

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.627/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

A J Buildcon Private Limited

[CIN: 70102MH2007PTC173391]

...Financial Creditor/Petitioner

V/s

Patel Engineering Limited

[CIN: L99999MH1949PLC007039]

...Corporate Debtor/Respondent

Order pronounced on: 08.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vineet Jagtap, Advocates

For the Respondent(s) : Mr. Karl K Shroff, Advocates

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition being C.P. (IB) No. 627/NCLT/MB/C-IV/2021 filed by A J Buildcon Private Limited, the Operational

Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Patel Engineering Limited, Corporate Debtor.

2. The Operational Creditor has executed work order dated 01.07.2015 and five more work orders in relation to construction work of a residential building being developed by a Corporate Debtor. The Operational creditor has claimed a sum of Rs. 4,04,43,155.80 as due from the Corporate Debtor on account of 5 invoices and retention money which fell due for the payment during the period from 17.07.2018 till 20.03.2020.
3. The Operational Creditor issued a demand notice u/s 8 of the Code dated 06.03.2021 and the same was replied by the Corporate Debtor vide reply dated 21.03.2021 stating that no amount is due and payable by the Corporate Debtor, as few invoices referred in the demand notice were never submitted and there is clear existence of dispute relating to the claimed amount before receipt of demand notice as an evidence for the correspondence between the parties.
4. The Corporate debtor has filed the reply dated 03.01.2022 stating that
 - (a) Each work order forms separate contract and cannot be clubbed together;
 - (b) Bills invoices at annexure A-1 to A-4 were in fact served for the 1st time along with the demand notice and all these bills were never certified by the Corporate Debtor nor were raised under any work order, However the Corporate Debtor has not disputed 5th and 6th

operational Debt which amounts to Rs.91,93,011 subject to deduction of mobilisation advance of Rs.25,32,307;

(c) These invoices do not tally with the statement at page 58 of the petition and hence require reconciliation.

5. The Operational Creditor has filed the Rejoinder dated 06.06.2022 stating that claims arising out of multiple work order can be filed u/s 9 of the Code. The applicant has also relied upon email dated 28.08.2019 sent by Mr. Soman Mukhopadhyay of Corporate Debtor stating that statement at page 58 is part of that email and verified by Corporate Debtor's authorised representative.
6. The Corporate Debtor has filed Sur-Rejoinder dated 25.03.2022 stating that the Operational Creditor has brought of record for the 1st time the "change order" dated 9.10.2018 to the work order and the quantities stated in the said document are certified and found ok on 09.10.2011. we have noticed that it is 9.10.2019 and not 9.10.2011 as read by the Corporate Debtor.

Findings

7. We have heard both the counsels and perused the material on record.
8. While going through the replies of the Corporate Debtor it is observed that the Corporate debtor has not brought on record any communication suggesting existence of any dispute prior to the issue of the Demand Notice. The Corporate Debtor has not denied that it has not received construction work services from the Operational Creditor even under bills/invoices placed as annexure A-1 to A-4 of the demand notice. The Corporate Debtor has not disputed that Mr. Soman Mukhopadhyay was not authorised to communicate with the

Operational Creditor. We do not find any substance in the pleading of the Corporate Debtor in relation to email dated 28.08.2019. The Corporate Debtor has disputed the endorsement on the “Change order” dated 09.10.2018 by misreading the date of endorsement as 09.10.2011 whereas it is 09.10.2019 actually.

9. 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. It is undisputed fact that the Corporate Debtor has received the Constructional services under bills marked as Annexure A1-A4 of the Demand Notice in view of endorsement of Corporate Debtor’s employee finding the quantity ok on 09.10.2019. About Operational Debt no. 5 & 6 stated in the Part IV, the Corporate Debtor has admitted that the amounts are due and payable subject to deduction of mobilisation advance.
10. 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.”

11. In view of the foregoing, we are of considered view that there exists a debt; such debts exceed the minimum threshold limit of Rs. 1.00 crores; and the corporate debtor has defaulted in payment of such debt. The plea of pre-existing dispute on ground that the invoices relating to operational debt no. 1 to 4 stated in Part IV were submitted with the corporate debtor along with demand notice only, does not any merit considering that the Operational Creditor had issued Invoices under GST law and these invoices are required to be filed on GSTIN portal which makes it available to the Corporate Debtor in its Form 2 at GSTIN portal; the endorsement on change order clearly indicates that the corporate debtor's employee found quantities to be ok; and the corporate debtor even didn't bother to pay the invoices after service of the demand notice.
12. In view of foregoing, we hold that it is a fit case for admission u/s 9 of the Code.

ORDER

The petition bearing CP(IB) 627/MB-IV/2021 filed by **A J Buildcon Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution

Process (CIRP) against **Patel Engineering 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) This bench hereby appoints Ms. Neeraja Kartik, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01445/2018-19/12137 Email Id neerajakartik@gmail.com Mb No 9922508850. 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)
08.02.2023

SD/-

KISHORE VEMULAPALLI
Member (Judicial)