

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP(IB) 291/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 03.06.2020**

Name of the Company: Rolltech Engineering Pvt Ltd
V/s
Labdhi Industries Pvt Ltd

Section 9 of IBC, 2016

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
|--------------|-------------------------------|--------------------|-----------------------|------------------|

1.

2.


ORDER

The case is taken up through video conferencing.

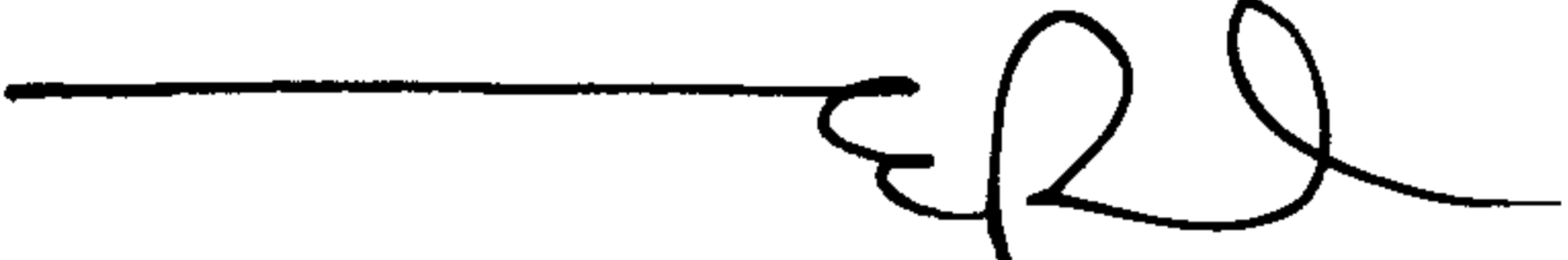
The Parties are represented through their respective counsel(s).

The case is fixed for pronouncement of order today.

The order in detail is recorded vide separate sheet.



**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)**



**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 3rd June, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 291/9/NCLT/AHM/2018

In the matter of:

ROLLTECH ENGINEERING PVT. LTD.

Having its Registered Office at:
3 Nirgun Bunglows, Opp. Karnavati
Club, Ramdevnagar Tekra, Satellite,
Ahmedabad-380015.

..... Petitioner

Versus

M/S LABDHI INDUSTRIES PVT. LTD.

Having its Registered Office at:
Block No.299, Old Survey No.388 & 399,
Village Sampla, Taluka Padra,
Padra, Vadodara, Gujarat-391421.

.....Respondent

Order delivered on 03.06.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Ms. Shilpi Thapar, PCS for the Petitioner/Operational Creditor.

Mr. Shashvata Shukla & Mr. Sharvil Majumdar, Advocate for the Respondent/Corporate Debtor.

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, **Rolltech Engineering Pvt. Ltd.**, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor Company namely, **Labdhi Industries Pvt. Ltd.**
2. The Petitioner - Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) -U36998GJ1998PTC034104. The registered office of the Petitioner is situated at 3 Nirgun Bunglows,

Opp. Karnavati Club, Ramdevnagar Tekra, Satellite, Ahmedabad - 380015. The present Petition is filed through Authorised Person Shri Sumesh Chaumal, having address: 3 Nirgun Bunglows, Opp. Karnavati Club, Ramdevnagar Tekra, Satellite, Ahmedabad - 380015.

3. The Respondent Corporate Debtor, M/s Labdhi Industries Private Limited, was incorporated on 27.02.2009 with CIN: U26941GJ2009PTC056229. The Nominal Share Capital of the company is INR.4,50,00,000.00 (Rupees Four Crore Fifty Lakhs Only) and the paid-up capital is INR.2,09,29,000.00 (Rupees Two Crores Nine Lakh Twenty Nine Thousand Only). The registered office of the Corporate Debtor Company is situated at: Block No.299, Old Survey No.338 & 339, Village Sampla, Taluka Padra, Vadodara, Gujarat - 391421.
4. The present petition has been preferred by the Operational Creditor M/s Rolltech Engineering Private Limited. It is submitted by the Petitioner that the Respondent Corporate Debtor is indebted to the Petitioner for **INR.53,48,656.81 (Rupees Fifty Three Lakhs Forty Eight Thousand Six Hundred Fifty Six and Eighty One Paisa Only)** Principal amount of **INR.36,10,191.00** + Simple Interest @14% per annum on the unpaid amount of INR.17,38,465.81 calculated as per Agreement dated 15.11.2013. It is submitted that the Petitioner was approached by the Respondent Corporate Debtor for the purpose of establishing a plant to manufacture TMT Steel Bars Agreement dated **15.11.2013** came to be **executed between the Petitioner Operational Creditor the Corporate Debtor and one HD Square Techno Engineers Private Limited.** As per the agreement, the Consultant is deemed to be the agent of the Corporate Debtor and has accepted the responsibility to manage, supervise and govern the entire contractual privity between the parties. The Applicant raised several bills and invoices upon the respondent between 29.12.2013 to 30.04.2014 as given below:

| Sr.No. | Date of Transaction | Invoice No. | Amount(INR) |
|--------|---------------------|------------------|-------------|
| 1 | 29.12.2013 | REPL01/2013-2014 | 84000.00 |
| 2 | 07.01.2014 | Ex-06/2013-2014 | 1297758.00 |
| 3 | 09.01.2014 | Ex-08/2013-2014 | 1179780.00 |
| 4 | 10.02.2014 | Ex-09/2013-2014 | 825846.00 |

