

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

C.P. 1926/I&BP/2018

Under Section 9 of I&BC, 2016

In the matter of:

M/s. Insulref Technologies Private Limited,  
No.408, Rupa Solitaire, Millenium Business Park,  
Mahape, Navi Mumbai-400710.

... Petitioner

vs.

M/s. Vedanta Limited,  
1<sup>st</sup> Floor, C-Wing, Unit-103, Corporate Avenue  
Atul Projects, Chakala, Andheri (E), Mumbai-  
400093

...Respondent

Order delivered on: 28.02.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Sriraj Menon a/w Mr. Deepan Dixit, Ms. Sheetal  
Prakash, Advocates.

For the Respondents: Mr. Prakash Shinde a/w Mr. Darshit Dave, Ms. Swati  
Maradani i/b MDP Partners

*Per: V. Nallasenapathy, Member (Technical)*

ORDER

1. This Company Petition is filed by M/s. Insulref Technologies Private Limited, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against M/s. Vedanta Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 19.11.2016 in making payment to the extent of Rs. 31,81,206/- inclusive of interest @21% per annum upto 06.09.2017 and for further interest till realization, by invoking the provisions of Sections 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The claim made by the Petitioner is as below:

SR NO.	STATEMENT OF OUTSTANDING	AMOUNT (Rs.)	AMOUNT (Rs.)
1	INVOICE AMOUNT OUTSTANDING		1,98,882
2	INTEREST TOWARDS INVOICE		53,305
3	INVOICE AMOUNT DEDUCTED TOWARDS SECURITY DEPOSIT AS PER PAYMENT ADVICE		18,00,000
4	INTEREST TOWARDS ABOVE DUE UNAUTHORIZED RETENTION OF SECURITY FROM NOVEMBER, 2016 TO 6 <sup>TH</sup> SEPTEMBER, 2017		3,01,364
5	INVOICE AMOUNT OUTSTANDING DUE TO UNAUTHORIZED DEDUCTION ETC AS PER PAYMENT ADVICE		7,77,655
6	TDS (-)	3,40,799	
7	EMD		50,000
	TOTAL OUTSTANDING		31,81,206

3. The Petitioner submits that they have rich experience in the field of Insulation and Refractory Engineering and they have entered into a contract with the Corporate Debtor on 07.10.2015 for refractory maintenance job and deployment of semi-skilled and un-skilled manpower for smelter operation at Tutucorin. The approximate value of the contract was Rs. 4,40,83,000/-. The Corporate Debtor by way of deduction from the payment to the Petitioner is holding the security deposit of Rs. 18 lacs. The Petitioner submits that the Corporate Debtor has not utilized the resources and manpower as provided in the contract which resulted in the heavy loss to the Petitioner. The petitioner further submits that the Corporate Debtor made many deductions in the invoices without any intimation or proper notice. The Petitioner on 12.02.2016 requested for a meeting with the senior officials of Corporate Debtor as the Petitioner was facing losses at the site level and requested for the discussion on price review as per Clause 46 of the contract. Since the Petitioner efforts to review the price failed the Petitioner issued contract termination notice on 16.06.2016 wherein it was informed to the Corporate Debtor that the Petitioner will completely demobilize by 20.06.2016. The Corporate Debtor by reply dated 18.06.2016 informed that the contract can be terminated only after giving 2 months notice for violation/ breach/ non-performance/ non-fulfillment of all or any of the conditions of the contract. The Corporate Debtor further contended that the reason for unilateral termination seems to be untrue and fabricated and as such the notice of termination without valid reason is arbitrary. The Corporate Debtor further stated that, termination of contract without valid reason and/or without

giving due notice for stipulated period would be entitling the Corporate Debtor to recover the loss and damages from the Petitioner.

