



SL. No.119

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

(Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)
CORAM: SHRI VEERA BRAHMA RAO AREKAPUDI, HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 18.10.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/56/2021
NAME OF THE COMPANY	Sri SCL Infratech Ltd
NAME OF THE PETITIONER(S)	VR Constructions
NAME OF THE RESPONDENT(S)	Sri SCL Infratech Ltd
UNDER SECTION	9 of IBC

ORDER

Order pronounced vide separate sheets in Company Petition IB/56/2021.

In the result, Petition is admitted.

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MEMBER (T)

Satya Priya

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MEMBER (J)



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

C.P. (IB) No. 56/9/HDB/2021
Under Section 9 of the IB Code, 2016, r/w
Rule 6 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M/S SCL Infratech Limited

Between:

M/S V R Constructions,
Rep. by its Managing Partner,
Mr. Ganta Rajasekhar Rao,
26-2-1799, Opp.: Water tank,
Vedyapalem, Nellore,
Andhra Pradesh – 524004.

... Operational Creditor/ Applicant

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M/S SCL Infratech Limited,
Regd. Office: H. No. 8-2-502/1/A,
1st Floor, Jivi Towers, Road No. 7,
Banjara Hills, Hyderabad – 500034.

... Corporate Debtor/ Respondent

Date of Order: 18.10.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial
Sri Veera Brahma Rao Arekapudi, Member, Technical

Counsel present:

For the Petitioner : Mr. Habibullah Mohammed

For the Respondent : Mr. M. Anil Kumar



Per : Bench

ORDER

1. Under consideration is an Application filed by M/S V R Constructions, a registered partnership firm (hereinafter referred to as “the Applicant/Operational Creditor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code, 2016”), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/S Sri SCL Infratech Limited (hereinafter referred to as “the Respondent/Corporate Debtor”), alleging a default of an operational debt of a sum over Rupees One Crore by the Corporate Debtor.
2. Brief facts of the case, as submitted by the Applicant, are as follows:
 - a) The Applicant is a registered partnership firm, bearing RC Reference No. 153/2000, on the file of the Registrar of Firms, Nellore, Andhra Pradesh.
 - b) On 25.01.2000 and therefrom, the Corporate Debtor entrusted four separate parts of the main work, i.e., earth work excavation/ lining of canal and construction of structures on the Sanjanamala sub-branch canal, majors, minors and sub-minors in Block No. X of the Srisailam Right Branch Canal, for a contract value of Rs. 24,73,00,848/-, which the Corporate Debtor bagged from the Government of Andhra Pradesh on a tender basis. The work was assigned to the Applicant on a sub-contract basis by entering into two sub-contract agreements.
 - c) The consideration towards work done under the sub-contracts and work orders issued thereunder, payable to the Applicant is set at on back-to-back basis by deducting the Corporate Debtor's

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commission at 7% of the gross bills towards the work done periodically, i.e., as and when the work bills are released by the Government, to the Corporate Debtor.

- d) The work has been completed in all respects as on 31.12.2002. However, the Corporate Debtor did not strictly adhere to the payment arrangement and unduly withheld an amount of Rs. 1,54,82,507/- out of the gross value of work done, recorded at Rs. 6,21,95,128/-.
- e) After issuing due notices to the Corporate Debtor and the Employer, the Applicant initiated proceedings in the form of a civil suit for recovery of the money, on the file of the Principal District Judge, Kurnool, bearing O.S. No. 5/2006, later renumbered as O.S. No. 83/2017.
- f) During trial of the said suit, the Corporate Debtor admitted to having received escalation charges of Rs. 90,27,914/-, from the Government, but declined to pass it on to the Applicant.
- g) The said suit was decreed, vide order dated 08.12.2017 and an amount of Rs. 2,73,92,604/-, with an interest of 18% p.a., from the date of institution of suit to the date of decree and interest at 6% p.a., from the date of decree to the date of realization, along with costs of Rs. 13,75,006/-.
- h) Aggrieved by the said decree, the Corporate Debtor preferred an appeal to the Hon'ble High Court of Andhra Pradesh. The same is pending and no interim stay has been granted.
- i) The Applicant initiated execution proceedings, vide E.P. No. 1609/2018, seeking attachment of the bills payable to the Corporate Debtor, by the Rail Vikas Nigam Ltd, Secunderabad (RVNL). However, the RVNL is contesting the matter on the claim that the money held by them do not exclusively belong to the Corporate Debtor as the same is payable to a Joint Venture Company, in which the Corporate Debtor is only one of the

