

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM NO. 128**  
**(IB)-1367/PB/2018**

**IN THE MATTER OF:**

ICICI Bank Ltd.

.... Applicant/petitioner

v.

C & C Construction Ltd.

.... Respondent

**Order under Section 7 of IBC**

**Order delivered on 25.02.2020**

**Coram:**

**SHRI B.S.V. PRAKASH KUMAR**  
**HON'BLE ACTG. PRESIDENT**

**SH. S. K. MOHAPATRA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the RP:

Mr. Pulkit Deora and Mr. Navya Khillon, Advs.

For the Applicant:

Ms. Apoorv P. Tripathi and Mr. Dheeresh K.  
Dwivedi, Advs. in C.A. No. 2197(PB)/2019

**ORDER**

**HEARD AND DICTATED IN OPEN COURT ON 13.02.2020**

**Per : SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT**

**C.A. No. 2197(PB)/2019**

It is an application filed by Power Grid Corporation of India Ltd. against the Corporate Debtor stating that it has entered into an agreement with this Corporate Debtor on 27.09.2016 that the Corporate Debtor would execute erection of transmission line of electricity and to complete the same by 30.08.2017. In order to obtain this contract, the Corporate Debtor has even given performance guarantee on the condition that in the event work has not been completed as

stated in the agreement, the Applicant is entitled to invoke the performance guarantee. Since the Corporate Debtor has not completed the work within the time agreed, and even within the time extended, thereby the Applicant terminated the contract on 26.06.2019 and allotted the balance left out work to somebody else in order to avoid unnecessary further delay in execution of the contract.

The Applicant counsel has further stated that upon termination of this agreement, as per the original agreement dated 27.09.2016, this Corporate Debtor shall deliver to the Employer (the Applicant) the equipment and material provided by the Employer (the Applicant) and it shall be free to enter upon the site, and expel the Contractor and complete the remaining work by employing any third party. To show this condition existing in the contract, we hereby reproduce the relevant clause which is as follows:

*“36.2.3 Upon receipt of the notice of termination under GCC sub-Clauses 36.2.1 or 36.2.2, the Contractor shall, either immediately or upon such date as is specified in the notice of termination,*

*(a) .....*

*(b) .....*

(c) *deliver to the Employer the parts of the Facilities executed by the Contractor up to the date of termination*

(d) .....

(e) .....

36.2.4 *The Employer may enter upon the Site, expel the Contractor, and complete the Facilities itself or by employing any third party.  
.....”*

For this contract being terminated on 26.06.2019, the same not being challenged by this Corporate Debtor or by the RP at any point of time till date, the Applicant has filed the present application with the reliefs as follows:

- a) *Pass an order directing the Corporate Debtor, the Resolution Professional and their employees/ officers/ directors/ representatives/ nominees/ assignees to vacate the project site for the contract dated 27.09.2016, entered into between the Applicant and the Corporate Debtor for 'Supply, Erection, Testing & Commissioning of Transmission Line Tower Package- TW01 for 400kv D/C Mohindergarh-Bhiwani Transmission Line, and handover the peaceful possession of the same to the Applicant;*
- b) *Pass an order directing the Resolution Professional/ Corporate Debtor to hand over the possession of the Plant & Equipment specified in the last column of **Annexure A-1** to the present application to the Applicant;*
- c) *Pass an order directing the Resolution Professional/ Corporate Debtor to hand over possession of the erected and completed work under the contract dated 27.09.2016, entered into between the Applicant and the Corporate Debtor for 'Supply, Erection, Testing & Commissioning of - - I& &*



*Transmission Line Tower Package- TWOI for 400kv D/C Mohindergarh-Bhiwani Transmission Line;*

