

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.434/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

MR. CHANDRA SRINIVASULU

Proprietor of M/s. Srinivas Constructions

& M/s. Sri Enviro Engineering

...Operational Creditor

v/s.

M/S RICHARDSON & CRUDDAS

(1972) LTD

[CIN: U28920MH1973GOI016389]

...Corporate Debtor

Order Delivered on: 22.02.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Dormaan Dalal i/b Sumi Soman,
Ld. Counsel.

For the Corporate Debtor:

Ms. Anisha Didwania i/b NDB Law,
Ld. Counsel.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by MR. CHANDRA SRINIVASULU (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/S RICHARDSON & CRUDDAS (1972) LTD, the Corporate Debtor.

1.1. The Company Petition is filed on 05.03.2021 claiming that an amount of Rs. 1,54,19,784.22/- (Rupees One Crore Fifty-Four Lakhs Nineteen Thousand Seven Hundred Eighty-Four and Twenty-Two Paise Only) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 05.11.2018.

Submissions of the Operational Creditor:

2. The Operational Creditor submits that the Corporate Debtor is into the business of fabrication of process equipment for power sector, steel manufacturing plants, railways, oil and gas, fertilizers, sugar industries, atomic energy, space, water and sewage treatment plants etc. The Corporate Debtor had sub contracted the Operational Creditor for Work Orders obtained for rendering construction, structural and maintenance works from M/s. Bharath Heavy Electricals Limited.

2.1. The Operational Creditor had entered into a Memorandum of Understanding (MOU) dated 28.01.2008 with the Corporate Debtor for development of Business Relationship. Thereupon, the Corporate Debtor as per the terms of the said MOU had sub contracted the Work Orders received from M/s. Bharath Heavy Electricals Limited to the Sole Proprietorship concerns owned by the Operational Creditor, namely M/s. Srinivas Constructions and M/s. Sri Enviro Engineering Services. Based on

the said MOU, the Operational Creditor obtained various Work Orders from the Corporate Debtor for the period beginning from 2009 to 2015.

- 2.2. The Operational Creditor submits that, as per the terms of the work orders, the Corporate Debtor is entitled to withhold 5% of the contract value as Security Deposit and the Operational Creditor is entitled to receive the Security Deposits so withheld by the Corporate Debtor upon satisfactory completion of the 'Defects Liability Period'. The Operational Creditor successfully completed all the work provided by the Corporate Debtor and the Corporate Debtor had issued completion certificate for the same.
- 2.3. During the year 2013, the Operational Creditor had lost the work orders, invoices and completion certificate issued by the Corporate Debtor in a theft which took place at G.N. Chetty Road, T. Nagar. Therefore, the Operational Creditor lodged an FIR at E-3 Teynampet Police Station on 27.12.2013.
- 2.4. The Corporate Debtor upon request made by the Operational Creditor issued a certificate for the payments made in each year from 2012 to 2019., the Corporate Debtor had made the payments after deducting Security Deposits and Work Contract Tax. It is hereby submitted that as per the terms of the Work Order, the Corporate Debtor is entitled to repay the Security Deposit withheld to the Operational Creditor as they have provided the Completion Certificate. The Corporate Debtor has withheld the Security Deposits even after providing the Completion Certificate for the works executed by the Operational Creditor. It is further submitted that, even after several reminders, the Corporate Debtor had failed to provide the Work Contract Tax Challans due to which the Operational Creditor was unable to claim the Work Contract Tax credit.
- 2.5. The Operational Creditor further submits that the Corporate Debtor, apart from the above said dues, had failed to make payment for the Invoice No.

005 dated 05-01-2019 amounting to a sum of Rs. 20,73,632/- and Invoice No. 003 dated 03-01-2019 amounting to a sum of Rs. 1,54,816/-. The Corporate Debtor sent a consolidated statement dated 10.01.2020 wherein the Corporate Debtor had allegedly stated that the outstanding payment to the Operational Creditor is Rs. 82,50,326 for Ms/. Srinivas Constructions and Rs. 2,84,652/- for M/s. Sri Enviro Engineering. In the said consolidated statements, the Corporate Debtor failed to give credit to the Work Contract Tax Paid by the Operational Creditor and has also miscalculated the outstanding dues.

3. The Operational Creditor submitted that the Corporate Debtor is in default to a sum of Rs. 1,54,19,784.22/- (Rupees One Crore Fifty-Four Lakhs Nineteen Thousand Seven Hundred Eighty-Four and Paise Twenty-Two Only), out of which Rs. 94,43,177.56/- is towards security deposit, Rs. 36,92,134.40/- towards work contract tax and Rs. 22,28,448/- against invoices bearing numbers No. 005 dated 05.01.2019 and No.003 dated 03-01-2019. The Corporate Debtor even after multiple correspondences by letters and in person has failed to pay the outstanding payments.

