



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.88/MB-IV/2018

Under Section 9 of the I&B Code, 2016

In the matter of:

S. V. R Enterprises

...Operational Creditor/Petitioner

V/s

Netizen Engineering Private Limited

[CIN: U51100MH2000PTC127631]

...Corporate Debtor/Respondent

Order pronounced on: 24.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Prachi Pandya a/w Ms.
Monica Salian, Advocates

For the Respondent(s) : Mr. Anuj Desai a/w Mr. D. J.
Kakalia i/b Mulla & Mulla,
Advocates



ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition being C.P. (IB) No. 88/NCLT/MB/C-IV/2018 filed by S. V. R Enterprises, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Netizen Engineering Private Limited, Corporate Debtor.
2. The Operational Creditor has executed work contracts during the year 2007 - 2010 in relation to Telecom cable laying, Splicing, Trenching, Ducting, etc for projects within Hyderabad developed by a Corporate Debtor. The Operational Creditor has further submitted that according to the terms of work orders, payments have to be made immediately after invoices are raised within 21 days.
 - 2.1. The Operational creditor has claimed a sum of Rs. 1,09,73,819/- (Rs. 98,92,925/- as principal amount and Rs. 10,80,894/- Retention amount). The Operational Creditor has further has also claimed an interest @18% as due from the Corporate Debtor on account of the 33 invoices and retention money which fell due for the payment of invoices raised.
 - 2.2. It is further submitted by the Operational Creditor that the corporate debtor, vide an email dated 23.01.2015, acknowledged the payments pending to the Operational creditor and further requested the Operational creditor to pay 1% CESS on certified amount for each bill and resubmit for clearance though the operational creditor has already paid a sum of Rs 4,772/- (Four



Thousand Seven Hundred and Seventy Two Only) on 25-06-2014 against the part outstanding amount of Rs 4,77,200/-(Four Lakh Seventy Seven Thousand Two Hundred only) which was the 1% CESS. Form-1 was also submitted even then this amount is not paid yet. The Corporate Debtor has also deducted TDS on 15-07-2014 (the Day Booking) and Remitted the said Amount Rs.3,914 (Three thousand Nine Hundred and Fourteen Only) Plus Rs.5,205 (Five Thousand Two Hundred and Five only) total to Rs 9,119/- (Nine Thousand One Hundred and Nineteen Only) to the Income Tax Department but the Corporate Debtor has not paid this Amount to the Operational Creditor till date.

2.3. The Operational Creditor issued a demand notice u/s 8 of the Code dated 30.12.2017 and the same was received by the Corporate Debtor. However, no reply was received from the Corporate Debtor.

3. The Corporate debtor has filed the reply dated 11.04.2018 stating that the Application is defective and not maintainable as the Operational Creditor has failed to annex crucial documents. The contentions raised by the Corporate Debtor in his reply are as follows:

3.1. The Corporate debtor submits that the Operational Creditor refers 33 work order on basis of which invoices were raised, however, the Applicant has annexed only 14 work orders. And the work orders annexed are of similar work of the same date There is also inconsistency with the invoices mentioned in the demand notice dated 30.12.20217.



3.2. The Operational Creditor also submits that earlier the Operational Creditor had submitted Demand Notice dated 13.09.2017 in Form 3 claiming an amount of Rs. 1,09,92,925/- which was duly replied by the Corporate Debtor vide its reply dated 28.09.2017 disputing the alleged claim on various grounds. The Corporate Debtor further submits that the Operational Creditor without withdrawing earlier claim in Form 3 dated 13.09.2017 served another Notice in Form 3 dated 30.12.2017 claiming a sum of Rs. 1,09,73,819/- and this was also duly replied by the Corporate Debtor vide Reply dated 19.01.2018. The Corporate Debtor also submits that the earlier notice dated 13.09.2017, the Operational Creditor demanded a sum of Rs. 1,09,92,925/- whereas in the later demand notice dated 30.12.2017 it has claimed an amount of Rs.1,09,73,819/-.

3.3. The Corporate Debtor submits that on perusal of the Invoices annexed by the Operational Creditor to the Application, which are stated by the Operational Creditor to form the basis of its claim it is stated that the said invoices have been raised on various entities amongst whom the Corporate Debtor is one. It is further submitted by the Corporate Debtor that few of the Invoices (i.e. the Invoices at page: 135) annexed by the Operational Creditor are raised in the name of Reliance Infratel Limited which is a different and separate entity. The Operational Creditor has annexed Service Entry No. RICL/2002900721 dated 7* March, 2011 under work order No.RA8/15628145 dated 25 October, 2007 (Page 130) which pertains to claim related to Reliance Communications Infrastructure Limited (RCIL).