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partners. In view of this stance, the realization of the fruits of the decree may not be possible for the Applicant.

- j) A demand notice, dated 04.12.2020, was issued to the Corporate Debtor, which was responded to by the Corporate Debtor, which disputed the debt.
- k) The amount due to the Applicant is Rs. 8,98,53,867/- as on the date of issue of the demand notice. The said amount includes the decreed amount of Rs. 2,73,92,604, with Rs. 5,61,96,114/-, towards interest from the date of institution of suit to the date of decree and Rs. 48,90,143/- towards interest from the date of decree to the date of realization, along with costs of Rs. 13,75,006/-, as awarded by the decree, dated 08.12.2017.

Reiterating the above, learned counsel for the Petitioner prayed that the instant Application be admitted.

3. Learned counsel for the alleged Corporate Debtor filed a reply, denying all the averments made by the Applicant, *inter-alia*, stating as under:

- a) The claim of the Applicant arises from the allegation that on 25.01.2000, the Corporate Debtor had entrusted the said work under sub-contracts to the Applicant. However, under Clause 7.1 of the principal contract, dated 03.05.1999 (under which the Corporate Debtor was assigned the main work, by the Government), entrusting sub-contract without the approval of the Engineer is *void ab initio*. In the instant case, no approval has been obtained from the Engineer before sub-contracting. Therefore, the claim of the Applicant is barred, baseless and forbidden by law.
- b) The Applicant initiated proceedings in the form of a civil suit for recovery of money, on the file of the Principal District Judge, Kurnool, bearing O.S. No. 5/2006, later renumbered as O.S. No. 83/2017. The claim of the Applicant amounting to Rs

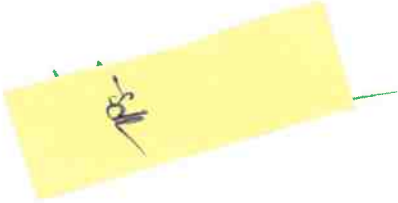
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8,98,53,867/- arises from the decree in the aforementioned suit, against which an appeal, bearing Commercial Court Appeal No. 7/2018 was preferred by the Corporate Debtor and is pending before the Hon'ble High Court of Andhra Pradesh. The Applicant has knowledge about the pending litigation and thus, the instant Application is barred under Section 9(5) of the Code, 2016.

- c) It has been judicially held that the Code, 2016, is not intended to be a substitute to a recovery forum and that whatever there was existence of a real dispute, the provisions of the Code, 2016, could not be invoked.
- d) It is not true that the Corporate Debtor has withheld an amount of Rs. 1,54,82,507/- out of gross value of work done recorded at Rs. 6,21,95,128/-. In fact, the gross value of the work done by the Applicant is valued at Rs. 5,27,51,687/- and the Corporate Debtor had deducted an amount of Rs. 1,56,17,233/-, as per the terms and conditions of the Sub-Contract Agreement, dated 25.01.2000 and 05.01.2001, and balance amount payable to the Applicant was Rs. 3,71,34,454/-. An amount of Rs. 3,85,83,756/- was paid to the Applicant, which is in excess of Rs. 14,49,302/-.
- e) There is no clause of escalation in the sub-contracts and therefore, the Corporate Debtor is not liable to pay Rs. 90,27,914/-, towards the escalation charges, as falsely claimed by the Applicant.
- f) There is no clause to pay interest on the value of the contract awarded to the Applicant, as per the terms of the said Sub-Contract Agreements.
- g) The amount claimed by the Applicant is initially mentioned as Rs. 1,54,82,507/- in the Application, but the Applicant, later in its Application, is claiming an amount of Rs. 2,73,92,604/-, along with interest as decreed.
- h) The Applicant initiated execution proceedings, vide E.P. No. 1609/2018, towards executing the decree, dated 08.12.2017. It





