



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
Through web based video-conferencing

CP (IB) No.90/BB/2023
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

M/S Eltech Transformers Private Limited

476, Sector - 9
Faridabad, Hyderabad – 121006,

... Petitioner/Operational Creditor

Versus

M/s. Lanarsy Infra Limited

4th Cross, Maruthi Nagar, Chandra Layout,
Bangalore, Karnataka - 560004

... Respondent/Corporate Debtor

Order delivered on: 08.02.2024

Coram: Hon'ble Retd. Justice T.Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Abheek Shah, Adv
For the Respondent : Shri Chakrapani S., Adv


ORDER

Per: Bench

1. The present Company petition is filed on 20/04/2023, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IB Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by **Eltech Transformers Private Limited** (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. **Lanarsy Infra Limited** (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 9,62,61,378/-. The date of default mentioned in the Part IV of Form 5 is 23.04.2019.



- 2.** Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
- i. The operational creditor is known for successfully executing various projects in both private and public sectors. The operational creditor is registered as a “small” enterprise with the Ministry of Micro, Small and Medium Enterprises, Government of India, under UDYAM Registration No. UDYAM-HR-03-0018457. The corporate debtor is public limited company incorporate in the year 2011 as an infrastructure developing company having interests and high stakes in infrastructure, Energy, Education and Training & HR Development sectors in India and Africa.
 - ii. In the year 2018, the corporate debtor approached the operational creditor towards the purchase of certain equipments and after having conducted its due diligence regarding the quality and repute of the operational creditor, the corporate debtor placed upon the operational a Purchase order(PO) bearing P.O. No. LIL/LOI/17-18/JHD/070 dated 31 October 2018 for supply of 25 KVA Distribution Transformers with accessories as per prescribed specifications.
 - iii. That vide Agreement dated 14th February 2019 parties recorded terms and conditions governing all aspects of the transaction between the parties aforesaid PO. That the aforesaid PO was supplemented by the corporate debtor with a verbal order for supply of 10 Power Transformers of 5 MVA each with accessories, with an assurance that a formal written communication shall be communicated. Against the aforesaid orders, the operational creditor supplied, as per instruction, 1214 Distribution Transformers of 25 KVA and 10 Power Transformers of 5 MVA, duly inspected and approved as per agreed terms, were duly received at respective sites designated by the corporate debtor.



iv. That subsequently, the following purchase orders were placed by the corporate debtor, delivery of transformers in lieu whereof is not disputed or denied and is supported by e-way bills.

a. Purchase Order No. LIL/DHBVN/TW/19-402/1020 (hereinafter called “PO No. 402”);

b. Purchase Order LIL/DHBVN/TW/19-20/1020 (hereinafter called “PO No. 1020”);

c. Purchase Order LIL/DHBVN/TW/19-20/1023 (hereinafter called “PO No. 1023”); and

d. Purchase Order LIL/DHBVN/TW/19-20/1025 (hereinafter called “PO No. 1025”)

v. After having supplied goods to the corporate debtor which were duly inspected, verified and utilised by the corporate debtor, the operational creditor approached the corporate debtor for payments however the corporate debtor kept evading payment on one pretext or the other. Various letters, notices and legal notices were exchanged between the parties however the corporate debtor failed to make any payments. That in addition to the principal amount, the corporate debtor was also required pay interest on such delayed payment.

vi. The operational creditor issued a Demand Notice dated 29.12.2022 under section 8 of the Code for outstanding of Rs. 9,62,61,378/- which was duly served upon the corporate debtor and there is no response from the corporate debtor. The default first occurred in 23.04.2019, however is continuing from time to time. Pertinently, different invoices became due on different dates and hence, the date of default is continuing from 2109 to 2023 hence, the present petition.


3. The notice to the Respondents in the present case was issued on 18.07.2023. The Respondent filed its statement of objection, vide Diary No: 5226 dated 11.10.2023 in which it is contented as under:

i. The Operational Debt is not maintainable and is ex-facie barred by limitation. The respondent is in continuous follow up with the petitioner for the disputes are pending which needs to be sorted



and then only the payment of amount will arise and copies of emails and letters are filed for bad quality material supplied by the petitioner, to furnish the performance bank guarantee in line with the agreed contract and to repair the failed products supplied by the petitioner in line with the terms of warranty period mentioned in the PO. The corporate debtor requested the petitioner to settle all the pending issued by way of Arbitration as per Clause 10 of the PO.

