



S.No.2

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – II  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
21.04.2026 AT 10:30 A.M.**

**CP (IB) No. 260/9/HDB/2018**  
U/s 9 of IBC

**IN THE MATTER OF:**

Sri Balaji Associates

**...Petitioner**

AND

Madhcon Projects Ltd

**...Respondent**

**C O R A M :-**

**SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)  
SHRI. SANJAY PURI, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders pronounced recorded vide separate sheets. In the result, this Petition is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**HYDERABAD BENCH - II**

**CP (IB) NO. 260/9/HDB/2018**

**IN THE MATTER OF:**

**M/S MADHUCON PROJECTS LIMITED**

**Between:**

**M/s. Sri Balaji Associates,**

Registered under the provisions of  
the Indian Partnership Act

Having its registered office at

A 7, Ph III, Thiru Vi Ka Industrial Estate Guindy  
Chennai, Tamil Nadu 600 032

Represented by its Partner,

Devi Lakshmanan,

...Operational Creditor

**And**

**M/s. Madhucon Projects Ltd.,**

Registered Office at H.No 1-7-70, Jublipura,  
Khammam Telangana 507 003

Represented by its Executive Director,

Mr. K. Srinivas Rao

...Corporate Debtor

**Date Of Order: 21.04.2026**

**CORAM:**

**Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)**

**Sri Sanjay Puri, Hon'ble Member (Technical)**

**Counsels present:**

For the Operational Creditor/Petitioner: MS. Mamata Choudhary,  
Mr. Preetham Reddy and Ms. Sravya (Advocates)

For the Corporate Debtor/Respondent: Mr. AM Rao, Advocate

**I. Case of the Operational Creditor:**

1. The present application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") for the initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor (hereinafter referred to as "CD/petitioner"), namely M/s. Madhucon Projects Ltd., on account of default in payment of the operational debt owed to M/s. Balaji Associates (hereinafter referred to as "Operational Creditor/OC").
2. The Operational Creditor and the Corporate Debtor entered into a subcontract agreement dated 12.01.2009, pursuant to which the Operational Creditor raised invoices in accordance with the purchase orders issued by the Corporate Debtor.
3. It is submitted that, an amount of Rs. 83,84,860/- (Rupees Eighty-Three Lakhs Eighty-Four Thousand Eight Hundred and Sixty only), remains due and payable by the Corporate Debtor to the Operational Creditor towards the unpaid invoices arising out of the aforesaid transactions.
4. It is submitted that, upon the Corporate Debtor's failure to discharge its liability, the Operational Creditor initiated proceedings by filing a company petition bearing No. 31/2016 before the Hon'ble High Court of Telangana, which is pending.
5. It is also contended that, the Operational Creditor had subsequently issued a Demand Notice dated 14.12.2017<sup>1</sup>, under Section 8 of IBC, to the registered office of the Corporate Debtor situated at 70, Jublipura, Khammam-507003, Telangana. The said Demand Notice was duly received by the Corporate Debtor on 28.12.2017.

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<sup>1</sup> A copy of demand notice is at pages 65-72 of the application.

6. It is the case of the Operational Creditor that, the Corporate Debtor has neither replied to the said Demand Notice nor raised any dispute in relation to the unpaid operational debt within the statutory period of ten (10) days from the date of receipt of the Demand Notice, and has failed to make payment of the outstanding amount to date.
7. It is further submitted that, the Corporate Debtor, subsequent to receipt of the Demand Notice, vide its letter dated 06.02.2018, sought to initiate arbitration proceedings. In this regard, the Operational Creditor alleges that, the said attempt is an afterthought and is made only with a view to creating a false and illusory dispute. Also, the said invocation is not in accordance with the terms of the agreement entered into between the parties.
8. It is contended that, if any genuine dispute existed between the parties, the Corporate Debtor ought to have raised the same prior to issuance of the Demand Notice or initiated appropriate proceedings in accordance with law. The belated attempt to initiate arbitration proceedings clearly demonstrates that the alleged dispute is not bona fide and has been raised only to evade liability under IBC.

