

GAHC010136292020



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Arb.P./32/2020

NAYAK INFRASTRUCTURE PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD, LUMDING-
782447, P.O. LUMDING, DIST. NAGAON AND ITS PRINCIPAL OFFICE AT 2ND
FLOOR, KAMAKHYA COMMERCIAL, C.K. ROAD, PAN BAZAR, GUWAHATI-
781001 AND IS REPRESENTED BY ITS LIQUIDATOR, SUDHA SARMA, W/O
SHANTANU KUMAR SARMA, RESIDENT OF SUDHA AND ASSOCIATES, 185,
MRD ROAD, NEAR SBI BAMUNIMAIDAM, GUWAHATI-781021.

VERSUS

NORTH EAST FRONTIER RAILWAY AND ANR.
(CONSTRUCTION ORGANISATION) REP. BY THE GENERAL
MANAGER/CONSTRUCTION, MALIGAON, GUWAHATI-781011, KAMRUP
(M), ASSAM.

2:CHIEF ENGINEER/CONSTRUCTION-2

NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION)
REP. BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GUWAHATI-781011
KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA, MR. U K NAIR,MR. U K NAIR,MR S
DAS,MR R SINGHA,MR D SENAPATI,MR. M SAHEWALLA,MR H K SARMA

Advocate for the Respondent : SC, RAILWAY, MR. B K DAS

Linked Case : Arb.P./38/2020

NAYAK INFRASTRUCTURE PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD
LUMDING- 782447
P.O. LUMDING
DIST.- NAGAON AND ITS PRINCIPAL OFFICE AT 2ND FLOOR
KAMAKHYA COMMERCIAL
C.K.ROAD
PAN BAZAR
GUWAHATI-781001 AND IS REPRESENTED BY ITS LIQUIDATOR
SUDHA SARMA
W/O SHANTANU KUMAR SARMA
RESIDENT OF SUDHA AND ASSOCIATES
185
MRD ROAD
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VERSUS

NORTH EAST FRONTIER RAILWAY AND ANR.
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MANAGER/CONSTRUCTION
MALIGAON
GHY-11
KAMRUP (M)
ASSAM

2:CHIEF ENGINEER/CONSTRUCTION-2
NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION) REP.
BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GHY-11
KAMRUP (M)
ASSAM

Advocate for : MR G N SAHEWALLA
Advocate for : SC
RAILWAY appearing for NORTH EAST FRONTIER RAILWAY AND ANR.

Linked Case : Arb.P./33/2020

NAYAK INFRASTRUCTURE PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD
LUMDING-782447
PO-LUMDING
DISTRICT-NAGAON AND ITS PRINCIPAL OFFICE AT 2ND FLOOR
KAMAKHYA COMMERCIAL
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GUWAHATI-781001 AND IS REPRESENTED BY ITS LIQUIDATOR
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NORTH EAST FRONTIER RAILWAY AND ANR.
(CONSTRUCTION ORGANISATION) REP. BY THE GENERAL
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MALIGAON
GHY-11
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2:CHIEF ENGINEER/CONSTRUCTION-2
NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION) REP.
BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GHY-11
KAMRUP (M)
ASSAM

Advocate for : MR G N SAHEWALLA
Advocate for : SC
RAILWAY appearing for NORTH EAST FRONTIER RAILWAY AND ANR.

Linked Case : Arb.P./40/2020

NAYAK INFRASTRUCTURE PVT LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT

1956 AND HAVING ITS REGISTERED OFFICE AT SWARUPNANDA ROAD
LUMDING-782447
P.O. LUMDING
DIST. NAGAON AND ITS PRINCIPAL OFFICE AT 2ND FLOOR
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VERSUS

NORTH EAST FRONTIER RAILWAY (CONS ORGANISATION) AND ANR
REP. BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GUWAHATI-781011
KAMRUP (M)
ASSAM.

2:CHIEF ENGINEER/CONSTRUCTION-2

NORTH EAST FRONTIER RAILWAY (CONSTRUCTION ORGANISATION) REP.
BY THE GENERAL MANAGER/CONSTRUCTION
MALIGAON
GUWAHATI-781011
KAMRUP (M)
ASSAM.

Advocate for : MR G N SAHEWALLA

Advocate for : SC

RAILWAY appearing for NORTH EAST FRONTIER RAILWAY (CONS
ORGANISATION) AND ANR

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

10.02.2026

Heard Mr. A Lal, learned counsel for the petitioner. Also heard Mr. BK Das, learned Standing Counsel, Railway and Dr. BN Gogoi, learned Standing Counsel, Railway for the respondents.