4. The Petitioner in reply email dated 28.06.2016 to the above notice explained that there were number of breaches committed by the Corporate Debtor and hence the contract termination notice was issued on 16.06.2016. Further the Petitioner requested to release the amount of security deposit amount immediately on site demobilization. It is to be observed that, on 28.06.2016, the Petitioner is only asking for the release of security deposit and there were no claim regarding invoices as claimed by the Petitioner in this Petition.
5. The Petitioner submits that the Corporate Debtor issued "No Dues Form" on 12.06.2017 and the same is reproduced below:

Vedanta	
Sterlite Copper	
Sterlite Copper, (Unit of Vedanta Limited) Thoothukudi	
<u>No Dues Form</u>	
PARTY NAME	: INSULREF TECHNOLOGIES PVT. LTD.
ORDER NO & DATE	: 115003700 Dt. 07-10-2015
NATURE OF WORK	: REFRATORY REPAIR & MAINTAINCE AND MANPOWER SUPPLY
JOB STARTED ON	: 01-11-2015
JOB COMPLETION DATE	: 20-08-2016
LD/ PENALTY IF ANY	: AS PER THE PAYMENT ADVICE
THIRD PARTY RECOVERY	: Rs. 13107/- (IF ANY)
REMARKS (IF ANY)	: AGAINST RECOVERY OF LIFTING TOOTO AND ----- We hereby certify that the party has satisfactorily performed and discharged the aforesaid O & M contract and there are no dues either from the party or from the company.
SOMAK CHATTOPADHYAY - PRODUCTION INCHARGE- VEDANTA	
USER HOD--	SIGNATURE OF SERVICE PROVIDER REPRESENTATIVE
Dated-	Dated-
SBU HEARD (SIGNED)	
SAFETY (SIGNED)	ADMIN SANDEEP ACHARYA- SAFETY HEAD- VEDANTA
HR ALL STATUTORY COMPLIANCE DOCUMENT SUBMITTED (SIGNED) SUDHIR- HR OFFICER- VEDANTA	
JAVAHAAR- INCHARGE Aparajitha	

6. The Petitioner submits that a sum of Rs. 31,81,206/- is due from the Corporate Debtor as stated supra. The Petitioner on 13.09.2017 issued demand notice in Form-4, under Section 8 of the IB Code to the Corporate Debtor demanding the said sum.
7. The Corporate Debtor raised objection to Form-4 notice issued by the Petitioner wherein it was stated that;
  - a. The Petitioner unilaterally terminated the contract entered between the parties w.e.f. 20.08.2016 due to commercial inconvenience and financial hardship.
  - b. The invoices were already settled and "No Due Form" was sent by E-mail on 13.06.2017 duly signed by the representative of the Petitioner wherein it was expressly recorded that there are no dues from the party or the Company.
  - c. With respect to the invoice amount outstanding, no invoice for the alleged outstanding amount of Rs.1,98,882/- was provided and the same was not enclosed with the Form.
  - d. With respect to the security deposit it was reiterated that notice for premature and unilateral termination of the contract was agreed to without prejudice to the rights of the Corporate Debtor by E-mail dated 06.07.2016
  - e. By E-mail dated 31.07.2017 and 31.08.2018 the Petitioner was informed that the Corporate Debtor is entitled to forfeit the security deposits under the provisions of contract.
  - f. In respect of the deductions made in the invoices, the said deductions were made in terms of contract such as industrial safety violations, non adherence of labour laws in the prescribed timeline, etc., which were duly concurrently intimated and there was no contemporary dispute notification from the side of the Petitioner
  - g. In terms of clause 24 of the contract since the factum of the claim is disputed, the dispute has to be referred to arbitration and accordingly they appointed one Mr. V. Inbavijayan, as the Arbitrator for the determination of the dispute under the contract.
8. In order to ascertain whether any pre-existing dispute is there in this case, it is worthwhile to mention some of the communications emanating from the respective parties.

9. The email of the Petitioner dated 15.05.2017 addressed to the Corporate Debtor is produced as below:

*"Dear,*  
*We have submitted all the closure related documents in Aparajitha, so kindly release all our pending payments and the security deposit Amount at the earliest.*  
*LAKSHMIKANTH.M.INSULREF TECHNOLOGY PVT. LTD."*

