

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

IBA/1279/2019

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)

In the matter of M/s. Coastal Energen Private Limited

M/s. Gammon Engineers and Contractors Private Limited,
Gammon House,
Veer Savarkar Marg,
P.O.Box No.9129, Prabhadevi,
Mumbai – 400 025.

... Operational Creditor

-Vs-

M/s. Coastal Energen Private Limited,
7th Floor, Buhari Towers,
4, Moores Road,
Chennai – 600 006.

... Corporate Debtor

Order Pronounced on 3rd August 2021

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : P.J.Sri Ganesh, Advocate

For Corporate Debtor : Anant Merathia, Advocate

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

The present Application is moved by the Applicant namely,
M/s. Gammon Engineers and Contractors Private Limited
(hereinafter referred to as "**Operational Creditor**") under Section
9 of the Insolvency & Bankruptcy Code, 2016 (**IBC, 2016**),

seeking to initiate the Corporate Insolvency Resolution Process (**CIRP**) against the Respondent namely, **M/s. Coastal Energen Private Limited** (*hereinafter referred to as "Corporate Debtor"*). The prayer made therein is to initiate Corporate Insolvency Resolution Process against the Corporate Debtor and to appoint an "Interim Resolution Professional" (IRP).

2. Part-I of the Application sets out the details of the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company with CIN:U45100MH2014PTC260191. Part-II of the Application gives all the particulars of the Corporate Debtor, from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U40102TN2006PTC060009 which was incorporated on 29.05.2006 and that its Authorised Capital and Paid up Capital is Rs.2,249,999,870/- and Rs.2,109,042,300/-, respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 7th Floor, Buhari Towers, 4, Moores Road, Chennai – 600 006. Part-III of the Application discloses that the Operational Creditor has not proposed the name of an Interim Resolution Professional and left it to the discretion of this Tribunal to appoint the same.



3. From Part-IV of the Application, it is seen that the Corporate Debtor vide a Letter of Acceptance (LoA) bearing No. Energen/5312A/SBCS/LOA dated 12.11.2009 awarded the work of 2*600 MW Mutiara Thermal Power Project – General Civil & Structural Works near Tuticorin, Tamil Nadu to the Operational Creditor herein and subsequently a Contract bearing No.TCE-5312A-F-CV-407 had been executed on 09.12.2009 and the total value of the Contract was arrived at a sum of Rs.397 crore.

4. As per the contractual requirement, it was submitted by the Learned Counsel for the Operational Creditor that the work had successfully completed by the Operational Creditor and also the Corporate Debtor issued a work completion certificate dated 23.11.2017. Thereafter, the final bill was submitted to the Corporate Debtor on 28.06.2017 and as per the terms of the Contract, the final bill is required to be settled within a period of 5 months from the date of its submission. However, it was submitted that, on 23.08.2017 the Corporate Debtor has admitted an outstanding amount of Rs.14,95,00,000/- as due and payable to the Operational Creditor and the same was also recorded by way of Minutes of Meeting dated 23.08.2017.

5. It was submitted by the Learned Counsel for the Operational Creditor that since the payments were not forthcoming, the

Operational Creditor had issued a notice of demand under Section 8 of the IBC, 2016 on 03.01.2018 claiming a sum of Rs.15,17,11,780/- including interest @ 15% p.a. However, it was submitted that the Corporate Debtor has not made any payment and also not issued any reply to the said notice. Under the said circumstances, the Operational Creditor has originally filed CP/253/IB/2018 before this Tribunal.

6. It was submitted that during the course of proceedings in the said CP/253/IB/2018 the Corporate Debtor has acknowledged the liability and debts and started making part payments during each date of hearing and as on 06.12.2018 the Corporate Debtor has paid a sum of Rs.4,70,00,000/-. Thereafter, on 06.12.2018 the parties have arrived at an understanding and as such the balance sum of Rs.10,97,94,264/- was to be paid in the following manner.

S. No.	DUE DATE	INSTALLMENT	PAYMENT IN RS
1	01.04.2019	1	1,50,00,000
2	01.05.2019	2	1,50,00,000
3	01.06.2019	3	3,00,00,000
4	01.07.2019	4	2,23,00,000
5	15.07.2019	5	2,74,94,264
		Total	10,97,94,264

Accordingly, this Tribunal after taking into consideration the Memorandum of Understanding as entered into between the parties, vide its Order dated 06.12.2018 in CP/253/IB/2018 has passed the following order.