3.1 The Operational Creditor sent a demand notice dated 14.10.2020 in response to which the Operational Creditor received a reply dated 27.10.2020 from the Corporate Debtor. In the said reply, the Corporate Debtor had stated that Mr. Balakrishniah of Chennai Unit who has issued the certificates and documents to the Operational Creditor is not authorized to issue the same and as per their books, there is no outstanding.

3.2 The Operational Creditor submits that the Corporate Debtor had executed a Power of Attorney on 21.11.2008 & 29.12.2015 authorizing Mr. Balakrishniah to execute and perform duties with reference to the Chennai Unit. This alone goes on to prove that Mr. Balakrishniah is

indeed authorised to provide confirmation on behalf of the Corporate Debtor.

Submissions of the Corporate Debtor:

4. At the outset, the Corporate Debtor has denied each and every contention raised by the Operational Creditor in the present application.
5. The Corporate Debtor submits that it is a 100% Government owned Company, under the Control of the Ministry of Heavy Industries. It is submitted that the Petition is barred by limitation and that petition was filed in 2021 after a period of 6 years of executing the work. It is submitted that the Operational Creditor has stated that vide letter dated 26.10.2018, the Corporate Debtor has acknowledged the debt owed to Operational Creditor, hence the petition is filed within time. The Corporate debtor submits that the said acknowledgment letter was issued by one Mr. E. Balakrishniah, the then unit in charge of Chennai unit of Corporate debtor. However, vide order dated 21.09.2016, the Union Cabinet had ordered to shut down the Chennai unit of Corporate debtor and the administrative work was taken over by the Mumbai unit; that vide letter dated 21.10.2020 addressed to Mr. Balakrishniah, the Corporate debtor questioned the unauthorized issuance of financial certificates to the contractor and instructed him not to issue any statement without approval of competent authority, and that this mistake was acknowledged by the then unit head.
6. The Corporate debtor submits that there were pre-existing disputes and that on 21.08.2019 and 12.09.2019, the Operational Creditor filed complaint against the Corporate debtor with the Vigilance Section of the Ministry of Heavy Industry and Public Enterprises (MHIPE) for a claim amount of Rs.1,54,19,784/- (which was forwarded to BHEL for report); that the CVO of BHEL after examining the financial reports called from the finance department

of the Corporate debtor filed a report which was forwarded to the Ministry of Heavy Industry.

7. The CVO's report on the complaint of the Operational Creditor clearly shows that the entire amounts in the contract were paid to the Operational Creditor by the Corporate debtor and only a balance of Rs.1,38,446/- remained unpaid. Thereafter, remaining amount (the details of the same are available on page 46 of the affidavit in reply), was transferred from the SBI account of the Corporate debtor on 21.09.2020 to the Operational Creditor and hence, no amount is payable by the Corporate debtor.
8. The Corporate debtor further submitted that the amount of Rs.20,73,632/-, (Invoice no.5) was duly adjusted against the advance payment made to the proprietorship concerns of the Operational Creditor & that Operational Creditor has conveniently combined the claims of its two proprietorship concerns to meet the mandatory threshold of Rs. 1 Cr.
9. The Corporate debtor further submits that Work Contract Tax was deducted by BHEL and that the Corporate debtor is therefore not liable to pay the same to the Operational Creditor; that the Operational Creditor has also not raised this issue before the Tribunal.

Submissions of the Operational Creditor through its Affidavit in Rejoinder dated 07.06.2022:

10. The Operational Creditor submits that the contention of pre-existing dispute was not even raised in the reply of the Corporate Debtor dated 27.10.2020 to the Demand Notice dated 14.10.2020. The complaint was filed by the Operational Creditor against the Corporate debtor before the Ministry of Heavy Industry and Public Enterprises, which was in turn forwarded to the vigilance

office and such a complaint on non-payment of dues cannot be construed as a dispute.

11. The corporate vigilance department of BHEL had vide its letter dated 13.08.2020 stated that no documents are provided by the complainant (the Operational Creditor) to the corporate debtor but with respect to this no communication was received from the Corporate debtor seeking any document to be submitted. The corporate debtor has also issued a completion certificate for the work order handled by the Operational Creditor and the corporate debtor has given its remark as “satisfactory” under the performance category in the same.

12. The Operational Creditor submits that the letter 13.08.2020 which is annexed by the Corporate debtor in his reply is an internal communication sent by the Chief vigilance officer to the under-secretary Ministry of heavy industry and public Enterprises, department of Heavy Industry, the same is neither served upon the Applicant nor the Corporate debtor relied on the said letter in his reply to Demand notice.

