

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**CP (IB) No.741/9/HDB/2019**

Under section 9 of IBC, 2016 read with Rule  
6 of I & B (AAA) Rules, 2016

**In the matter of**

Ingersoll Rand Climate Solutions Private Limited  
**[CIN: U24233KA1996PTC093425]**  
8<sup>th</sup> Floor, Tower-D, IBC Knowledge Park  
No.4/1, Bannerghatta Main Road  
Bengaluru – 560029.

**Petitioner/  
Operational Creditor**

Versus

Prajay Engineers Syndicate Limited  
**[CIN: L45200TG1994PLC01738]**  
1-10-63 & 64  
5<sup>th</sup> Floor, Prajay Corporate House  
Chikoti Gardens, Begumpet  
Hyderabad – 500016.

**... Respondent  
Corporate Debtor**

**Date of order: 06.01.2021**

**Coram:**

**HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY,  
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,  
MEMBER (TECHNICAL)**

**Parties / counsels present:**

For the Petitioner: Shri Pramod Maligi, Advocate

For the Respondent: Shri Ramana Reddy,  
Practising Company Secretary.

**Per: SHRI VEERA BRAHMA RAO AREKAPUDI,  
MEMBER (TECHNICAL)**

Heard on: 05.02.2020, 24.02.2020, 12.03.2020, 09.12.2020 and  
15.12.2020



## **AVERMENTS**

This petition is filed by Messrs Ingersoll Rand Climate Solutions Private Limited, who is the Operational Creditor, stating that an operational debt of **Rs.6,63,118/-** (Rupees six lacs sixty three thousand one hundred and eighteen only) has become due along with interest at the rate of 18% p.a. from 20.08.2016, as per computation of default and amount payable by the Corporate Debtor to the Operational Creditor (ANNEXURE 'G'). Hence this petition is filed under section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments made in the petition are as follows:

2.1 The operational creditor, Ingersoll Rand Climate Solutions Private Limited is represented by its Creditor Controller, Mr. Prabeen Francis by virtue of Power of Attorney dated 14.08.2019 (ANNEXURE 'H'). Registered office of the Operational Creditor is described in para 1 of the petition. Copy of Incorporation Certificate and PAN Card of the Operational Creditor is at ANNEXURE 'M'. The petitioner is in the business of inter alia, manufacturing, operating and managing heating, ventilation and air conditioning (HVAC) systems.

2.2 The Corporate Debtor, Prajay Engineers Syndicate Limited has its registered office as mentioned in paras 2 and 3 of the petition. Its details are at ANNEXURE-K. Its authorised share capital is Rs.2,50,00,00,000/- (Rupees two hundred and fifty crores only). Its paid up share capital is Rs.69,93,58,000/- (Rupees sixty nine crores ninety three lacs fifty eight thousand only).

2.3 The Corporate Debtor had approached the Operational Creditor during or around February 2016 for Annual Maintenance Contract (AMC) services and the Corporate Debtor had placed purchase order dated 25.02.2016 (ANNEXURE 'A') for AMC services for the units in question. Accordingly, the Operational Creditor had raised invoices for an aggregate amount of





Rs.6,63,118/- vide Invoice No.185124 dated 23.05.2016 and Invoice No.186652 dated 20.08.2016 (ANNEXURES 'B' and 'C'). However, the Corporate Debtor has failed to complete the full payment of due amount. (Para 4)

2.4 The Operational Creditor has addressed e-mail communications dated 23.11.2016, 12.05.2017, 13.06.2017 and 14.08.2017 (ANNEXURE 'D'), but the Corporate Debtor has failed to make good its debt. Thereafter, the Operational Creditor has issued Demand Letter dated 11.09.2017 (ANNEXURE 'E') to the Corporate Debtor. Finally the Operational Creditor had issued Demand Notice dated 17.08.2019 (ANNEXURE 'F') to the Corporate Debtor.

**3. COUNTER DATED 04.02.2020/ 05.02.2020 FILED BY THE CORPORATE DEBTOR.**

3.1 At the outset the Corporate Debtor has denied that there is any 'operational debt' as claimed by the Operational Creditor as defined u/s 4 of the I&B Code, 2016.

3.2 It is averred that the respondent/ Corporate Debtor is a public listed real estate company, which gives more than just real estate. It has been in business for the last two decades. The petitioner had agreed to provide comprehensive AMC services pursuant to Purchase Order dated 25.02.2016. However, the petitioner had breached its obligations and trust.

3.3 It is further alleged that there is no operational debt. The petitioner has failed to provide AMC services as agreed. As a result of which the respondent had incurred huge irreparable loss. Therefore, the Operational Creditor is liable to pay damages to the respondent.

3.4 The respondent has relied on a decision of the Hon'ble Supreme Court in the case of **MOBILOX INNOVATIONS PVT LTD Vs. KIRUSA SOFTWARE (P) LTD**, (2017) 1 SCC OnLine SC 353, wherein it was held that,

"Therefore, 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."

**4. WRITTEN SUBMISSIONS DATED 22.12.2020/ 23.12.2020 FILED BY THE RESPONDENT/ CORPORATE DEBTOR.**

4.1 It is contended that the petition is filed by Power of Attorney Holder vide Power of Attorney at Annexure 'H', without there being specific authorisation for initiation of CIRP. In this context the Corporate Debtor has relied on decision of the Hon'ble NCLAT in the case of **PALOGIX INFRASTRUCTURE PVT LTD Vs. ICICI BANK LTD.**, wherein it is held that the Power of Attorney is not competent to file an application on behalf of the Financial Creditor or Operational Creditor or Corporate Applicant. There must be a specific authorisation in favour of the person presenting the application.

