

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-1023/(ND)/2020**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**SAM Business Continuity Services**

Registered office at:  
D-73, First Floor, Nangal Dewat,  
Vasant Kunj,  
New Delhi- 110070

...Applicant/Operational Creditor

**Versus**

**JSP Projects Pvt. Ltd.**

Registered Office at:  
E-27, Ground Floor,  
Geetanjali Enclave, Malviya Nagar,  
New Delhi -110017

...Respondent/Corporate Debtor

**Coram:**

**SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)**  
**DR. V.K. SUBBURAJ, Hon'ble Member (Technical)**

**Counsel for Applicant:** Ms. Minakshi Jyoti and Mr. Dharamveer Singh, Advocates.

**Counsel for Respondent:** Mr. Manish Gupta and Ms. Neelmani Guha, Advocates.

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IB-1023/ND/2020

SAM Business Continuity Services vs JSP Projects Pvt. Ltd.



**ORDER**

**Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 07.04.2021**

1. This is an application filed by the Applicant SAM Business Continuity Services through its Authorized Representative Mr. Sandeep Kumar seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent JSP Projects Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 4,26,38,271/- (Rupees Four Crore Twenty-Six Lakhs Thirty-Eight Thousand Two Hundred and Seventy-One only), as alleged by the applicant, towards the Services provided by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the applicant is a partnership firm engaged in the business of providing services of Marketing Consultancy and Project Consultancy. The applicant states that the Respondent Company is into installation of 33/11 KV, 66/33 and 132/33 KV Substations, internals/external electrification

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works, erection, testing and commissioning of the Transformers and its allied works hence, the Respondent was desirous to bid for the Tenders issued by Jharkhand Government with respect to JSBAY Package D work at Industrial Bokaro & Town Area of Dhanbad, Jharia and Govindpur Particularly of tender ref: 136/PR/JBVNL/18-19 (Hereinafter referred to as "the project") and for this purpose the Respondent availed the services of the applicant.

- ii. The applicant further states that the Respondent wanted to employ the Respondent for providing consultancy services to the applicant to bid for the said project. The Applicant was engaged by the Respondent for successfully bidding in the project, successfully being awarded the project and for project implementation.
- iii. That a Consultancy agreement dated 20.10.2018 was signed between both the parties and the agreed consultancy fees for the services to be rendered by the applicant to the Respondent was 3% of the work order value awarded by the client to the Respondent.

- iv. The applicant states that due to the assistance of applicant, the Respondent was declared as L1 bidder for the project pursuant to which the Letter of intent (Ref No. 562/R-ARDRP-1087) Part-1 Dated 07.03.2019 was issued by JBVNL to the Respondent.
- v. The applicant further submits that as per the terms of the agreement, the applicant was entitled to get consultancy fee of Rs. 15 Lakh at this stage, which was duly paid by the Respondent to the applicant. The applicant alleges that upon instruction of the Respondent the applicant raised an invoice of Rs 2,65,000/- vide dated 18.06.2019 as the remaining payment was made by the Respondent in cash in 3-4 tranches prior to 18.06.2019.
- vi. The applicant further submits in its application that the applicant extended its services to the Respondent to enable them to fulfil the terms of the LOI and resultantly the following LOA's were issued to the Respondent by JBVNL:
  - (i) LOA No 33 /R-APDRP-1087(Part-1) dated 12.09.2019 for supply of all materials and equipment's related to the Contract for

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overhead and/or underground cabling work of 33KV, 11KV & LT Lines, GIS/AIS PS5 of Rs.287.09 Cr. for Dhanbad town & Bokaro Industrial Area under Jharkhand Sampurana Bijli Achchadhan Yojna QSBAY) on behalf of JBVNL.

- (ii) LOA No 34 /R-APDRP-1087(Part-1) dated 12.09.2019 for erection of all materials and equipment's related to the Contract for overhead and/or underground cabling work of 33KV, 11KV & LT Lines, GIS/ALS PSS of Rs.36.50 Cr.

vii. That the next tranche of payment payable by the respondent to the applicant under clause 6.2 of the consultancy agreement was 1% of Rs. 3,23,59,00,000 less Rs. 15,00,000 which was already paid, plus GST resulting in amount of Rs. 3,64,13,620/- which was due and payable by the Respondent as per the Terms of the Consultancy Agreement. The applicant further states that the Respondent requested the Applicant to raise invoice for bare minimum only, since substantial amount was told to have already invested by the Respondent for the purpose of tendering Performance Security to JBVNL. It was requested that invoice for balance



amount be raised later. The Applicant submits that it acceded to the request of the Respondent and raised Invoice No SAM/JSP/DHANBAD/02 Dated 16.12.2019 for Rs. 59,00,000 (Rupees Fifty-Nine Lakhs only) against which payment of Rs. 29,50,000/- was made on 02.01.2020 and Its Rs. 9,00,000 was paid on 10.02.200.

viii. The Applicant further states that Respondent received its first payment from JBVNL for an amount of Rs. 29,45,37,498/-, hence the applicant also raised an invoice dated 27.12.2019 for an amount of Rs. 69,51,084/- calculated @ 2% of Rs. 29,45,37,498/-. Further, another invoice dated 20.03.2020 of Rs. 3,05,13,620/- was raised by the applicant and another invoice dated 20.03.2020 for an amount of Rs. 31,23,566/- was raised. The applicant states that the consultant of the applicant followed up persistently and another invoice dated 10.07.2020 for an amount of Rs. 33,58,791/-.

ix. The applicant states that an amount of Rs.4,26,38,271/- excluding interest is due as on

20.03.2020 from the Respondent. The applicant further states that meetings with the Respondent were held where the Respondent assured that the payment will be made soon.