## **II. Case of the Corporate Debtor:**

9. The Corporate Debtor submits that, the instant Petition has been filed despite the existence of pre-existing disputes between the parties, and the alleged claim has not crystallized into an admitted operational debt. Further, the amounts claimed are disputed and subject to reconciliation, and the present proceedings impermissibly seek to treat a disputed claim as an undisputed debt under the IBC.
10. The disputes between the parties arose out of certain infrastructure projects awarded to the CD by the National Highways Authority of India ("NHAI") for widening and strengthening of highways, namely, NH-67

(Thanjavur–Trichy Road), NH-7 (Karur–Dindigul Road), and NH-45B (Madurai–Tuticorin Road).

11. In the course of executing these projects, the OC undertook to perform the work under various Piece Rate Contracts dated 12.01.2009, 06.01.2010, and 13.12.2010, as entrusted by the CD. Further, the scope of work across these projects was similar, and a consolidated Bill of Quantities, Purchase Order dated 12.01.2011, and Work Order dated 09.12.2011 were issued.
12. The CD avers that, the conduct of the OC demonstrates a lack of bona fide as it had earlier filed Company Petition No. 31 of 2016, before the Hon'ble High Court at Hyderabad, seeking winding up of the CD on the very same cause of action, which is still pending adjudication. Also, without withdrawing the said proceedings, the OC has initiated the present proceedings under the IBC, thereby amounting to an abuse of law.
13. Moreover, it was alleged that several works carried out by the OC were substandard and of inferior quality, resulting in penalties being imposed by NHAI. Thereafter, the CD has submitted that he was compelled to rectify and complete the defective works at substantial additional cost. However, it is averred that, as per the agreements, including Clause 15.10, the OC is liable for such damages.
14. It is further submitted by the CD that, the computation of the total claim amounting to Rs. 83,84,860/- is arbitrary and without basis. The CD further states that, the OC had earlier issued a demand notice dated 25.10.2014 claiming an amount of Rs. 96,58,935/-. In response thereto, the CD paid a sum of Rs. 10,00,000/- based on its own assessment, which, according to the CD, was accepted by the OC towards full and final settlement of the claim.

15. Notwithstanding the same, the OC issued a subsequent legal notice dated 01.08.2015 after a gap of ten months. In the said notice and subsequent rejoinders, the receipt of Rs. 10,00,000/- was admitted. Additionally, the correspondence between the parties is averred to evidence the existence of a pre-existing dispute.
16. The CD also contended that, it is relevant to note that under Clause 15 of the Agreement, retention money aggregating to 25% of the contract value is payable only upon submission of a valid completion certificate and bank guarantee. In the present case, the OC neither completed the work satisfactorily nor complied with these conditions. Consequently, it is not entitled to claim release of retention money.
17. The CD alleges that, the OC has manipulated the completion certificate issued by the CD by altering the date of issuance from 21.01.2014 to 21.01.2015, and inflating the value of the completed work. Also, it is pertinent that the OC had itself confirmed in writing that the certificate would be used only for tender purposes and not for any commercial or legal claims. This conduct clearly establishes mala fide intent.
18. It is further submitted that, the contractual framework between the parties specifically provides for dispute resolution through arbitration under Clause 27.3 of the agreement. Thus, the Corporate Debtor initiated arbitration proceedings by appointing a Retired District and Sessions Judge, Sri Y.C.S. Reddy, and the Operational Creditor has participated in the said proceedings (Arb. No. 1/2018). The matter is, therefore, sub judice, and the alleged suppression of this material fact before this Adjudicating Authority renders the present Petition an abuse of process.
19. The Corporate Debtor alleges that, the claims raised by the Operational Creditor are not only disputed but are also ex facie barred by limitation. It is submitted that any attempt to resurrect such time-barred claims under the guise of proceedings under the IBC is legally untenable. The

IBC is not intended to be invoked as a substitute for recovery mechanisms or as a tool to exert pressure in contractual disputes involving complex and disputed questions of fact.