4.2 It is further contended that the petitioner has neither filed an affidavit under section 9(3)(b) of the I&B Code, 2016, nor served notice of default under section 8 of I&B Code. Section 9(3)(b) of the Code reads as under:

*"9 (3) The operational creditor shall, along with the application furnish ---*

*(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt,"*

Thus, it is contended that cause of action to the Operational Creditor accrues only on service of notice under section 8 of the Code, as held by the Hon'ble Supreme Court in **MOBILOX INNOVATIONS PVT LTD Vs. KIRUSA SOFTWARE (P) LTD.** Further, the Corporate Debtor relied on order dated 03.04.2018 rendered in IB No.492/ND/ 2017 by the NCLT, New Delhi in the



matter of **OPGS POWER GUJARAT (P) LTD. VS. RL STEELS & ENERGY LTD.**

4.3 The Corporate Debtor, in para 3 of the Written Submissions, has submitted that the petition is required to be dismissed on the following grounds:

- (i) The petitioner has breached its obligations under Purchase Order dated 25.02.2016 (ANNEXURE 'A' of the petition) and failed to provide AMC services as agreed leading to losses incurred by the Corporate Debtor.
- (ii) The Corporate Debtor does not owe any dues to the petitioner. Management of the respondent has not at any point of time received their invoices, services and confirmed the amount claimed by the petitioner.
- (iii) There is no operational debt under section 4 of the I&B Code.

**OBSERVATIONS :**

5. It is observed that the petitioner/ Operational Creditor though claimed to have entered into Purchase Order dated 25.02.2016 (ANNEXURE 'A') with the respondent/ Corporate Debtor, the petitioner/ Operational Creditor could not produce any documentary evidence to the effect that it had provided AMC services as agreed upon, or any evidence to show that the Corporate Debtor has acknowledged debt or any acknowledgement that the Corporate Debtor has received invoices issued by the Operational Creditor or that the Corporate Debtor has confirmed any debt, in part or full.

6. It is further observed that the petitioner/ Operational Creditor had claimed to have issued Demand Notice dated 11.09.2017 (ANNEXURE 'E'). However, there is no proof of service/ acknowledgement of the said Demand Notice. So is the case with Demand Notice dated 17.08.2019 (ANNEXURE 'F'). Besides, affidavit under section 9(3)(b) of the I&B Code, 2016, is not filed by the petitioner/ Operational Creditor.

7. From the record we are not able to trace any shred of acknowledgement/ confirmation from the Corporate Debtor that the





Operational Creditor had provided AMC services either in part or full or that the Corporate Debtor had acknowledged/ confirmed that the Corporate Debtor owed any dues to the Operational Creditor towards such services or that the Corporate Debtor had paid any part of amount towards any services provided by the Operational Creditor. Nowhere we find any acknowledgement of the Corporate Debtor, except Purchase Order dated 25.02.2016 (ANNEXURE 'A', page 17). Mere signing of Purchase Order, *ipso facto*, does not lead to its execution.

8. In absence of such acknowledgement/ confirmation by the Corporate Debtor, operational debt is not proved. Further there is no documentary evidence to show that debt has become due and payable by the Corporate Debtor. Thus, the requirements as laid down by the Hon'ble Supreme Court in the case of **MOBILOX INNOVATIONS PVT LTD Vs. KIRUSA SOFTWARE (P) LTD**, (2017) 1 SCC OnLine SC 353, are not fulfilled in the present case.

9. Furthermore, the petition is filed by Power of Attorney Holder vide Power of Attorney at Annexure 'H', without there being specific authorisation for initiation of CIRP. Thus, institution of the present petition under section 9 of the I&B Code itself is hit by the decision of the Hon'ble NCLAT in the case of **PALOGIX INFRASTRUCTURE PVT LTD Vs. ICICI BANK LTD**. The decision of the Hon'ble NCLAT holds that Power of Attorney Holder is not competent to file an application on behalf of the Financial Creditor or Operational Creditor or Corporate Applicant. There must be a specific authorisation in favour of the person presenting the application.

10. We are therefore, of the opinion that (i) no ingredients of any debt having become 'due and payable' are available in the present case, (ii) there is no acknowledgement/confirmation by the Corporate Debtor that the Corporate Debtor had received any services, in part or full, pursuant to Purchase Order dated 25.02.2016 (ANNEXURE 'A'), and (iii) no evidence that the Corporate Debtor had ever paid any amount towards any services provided by the Operational Creditor.

11. In view of the above discussion it is clear that the present petition filed by Operational Creditor under section 9 of the I&B Code lacks merit. The proceedings initiated by the Operational Creditor is solely based on Purchase





Agreement dated 25.02.2016 (ANNEXURE 'A') sans any evidence to show that such an agreement has ever been executed and sans evidence that any debt has become due and payable by the respondent/ Corporate Debtor.

**ORDER :**

12. In the light of above the present petition filed under section 9 of the I&B Code deserves rejection.

13. In the result, the petition stands rejected.

  
VEERA BRAHMA RAO AREKAPUDI  
MEMBER TECHNICAL

  
K. ANANTHA PADMANABHA SWAMY  
MEMBER JUDICIAL

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