- 3.4. It is the submission of the Corporate Debtor that most of the invoices annexed by the Operational Creditor in the Application have no date and few of them are without numbers.
- 3.5. It is also submitted by the Corporate Debtor that the Email dated 23.01.2015 claimed to be an acknowledgement of debt, cannot be construed as an acknowledgement of liability as the same doesn't acknowledge or admit any liability of alleged outstanding payment and if the said acknowledgement of liability is considered, the same is after the period of Limitation since the invoices are of the year 2008, 2010 & 2011, hence, cannot extend the limitation period having been acknowledged after expiry of three year from the debt becoming due. Further, the Application is barred under Limitation Act as it is beyond three years from the date of default which can only be in the year 2011.
- 3.6. Also, it is submitted by the Corporate Debtor that the Work Order values and claim/invoices values mentioned in Form-5 by the Operational Creditor do not match with the Invoices amounts and the amounts claimed by the Operational Creditor are in excess to the Work Order values. The Corporate Debtor has submitted a table detailing the work order no., the work order value and the sum of unpaid invoice claim and the retention money claim.
- 3.7. The Corporate debtor further submits that the business arrangement between the Operational Creditor and the Corporate Debtor involved several transactions carried on under various Work Orders. The amount claimed to be outstanding by the Operational Creditor therefore comprises amounts purportedly due under several invoices which pertain to diverse Work Orders, in respect of the supply of services. It is submitted that the



claiming amounts which are said to have arisen under such diverse Work Orders, the Operational Creditor has combined multiple claims arising out of different agreements and Work Orders and therefor seeks to pursue multiple causes of action in one Application, which is not permissible. It is submitted that an alleged default under any Work Orders constitutes a separate and distinct cause of action and, in an Application under Section 9 of the Code, the same cannot clubbed along with any other alleged defaults under other Work Orders or Purchase Orders and for the said reason, the Application is not merely incomplete but is also defective and therefore, not maintainable.

3.8. The Corporate Debtor has relied on the case of International Road Dynamics SouthAsia Pvt. Ltd. v. Reliance Infrastructure Limited, (Company Appeal (AT) (Insolvency) No. 72 of 2017), wherein the Operational Creditor's appeal was dismissed holding that the Application is misconceived as it is in the nature of a joint Application relating to claims arising out of different Work Orders and invoices raised thereunder having different dates of default which give rise to different cause of action and is therefore defective and not maintainable.

3.9. Further, it is submitted that the amount of debt must be crystallized on the basis of the agreement arrived at between the parties. The Applicant has claimed interest at the rate of 18% in computing the amount of alleged debt in default in relation to each invoice from the date of default. The Work Orders pertaining to the invoices, payment whereof is alleged to be in default, do not provide for any interest in the vent of default of payments under the invoices raised thereunder.



4. The Operational Creditor has filed the Rejoinder dated 04.06.2018 stating that only those work orders are annexed to Form 5 which are pertinent to the outstanding claim/invoices. The Operational Creditor has further submitted that the invoices which were not annexed to the Form 5 are annexed to the Rejoinder as it was an inadvertent mistake which was overlooked due to hurry.

4.1. Further, the Operational Creditor that the difference in amounts was due to the crystallization of retention amount resulting in the reduction of the claimed amount. The said reduction only exhibits the bona fide of the Operational Creditor.

4.2. The Operational Creditor further clarifies that the invoice on page 135 of its application was raised upon Reliance Infratel Ltd on the instructions of the Corporate Debtor. The said invoice has been raised for work order no.RA8/15680310 dated 18.03.2008. The said work order has been exhibited at page 14 of the Operational Creditor's Form 5. At the outset the said work order has not been disputed by the Corporate Debtor. The said work order was issued by the Corporate Debtor. It is also submitted that the said work order no.RA8/15680310 has also been mentioned by the Corporate Debtor in its email dated 21.01.2015. Hence the Corporate Debtor now denying and disputing the same clearly reflects of its mala fide and its dishonest intentions to circumvent its obligations qua the Operational Creditor.

