

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

COMPANY PETITION IB (IBC)/ 89(ND)/2022

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

CONNECTING PEOPLE OF INDIA

Registration No. 907 of 2007

A Company incorporated under The Companies Act, 1956

Registered Office: **S.F. No:315, Angels Garden, Pattanam, Coimbatore-641016, Tamil Nadu.**

...Operational Creditor

Versus

G.S.P. POWER SYSTEMS PRIVATE LIMITED

CIN U31909DL2003PTC123568

A Company incorporated under The Companies Act, 1956

Registered Office at **B-II/16, Mohan Cooperative Industrial Estate, Badarpur Delhi, South Delhi, 110034.**

...Corporate Debtor

Order Delivered on: 17.03.2023

Coram:

Shri P.S.N. Prasad : Member (Judicial)

Shri Rahul Bhatnagar : Member (Technical)

Appearances (through Video Conferencing/physical hearing)

For the Operational Creditor: Mr. Jogy Scaria, Advocate

Ms. M. Priya, Advocate

For the Corporate Debtor : None Present

O R D E R

PER: SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***'the Code'***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Connecting People of India (*'Operational Creditor'*)**, duly authorized for initiation of Corporate Insolvency Resolution Process (***'CIRP'***) against **G.S.P. Power Systems Private Limited (*'Corporate Debtor'*)**.
3. The present Petition was filed on 10.01.2022 before this Adjudicating Authority. The total amount claimed in default is Rupees 4,15,08,378.56 (Four Crores Fifteen Lacs Eight Thousand Three Hundred and Seventy-Eight). The ***date of default*** is stated to be on 05.11.2020 and 25.11.2020.
4. In part II of the Petition the Nominal Share Capital of the Corporate Debtor is Rs. 1,50,00,000 (One Crore Fifty Lacs) with Paid-up Share Capital of Rs, 1,43,50,000 (One Crore Forty-Three Lacs Fifty Thousand).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - a) In the present petition, Reliance Jio is the end customer and Mahindra & Mahindra is vendor for providing support services in setting up Jio's infrastructure. There is one '**GSP Power'**', along with others such as Mitraa, Greenland, sub-vendor of Mahindra & Mahindra, whose only role is to disburse payments and they would never know anything about the work.

- b)** GSP Power has one sub-vendor named '**Connecting People of India**' (**CPI**). The role of CPI is solely restricted to execute infrastructure related services of Reliance Jio. However, all the work-related communications relating to CPI will be with Mahindra & Mahindra or Reliance Jio and such shall be communicated by Mahindra via e-mail.
- c)** CPI was engaged by Mahindra & Mahindra for executing Jio's infrastructure services, from April 2018. CPI had to execute the project as instructed by Mahindra. Thereafter, CPI would have to raise invoice in the name of an entity mentioned by Mahindra and based on such invoice Mahindra will ask its sub-vendor to issue Purchase Order.
- d)** The dispute arose after July 2019 when GSP stopped making payment alleging that Mahindra didn't pay them well. It is also alleged hearsay that some of the employees had misappropriated funds and therefore, many sub-vendors filed police complaints for recovering their hard-earned money. However, some got settled by GSP, Mitraa, etc.
- e)** In February 2020, GSP asked CPI to come to their office in Velachery, Chennai with a view to settle the dispute between the two. However, on the concerned date and place, GSP failed to meet CPI and even obtained injunction order against CPI or its employees not to enter GSP's office premises in Chennai.
- f)** Thereafter, Covid-19 Pandemic took place. After waiting for few months, CPI raised invoices for the completed work in the month of October 2020, after being unable to get any response

from GSP. After receiving invoices, GSP issued a legal notice asking CPI to pay some amount and CPI issued a reply notice.

g) Finally in December 2020, CPI issued a Form 3 Demand Notice under Insolvency and Bankruptcy Code, 2016. GSP replied to the same but never disputed the invoices mentioned in the Demand Notice.

h) Therefore, the present Application is filed in Form 5.

Submission by Corporate Debtor

6. The Corporate Debtor on 26.11.2020 has replied to the demand notice issued by the Operational Creditor. It is the contention of the Corporate Debtor that the 'GSP Power Systems Pvt. Ltd.' has issued a legal notice dated 03.11.2020 against the Operational Creditor and submitted that the Corporate Debtor has made extra payment to Operational Creditor for the work in which some work is pending and some work has not been started yet by the Operational Creditor and asked the Operational Creditor to make payment of Rs. 1,69,91,180 along with interest @ 12 % p.a.

7. It is submitted that although the Corporate Debtor has sent a reply to the notice issued by the Operational Creditor, he has not made any appearance before this Hon'ble Tribunal. The applicant was directed to issue notice on the respondent by all modes including e-mail, vide order dated 12.04.2022. The Registry was also directed to serve e-notice on the Corporate Debtor for his appearance as well as for filing the reply, vide order dated 06.07.2022. Despite several notices to the Corporate Debtor by the Operational Creditor and by the Court Officer, the Corporate Debtor failed to appear. Therefore,

the Corporate Debtor has been set ex-parte vide order dated 29.07.2022.