2. The core issue raised in this application is that the petitioner before this Court has already been ordered for liquidation by the NCLT vide the order dated 11.12.2023. This liquidation order was passed by the NCLT after the resolution proposal submitted for the revival of the company failed, as the company could not be revived in accordance with the said proposal. Prior to the order of liquidation issued by the NCLT in respect of a contract executed by and between the petitioner and the NF Railways, certain disputes had arisen and notice under Section 21 of the Arbitration and Consolidation Act, 1996 was issued by the petitioner calling upon the respondents to appoint an arbitrator. That not having been done, the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 has been filed.

3. This matter, after issuance of notice on 21.01.2021, has been pending

before this Court. On 30.11.2022 the learned counsel for the parties made the submissions that the matter should await the outcome of the judgment of the Apex Court in *Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML(JV) A Joint Venture Company* reported in (2020) 14 SCC 712. Therefore, till the judgment by the Apex Court was delivered, the matter was not proceeded. Be that as it may, meanwhile, since the resolution proposal to revive the company failed, the NCLT by the said order directed winding up of the company by appointment of a liquidator. The liquidator so appointed by the NCLT for completion of the winding-up process has, by operation of law, stepped into and substituted itself in place of the Directors of the company and has appeared before this Court by its authorised Counsel to press the prayers made in the present petitions.

4. The prayers in the present petitions are for appointment of an Arbitrator since the respondents have failed to appoint the Arbitrator in terms of the provisions of the contract, when they were called upon to do so, by issuance of a notice.

5. During the course of the arguments before this Court, it has been informed that pursuant to the orders passed by the NCLT, no specific application has been filed before the NCLT seeking any permission to pursue the present

matter after the order of liquidation has been issued by the NCLT. It is on this aspect that the Court wanted the parties to address the issue.

6. Mr. A. Lal, learned counsel representing the Official liquidator referring to Section 33 (5) submits that the NCLT would be necessary only in cases where fresh suit or legal proceedings are instituted by the liquidator on behalf of the corporate debtor. He submits that there is no bar or any approval necessary for proceeding with a pending suit. He submits that this is also evident from Section 14 of the Arbitration and Conciliation Act, 1996, which imposes moratorium and which will continue till such orders as may be passed by the appropriate authority or till orders of winding up is passed against the company. He, therefore, submits that once the winding up process is directed by the NCLT and in the absence of any express bar, there is no restraint under the provisions of the Insolvency and Bankruptcy Code (IBC), 2016 restraining pending suits or proceedings like the present arbitration proceedings to continue. Learned counsel for the petitioner has further referred to a judgement of the Apex Court, which is rendered in *Regenta Hotels Private Limited vs. Hotel Grand Centre Pint and Others* reported in 2026 SCC OnLine SC 35, to submit that the Apex Court in that matter, while examining Section 21 of the Arbitration and Conciliation Act, 1996 submits that once a notice under Section 21 of the Arbitration and Conciliation Act, 1996 is received by the respondent, the commencement

(proceeding) is complete and effective for all legal purposes including limitation, maintainability of Section 11, petition and legal efficacy of any pre-arbitral measures. He, therefore, submits that pursuant to the notice under Section 21 having been issued and the same being received by the respondent authority on 26.05.2020, the arbitration proceeding had commenced. Therefore, on a date when the resolution proposal was initiated under the IBC, the present proceedings will have to be construed to be a pending proceeding and in view of Section 14, the moratorium is applicable, which, however, will continue till such time the order of liquidation is issued by the NCLT. He further refers to Section 238 of the IBC-2016 to submit that the provisions of this Court shall override other laws. Under this section, it is provided that the provisions of this Court shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having the effect by virtue of any such law. He, therefore, submits that the provisions of Section 279 of the Companies Act of 2013, which provides for stay of suits pursuant to winding up orders being issued and commencement of pending legal proceedings, by or against the Company, cannot be proceeded with except with the leave of the Tribunal and on such terms and conditions as the Tribunal may impose. He submits that in view of Section 238 of the IBC, 2016, provisions of the IBC will override provisions of Section 279 of the Companies Act of 2013.

Mr. A Lal, learned counsel for the petitioner submits that he would like to press certain case laws in support of his contentions in this regard.

7. *Per contra*, Mr. B.K. Das, learned Standing Counsel, Railway and Dr. BN Gogoi, learned Standing Counsel, Railway submit that notwithstanding the provisions of Section 238 of the IBC, 2016, the approval of the adjudicating authority, namely, the NCLT is mandatorily required in terms of Section 279 of the Companies Act of 2013. It is submitted that there is no conflict between these two sections. Both operate within their own parameters and the provisions of IBC-2016 do not expressly override the provisions of Section 279 of the Companies Act, 2013.

8. Therefore, in that view of the matter, the petitioner ought to have approached the NCLT for seeking an approval in these proceedings once the order of winding up is issued by the NCLT.

9. Considering the prayer made, let these matters be listed again on 10.03.2026 for further hearing.

JUDGE

Comparing Assistant