- d) Pass an order directing the parties or appointing a Local Commissioner, to prepare an inventory of the work done by the Corporate Debtor pursuant to the contract dated 27.09.2016, entered into between the Applicant and the Corporate Debtor for 'Supply, Erection, Testing & Commissioning of Transmission Line Tower Package TWOI for 400kv D/C Mohindergarh-Bhiwani Transmission Line;*
- e) Pass an order of injunction, restraining the Resolution Professional, the Corporate Debtor and their employees/ officers/ directors/ representatives/ nominees/ assignees from alienating or creating any third party right or interest over the Plant & Equipment specified in **Annexure A-1** to the present application and over the erected/ completed work till the final disposal of the present application;*
- f) Pass an order of directing the Resolution Professional, the Corporate Debtor and their employees/ officers/ directors/ representatives/ nominees/ assignees to not to remove any Plant & Equipment as specified in **Annexure A-1** hereto from the Site and to maintain status quo over the Plant & Equipment specified in **Annexure A-1** to the present application and over the erected/ completed work till the final disposal of the present application; and*
- g) Pass any other order as this Hon'ble Tribunal may deem fit in the interest of justice."*

The Applicant Counsel has emphasized that applicant has given several extensions to the Corporate Debtor, but despite several extensions since the work could not be completed, the contract was terminated on 26.06.2019. Thereafter the Applicant issued a tender in respect of

completion of the balance work on 06.08.2019. Accordingly, bids were opened on 12.09.2019, thereafter a notification of award was issued on 08.11.2019 and the contract was allotted to a third party on 06.12.2019 for execution. The scheduled date of completion of the work as per the new contract is nine months from the date of notification of award, which expires on 07.08.2020. However, the work could not be started by this third party so far solely due to the arbitrary refusal of the RP to handover the plant and equipment lying at the site as specified in the Annexure A-1, which is as below:

**STORE POSITION AS ON 21.08.2019**

Name of Work: 400KV D/C MOHINDERGARH - BHIWANI T/L.

Tower Package - TW01 for 400Kv D/C Mohindergarh - Bhiwani Transmission Line including supply of Conductor & Insulators associated with Northern region Strengthening Scheme XXXV

Name of Contractor: M/s C&C Constructions Ltd.

Contract agreement no.: CC-CS/725-NR1/TW-3307/3/G10/CA-I/6963 Dated 27.09.2016

Sl No	Item Description	Unit	Unit Exworks price as per LOA				Amount of supplied items	Amount of items balance in store
				Supplied	Consumed	Balance in store		
1	2	3	4	6			8=4x6	
	Tower							
1	Fabrication, galvanising & supply of various Types of towers & towerparts, tower/leg extensions (complete) excluding step bolt, stubs and bolts & nuts but including hangers, D-Shackles, pack washers etc.- MS steel for Normal Towers.	MT	58,673.00	1006.064	812.672	193.392	5,90,28,793	1,13,46,888.82
2	Fabrication, galvanising & supply of stubs with cleats for various Types of towers & tower extensions (complete) with packwashers excluding supply of bolts & nuts- HT steel for Normal Towers.	MT	60,868.00	99.724	86.690	13.034	60,70,000	7,93,353.51

3	Fabrication, galvanising & supply of stubs with cleats for various Types of towers & tower extensions (complete) with packwashers excluding supply of bolts & nuts- MS steel for Normal Towers.	MT	58,674.00	11.645	10.822	0.823	6,83,259	48,288.70
4	Supply of Hexagonal Bolts and Nuts for towers including step bolts, Spring washer etc.	MT	79,613.00	73.703	62.654	11.049	58,67,717	8,79,644.04
5	Supply of Bolts and nuts for Stubs including Spring washer etc.	MT	1,18,994.00	2.260	1.988	0.272	2,68,926	32,366.37
6	Fabrication, galvanising & supply of various Types of towers & towerparts, tower/leg extensions (complete) excluding step bolt, stubs and bolts & nuts but including hangers, D-Shackles, pack washers etc.- HT steel for Normal Towers.	MT	60,867.00	839.863	757.166	82.697	5,11,19,941	50,33,518.30
7	Pipe Type Earthing	EA	2,262.00	181	99	82.000	4,09,422	1,85,484.00
8	Shieldwire Earthing including PG clamps, Downlead clamps but excluding Earthwire bits for pipe type earthing	EA	2,262.00	0	0	0.000	0	-
9	Number plate for 400 KV	EA	309.00	0	0	0.000	0	-
10	Danger plate for 400 KV	EA	309.00	0	0	0.000	0	-
11	Phase plate (Set of three)	Set	247.00	0	0	0.000	0	-
12	Circuit plate (Set of two)	Set	205.00	0	0	0.000	0	-
13	Anti climbing device of Barbed Wire Type	Nos.	7,403.00	0	0	0.000	0	-
14	Bird Guard (Set of Three)	Sets	1,850.00	0	0	0.000	0	-
15	Mid span Compression Joint for conductor -ACSR Moose	EA	1,042.00	423	12	411.000	4,40,766	4,28,262.00
16	Repair Sleeve for conductor - ACSR Moose	EA	384.00	141	1	140.000	54,144	53,760.00
17	Vibration Damper for conductor-ACSR Moose	EA	891.00	5472	336	5136.000	48,75,552	45,76,176.00
18	Bundle Spacer Damper for conductor-Twin ACSR Moose	EA	809.00	5427	414	5013.000	43,90,443	40,55,517.00
19	Rigid Spacer for jumper -Twin ACSR Moose	EA	369.00	1422	0	1422.000	5,24,718	5,24,718.00

