
- ix. It is stated that owing to the complete stagnation of work at the project site, the Petitioner, having no alternative, awarded the work to M/s Him Piles Foundation. It is further stated that the Respondent abandoned the project without clearing dues of vendors and contractors, which were subsequently discharged by the Petitioner.
- x. 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.

- xi. It is stated that the learned Arbitral Tribunal entered upon reference on 22.08.2014.
- xii. 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. 7,00,000/- being the amount against final payment and security deposit.

Claim No.2: A sum of Rs. 45,00,000/- on account of under-utilization/idling of RT3 with 955 BLC crane, DMC Tripod, welding set from 23.11.2012 to 10.05.2013.

Claim No.3: A sum of Rs. 25 lacs being the idling charges/under-utilization of TMR/DMC @ Rs. 3.5 lacs/month with effect from 11.05.2013 to 31.12.2013.

Claim No.4: A sum of Rs. 1,10,000/- being the loss of turnover for the period between 21.01.2013 to 31.12.2013 for the prolonged period /extended period of stay at site by Claimant.

Claim No. 5: A sum of Rs. 1,10,00,000/- on account of harassment, mental agony, financial monetary & business loss pegged at Rs. 5 lacs per month for 15 months.

Claim No. 6: A sum of Rs. 7,00,000/- being the loss of profit on the balance work remained executed due to breaches, lapses, delays and defaults committed by Respondent.

Claim No. 7: A sum of Rs. 21 lacs being the escalation for the work executed from the period 22.01.2013 to



31.12.2013 based on 1st to 6th RA bill.

Claim No. 8 & 9: Presuit, pendente lite and future interest (a, 18% p.a. on claim no. 1 to 5.

Claim No. 10: A sum of Rs. 5,00,000/- being the cost of Arbitration.

Claim No. 11: A sum of Rs. 26 lacs being idle/under-utilization charges of labour and staff Rs. 2 lacs/month.

Claim No. 12: A sum of Rs. 10,000/day on account of miscellaneous site expenditure including conveyance charges etc. etc. from 22.11.2012 to 31.12.2013.”

- xiii. 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:

<i>Counter Claim No.</i>	<i>On account of</i>	<i>Amount (in Rupees)</i>
1	<i>Liquidated Damages as per the Contract between the claimant and respondent.</i>	7,57,200/-
2	<i>Claim towards the amount of Loss suffered by the respondent due to delay in execution of work by the claimant.</i>	1,60,00,000/-
3	<i>Claims towards damages on account of idling of plant & machinery for the reasons of delay on the part of the claimant.</i>	18,30,000/-
4	<i>The respondent claim on account of payment made to various</i>	1,22,238/-



	<i>vendors on behalf of Pile Foundation Company.</i>	
5	<i>Claim towards construction material issued to the claimant but not returned or utilized.</i>	6,32,439/-
6	<i>Claimant's claim towards sub-standard work.</i>	5,74,200/-
7	<i>Cost of Arbitration Proceeding = Rs. 20 Lacs.</i>	20,00,000/-
8	<i>Respondent claim on account of interest a 18% per annum anti-lite, penente-lete and post —lite interest.</i>	To be quantified
	<i>Total of counter claims =</i>	2,19,16,077/-

- xiv. 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.
- xv. 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.
- xvi. 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 Hon'ble 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.
- xvii. Pursuant thereto, a Resolution Plan was submitted before the Hon'ble NCLT, Kolkata on 18.04.2018 and was duly approved by the Adjudicating Authority.
- xviii. It is further stated that on 16.08.2019, the Hon'ble 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.
- xix. It is stated that the Arbitral Tribunal rendered its Award dated 26.07.2021 in Arbitration Case No. 158/2014.
- xx. 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.
- xxi. 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.
- xxii. 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.
- xxiii. 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.
- xxiv. 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.
- xxv. 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.
- xxvi. 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.

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

xxviii. 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.22,27,783/- in favour of the Respondent/Claimant and a sum of Rs.1,85,496/- 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.20,42,287/-, 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”)?

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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