4.3. the Operational Creditor submits that the Corporate Debtor vide its email dated 21.01.2015 has categorically accepted and admitted that there are several payments which are outstanding. Further, the Corporate Debtor has paid TDS to the extent of Rs. 9119 in May 2014 with respect to two of the invoices mentioned on page 8 of the



Operational Creditor's form 5. However, the Corporate Debtor did not make the said payments to the Operational Creditor. The clearly implies Corporate debtors admission of liability

4.4. It is submitted by the Operational Creditor that the Corporate Debtor vide its email dated 21.01.2015 has categorically admitted its liability by saying "*We are unable to process the following bills. Please advise to vendor to pay 1% cess on certified amount for each bill and resubmit for clearance at our end*"

4.5. Further, it is denied by the Operational Creditor's claim is barred by limitation as the Corporate Debtor has admitted its liability vide its email 23.01.2015 and the application is filed within 3 years of the same. Further, the Operational Creditor has been continuously following up with the Corporate Debtor, orally as well as via emails for its outstanding payment. It is further pertinent to mention that the Corporate Debtor never denied or disputed the said claim of the Operational Creditor. The Operational Creditor has annexed emails sent between 07.06.2017 to 27.06.2017 along with the list of pending bills. Furthermore, it is submitted that Corporate Debtor cleared work order no.RA8/15669908 dated 22.02.2008 as late as in February, 2014.

Findings

5. We have heard both the counsels and perused the material on record.

5.1. While going through the replies of the Corporate Debtor it is observed that the Corporate debtor has brought on record communication suggesting existence of any dispute prior to the issue of the Demand Notice dated 30.12 2017. The Corporate Debtor has not denied that it has not received construction work



services from the Operational Creditor. In the absence of any communication in relation to existence of dispute prior to service of demand notice, we are unable to accept the contentions of the raised by the Corporate Debtor about pre-existing dispute.

5.2. The Corporate debtor has objected to the present petition stating that the different debts, as claimed in the petition, arises from different work order(s), hence such debts cannot be clubbed together for satisfying the minimum threshold limit prescribed in section 4 of the Code. We find that in case of **M/s. A2 Interiors Products Pvt. Ltd. Vs. M/s. Ahluwalia Contracts (India) Ltd. (2021) SCC online NCLT 438**, the Hon'ble NCLAT had allowed the petition holding that debts arising from different work order(s) can be clubbed to satisfy the minimum threshold limit. The Para 27 of the said judgement reads as under -

“27. Considering the documents on records and submissions made, it is observed that there exists an operational debt which is due and payable by the Corporate Debtor. Further with respect to the maintainability of an application, with regards the issue that whether for various claims arising out of separate work orders, single application can be filed by operational creditor. There are various judgments passed by separate claims can be part of single application. The Judgments are also relied by the applicant as referred above.”

5.3. However, we notice that the invoices were raised in the year 2008-2011 and were payable within 21 days from the date of valid invoice. It is pleaded by the Applicant that the said debt is not barred by Limitation as the Corporate Debtor had deducted tax t source on 15.07.2014 on two of its invoices (the aggregate of which



exceed Rs. 1 lacs) and thereafter vide email dated 23.01.2015, the Corporate debtor admitted its liability, wherein various invoices were listed and claimed to have been received by the Corporate Debtor on 21.01.2015 and verified on the said date. The Corporate Debtor had informed the Applicant that it is unable to process the bill and asked it to pay 1% cess on certified amount and resubmit the same. In view of this communication read with payment condition stated in the work order i.e. “ *pro rata payment shall be made within 21 days from the date of receipt of correct invoice at our end subject to certification by engineer in charge*”. The CESS was paid by the Applicant prior to this communication. The email dated 21.01.2015 clearly states the invoices were verified on 21.01.2015, accordingly the invoices became due for payment 21 days thereafter. The present Application was filed on 23.01.2018, which is within 3 years from the date of invoices became due. We also note that the aggregate amount of invoices stated in email dated 21.01.2015 exceeds Rs. 1 Lakh which satisfy the threshold limit stated in section 4 of the Code.

5.4. We find there is no dispute and it's a clear admitted liability of exceeding Rs. 1 Lakh, which has not been paid even after having become due.

5.5. In view of the foregoing, we are of considered view that there exists a debt; such debts exceed the then minimum threshold limit; and there is no prior existing dispute in relation thereto, we feel that the present Application is fit for admission u/s 9 of the Code



ORDER

The petition bearing CP(IB) 88/MB-IV/2018 filed by **S.V.R Enterprises**, the Operational Creditor, under section 9 of the IBC for initiating Corporate Insolvency Resolution Process (CIRP) against **Netizen Engineering Private Limited** (“the Corporate Debtor) is **admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -



- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Since, the Applicant has not recommended any Insolvency Professional; This bench hereby appoints Mr. Sunil Kumar Bansal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA--001/IP-P01232/2018-2019/11928 Email Id skbansal.irp@gmail.com. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.



- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
PRABHAT KUMAR
Member (Technical)
24/03/2023

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)



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