

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

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI.RAJEEV BHARDWAJ- HON'BLE MEMBER (J)

CORAM: SHRI.SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.12.2023 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/220/2021
NAME OF THE COMPANY	Mytrah Energy (India) Pvt Ltd
NAME OF THE PETITIONER(S)	Scorpius Trackers Pvt Ltd
NAME OF THE RESPONDENT(S)	Mytrah Energy (India) Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP(IB) No.220/09/HDB/2021
U/s. 9 of IB Code, 2016

Between:

M/s. Scorpius Trackers Private Limited,
397/6-7, Senapati Bapat Road,
Shivaji Housing Society,
Pune – 411 016.

...the Petitioner/
Operational Creditor

Vs

M/s. Mytrah Energy (India) Private Limited,
8th Floor, Q City, Survey No.109,
Gachibowli, Nanakramguda Village,
Serilingampally Mandal,
Hyderabad – 500 032.

...the Respondent/
Corporate Debtor

Date of Order: 19.12.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr. D. Raghavendar Rao, Advocate

For the Respondent : Mr. Avinash Desai, Senior Advocate

Heard on : 24.11.2023

Per : Sanjay Puri

ORDER

1. This application is filed by Mr. Shailesh Vaidya, Authorized Representative of M/s. Scorpius Trackers Private Limited, (**the**

Petitioner) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Mytrah Energy (India) Private Limited, **(the Respondent)**, for the alleged default in discharging the debt that is due to the Petitioner.

The facts of the case as per the Applicant:

2. The Respondent entered into agreements with the Petitioner to acquire materials for a Solar Power Generating System and to utilize supervisory services for Solar Power Projects situated at Baretta & Balran in the State of Punjab, and at Thimmajipet in the State of Telangana. Following these agreements, the Petitioner supplied materials and rendered services to the Respondent in accordance with the Purchase Orders issued by the Respondent. Consequently, the Petitioner generated invoices totalling an amount of Rs 18,06,65,068, and these invoices were duly acknowledged by the Respondent without any objections.
3. The Petitioner received a partial payment of Rs 16,19,26,048 against the invoices issued to the Respondent. According to the accounts maintained by the Petitioner, the total outstanding debt of the Respondent before the cut-off date of 25.03.2020 amounted to Rs 1,16,41,059. This included a principal outstanding amount of Rs 17,05,653 related to the supply of materials, and Rs 21,03,125 plus Rs 78,32,281 related to the amounts returnable after completion of the Performance Bank Guarantees period for the Thimmajipet and Baretta Projects, respectively.
4. As per the Agreement, the Respondent was also under an obligation to pay the due amount of Rs 70,97,963 on 30.03.2020 for Balran Project. However, since the said date was after the cut off date, as provided under Sec 10A of the IBC Code this claim has not been included in the present proceedings. This claim, arising from a separate and independent Agreement, Purchase Order/Service

Order, is reserved to be raised under separate proceedings as chosen by the Petitioner under the law.

5. The Petitioner's Representative had several telephonic discussions with Respondent's Representative and also sent numerous emails¹ requesting the Respondent to make the payment against the outstanding amount. Despite repeated reminders, the Respondent had not made the payment to the Petitioner.
6. The Petitioner issued two separate Demand Notices in Form-3 dated 29.11.2019² and 11.11.2020³, duly received by the Respondent on 4.12.2019 & 18.11.2020 respectively. In response to the said Demand Notices, the Respondent sent two separate reply Notices dated 13.12. 2019⁴ & 28.11.2020⁵, under false pleas.
7. The Respondent claiming that, the Applicant has not submitted E1 forms. In this regard, it is submitted that the Applicant has submitted E1 forms against all Invoices except four (4) invoices. The E1 forms for these 4 invoices have not been submitted solely due to the fact that the Respondent has not issued C-forms against these 4 Invoices. In fact, the Respondent is clearly aware of this fact and is now using it to set up a false defence, which is not valid. Furthermore, in the reply Notice dated 13.12.2019, the Respondent has taken up several false pleas to resist the Demand Notice.
8. It is stated that none of the grounds taken by the Respondent under the Notice of dispute can be accepted, as the same are only an afterthought issued as a "moonshine" defence to resist the genuine claim of the Petitioner. Since the Respondent failed to pay the outstanding dues of Rs 1,16,41,059 even after a Demand Notice

¹ Pg 33-48, 50-53 & 56 of the Application (Annexure A2,A3, A5 & A7)

² Pg 22-32 of the Application (Annexure-A1)

³ Pg 57-70 of the Application (Annexure-A8)

⁴ Pg 54-55 of the Application (Annexure-A6))

⁵ Pg 71-79 of the Application (Annexure-A9)

under Form-3 was issued, the present Petition under Section 9 was filed.