Analysis & Findings

- 8.** It has come to our knowledge that the petitioner had earlier filed a Company Petition IB No. 549 of 2021 before this Adjudicating Authority. This Adjudicating Authority vide its order dated 11.10.2021, allowed the petitioner to withdraw the application with liberty to file afresh. Therefore, the petitioner has bring forth the present petition before this Hon'ble Tribunal.
- 9.** We have heard the Learned Counsel for the Operational Creditor and perused the averments made in the petition and also the written submissions made by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
- 10.** It is to be noted that the 'Operational Creditor' had sent a demand notice to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues. It is also to be noted that there has been no appearance on the part of 'Corporate Debtor' since the petition for initiating CIRP has been filed by the 'Operational Creditor'. Therefore, this Tribunal is inclined towards passing ex-parte order.
- 11.** Th amount claimed to be in default is Rs. 4,15,08,378.56 (Four Crores Fifteen Lacs Eight Thousand Three Hundred and Seventy-Eight) which fulfils the criteria of minimum threshold limit of Rs. 1

Crore as required by Section 4 of the Insolvency and Bankruptcy Code, 2016. Furthermore, the date of default is stated to be 05.11.2020 and 25.11.2020, therefore, the present petition is filed under the period of limitation.

- 12.** In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said section, 'Operational Debt' is defined as:

“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

- 13.** While analyzing the present facts in the light of said Section 5(21), it is to be said that the Operational Creditor (**Connecting People of India**) is the sub-vendor of the Corporate Debtor (**GSP Power Systems Private Limited**). The Operational Creditor was engaged in the business of providing infrastructure services for end customer Reliance Jio and the role of Corporate Debtor was only to disburse payments to CPI for the completed works. In October 2020, CPI raised invoices for the completed work totally calculated at Rs. 4,15,08,378.56 (Four Crores Fifteen Lacs Eight Thousand Three Hundred and Seventy-Eight).

- 14.** It is the contention of the Corporate Debtor that the 'GSP Power Systems Pvt. Ltd.' has issued a legal notice dated 03.11.2020 against the Operational Creditor and submitted that the Corporate Debtor

has made extra payment to Operational Creditor for the work in which some work is pending and some work has not been started yet by the Operational Creditor and asked the Operational Creditor to make payment of Rs. 1,69,91,180 along with interest @ 12 % p.a.

- 15.** It is submitted that the Operational Creditor disputed the said allegation of the Corporate Debtor and held that the outstanding amount claimed by the Corporate Debtor is for some different work assigned to the Operational Creditor and the Corporate Debtor never disputed the invoices mentioned by the Operational Creditor, to which there has been no rebuttal on the part of the Corporate Debtor. Furthermore, the Operational Creditor has attached proof in support of his statement, specifically mentioning the invoices in respect of which outstanding debt is claimed. Therefore, the debt claimed by the Operational Creditor would fall under the ambit of 'Operational Debt' within the meaning of Section 5(20) of the Insolvency and Bankruptcy Code, 2016 and hence, the said Creditor is the Operational Creditor within the meaning of Section 5 (21) of the Code.
- 16.** Furthermore, the Operational Creditor has attached proof in respect of the invoices for the completed work, sent by the said Operational Creditor to the Corporate Debtor. There has been attached proof of e-mail communications between Mahindra & Mahindra, CPI and GSP, which clearly shows that there was a mutual agreement between the said entities.
- 17.** It is to be stated that indeed the application of the Operational Creditor is complete in all respects, yet the insertion of Section 10A in the Insolvency and Bankruptcy Code, 2016 by amendment of 2020, has made a substantial impact in the realm of initiating

Corporate Insolvency Resolution Process against the Corporate Debtor. The said Section states that:

“Notwithstanding anything contained in Sections 7,9 and 10, no application for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed, for any default arising on or after 25th march 2020, for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf.

Provided that no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of Corporate Debtor for the said default occurring during the said period”.

18. On the perusal of the facts in the present petition, it is to be stated that the date of default mentioned in the given case is 05.11.2020 and 25.11.2020. Therefore, by virtue of Section 10A of the Insolvency and Bankruptcy Code, 2016, such period is liable to be excluded for initiating Corporate Insolvency Resolution Process and hence, the present petition finds no stand.

19. In view of the above facts and circumstances, we are satisfied that the present petition fails to fulfil the criteria laid down under the Section 10A of the Code. Hence, this petition is sought to be dismissed on the grounds stated above. It is, accordingly, hereby ordered as follows: -

- a) The application bearing **CP (IB) No.** 89/ND/2022 filed by, **Connecting People of India**, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **G.S.P. Power Systems Private Limited**, stands dismissed.

20. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

Shri Rahul Bhatnagar

Member (Technical)

Sd/-

Shri P.S.N. Prasad

Member (Judicial)