20	Mid span Compression Joint - 7/3.66mm Earthwire	EA	233.00	36	0	36.000	8,388	8,388.00
21	Flexible Cu Bond-7/3.66mm Earthwire	EA	891.00	474	0	474.000	4,22,334	4,22,334.00
22	Vibration Damper- 7/3.66mm Earthwire	EA	370.00	548	28	520.000	2,02,760	1,92,400.00
23	Tension Clamp assembly- 7/3.66mm Earthwire	EA	659.00	172	6	166.000	1,13,348	1,09,394.00
24	Suspension clamp assembly- 7/3.66mm Earthwire	EA	616.00	102	8	94.000	62,832	57,904.00
25	24 Fibres (DWSM) OPGW fibres optic cable including down lead & splicing length	km	1,55,503.00	58.054	0	58.054	90,27,571	90,27,571.16
26	Suspension clamp assembly for 24 fiber OPGW	EA	4,257.00	97	0	97.000	4,12,929	4,12,929.00
27	Tension Assembly-Dead end for 24 fiber OPGW	SET	3,920.00	2	0	2.000	7,840	7,840.00
28	Tension Fitting Assembly for 24F OPGW including all accessories for joint box (SPLICING) Location	SET	8,289.00	10	0	10.000	82,890	82,890.00
29	Tension Assembly-Double Tension pass through assembly for 24 fiber OPGW	SET	7,840.00	57	0	57.000	4,46,880	4,46,880.00
30	Tension Fitting Assembly on Suspension Tower for 24F OPGW including all accessories for joint box (SPLICING) Location	Set	8,960.00	0	0	0.000	-	-
31	Vibration Damper for 24 fiber OPGW	EA	1,007.00	606	0	606.000	6,10,242	6,10,242.00
32	Down Lead clamp Assembly for 24 fiber OPGW	EA	433.00	450	0	450.000	1,94,850	1,94,850.00
33	Joint Box for 24 Fiber OPGW	EA	10,404.00	12	0	12.000	1,24,848	1,24,848.00
34	OPGW fiber Optic Distribution Panel (FODP): Indoor Type : 48 F	EA	1,04,540.00	2	0	2.000	2,09,080	2,09,080.00
35	Fiber Optic Approach cabling : including installation Hardware Liketies/Clips/Cleats, Conduits, Ducts, Supports, Fitting	KM	67,201.00	0	0	0.000	0	-
36	Hardware Fitting for 400 KV AC with Twin ACSR Moose Conductor-Single "I" Suspension String	sets	8,376.00	582	90	492.000	48,74,832	41,20,992.00
37	Hardware Fitting for 400 KV AC with Twin ACSR Moose Conductor-Single "I" Suspension String (Pilot)	sets	6,278.00	4	0	4.000	25,112	25,112.00