**III. Rejoinder by Operational Creditor:**

20. It is submitted that a sum of Rs. 96,58,935/- remained outstanding from the CD to the OC, pursuant to which a letter dated 25.10.2014<sup>2</sup> was issued to the Corporate Debtor, and it was not disputed at that stage.
21. The CD, thereafter, made a part payment of Rs. 10,00,000/-. Upon failure to clear the balance, the Operational Creditor issued a statutory notice dated 01.08.2015<sup>3</sup>. In response, the Corporate Debtor has raised disputes regarding the dues and the quality of work<sup>4</sup>, which were refuted by the Operational Creditor in its reply dated 26.09.2015<sup>5</sup>.
22. The OC denies the allegations of substandard work and avers that, the contracts dated 12.01.2009 and 13.12.2010 provided the CD with adequate safeguards, including the right to test materials under Clause 1.4 and to terminate the contract under Clause 26.1. However, none were invoked. Additionally, the OC submits that the release of Performance Bank Guarantee<sup>6</sup> on 01.05.2010, aggregating to Rs. 43,79,975, evidences the acceptance of the work without any objection.
23. Further, it is contended that, no issue regarding the quality of the work was raised at any stage, nor has any material been produced to substantiate the alleged deficiencies or penalties. The dispute raised after the issuance of the notice as per Section 434 of the Companies Act, 1956, is an afterthought. Moreover, the Corporate Debtor failed to

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<sup>2</sup> A copy of the letter is at page 13 of the rejoinder

<sup>3</sup> A copy of the notice is at pages 14-21 of the rejoinder

<sup>4</sup> A copy of reply is at pages 22-25 of the rejoinder

<sup>5</sup> A copy of the letter is at pages 26-28 of the rejoinder

<sup>6</sup> The Bank Guarantee No. 32/2009

invoke the contractual remedies available under the agreements dated 12.01.2009, 27.11.2009, and 13.12.2010, which further undermines the credibility of its claims.

24. It is alleged that, although the CD claimed that Rs. 10,00,000 was paid towards full and final settlement, it continued to make subsequent payments. Notably, a payment of Rs. 30,00,000 on 25.01.2019, followed by further payments up to 20.02.2019, clearly acknowledges the subsistence of the debt, thereby rendering the plea of limitation untenable and constituting an unequivocal admission of liability.
25. The attempt to initiate arbitration is misconceived, as the mandatory precondition of conciliation under Clause 27.2 has not been complied with. In any event, such subsequent proceedings do not evidence a pre-existing dispute.

**IV. Written Submissions On Behalf Of The Operational Creditor:**

26. The Operational Creditor reiterates that the works were duly executed and relies on the work completion certificate dated 30.12.2011 thereof. It is further submitted that, notwithstanding completion of the works, the agreed payments remain outstanding. Accordingly, a statutory demand notice dated 14.12.2017 under Section 8 of the IBC was duly served upon the Corporate Debtor, which failed to respond within the prescribed period.
27. It is further contended that the allegations pertaining to defects and damages are unsupported by any contemporaneous record and are therefore illusory in nature, failing to meet the threshold laid down in *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*, (2018) 1 SCC 353.
28. It is the case of the Operational Creditor that the Corporate Debtor, by its letter dated 06.02.2018, invoked arbitration only after receipt of the

Section 8 demand notice and in deviation from the agreed dispute resolution mechanism. Thus, it is stated that, such an invocation of arbitration proceedings is merely a reactive step and cannot be relied upon to establish the existence of any pre-existing dispute.

29. Additionally, C.P. No. 31 of 2016 filed before the Hon'ble High Court of Telangana under Sections 433(e) and (f) of the Companies Act, 1956 has been transferred to this Adjudicating Authority and renumbered as T.P. (IBC)/2(Hyd)2024. In terms of ***Kaledonia Jute & Fibres Pvt. Ltd. v. Axis Nirman Industries Ltd.***<sup>7</sup>, the proceedings are to be treated as a continuation of the original petition; hence, limitation is to be reckoned from the date of institution before the High Court, and the notification dated 24.03.2020 is inapplicable. Also, the said transfer of the petition is contended to be, in terms of Section 434 of the Companies Act, 1956, read with Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016, as explained in ***Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd.***<sup>8</sup>.
30. The Operational Creditor further submits that, it has been pursuing its remedies since 25.10.2014 and that the payments made by the CD during the pendency of the proceedings constitute an acknowledgment of liability, thereby extending the limitation period.