- x. That applicant submits that a statutory Demand notice under section 8 of IBC, 2016 vide dated 11.09.2020 was delivered to the Respondent. It was further submitted by the applicant that a reply dated 14.09.2020 was received by applicant from Respondent wherein certain objections were raised by the Respondent.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Respondent filed its reply Affidavit on behalf of the Respondent stating that:

- i. The Respondent submitted that no document is placed on record which states that there is ever any invoice raised with regard to the said consultancy agreement.
- ii. That the Respondent has strong objections to the Clause 3.5 referred in the Consultancy Agreement



referred by the Applicant and non-performance on account of Clause 6 (6.1 & 6.2) to be read with Clauses 11 to Clause 16 of the said Consultancy Agreement which clearly shows that the Operational Creditor has not discharged its obligations under the said Consultancy Agreement as it was not possible to do the same at the end of the Applicant making the said Consultancy Agreement void ab-initio.

- iii. The Respondent further states in its reply that the Applicant has not only fleeced but deceived the Respondent to enter into the said Consultancy Agreement, the performance of which was not possible as evident from the careful reading of the expertise of the Applicant referred in Clause 3.5 of the Consultancy Agreement dated 20th October 2018 which is contrary to the impossible services promised to be rendered as defined in the repeated Clause 3.5 which is nothing but an inducement in *"taking care of all bureaucratic interference related to project..... and completion of the project."* That





said Consultancy Agreement referred in the above Application falls under Section 18 of the Indian Contract Act, 1872.

- iv. The Respondent further submits that the important ingredients of a Valid Contract is that it should be for a lawful consideration and with a lawful object and it is once again reiterated that the repeated Clause 3.5 of the Consultancy Agreement referred by the Applicant in the aforesaid Application fails the test of Section 10 of the Indian Contract Act, 1872.
- v. The Respondent submits that the Applicant has failed to perform the obligations which were required to be performed as per the Consultancy Agreement referred above either in Part or in full as it was not possible for the Applicant to perform the same because of the impossibility of the performance as mentioned above.
- vi. Further, the Respondent submits that the Applicant was not in a position to perform what they claimed while inducing the Respondent into signing of the



said Consultancy Agreement. That the illegal claim made by Applicant is fully disputed.

- vii. It was stated by the Respondent that the claim of the applicant for the amount of Rs. 4,59,97,062 has calculation errors, furthermore, the Respondent submits that the Applicant demanding a sum of Rs. 3,05,13,620/-(Rupees Three Crores Five Lacs Thirteen Thousand Six Hundred and Twenty Only) being 1% of the work contract value which as per the impossible Consultancy Agreement referred above was for the purpose of providing Corporate BG.
- viii. That the Respondent is progressing slow for possible Civil or criminal litigation against the applicant due to Covid-19 Pandemic period as the respondent alleges that he is aggrieved of the irresponsible, unprofessional and false promise made by the Applicant.
- ix. Further, the Respondent states that the failure on the part of the Applicant to perform his obligations on the said impossible Consultancy Agreement has



caused irreparable loss and injury to the Respondent as mentioned above and the following counter claims are being preferred by the Respondent and the same was sent on 14.09.2020 to the applicant in the reply to the Demand Notice dated 11.09.2020.

3. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.
4. We have heard the arguments made by the counsel for the Operational Creditor and perused the documents filed by him. The Operational Creditor has established the existence of debt and default on the part of the Corporate Debtor. The Corporate Debtor's plea of Consultancy agreement being void ab initio and error in computation of default amount does not stand any merit along with that, no documentary evidence substantiating the Corporate Debtor's plea regarding pre-existence of dispute in relation to non-



performance of agreement was annexed in the reply. Furthermore, the Corporate Debtor's plea that a civil or Criminal litigation against Operational Creditor has already been initiated has not been substantiated with any relevant document. Hence, the Corporate Debtor fails to establish any pre-existence of dispute and in view of the above situation, this Tribunal **admits** this petition and **initiates CIRP** on the Respondent with immediate effect.

- 1) A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;



(c) any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

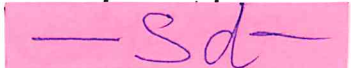
(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

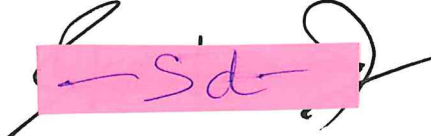
(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion

of the corporate insolvency resolution process.”

7. The interim resolution professional (“IRP”) proposed by the Tribunal is Mr. Mansij Arya, (Email – [pcsmansij@gmail.com](mailto:pcsmansij@gmail.com)), (Mobile No.- 9716092482) Reg. No: IBBI/IPA-002/IP-N00907/2019-2020/12939 is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

  
**(DR. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

  
**(SH. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

RDS