was held by the Hon'ble Supreme Court in *Jai Singh v. Union of India* (1997 AIR SC 898), that an applicant cannot pursue parallel remedies in respect of the same matter, at the same time. In this light, the instant Application is not maintainable because it amounts to a parallel proceeding.

- i) No purchase order or invoice showing payments made by the Corporate Debtor to the Applicant has been filed in the instant Application.

Reiterating the above, the learned counsel prayed that the instant Application be dismissed with costs, as the same is devoid of merits.

4. We have heard the submissions made by the learned counsel for the parties and have perused the record.

5. In the light of the contentions as above, the following points emerge for our consideration:

- 1.) Whether the instant Application is barred by limitation?
- 2.) Whether there is a pre-existing dispute between the Corporate Debtor and the Applicant, that proscribes the instant Application, under Section 9 of the Code, 2016?

Point No. 1 : Whether the instant Application is barred by limitation?

6. The instant Application has been filed on the strength of the decree passed by the learned Principal District Judge, Kurnool, in O.S. No. 5/2006 (later renumbered as O.S. No. 83/2017), dated 08.12.2017, in which it was held that the Applicant is entitled to recover the sum of

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money as decreed, payable by the Corporate Debtor, towards the work carried out by the Applicant.

7. Therefore, the cause of action for the instant Application arose on 08.12.2017, i.e., the date of which the aforementioned decree was delivered in favour of the Applicant.
8. It is observed that the instant Application has been filed on 12.02.2021. The period of limitation, within which the realization of the amount can be sought for, is three years from the date of decree and in the instant case, the limitation for the said cause of action would have extinguished on 07.12.2020.
9. However, the order of the Hon'ble Supreme Court of India, in *Suo Moto Writ Petition (C) No. 3 of 2020*, dated 10.01.2022, in which it has been directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation, as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, will come to the rescue of the Applicant. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, as with the instant *lis*, notwithstanding the actual balance period of limitation remaining, it was directed that all persons shall have a limitation period of 90 days from 01.03.2022. As already observed, this Application was filed in the month of February, 2021. Therefore, the said order of the Hon'ble Supreme Court excluding limitation from the specified dates would be of help here to save the limitation in favour of the Applicant.

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10. In the light of the above, we conclude that the instant Application has been filed within the period of limitation and is not barred by limitation. Hence, Point No. 1 has been answered accordingly.

Point No. 2 : Whether there is a pre-existing dispute between the Corporate Debtor and the Applicant, that proscribes the instant Application, under Section 9 of the Code, 2016?

11. The defense taken by the Corporate Debtor in its reply to the statutory demand notice is that it has preferred an appeal against the decree of the Principal District Judge, Kurnool, before the Hon'ble High Court of Andhra Pradesh. It has also mentioned that the Applicant has initiated execution of the said decree by instituting E.P. No. 1609/2018 before the Commercial Court-cum-Court of the Principal District Judge, Kurnool.

12. Section 8(2) of the Code, 2016, states that the Corporate Debtor shall, within a period of ten days of the receipt of the demand notice, bring to the notice of the Operational Creditor— (a) existence of a dispute, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice in relation to such dispute. Thus, a pre-existing dispute means a suit or arbitration pending or pending before the receipt of the demand notice under Section 9 of the Code, 2016.

13. It may be important to note that the decree of the Principal District Judge, Kurnool, had been passed before the issuance of the demand notice by the Operational Creditor. It is significant to note that the Hon'ble High Court of Andhra Pradesh, in the appeal proceedings, has not granted a stay against the execution of the decree.