38	Hardware Fitting for 400 KV AC with Twin ACSR Moose Conductor-Double Tension String	sets	15,149.00	786	36	750.000	1,19,07,114	1,13,61,750.09
39	7/3.66 G.S Earthwire	KM	51,951.00	61.539	4.186	57.353	31,97,013	29,79,545.70
40	ACSR Moose Conductor	kms	3,20,175.00	193.49	50.23	143.260	6,19,50,661	4,58,68,270.50
41	120KN (Length-3335 mm, Creepage-13020 mm)	EA	8,212.00	618	91	527.000	50,75,016	43,27,724.00
42	160 KN (Length-3910 mm, Creepage-13020 mm)	EA	9,308.00	1588	73	1515.000	1,47,81,104	1,41,01,620.00
43	24 Fibres (DWSM) OPGW fibres optic cable	KM	1,55,503.00	5	0	5.000	7,77,515	7,77,515.00
44	Suspension clamp assembly for 24 fiber OPGW	EA	4,257.00	5	0	5.000	21,285	21,285.00
45	Tension Fitting Assembly for 24F OPGW including all accessories for joint box (SPLICING) Location	SET	8,289.00	1	0	1.000	8,289	8,289.00
46	Tension Assembly-Double Tension pass through assembly for 24 fiber OPGW	SET	7,840.00	4	0	4.000	31,360	31,360.00
47	Tension Fitting Assembly on Suspension Tower for 24F OPGW including all accessories for joint box (SPLICING) Location	SET	8,960.00	0	0	0.000	0	-
48	Vibration Damper for 24 fiber OPGW	EA	1,007.00	22	0	22.000	22,154	22,154.00
49	Down Lead clamp Assembly for 24 fiber OPGW	EA	433.00	15	0	15.000	6,495	6,495.00
50	Joint Box for 24 Fiber OPGW	EA	10,404.00	1	0	1.000	10,404	10,404.00
51	Fiber Optic Approach cabling : including installation Hardware Liketies/Clips/Cleats, Conduits, Ducts, Supports, Fitting	KM	67,201.00	0	0	0.000	0	-
52	Tension Assembly-Dead end for 24 fiber OPGW	SET	3,920.00	1	0	1.000	3,920	3,920.00
53	Span Marker for Aviation	EA	6,174.00	0	0	0.000	-	-
54	PMU with GPS clock (Clock can be either internal or external)	EA	12,18,578.00	0	0	0.000	0	-
55	WAMS Hardware-Time System (GPS receiver)	EA	3,35,109.00	0	0	0.000	0	-
56	WAMS Hardware-Substation Grade Layer-3LAN Switches with minimum 4x10/100 Mbps Ethernet ports and 2x1 Gbps Ethernet ports	EA	79,208.00	0	0	0.000	0	-



57	WAMS Miscellaneous- ArMored Fiber Optic Cable and associated termination (e.g. L2 switch) for connecting PMU panels located in different control room of a station	EA	5,21,551.00	0	0	0.000	0	-
58	SDH Equipment (STM-4 MADM upto 3 MSP protected directions)-Base Equipment (Common cards, cross connect/control cards, optical base cards, power supply cards, power cabling ,other hardware and accessories including Sub Racks ,Patch Cords,DDF ETC Fully Equiped excuding optical interface and Tributary cards	EA	9,25,358.00	1	0	1.000	9,25,358	9,25,358.00
59	L4.2 SFP for Tejas	EA	39,242.00	2	0	2.000	78,484	78,484.00
60	Tributary Cards-E1 Interface Card (Minimum 16 Interface per Cards)	EA	1,22,435.00	1	0	1.000	1,22,435	1,22,435.00
61	Tributary Interface -Ethernet Interfaces 10/100 MBPS with Layer -2 Switching (Minimum 16 Nos.)	SET	5,37,393.00	1	0	1.000	5,37,393	5,37,393.00
62	Equipment Cabinets for SDH	EA	80,926.00	1	0	1.000	80,926	80,926.00
63	Main Distribution Frame (200 Pairs)	EA	42,650.00	1	0	1.000	42,650	42,650.00
64	NMS-Craft Terminal Hardware	EA	1,36,737.00	1	0	1.000	1,36,737	1,36,737.00
65	Software for Craft Terminal	EA	16,744.00	1	0	1.000	16,744	16,744.00
66	Termination Equipment Drop/Insert Multiplexer : Base Equipment (Commoncards, Power Supply cards, power cabling, other hardware & accessories including sub-racks, etc. fully equipped excluding subscriber line interface cards)	EA	5,84,917.00	0	0	0.000	0	-
67	Subscriber Line Interface Cards for 2 wire (sub/sub) voice channel cards (min 8 channel per card)	EA	70,678.00	0	0	0.000	0	-
68	2 Wire (Sub/Exch) Voice Channel Cards (Min 8 Channels per Cards)	EA	70,678.00	0	0	0.000	0	-
69	Subscriber Line Interface Cards for 4 wire (E & M) voice channel cards (min 8 channel per card)	EA	70,678.00	0	0	0.000	0	-