- ii. The petitioner has not furnished any proof of supplies made viz., acceptance/acknowledgement from the alleged corporate debtor on receipt of materials, from which it is clearly evident the veracity of the said claims of the petitioner. In business parlance it is commonly understood that merely having a PO does not deem for automatic release of payment.
- iii. The petitioner has issued legal notice dated 18.07.2021 initiating for the Arbitration Clause and for reasons best known to the petitioner has not whispered the said fact in this application. As, such there has been a clear breach of the representations made by petitioner per purchase orders by the petitioner itself. Further, the communication has been sent to one of the corporate debtor address which is not in PO. Thus the notice sent cannot be treated as proper communication.
- iv. The petitioner has not mentioned about the dates of the purchase orders in the claim notice or in the petition except once, deliberately to avoid the issue of limitation. The petitioner also does not mention the date from which the alleged debt fell due, as mandated under part IV of form 5. It is also not in dispute that the present application was filed after the date of limitation, considering the dates when the alleged debt fell due.
- v. The delivery challan annexed to the invoices do not have the attestation of the corporate debtor. It will not reflect the attestation of the receiver of the goods if such goods were indeed delivered. As such, the petitioner has failed to prove that any goods whatsoever have ever be supplied to the corporate debtor.



vi. The respondent placed their on the decisions of Hon'ble Supreme Court in the matter of Mobilox Innovations Pvt. Ltd and the order of Hon'ble High Court of Himachal Pradesh in the matter of Company Appeal Nos.3 & 4 of 2015 (2017) 200 Comp Cas 191.

- 4.** The Ld. Counsel for the Petitioner have filed Rejoinder and a clarification on limitation and date of default vide Diary No 6012 and 6013, dated 30.11.2023 and contended that upon receipt of bad quality material, the DHVBNL issued an inspection report recommending the acceptance of the material. Further, the petitioner relied on the Sua Moto Writ Petition (C) No. 3 of 2020 in which vide order 10.01.2022, the Hon'ble Supreme Court of India, excluded the period from 15.03.2020 till 28.02.2020 for the purpose of limitation. It is contended that as a consequence of the aforesaid order, the balance period of limitation remaining as shall become available with effect from 01.03.2022. Further, it is stated that even though the default was a continuing default, considering that the default occurred first on 23rd April, 2019 the Applicant as on 15th March 2020 was left with 769 days of limitation. Therefore, considering this 769 days from 01.03.2022 the applicant was having limitation upto 9th May 2024. Accordingly, it is claimed that the application efiled on 19.04.2023 was within limitation.
- 5.** The Petitioner have filed a brief written Submissions reiterating the rejoinder vide Diary No 531 and 694, dated 25.01.2024 and 31.01.2024. The same is taken on record.
- 6.** We have heard the learned counsel for both the parties and have perused the material available on record.
- 7.** The first issue to be considered in this petition is whether the present Petition is filed within the prescribed limitation period of 3 years from the Date of Default. As per the Part IV Form 5 of the Petition, the Date of Default mentioned in 23.04.2019. In the Record of default in Form 'D' issued by NESL, submitted as Annexure A18 at page 341 to the petition also the Date of default is mentioned as 23.04.2019. Therefore, the period of Limitation would have expired on 22.04.2022. However, it is the contention of the Petitioner that the said period is covered by the Order of Hon'ble Supreme Court in Sua Moto Writ Petition No. 03 of

2020 for extending the period of limitation from 01.03.2022, and hence the 3 years Limitation period would end on 09/05/2024.

8. For Convenience sake, Para II & III of the Order of **Hon'ble Supreme Court in Suo Moto Writ Petition No. 03 of 2020** is being reproduced below;

“II. Consequently, the balance period of limitation remaining as on 03/10/2021, if any shall become available with effect from 01/03/2022.

III. In cases where the limitation would have expired during the period between 15/03/2020 till 28/02/2022, notwithstanding the actual balance period of limitation remaining, all persona shall have a limitation period of 90 days from 01/03/2022. In the event the actual balance period of limitation remaining, with effect from 01/03/2022 is greater than 90 days, that longer period shall apply.”

9. Accordingly, considering the balance period left in the original limitation from 01.03.2022 to 22.04.2022, which is less than 90 days, the Applicant is entitled to an extra 90 days from 01.03.2022 for filing of the Present Petition i.e., upto 31.05.2022. However, the Present Petition was filed on 20.04.2023, which is well beyond the extended period of Limitation. Moreover, considering the para II of the Judgment of Hon'ble Apex Court stated above; the original limitation period available from 03.10.2021 upto 22.04.2022 would be available from 01.03.2022. Since this period is more than 90 days; this will be available to the applicant. Even if this period of 201 days is added from 01.03.2022, the extended limitation is available only upto 17.09.2022. Therefore, the petition filed on 20.04.2023 is barred by limitation on the basis of this alternative calculation also.
10. Accordingly, this Tribunal is of consideration opinion that this petition is not a fit case for admission, since the Limitation for filing the same has already expired. Therefore, the petition **CP (IB) No. 90 of 2023** is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so advised.

-Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd/-

**(T.KRISHNAVALLI)
MEMBER (JUDICIAL)**