"Counsels for both the parties are present; submitted that the parties have arrived at a settlement with the condition that Rs.2,30,00,000/- (Rupees Two Crores and Thirty Lakh Only) is being paid by way of DD bearing No.94114 dated 12.11.2018 drawn on State Bank of India and the balance amount will be paid in six instalments commencing from 01.04.2019, i.e., four instalments towards each month will be of Rs.1.50 Crores; fifth instalment will be of Rs.2.23 Crores and last and final instalment will be of Rs.2.41 Crores, which will be paid on 15.07.2019. However, the last instalment will be subject to the condition of reconciliation of the accounts of both the parties. Accordingly, the Application stands **disposed of**.

However, it has been submitted by both the parties that in the event of default, if any, committed by the Corporate Debtor, the Applicant will be at liberty to revive the Petition."

7. Learned Counsel for the Operational Creditor submitted that as per the Memorandum of Settlement arrived at between the parties, the Corporate Debtor, out of 5 instalments, has paid a total four instalments and as such a sum of Rs.8.23 crore was received by the Operational Creditor. However, it was submitted that the Corporate Debtor has not paid the last instalment amount of Rs.2,74,94,264/-. In this context, it was submitted, that the Corporate Debtor, under the pretext of settlement, protracted the proceedings without any reason and in spite of several e-mails dated 06.07.2019, 22.07.2019 and 22.08.2019 sent by the Operational Creditor, there has been no response from the Corporate Debtor.

8. Ld. Counsel for the Operational Creditor submitted that as per the Order passed by this Tribunal, the last instalment amount

would be subject to reconciliation of accounts of both the parties and the same was recorded because, only from the date of filing of the Petition in CP/253/IB/2018, several part payments were made by the Corporate Debtor and in order to reconcile the same, such statement was recorded in the Order of this Tribunal. However, it was submitted that the Corporate Debtor is trying to project as if reconciliation is to be done for the entire Contract right from 2009 which is unnecessary and unwarranted especially when the full and final settlement figure was agreed at a sum of Rs.14,95,00,000/-. It was also submitted that no question of reconciliation of accounts would arise since as per the Corporate Debtor's own statement of accounts from 01.04.2017 to 31.03.2018 a sum of Rs.14,95,00,000/- was accounted in the name of the Operational Creditor.

9. It was submitted that since the Corporate Debtor has failed to make last payment of Rs.2,74,94,264/-, the Operational Creditor issued a demand notice dated 06.09.2019 under Section 8 of the IBC, 2016 and the Corporate Debtor has replied on 24.09.2019, to which the Operational Creditor has also sent a Rejoinder Notice dated 04.10.2019. Under the said circumstances, since the Corporate Debtor has failed to make payment of Rs.2,74,94,264/-, the Operational Creditor has filed the present Application before this Tribunal under Section 9 of the IBC, 2016



seeking thereof to initiate the CIRP as against the Corporate Debtor.

10. The Corporate Debtor has filed the Counter and the Learned Counsel for the Corporate Debtor states that the present Application deserves to be dismissed at the threshold stage itself since it is not maintainable. Learned Counsel for the Corporate Debtor submitted that it had strictly adhered to the payment schedule as agreed between the parties and is abiding by the Order of this Tribunal. It was pointed out by the Learned Counsel for the Corporate Debtor that this Tribunal vide Order dated 06.12.2018 has recorded that the last payment is subject to the condition of reconciliation of accounts of both the parties. It was submitted that, in abidance to the Order dated 06.12.2018, the Corporate Debtor herein has sent an e-mail dated 22.07.2019 to the Operational Creditor and has reminded about the reconciliation pending for the final instalment and called upon the Operational Creditor to visit the accounts department concerned at its Tuticorin site for reconciling and arriving at the final amount.