**v. Written Submissions On Behalf Of Corporate Debtor:**

31. It is submitted that, the claim put forward by the Operational Creditor is inflated, disputed, and never crystallized into an admitted operational debt. The present proceedings are a misuse of the insolvency jurisdiction as a recovery mechanism.
32. It is further averred that, the petitioner's computation sheet indicates that the alleged dues arise from transactions with due dates in 2011

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<sup>7</sup> (2021) 2 SCC 403

<sup>8</sup> (2019) 18 SCC 549

and 2012, and the work completion certificate was issued on 30.12.2011. In the aforesaid circumstances, it is submitted that the present petition, having been filed in 2018, is barred by limitation. It is further submitted that the demand notice dated 14.12.2017 does not extend or revive the period of limitation, as the limitation under Section 9 of the IBC is to be reckoned from the date of default.

33. It is the case of the CD that, a substantial dispute existed between the parties much prior to the issuance of the Section 8 demand notice. The CD has specifically relied upon the sequence of correspondence comprising the demand letter dated 25.10.2014, the legal notice dated 01.08.2015, the reply dated 21.08.2015, and the rejoinder dated 26.09.2015, which collectively demonstrate that the alleged claim was categorically denied and seriously disputed.
34. This chain of correspondence is contended to conclusively establish the existence of a pre-existing dispute regarding the sub-standard and defective execution of work by the OC. It is further submitted that, the CD had to bear the costs for substantial rectification and completion of the work at its own cost.
35. The CD contends that the petitioner's defective performance has caused losses, rendering the petitioner liable for damages under the contract. Accordingly, the dispute goes to the root of liability and is not amenable to adjudication in insolvency proceedings, particularly when a substantial portion of the claim pertains to retention money and security deposit, which are payable only upon fulfilment of stipulated contractual conditions.
36. Moreover, the CD has specifically pleaded that the petitioner did not fulfil such conditions, and therefore, such amounts cannot be treated as due and payable. It is submitted that the claim is inconsistent, inflated, and unascertained. While the principal amount is stated as Rs. 83,84,860/-, the interest claimed is Rs. 85,22,335/-, exceeding the

principal amount itself. At the claimed rate of 18% per annum, this corresponds to a period of approximately 5½ to 6 years, clearly indicating that interest has been calculated from 2011 up to around 2017. This demonstrates that the claim is time-barred and artificially inflated.

37. Further discrepancies exist between the computation sheet and the work completion certificate, showing that the alleged debt is neither certain nor crystallized. It is further submitted that the CD paid Rs. 10,00,000/- upon its assessment, which was accepted by the petitioner without protest. The Corporate Debtor's case is that, the said payment was towards full and final settlement. In any event, the same cannot be construed as an acknowledgment of the inflated claim now put forward.
38. The Petitioner has initiated parallel proceedings on the same cause of action without withdrawing the earlier petition, amounting to an abuse of process and a coercive recovery attempt. Further, the present petition is not maintainable as the claim falls below the prescribed limit. In any event, the letter dated 21.01.2014, restricts the use of the completion certificate to tender purposes alone, and thus cannot be relied upon or construed as an admission of liability.
39. In view of the above, it is submitted that the petition is barred by limitation, involves a clear pre-existing dispute, relates to defective and disputed performance, contains inconsistent and inflated claims, is subject to arbitral adjudication, and constitutes abuse of process. The alleged debt is neither admitted nor crystallized, and the petition is liable to be dismissed.
40. We have heard learned counsels for both the parties and carefully perused the entire record.

**VI. Findings & Decision:**

41. At the outset, it is to be noted that the present application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, and it is incumbent upon the Operational Creditor to demonstrate that an operational debt exceeding the threshold<sup>9</sup> of Rs. 1,00,000/- is due and payable by the Corporate Debtor and that there has been a default in repayment of the same.
42. However, if the Corporate Debtor is able to establish that there is a pre-existing dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute exists, this Adjudicating Authority shall not admit the application.
43. In this regard, we place our reliance on the ruling of the Hon'ble Supreme Court of India, in re., **Mobilox Innovations Private Limited vs. Kirusa**<sup>10</sup>, wherein it was held that;

*“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is*

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<sup>9</sup> At the time of filing in 2018, the minimum default threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016 was Rs. 1,00,000/-, which was subsequently enhanced to Rs. 1 crore by notification dated 24.03.2020.