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14. Therefore, the cause of action for the instant Application continues and the pendency of the said appeal does not act as a bar against entertaining this Application. Hence, the pending appeal does not amount to a pre-existing dispute, under Section 5 (6) of the Code, 2016.
15. Further, with regard to the defense of the Corporate Debtor on the non-permissibility of parallel proceedings, we observe that the pendency of the said execution proceedings is not a bar to the institution of proceedings under the Code, 2016.
16. The Hon'ble National Company Law Appellate Tribunal, Chennai, in the case of *Mr. Amar Vora v. City Union Bank Ltd.* [Company Appeal (AT) (CH) (Ins) No. 130 of 2022], has held that in view of Section 238 of the Code, 2016, a Financial Creditor/Operational Creditor/Corporate Person can file an application under Section 7, 9 and 10 of the Code, 2016, before the respective Adjudicating Authorities, even though in respect of the same proceedings may be pending before other forums, on the ground that the provisions of the Code, 2016, have an overriding effect over other laws. Therefore, the stand of the Corporate Debtor that the instant Application is not maintainable as it amounts to a parallel proceeding, stands negated.
17. It may, further, be of some significance to note that the dispute between the parties has been agitated before the learned Principal District Judge, Kurnool and the debt owed by the Corporate Debtor to the Applicant, has crystallized in the form of the said decree. Therefore, there is no dispute regarding the existence or the amount of debt and the contentions of the Corporate Debtor about the quantum of the debt being disputed does not hold ground.

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18. In the light of the above discussion, we conclude that there is no pre-existing dispute between the parties, that would act as a barrier to the instant Application. Hence, Point No. 2 has been answered accordingly.
19. The Hon'ble Supreme Court, in *Mobilox Innovative Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353], held that the dispute must not be a patently feeble argument or an assertion of fact that is unsupported by evidence. While this Tribunal does not need to go into the merits, it is important to separate the wheat from the chaff and reject a bogus defense that is nothing more than mere bluster, as held by the Hon'ble Apex Court.
20. When tested against the above ruling of the Hon'ble Supreme Court, it becomes clear that the defense taken by the Corporate Debtor is feeble and the chaff is blown away by the reasoning, as elaborated above, with no substantial evidence being presented to point to the existence of a genuine dispute between the parties.
21. Accordingly, the Application is hereby admitted and this Tribunal orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.
22. No name has been proposed by the Applicant, with regard to the Interim Resolution Professional (hereinafter referred to as the "IRP"), who has to be appointed and it has been left to the discretion of this Tribunal. Hence, we appoint Mr. Bojja Hemanth Reddy, bearing Registration No.: IBBA/IPA-001/IP-P02632/2021-2022/14026, E-Mail ID: bhreddy.ip@gmailcom, from the list of the panel of the Insolvency and Bankruptcy Board of India (for 01 July, 2022 to 31

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December, 2022), as the IRP for the Corporate Debtor. The IRP is directed to file Authorization for Assignment within three days from the date of receipt of this order.

23. The IRP is directed to take charge of the management of the Corporate Debtor immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.
24. We direct the Applicant to pay a sum of Rs. 2,00,000/- towards the advance fee of the IRP and the expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors, upon submission of the statement of expenditure, detailing the fee and other expenses incurred in this regard.
25. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:
- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court or law, tribunal arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
 - v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession,

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clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

26. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

27. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the Code, 2106. The Directors, Promoters or any other person associated with the management of the Corporate Debtor are directed to extend all assistance and co-operation to the IRP, as stipulated under Section 19 and for discharging his functions under Section 20 of the Code, 2016.

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28. The Petitioner and the Registry are directed to send the copy of this order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
29. The Registry is directed to communicate this order to the Petitioner and to the Corporate Debtor.
30. The Registry shall also communicate this order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.
31. Accordingly, this Application is admitted.


Veera Brahma Rao Arekapudi
Member, Technical


Dr. N.V. Ramakrishna Badarinath
Member, Judicial