11. Learned Counsel for the Corporate Debtor submitted that they are willing to make last and final instalment subject to the Applicant visiting the accounts department concerned to reconcile the accounts and arrived at a final amount. Further, Learned

Counsel for the Corporate Debtor submitted that on 22.07.2019, a reply was received from the Operational Creditor wherein they have stated that since the Corporate Debtor has made part payments during the course of proceedings, the question of reconciliation of the accounts between the parties does not arise. It was submitted by the Learned Counsel for the Corporate Debtor that several sub-contractors of the Operational Creditor, has demanded the money from the Corporate Debtor to be paid directly to them in respect of the work which was awarded to the Operational Creditor. The monies which were demanded by the sub-contractors from the Operational Creditor are as follows:-

NAME OF THE SUB-CONTRACTOR	AMOUNT CLAIMED IN RS.
A.S. Construction	13,50,000/-
Priya Constructions	99,00,000/-
T.J.Lenin	7,36,091/-
MPZ Engineering	92,53,078/-
Renuka Industries	14,28,000/-
Jeya Bharath Security Services	7,02,988/-
Mini Transport Corporation	5,54,789/-
AR Enterprises	49,56,846/-
Emcee Engineering Constructions	Not quantified in the notice

12. It was submitted that some of the demands were made by the Sub-Contractors, after the order passed by this Tribunal dated 06.12.2018 in CP/253/IB/2018, as a result of which the Corporate Debtor has paid a sum of Rs.12,93,00,000/- towards the outstanding amounts due for the services rendered by the Operational Creditor. It was further submitted that the Operational

Creditor, without complying with the Order passed by this Tribunal on 06.12.2018 in CP/253/2018 had issued a Demand Notice and subsequently proceeded with the present application.

13. Further, it was also emphasized by the Learned Counsel for the Corporate Debtor that there are serious disputes between the Corporate Debtor and the Operational Creditor on several issues after the Order passed by this Tribunal dated 06.12.2018 and as such the initiation of Corporate Insolvency Resolution Process as against the Corporate Debtor at this point of time is premature, unwarranted and disputed. Under the said circumstances, the Learned Counsel for the Corporate Debtor prayed for the dismissal of the present application.

14. Heard the submissions of the Learned Counsel for both the parties. It is seen from the Order dated 06.12.2018 passed by this Tribunal in CP/253/IB/2018 that the parties have entered into understanding, however, it is seen from the records that no document was signed between the parties and it is only the payment schedule which was orally agreed between the parties. Further, the debt which is due in the present application is arising out of the Order passed by this Tribunal dated 06.12.2018 in CP/253/IB/2018. It is also seen that various e-mails have been exchanged between the parties in order to reconcile the account.

However, it is seen that the Operational Creditor has not taken any steps in order to reconcile the account. On the other hand, the Operational Creditor is only harping on the fact that since various payments have been made by the Corporate Debtor when the proceedings were pending before this Tribunal there does not arise any circumstance for reconciliation of the accounts between the parties. On the contrary, it is seen that the Corporate Debtor has placed on record of various communication received on behalf of the Sub-Contractors demanding them of certain payment. It is also seen that as against the order passed by this Tribunal in CP/253/IB/2018 dated 06.12.2018, the Operational Creditor has not preferred an Appeal, in so far as reconciliation of the accounts are concerned.

15. Further, It is also averred in the counter that the Corporate Debtor has paid a sum of Rs.12,93,00,000/- towards the sub-contractors. While this being the fact, nothing prevented the Operational Creditor to reconcile the accounts with the Corporate Debtor in consonance with the Order passed by this Tribunal dated 06.12.2018 in CP/253/IB/2018.

16. From the records it is seen that the Operational Creditor has acted in stark defiance to the Order passed by this Tribunal and also from e-mail exchanged between the parties, it would show



that the disputes exist between the parties in relation to the final instalment amount of Rs. 2,74,94,264/-.

17. Thus, taking into consideration the reasons and discussions made *supra*, we are of the view that the Operational Creditor has not made a ground to initiate CIRP as against the Corporate Debtor. However, on the other hand the Corporate Debtor has proved that there is an existing dispute in relation to the final instalment of Rs.2,74,94,264/-. Under the said circumstances, the Application filed by the Operational Creditor under Section 9 of IBC, 2016 is liable to be dismissed. Accordingly, the above Application stands **dismissed** no costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond