



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

CP(IBC)/53/KOB/2022

(Under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 Of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

M/s. Vijay Ele-Techs Private Limited, Karthika, M1, Franklin Gardens,
Kuttikkattukara, Udyogamandal, Ernakulam- 683 501

... Operational Creditor.

-Versus-

M/s. Kapico Kerala Resorts Private Limited, Building No. 62/376, 1st Floor,
Kozhiparambath House, Church Landing Road, Ernakulam, Kochi- 682 016.

... Corporate Debtor.

Coram:

Shri. P. Mohan Raj	: Member (Judicial)
Shri. Satya Ranjan Prasad	: Member (Technical)

Parties/ Counsel present (through video conference):

For Operational Creditor	:Mr. Dhananjaya Sud, Adv., Mr. Abhinav Tyagi, Adv.
For Corporate Debtor	:Mr. M.N. Sanjith, Adv., Mrs. Archana Ramanan, Adv., Mrs. Veena Vallikathan, Adv.

**Order reserved on: 31.03.2023
Order pronounced on: 03.05.2023**

ORDER

1. Under consideration is Petition No. CP(IBC)/53/KOB/2022 filed by Operational Creditor M/s. Vijay Ele-Techs Private Limited against M/s. Kapico Kerala Resorts Private Limited invoking Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The relief sought is to initiate Corporate Insolvency Resolution Process (hereinafter referred as CIR Process)



against M/s. Kapico Kerala Resorts Private Limited for the amount of **Rs. 2,50,55,770/- (Rupees Two Crore Fifty Lakh Fifty-Five Thousand Seven Hundred and Seventy Only)** in respect of credit facility availed from the Operational Creditor.

2. The facts as narrated in the application and explained by the Operational Creditor are summarized hereunder:

- i. The Operational Creditor herein is a company incorporated under the Companies Act, 1956 carrying on the business as Class “A” Electrical Contractors, undertaking electrical installation on a contract basis. It is stated that the Corporate Debtor had entrusted the work of electrification of the resort of the Corporate Debtor at Nedyathuruthu, Alappuzha District to the Operational Creditor on 11.07.2011 and the said contract was amended vide letter dated 19.07.2012. The Corporate Debtor had also placed orders for the installation and supply of 7 number of panel boards vide separate purchase order No.300 dated 17. 05.2012.
- ii. It is stated that the Operational Creditor had duly completed the work as was entrusted by the Corporate Debtor and duly supplied and installed the panel boards as per the requirements of the Corporate Debtor in the year 2013. Thereafter, the Hon’ble High Court of Kerala directed the demolition of the resorts of the Corporate Debtor for violation of C.R.Z. Regulations. However, the same was stayed by the Hon’ble Supreme Court of India on 08.08.2014. Due to the above, the project of the Corporate Debtor came to a standstill. The Operational Creditor had duly completed the work as was agreed between the parties. After the completion of works, supplies and installation, the measurements of the works were taken jointly by the Operational Creditor and the Corporate Debtor from September 2013 onwards and thereafter, on 31.01.2015, the Corporate Debtor through their Project Manager certified the total value of the works carried out by the Operational Creditor to the tune of Rs.5,25,74,543/- (Rupees Five Crore Twenty-Five Lakh Seventy-Four Thousand Five Hundred and Forty-Three Only). As against the aforesaid value of Rs.5,25,74,543/- the Corporate Debtor paid Rs.3,18,00,520/- (Rupees



- Three Crore Eighteen Lakh Five Hundred and Twenty Only) for the period from 01.04.2009 to 31.03.2015. That due to non-payment of the outstanding dues of the Operational Creditor to the tune of Rs.2,07,74,023/- (Rupees Two Crore Seven Lakh Seventy-Four Thousand and Twenty-Three Only), the Operational Creditor made a request for payment of the aforesaid amount by way of letter dated 01.02.2015. However, the Corporate Debtor neither responded to the same nor any payment received from the Corporate Debtor.
- iii. Thereafter, the Operational Creditor sent another notice dated 11.07.2015 demanding payment of the balance amount with interest at 14% per annum from 01.10.2013 within 21 days of the receipt of the notice stating that failing which appropriate legal action would be taken against the Corporate Debtor. In furtherance of the aforesaid Notice, Mr. Roy. M. Mathew, the Director of the Corporate Debtor convened a meeting with the Operational Creditor and with other 14 contractors and suppliers. In the said meeting, it was requested by the Corporate Debtor to the Operational Creditor to submit a Formal Claim along with Copies of Work Orders and supporting Documents, as the documents were not available with the Corporate Debtor. The Operational Creditor vide letter dated 11.09.2015, provided to the Corporate Debtor the Ledger Account and the Tabular Statement maintained by the Operational Creditor in the name of the Corporate Debtor showing the balance amount to be paid by the Corporate Debtor to the Operational Creditor. However, the Corporate Debtor did not respond to the same.
- iv. It is stated that on 05.10.2015, the Operational Creditor sent a notice to the Corporate Debtor demanding payment of the outstanding dues of the Operational Creditor to the tune of Rs.2,07,74,023/- (Rupees Two Crore Seven Lakh Seventy-Four Thousand and Twenty-Three Only) along with interest at the rate of 14% per annum. It is stated that being aggrieved of the actions of the Corporate Debtor, the Operational Creditor on 11.04.2016, filed a Suit for Recovery of Money before the Court of Subordinate Judge, Cherthala for payment of the outstanding dues of Rs.2,07,74,023/- (Rupees Two Crore Seven Lakh Seventy-Four Thousand and Twenty-Three Only).