70	Subscriber Line Interface Cards for Asynchronous Sub channels data cards (minimum 4 channels per card)	EA	70,678.00	0	0	0.000	0	-
71	Equipment Cabinets for Drop/Insert Multiplexer	EA	80,926.00	0	0	0.000	0	-
72	SDH Equipment (STM-4 MADM upto 3 MSP protected directions)- (Common cards, cross connect/control cards, optical base cards, power supply cards, power cabling ,other hardware and accessories (EACH)	SET	9,25,358.00	1	0	1.000	9,25,358	9,25,358.00
73	L4.2 SFP for Tejas	EA	39,242.00	1	0	1.000	39,242	39,242.00
74	Tributary Cards-EI Interface Card (Minimum 16 Interface per Cards)	EA	1,22,435.00	1	0	1.000	1,22,435	1,22,435.00
75	Tributary Interface -Ethernet Interfaces 10/100 MBPS with Layer -2 Switching (Minimum 16 Nos.)	SET	5,37,393.00	1	0	1.000	5,37,393	5,37,393.00
76	PRE Connectorized Optical Fiber Patch Cords (10 MTRS) " ^aE "Pack of Six Patch Cords	SET	6,093.00	1	0	1.000	6,093	6,093.00
77	Drop & Insert Multiplexer Common Cards, Power Supply Cards, Power Cabling, other Hardware & Accessories (EACH)	SET	5,84,917.00	0	0	0.000	0	-
78	Subscriber Line Interface Cards for 2 wire (sub/sub) voice channels cards (min 8 channel per card)	EA	70,678.00	0	0	0.000	0	-
79	2 Wire (Sub/Exch) Voice channel Cards (Min 8 Channels per Cards)	EA	70,678.00	0	0	0.000	0	-
80	Subscriber Line Interface Cards for 4 wire (E & M) voice channel cards (min 8 channel per card)	EA	70,678.00	0	0	0.000	0	-
81	Subscriber Line Interface Cards for Asynchronous Sub channels data cards (minimum 4 channels per card)	EA	70,678.00	0	0	0.000	0	-
82	48V DCPS-SMPS based 48V DC Power supply (DCPS)	EA	1,64,508.00	0	0	0.000	0	-
83	VRLA Battery Bank for DCPS system of 200AH rating	EA	1,34,044.00	0	0	0.000	0	-
84	MCCB/MCB-2P/CONTACTOR/TIMER/RE LAY OF EACH	SET	42,650.00	0	0	0.000	0	-

85	Single Pole MCBs (for outgoing DC Feeders) for DCPS	SET	2,436.00	0	0	0.000	0	-
86	Electronic Printed Circuit Board	SET	54,836.00	0	0	0.000	0	-
87	SDH Equipment (STM-4 MADM upto 3 MSP protected directions)- Base Equipment (Common cards, cross connect/control cards, optical base cards, power supply cards, power cabling ,other hardware and accessories Including Sub Racks ,Patch Cord, DDF ETC Fully Equipment excluding optical Interface & Tributary Cards	EA	9,25,358.00	1	0	1.000	9,25,358	9,25,358.00
88	SFP S4.1	EA	13,709.00	2	0	2.000	27,418	27,418.00
89	L4.2 SFP for Tejas	EA	39,242.00	2	0	2.000	78,484	78,484.00
90	Tributary Cards- E1 Interface Card (minimum 16 Interface per Card)	EA	1,22,435.00	1	0	1.000	1,22,435	1,22,435.00
91	Tributary Interfaces-Ethernet Interfaces 10/100 MBPS with Layers-2 Switching (Minimum 16 Nos.	SET	5,37,393.00	1	0	1.000	5,37,393	5,37,393.00
92	Equipment Cabinets for SDH	EA	80,926.00	1	0	1.000	80,926	80,926.00
93	SDH Equipment (STM-4 MADM upto 3 MSP protected directions)- (Common cards, cross connect/control cards, optical base cards, power supply cards, power cabling ,other hardware and accessories (EACH)	SET	9,25,358.00	1	0	1.000	9,25,358	9,25,358.00
94	SFP S4.1	EA	13,709.00	1	0	1.000	13,709	13,709.00
95	L4.2 SFP for Tejas	EA	39,242.00	1	0	1.000	39,242	39,242.00
96	Tributary Cards- E1 Interface Card (minimum 16 Interface per Card)	EA	1,22,435.00	1	0	1.000	1,22,435	1,22,435.00
97	Tributary Interfaces-Ethernet Interfaces 10/100 MBPS with Layers-2 Switching (Minimum 16 Nos.	SET	5,37,393.00	1	0	1.000	5,37,393	5,37,393.00
98	PRE Connectorized Optical Fiber Patch Cords (10 MTRS) " ^aE "Pack of Six Patch Cords	Nos.	6,093.00	1	0	1.000	6,093	6,093.00
	<b>TOTAL</b>						255340239	130519455