Findings

13. This Bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

14. The Bench observes that the Operational Creditor’s claim of Rs.1,54,19,784.22/- comprises of the following:

- i) Rs. 94,43,177/- Security deposit,
- ii) Rs.36,92,134/- Work Contract Tax,
- iii) Rs.22,28,448/- against invoice no. 005 (Rs.20,73,632/-) and 003 (Rs.1,54,816/-) dated 05.01.2019 & 03.01.2019 respectively.

15. The Bench notes that the claim of Rs.94,43,177/- relates to work done during the period 2011 to 2015 and the said petition was filed in 05.03.2021, which is beyond the limitation period; that the Operational creditor has also not produced original invoices and other related documents stating that they were lost. The Operational Creditor's claim is solely based on a confirmation of account given by the erstwhile supervisor of the Chennai unit. The Operational Creditor claims that this is admission of liability and hence the petition is filed within time. The Bench notes that the Corporate debtor has clearly brought out in its reply that the Government of India had closed the Chennai unit in 2016 and shifted administrative control to Mumbai unit and therefore any acknowledgement issued by the then supervisor was unauthorized and that the Corporate debtor had written to the then supervisor to abstain from issuing such financial certificates as he was not authorized to do so. The Bench notes that the said supervisor vide letter dated 27.10.2020 stated that, "*As contractor insisting for reply with continues letters and we have clearly informed them the accounts are already shifted to Head Office before 2 years and we have forwarded the available data for further reconciliation will be done at H.O level*". Therefore, the Bench observes that in view of the facts stated supra there is no clarity on the issue of limitation of this petition. The basis for stating that the date of default as 05.11.2018 is also not explained by the Operational Creditor.

16. This Bench notes the fact that the Corporate debtor, a Government of India Enterprise working under the aegis of Ministry of Heavy Industries & Public Enterprises and had entered into a MoU with Bharat Heavy Electrical Limited (BHEL) to undertake some works and some part of such work was carried out by Operational creditor. The Bench notes the fact that in 2019, the Operational creditor had made a vigilance petition to the Ministry of Heavy Industries (which was forwarded to CVO of BHEL and onward to finance department of the Corporate debtor for examination and report) for amount of Rs.

1,54,19,784.22/- . This matter was examined by the finance department of the Corporate debtor and later by the vigilance department of BHEL. The CVO of BHEL submitted its detailed report dated 13.08.2020 after examining all records (page 28 of the affidavit in reply) to Ministry of Heavy Industry and Public Enterprises stating that *“from the available information from Books of Accounts (latest Balance Sheets Records) as provided by R&C-Mumbai office, an amount of Rs.138446/- only is payable to firms of Sh Chandra Srinivasulu (including his last invoice 005 dated 05/01/2019 for Rs.2073632/- for payment of withheld security deposit by BHEL-Tirchy)”*. The report also clearly brings out that the security deposit has already been paid to the Operational creditor.

17. This Bench also take note of the summary of accounts derived from the ledger of the parties submitted as part of the report of the Finance Department which clearly shows the final outstanding amount to the Operational creditor as Rs.1,38,446/- after duly accounting for all claims raised by the Operational creditor and also the bank statement of the Corporate debtor dated 22.09.2021 which reflects the payment of the amount to the Operational Creditor.

18. Without prejudice to the above observations that no dues are payable to the Operational Creditor as on the date of filing of the present petition, the Bench also notes that the Operational Creditor has claimed that the Work Contract Tax was deducted from his bill but not paid to the statutory authorities and hence the amount is refundable to him. Even if, this statement has to be taken on the face value, the Corporate debtor is not a debtor to the Operational Creditor for this amount, as this amount would have been deducted as a tax which was to be paid to the statutory authorities and hence, the Corporate debtor is a defaulter of the Government of India and not a debtor to the Operational Creditor. Moreover, the Corporate debtor has stated that this tax

was deducted by BHEL & hence Corporate debtor is not liable to repay this amount.

19. In view of the observations stated supra, the Bench holds that as on date of filing of the Petition, no amount was due to the Operational Creditor and therefore this petition is devoid of merits and liable to be rejected.

20. This Bench is of the view that, the Corporate Insolvency resolution process cannot be initiated against M/S RICHARDSON & CRUDDAS (1972) LTD., the Corporate Debtor. In view of the above, we find that the present case deserves to be dismissed under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

21. The petition bearing CP(IB) 434/MB-IV/2021 filed by MR. CHANDRA SRINIVASULU ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/S RICHARDSON & CRUDDAS (1972) LTD., the Corporate Debtor is **Rejected**.

22. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The rights of the petitioner before any other judicial forums shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)