

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

COURT – IV

25.

C.P.(IB)/120(MB)/2021

CORAM:

SHRI RAJESH SHARMA
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **01.03.2022**

NAME OF THE PARTIES:

Gannon Dunkerly & Co. Ltd.
v/s.
Gharda Chemicals Ltd.

SECTION: 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Uzair Kazi i/b Adv. Yogendra Kanchan, Ld. Counsel for the Operational Creditor present. Mr. Sunip K. Sen a/w Mr. Chirag Dave i/b Legasis Partners, Ld. Counsel for the Corporate Debtor present.
2. This is a Petition filed u/s 9 of the IBC, 2016 by the Operational Creditor (OC) viz. Gannon Dunkerley & Co. Ltd. for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) viz. Gharda Chemicals Ltd. for a claim of Rs. 14,90,30,198/-.
3. This Bench heard both sides at length and perused the records.

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4. Counsel for the OC submits that the OC was appointed by the CD as Contractor for construction of Civil and Structural works at Lote Parshuram, Taluka Khed, District Ratnagiri, Maharashtra vide their Work Order No.: PI/173/BPPO/000016/1314 dated 15.04.2013 pursuant to the Letter of Intent dated 15.02.2013. The total value of the Work Order was Rs. 17,10,84,395/-.
5. While working on the project, OC raised 25 running bills. The CD certified the bills raised by OC for an amount of Rs. 10,24,36,142/-. Although, CD made payments against those certified bills, an amount of Rs. 1,03,79,029/- remains unpaid. The last payment was made by the CD to OC to the tune of Rs. 19,66,960/- on 30.09.2015. The OC further raised 26th running bill on 18.06.2017 for an amount of Rs. 7,40,57,344/-, which has never been certified by the CD.
6. The OC has attached the Certified Balance Confirmation dated 28.06.2019 in the Petition (at page 127), which was sought by the CD from OC, which states that an amount of Rs. 8,44,36,373/- is due and payable by the CD to OC.
7. However, the Counsel for the CD submitted its requisition dated 21.06.2019 for Balance Confirmation, sent by the CD wherein it has been clearly shown that the hand-written part has been filled up by the OC on 28.06.2019 and it is not a confirmation of an amount which has been sent by CD to OC. The CD has also taken the plea of Limitation. *Contd...3*

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8. This Bench has perused the submissions made by the CD with respect to pre-existing disputes which has undoubtedly made out by the CD from the attachments in its reply from page 34 till 110, which clearly establishes that there have been series of pre-existing disputes raised by the CD with respect to quantity and quality of the goods supplied and services rendered including that of employment of lesser labourers and deficiency in executing the works. More specifically on page 61 with respect to cement and inadequate deployment of manpower, which has been duly acknowledged by the OC on page 62.
5. From the bare perusal of the records as is filed by the OC in its Petition u/s 9 of IBC, 2016 and the reply filed by the CD, this Bench is of the considered view that it is beyond doubt that there have been series of pre-existing disputes. Under these circumstances, this Bench is not inclined to pass an order of admission against the CD under the provisions of Section 9 of IBC, 2016. However, this order does not come in the way of any remedy available to the OC against the CD under any other Law.
7. In view of the above findings, this Petition [C.P.(IB)/120(MB)/2021] stands **dismissed**.

//This Order is dictated in open Court//

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

Sd/-
RAJESH SHARMA
Member (Technical)