As against this submission, the contention of the RP is that they should get their assets back including the retention



money and all Operational Creditors should prefer their claims as per law, and guarantees given by the Corporate Debtor should not be invoked and their bank guarantees should be returned before release of the work site and their equipment thereupon.


On hearing the submissions of either side, it appears that this work was assigned to the Corporate Debtor by a public institution in the year 2016 hoping that it would complete the assignment within one year as per the agreement terms. Whereas the work was not completed within the time stipulated. Even the work was not completed within the time extended by the Applicant from time to time. The Applicant having realized that the work completed till then was only 50% and since the Corporate Debtor has already gone into CIR process and is not in a position to complete the work, the Applicant terminated the agreement on 26.06.2019 and thereafter entered into a contract with third party for completion of the balance left out work.

In a situation like this, unless the Corporate Debtor delivers the equipment of the Applicant as well as the work site to the Applicant forthwith, it will become an impediment



to the progress of the public work. Though the counsel for RP says that they would deliver the work site as well as the assets, but it has not given any unconditional undertaking confirming that it would deliver the site and assets of applicant lying therein. By seeing the e-mails sent by the RP, it is clear that this delivery has been linked to the bank guarantee, over which litigation is already pending before Hon'ble NCLAT. In case the parties remain waiting for the outcome of this litigation, the Applicant would not be in a position to get the work completed even by the new contractor in the absence of the possession of the site. Out of the time lines stipulated in the new work order, already more than three months are over. Therefore, unless urgent steps are taken with regard to this application, public work will remain in limbo. The RP having already admitted that the equipments lying at the work site and the work site is under the possession of RP, it is his bounden duty to deliver the equipments of the applicant as well as possession of work site forthwith.

As to the another objection raised by the RP counsel saying that the possession cannot be disturbed during the

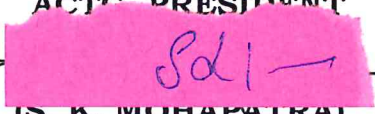


moratorium period, we hold that this prohibition is applicable to the proceedings pending before other competent Authorities, but not before this Bench. Admittedly by retaining possession of site and belongings of the applicant, the Corporate Debtor will not be benefitted in any way. On the contrary non-release of the site creates hurdle to this public work under the cover of Moratorium. This is power grid work taken up by state government spreading across and covering hundreds of acres of land in public interest. Any further delay, shall cause cost escalation, which in turn will fall upon the exchequer of the State, apart from other incidental loss such as delaying the benefit of using the power grid. Continuance of possession of the site by RP has caused prejudice to the public interest.

In view thereof this application is hereby allowed directing the RP to deliver the equipments as specified in Annexure A/1 as well as to leave the work site forthwith with a clarification that since the issue of bank guarantee is already pending before Hon'ble NCLAT, we have not dealt with that issue.

C.A. No. 2197(PB)/2019 is hereby allowed, in the aforesaid terms.

  
**(B.S.V PRAKASH KUMAR)**  
**ACTG. PRESIDENT**

  
**(S. K. MOHAPATRA)**  
**MEMBER (TECHNICAL)**