10. The email of the Petitioner dated 28.07.2017 addressed to the Corporate Debtor is produced as below:

*"Dear Ponraj,*  
*As per our Monday (24/7/16) discussion you are supposed to clear out "No Claim Certificate" by Wednesday (26/7/2017), but till now it is not cleared yet.*  
*We have submitted our "No Dues Certificate" on 12/06/2017. For more than a month I am in Tuticorin only to clear this matter.*  
*Yesterday also you are supposed to do, but it has not done. I am not able give proper update regarding this "No Claim Certificate" to my Office.*  
*Kindly help me to get all our pending and Security deposit amount at earliest.*  
*LAKSHMIKANTH. M"*

11. The email of the Corporate Debtor dated 31.07.2017 addressed to the Petitioner is produced as below:

*"Please note that Security deposit amount shall be forfeited on account of breach of terms and condition of the contract.*  
*Thanks & Regards*  
*P. S. PONRAJAN"*

12. The email of the Petitioner dated 01.08.2017 addressed to the Corporate Debtor is produced as below:

*"Dear Mr. Ponraj,*  
*We have not breached any Terms and Conditions of the contract.*  
*We have given you proper intimation of Closure notice in 17/06/2016 and we have got the acceptance mail by Mr. Thanraj on 06/07/2016.*  
*If there is any such Terms and Condition in the Contract, Kindly hint that clause no. under which we have breached the Contract for our Clarification.*  
*Regards*  
*LAKSHMIKANTH. M"*

13. The demand notice u/s 8 of the Code was issued by the Petitioner on 13.09.2017 demanding a sum of Rs. 31,81,206/- as detailed supra. The

Corporate Debtor submitted that, the demand notice was received by them on 19.09.2017 and replied to the same on 28.09.2017. In the said reply the Corporate Debtor denied the liability and also stated that the dispute shall be referred to the sole arbitrator in accordance with the clause 24 of the contract and accordingly they nominated one Mr. V. Inbavijayan, as the arbitrator for determination of all dispute in the subject contract.

14. An ordinary scanning of the "No Dues Form" dated 12.06.2017 clearly reveals that there are no dues payable by the Corporate Debtor to the Petitioner or vice-versa. The certificate further reveals that, the job was completed on 20.08.2016. In view of this, the claim of the Petitioner towards invoice amount outstanding of Rs. 1,98,882/-, interest towards invoice of Rs. 53,305/-, unauthorized deduction in the invoice to the extent of Rs. 7,77,655/- does not have legs to stand, since the "No Dues Form" issued by the Corporate Debtor is also signed by the representative of the Petitioner (under the signature of the service provider representative) and the seal of the Petitioner is also affixed on the "No Dues Form". This settles the part of the claim towards invoices and interest.
15. In the email dated 31.07.2017, sent by the Corporate Debtor to the Petitioner, it was clearly stated that security deposit shall be forfeited on account of breach of terms of the contract. The Corporate Debtor further submitted that, due to non-performance of the Operational Creditor to complete the segregation of copper from brick as stipulated in the contract, the Corporate Debtor made deductions from the security deposits, as they have engaged M/s. Ind Tech Engineers and Contractors to complete the work for which they have paid a sum of Rs. 16,96,000/-.
16. Since the said email dated 31.07.2017 cited above categorically conveys a message that a security deposit shall be forfeited on account of breach of terms of the contract and the same is before the issuance of demand notice on 13.09.2017, the logical conclusion shall be there is a pre-existing dispute in respect of the security deposit. The Corporate Debtor in the reply to the demand notice also stated that, they have appointed Mr. V. Inbavijayan, as a sole arbitrator in terms of Clause 24 of the contract.

17. The above discussion clearly reveals that, there is existence of dispute regarding the debt amount in respect of invoices as well as the security deposit.
18. The Hon'ble Supreme Court in the case of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154) held as below:-  
*"40..... 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 defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense 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 not spurious, hypothetical or illusory, the adjudicating authority has to reject the application".*
19. When the law laid down by the Hon'ble Supreme Court in the above case is applied to the facts of the present case it is established that there is a clear dispute relating to the existence of debt as provided u/s 5(6)(a) of the Code.
20. In view of the above discussion, the Petition is dismissed, with liberty to the Petitioner to proceed in accordance with law.

SD/-  
V. Nallasenapathy  
Member (T)

SD/-  
Bhaskara Pantula Mohan  
Member (J)