Respondent's Counter Reply:

9. The Respondent, in their Counter, refuted the assertions presented in the Petition. Further indicated that, no document is provided by the Petitioner to demonstrate Mr. Shailesh Vaidya's authorization as the Authorized Representative and initiation of proceedings under the Code without proper authorization could have severe consequences for the Respondent. Hence the current Company Petition is not maintainable for lack of specific authorization.
10. The Respondent asserts that, a Supply Contract was executed between the Respondent and the Petitioner wherein the Petitioner had guaranteed a five-year warranty period for the supplied material. The Respondent had raised disputes about the quality of works performed by the Petitioner in all the three projects at Balran, Baretta and Thimmajipet and suffered losses due to deficient service by the Petitioner. The communication between the parties in this regard indicated a dispute before the issuance of Demand Notices on 29.11.2019 and 11.11.2020.⁶ Therefore, the instant Petition is deemed liable to be dismissed under Section 8(2)(a) read with Section 9(5)(ii)(d) of IBC.
11. The Respondent issued various Purchase Orders/Service Orders to the Petitioner for materials supply to the Projects and each Order necessitated separate execution and had its distinct dispute resolution clause.⁷ It is argued that the claims arising from different Service Orders cannot be consolidated for computing a debt default in an Application under Section 9 of the IBC. *The Hon'ble NCLAT in the case of International Road Dynamics South*

⁶ Pg 18-39 of the Counter (Annexure-R2, R3 & R4)

⁷ Pg 40-110 of the Counter (Annexure-R5 & R6)

Asia Private Limited vs. D.A Toll Road Private Limited, Company Appeal (AT) (Insolvency) No. 77 of 2017⁸, held that:

“We are of the view that different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate. For the said reasons, we hold that the joint application preferred by appellant under Section 9 is defective, as distinct from incomplete, and, was not maintainable.”

Therefore, the alleged debt claimed by the Petitioner is an aggregate sum of dues from individual Purchase Orders, making the Petition not maintainable as per the decision in International Road Dynamics South Asia Private Limited v. D.A Toll Road Private Limited.

12. The Petitioner issued two different Demand Notices on 29.11.2019 and 11.11.2020 to the Respondent. Demand Notice-I claimed Rs 17,05,653 as the principal amount and Rs 21,03,125 for the release of a Performance Bank Guarantee, totalling Rs 38,08,773. Demand Notice-II claimed Rs 1,49,30,244 as outstanding dues. The Petitioner filed the Petition by clubbing the alleged dues from both the Demand Notices, violating legal recourse under Section 9 of the IBC. A reference is also made to the judgment of Hon'ble NCLAT in the case of Jumbo Paper Products vs. Hansraj Agrofresh Private Limited, in Company Appeal (AT) No. 813 of 2021⁹.
13. It is argued that a careful examination of the letter dated 12.02.2019¹⁰ indicates that the Respondent did not admit to the alleged debt's existence. Furthermore, the timelines mentioned in the Petitioner's email pertain to payment obligations contingent on the successful completion of works outlined in Purchase Orders, which the Petitioner has not fulfilled. The Respondent requested

⁸ Pg 111-115 of the Counter (Annexure-R7)

⁹ Pg 116-121 of the Counter (Annexure-R8)

¹⁰ Pg 122 of the Counter (Annexure-R9)

rectification of defects in services rendered at various Project sites, contending that said letter cannot be considered an acknowledgment of debt due to the Petitioner's provision of defective goods and services.