<sup>10</sup> (2018) 1 SCC 353

*not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

44. The Hon'ble Supreme Court of India, in **Mobilox (supra)**, has further laid down that:

*“The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act)?*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”*

*“If any one of the aforesaid conditions is lacking, the application would have to be rejected.”*

45. Since the Corporate Debtor contends that there exists a pre-existing dispute between the parties, which is denied by the Operational Creditor, we consider it appropriate to first examine the issue of pre-existing dispute in the light of the settled legal position and the factual matrix of the present case.

46. We observed that, on 25.10.2014, the Operational Creditor issued a demand notice<sup>11</sup> to the Corporate Debtor claiming an amount of Rs. 96,58,935/-. In response to the notice, the Corporate Debtor made a part payment of Rs. 10,00,000/-. Thereafter, another statutory notice<sup>12</sup> dated 01.08.2015 was issued by the Operational Creditor, to which the Corporate Debtor raised objections via letter<sup>13</sup> dated 21.08.2015,

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<sup>11</sup> At page 13 of the rejoinder

<sup>12</sup>At pages 14-21 of the rejoinder

<sup>13</sup>At pages 22-24 of the rejoinder

regarding execution and quality of work, alleged defects in performance, imposition of penalties by NHAI, and consequential rectification costs incurred by the Corporate Debtor. Once again, the Operational Creditor issued a Section 8 statutory demand notice dated 14.12.2017 on the CD, to which no reply was filed within the statutory period.

47. It is further noted that, the basis of computation of the debt, as set out in the demand notice issued under Section 8 of IBC, is at variance with the Work Completion Certificate issued by Madhucon Projects Ltd., which has been relied upon by the Operational Creditor to substantiate the existence of the alleged operational debt and the quantum of default. The computation table annexed to the demand notice records the total value of work executed as Rs. 5,31,18,776/-, whereas the Work Completion Certificate records the said value as Rs. 5,03,24,269/-. The said discrepancy remains unexplained. In the absence of any reconciliation between the two figures, a material inconsistency arises in the quantification of the claim, thereby rendering the quantum of the due payable uncertain.
48. Additionally, we are of the considered view that, the exchanges of correspondence between the parties unequivocally demonstrate the existence of disputes, which have occurred more than two years prior to the issuance of the Demand Notice<sup>14</sup> under Section 8 of the IBC dated 14.12.2017. Further, the disputes thus raised relate squarely to the “quality of goods delivered or services rendered”, which is expressly covered by the definition of “dispute” under Section 5(6) of the IBC.
49. It is pertinent to note that, the proceedings in respect of the same debt were earlier initiated by the Operational Creditor before the Hon’ble High Court of Telangana by way of Company Petition No. 31 of 2016, which was pending at the time of filing of the present Petition and has since been transferred to this Adjudicating Authority. In the said

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<sup>14</sup> At page 88-93 of the Application

proceedings, the Operational Creditor sought winding up of the Corporate Debtor on the basis of the same alleged dues now relied upon herein, indicating that the predominant object was recovery of money rather than bona fide insolvency resolution, which is contrary to the scheme and spirit of the IBC.

50. It is further noted that the said proceedings were already pending prior to the issuance of the demand notice under Section 8 of the IBC, thereby evidencing a pre-existing dispute. Viewed cumulatively, the above sequence of actions demonstrates forum shopping and detracts from the bona fides of the claim as a genuine operational debt.
51. Applying the test laid down by Mobilox (supra), we are satisfied that a plausible contention requiring further investigation exists and that the defence raised by the Corporate Debtor is neither spurious, hypothetical, nor illusory. The record placed before us establishes beyond doubt that a real and plausible dispute existed on the very same cause of action long prior to the issuance of the Section 8 Demand Notice.
52. Accordingly, having found the existence of a real and substantial pre-existing dispute, the present petition does not satisfy the conditions for admission under Section 9 of the IBC and is, therefore, dismissed.

Sd/-

(SANJAY PURI)

MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)

MEMBER (JUDICIAL)