- The Court of Subordinate Judge, Cherthala passed a Decree dated 21.06.2022 for payment of Rs.1,57,87,181/- (Rupees One Crore Fifty-Seven Lakh Eighty-Seven Thousand One Hundred and Eighty-One Only) with interest at the rate of 9% per annum from 11.04.2016 till the date of realization along with costs.
- v. Thereafter in view of the Decree passed by the Court of Subordinate Judge, Cherthala in OS No. 11/2016 against the Corporate Debtor, the Operational Creditor in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016 issued a Demand Notice dated 01.08.2022 upon the Corporate Debtor and the same was duly delivered to the Corporate Debtor on 03.08.2022. It is further stated that till date, the Corporate Debtor failed to clear the dues of the Operational Creditor and that the Corporate Debtor neither replied to the Demand Notice sent by the Operational Creditor on 01.08.2022 in terms of Section 9 (3) (b) of the Insolvency and Bankruptcy Code, 2016.

3. On 13.12.2022, the Corporate Debtor filed its reply statement and stated that this Company Petition (IBC) was based on debt that fell due in view of the decree dated 21.06.2022 in OS. No.11 of 2016 passed by the Court of Subordinate Judge, Cherthala against the corporate debtor for an amount of Rs. 1,57,87,181/- (Rupees One Crore fifty-seven lakhs eighty-seven thousand one hundred and eighty-one only) along with interest @ 9% per annum from 11.04.2016 till the date of realization along with costs. It is stated that challenging the said judgment and decree dated 21.06.2022 in OS No.11 of 2016 the Corporate Debtor through its director filed Memorandum of Regular First Appeal No.329 of 2022 (RFA for short) before the Hon'ble High Court of Kerala. The Corporate Debtor has raised the dispute that the Operational Creditor is not entitled to recover any amount from the Corporate Debtor.

4. The Hon'ble High Court of Kerala vide order dated 01.11.2022 admitted the R.F.A. and stayed the execution of the impugned decree and judgment on the condition that the corporate debtor furnishes security for the decree amount to the satisfaction of the Court Below (Sub Court, Cherthala) within a period of two months. Thus, in compliance with the order dated 01.11.2022, the properties already under attachment by the trial court were offered as security for the decree



amount. The Corporate Debtor has filed an affidavit along with the valuation report dated 05.12.2022 of an approved registered valuer regarding the fair market value of the properties. As per the valuation report, the value of the properties offered as security is Rs. 2, 10,00,000/. (Rupees Two Crores and Ten lakhs only). In the meanwhile, Operational Creditor had filed Execution Petition No. 42 of 2022 before the Sub Court, Cherthala for recovery of the amount due under the decree, which is now stayed by the Hon'ble High Court. The execution court has directed the Corporate Debtor to produce the original title deed of the attached property and also the valuation certificate issued by the Tahsildar and the execution petition stands posted to 22.05.2023.

5. It is further stated that an appeal is a continuation of the suit and the appellate jurisdiction involves re-hearing of the suit on the law as well as on fact. The Operational Creditor is also contesting the appeal before the Hon'ble High Court of Kerala. Therefore, it is evident that Operational Creditor has received the notice of dispute and is well aware of the pendency of the appeal before the Hon'ble High Court of Kerala.

Point for consideration is:

Whether this petition is maintainable in view of decree dated 21.06.2022 is stayed by the High Court of Kerala?

6. This Petition has been filed on the basis of the decree dated 21.06.2022 passed in O.S. No. 11 of 2016 by the Court of Subordinate Judge, Cherthala. On the respondent side filed a reply admitting the decree passed by the Subordinate Court, Cherthala in favor of the petitioner/operational creditor on 21.06.2022. Further, it is stated that against the said judgment and decree the respondent preferred a regular first appeal before the High Court of Kerala in R.F.A. No. 329 of 2022. The Hon'ble High Court of Kerala in IA No. 1/2022 in R.F.A. No. 329 of 2022 stayed the execution of the impugned judgment and decree dated 21.06.2022, on condition that the respondent/corporate debtor shall furnish security for the decree amount to the satisfaction of the Trial Court. The copy of the order of the High Court is furnished as Annexure R4. On the respondent side stated that in pursuance of the High Court order, he complied the condition. As



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on today the decree is stayed. Further, there is serious dispute exist between the parties regarding the debt for more than a decade. Since, the decree dated 21.06.2022 is stayed by the High Court, this petition filed on the strength of the said decree has become ineffective and could not be proceeded. In the circumstances, petition is **DISMISSED**.

7. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

8. Let the certified copy of the order be issued upon compliance with requisite formalities.

9. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.05.03 16:01:19 +05'30'

(Satya Ranjan Prasad)
Member (Technical)

PANDIAN MOHAN
RAJ

Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.05.03 14:42:08 +05'30'

(P. Mohan Raj)
Member (Judicial)

Signed on this 3rd day of May, 2023.

Kaushal P.S.