14. It is further submitted that the Respondent vide an email dated 06.08.2019¹¹ informed the Petitioner that an ongoing audit for the transactions on the basis of the Purchase Orders had been initiated by its technical auditors and the payments would be contingent on the audit's outcome. The Respondent contends that the Petitioner failed to submit required forms within the stipulated timeframes, exposing itself to penalties. The Respondent, through a Demand letter dated 09.07.2021¹² claims compensation of Rs 9,55,33,000 for revenue loss due to deficient services by the Petitioner, citing Clause 14.7(ii) of the Contract.
15. It is emphasized that the Petitioner in the current Petition has deliberately concealed a crucial fact to fabricate the alleged debt for initiating the present legal action. The submission asserts that the Petition is susceptible to being dismissed at the threshold since the Petitioner has inadequately substantiated the claims made in the Petition and has, in bad faith, purposefully withheld essential information to obscure their involvement in causing unjustifiable harm to the Respondent. Hence, the Petition needs to be dismissed.

The written submission:

16. The Respondent submitted its written submissions on 04.12.2023 wherein contents of the Counter were reiterated.

The Decision:

17. This petition is based on two demand notices served to the Respondent. The initial notice under Section 8, dispatched on

¹¹ Pg 123 of the Counter (Annexure-R10)

¹² Pg 126-133 of the Counter (Annexure-R12)

29.11.2019, claimed an outstanding debt of Rs 38,08,778, due on 29.09.2019. This sum comprised Rs 17,05,513 for invoiced material & services and Rs 21,03,125 for the release of a performance bank guarantee. The second demand notice, dated 11.11.2020, sought payment of the debt of Rs 78,32,281, due on 23.02.2020, with an additional Rs 70,97,963 becoming due on 30.03.2020 for the performance bank guarantee. The Petitioner, acknowledging the suspension period under Section 10A of IBC due to the COVID period, omitted the amount of Rs 70,97,963 from the application. The claims of Rs 38,08,778 and Rs 78,32,281 demanded through two notices have been combined in the petition, totalling Rs 1,16,41,059, to meet the threshold for filing an application under Section 8 of IBC.

18. The petition encounters its first challenge regarding the threshold. Section 8 of IBC mandates the issuance of “*a demand notice*” by the operational creditor, not multiple notices at different times. While individually neither notice meets the threshold, the Petitioner has aggregated the amounts to surpass it.
19. Since the issuance of '**a demand notice**' is the sine qua non for Section 9, under which the present petition is filed, the notice should cross the threshold outlined in Section 4 of IBC, i.e., Rs 1 crore. However, in this case, neither demand notice surpasses the prescribed threshold. The petition should fail on this count alone.
20. It is noteworthy that the Petitioner invoiced Rs 1806 lakhs, yet the current petition concerns non-payment of Rs 38.08 lakhs and Rs 78.32 lakhs (totalling Rs 116.40 lakhs) by the Respondent. Over 93% of the contracted amounts either have been paid or are not part of this petition, suggesting an attempt to use IBC provisions as a recovery mechanism against an otherwise solvent company.

21. The claimed debt of Rs 116.40 lakhs is also disputed, evident from the communication between the parties, indicating operational disagreements on various projects.
22. The Respondent's reply¹³ to the earlier demand notice on 13.12.2019 clearly disputes the debt claim of Rs 78,32,281, stating,

“Even prior to your Demand Notice, we have written to you with regard to our non-acceptance of your invoice amounts and thereby disputed the same.”

It is thus apparent that the debt claim of Rs 78,32,281 was not free from dispute when the demand notice was issued on 11.11.2020. Excluding this disputed amount, the remaining sum claimed in the petition falls below the required threshold, leading to failure of the petition.

23. The operational disagreements during the execution of different projects are evident from the email exchange brought on record by the Respondent. Any of these could have led to the withholding of payment to the Applicant, the supplier/service provider to the Respondent, serving as the genesis for the dispute between the parties. Utilizing the IBC platform, the Petitioner seeks to recover contested outstanding dues, which is against the objectives of the Code. For these reasons also the petition deserves to be dismissed.
24. The Respondent had filed an IA No. 202 of 2022 on maintainability of the Petition on the grounds which have also been discussed while deciding this Petition and decided against the Petitioner.

IA No. 202/2022 is therefore allowed.

CP(IB) No. 220/9/HDB/2019 is dismissed.

Sd/-
(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-
(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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¹³ Page 54 of the Application