| | | | |
|--|------------|-------------------|----------------|
| 5 | 16.02.2014 | Ex-10/2013-2014 | 1505220.00 |
| 6 | 01.03.2014 | Ex-11/2013-2014 | 926520.00 |
| 7 | 10.03.2014 | Ex-12/2013-2014 | 405353.00 |
| 8 | 18.03.2014 | Ex-13/2013-2014 | 1273965.00 |
| 9 | 24.03.2014 | Ex-14/2013-2014 | 2084670.00 |
| 10 | 29.03.2014 | Ex-15/2013-2014 | 1389780.00 |
| 11 | 31.03.2014 | Ex-16/2013-2014 | 1795133.00 |
| 12 | 06.04.2014 | REPL 01/2014-2015 | 1042335.00 |
| 13 | 22.04.2014 | Ex-02/2014-2015 | 822286.00 |
| 14 | 25.04.2014 | Ex-03/2014-2015 | 2507394.00 |
| 15 | 27.04.2014 | Ex-04/2014-2015 | 434306.00 |
| 16 | 30.04.2014 | Ex-05/2014-2015 | 2507395.00 |
| Total Amount of Debt Due | | | 2,08,37,741.00 |
| Amount Recovered from the above Debt through RTGS | | | 1,72,27,550.00 |
| Amount of Debt Due | | | 36,10,191.00 |
| Simple Interest @14% per annum on the unpaid money | | | 17,38,465.81 |
| Total Amount of Debt Due as on Date | | | 53,48,656.81 |

5. It is submitted that the said invoices/bills are still outstanding and have remained unpaid till date. That as on date there is an outstanding amount of **INR.53,48,656.81** (Rupees Fifty Three Lakhs Forty Eight Thousand Six Hundred Fifty Six and Eighty One Paisa Only) which is **due and defaulted and payable by** the Corporate Debtor. **Date on which the first Default occurred is 29.12.2013.**
6. It is submitted that the Form No.3 demand notice was issued by the operational creditor on 13.12.2017 under the provisions of Insolvency and Bankruptcy Code, 2016.
7. It is submitted that the Corporate Debtor **would make payment to the Consultant and the Consultant in turn would make payment to the Operational Creditor.** Accordingly, the invoices are raised in the name of the Consultant. The total invoices are raised in the name of Consultant. The total invoice amount raised by the Operational Creditor of INR. 2,08,37,741.00 against which the Petitioner has already received an amount of INR.1,72,27,550.00. The balance amount of INR.36,10,191.00 along with interest is not paid for which the present petition is maintained.
8. It is submitted that the Operational Creditor has specifically asserted and demonstrated that as per the understanding between the parties, the petitioner would raise the invoice on the

Consultant and the Consultant would make the payment to the Petitioner. The Consultant in turn would receive the payment from the Corporate Debtor. By this process, the **Consultant** has already made payment of INR.1,72,27,550.00 out of the amount of INR.2,08,37,741.00. The Corporate Debtor has accepted this arrangement without any objection in the present petition. The occurrence of the Corporate Debtor is also visible from the Contents of the letter dated 14.03.2015.

9. In response to the present I.B. Petition filed by the Petitioner, **the Respondent has filed its written submission as:**

9.1 **It is categorically denied that** there is a default of the alleged Operational Debt **in the amount of INR.56,48,656.81** or any part thereof, as alleged by the Applicant. It is denied that the Applicant is entitled to any interest as claimed. It is denied that **the Respondent is in default of the alleged debt** as claimed by the Applicant. It is denied that **any verbal instructions** were given by the Respondent to the Applicant. It is further denied that the Respondent **has ever confirmed** or admitted any of the amounts claimed by the **Applicant as being due from the Respondent to the Applicant. In fact the Applicant's own documents and correspondence shows that there was no privity of contract or debtor-creditor relationship between the Applicant and the Respondent.**

9.2 It is further submitted by the Respondent that there are **several pending disputes between the parties pertaining to the failure of the Applicant** to supply the material and **perform their part of the contract.** It is submitted that the **tri-partite agreement dated 15.11.2013 imposed principal obligation upon the Applicant** which were owned to HD Square Techno Engineers Private Limited. However, there has been a serious deficiency in the supply of material on the part of the Applicant. The Applicant has failed **to complete the erection and commissioning of the plant and machinery which** was its principal obligation under the agreement. The applicant failure to complete the erection and

commissioning of the machinery **led to the procurement of substituted performance at increased cost** for which the applicant is liable in damages. It is further submitted that the respondent has already **initiated arbitral proceeding vide its letter dated 14.12.2017 with respect to its claim for damages for the breaches committed by the applicant.**

- 9.3 It is submitted that the applicant has further breached the terms of the agreement dated 15.11.2013 by failing to provide the GAD drawings as well as the electrical panel drawings and electric charge which were vital and essential for the smooth functioning of the machineries that were to form a part of the plant. It is submitted that all such despite are alive and existing between the parties and are the subject matter of **arbitral proceedings commenced under Section 21 of the Arbitration and Conciliation Act, 1996.**
- 9.4 It is submitted that the applicant has **falsely issued a statutory demand notice** under Section 8 of IBC, 2016 on **13.12.2017** to the Respondent despite being aware that there was **no debtor creditor relationship** between them. Nevertheless, the Respondent had responded to the Section 8 Demand Notice within the statutorily prescribed time limit by sending out a notice of dispute on 28.12.2017 and strongly denied the claim of the applicant.
- 9.5 It is submitted that even as per the document produced by the applicant including the invoices and correspondence and the applicant has no claim against the Respondent Company. All the invoices were raised upon **HD Square Techno Engineering Private Limited. Even the balance confirmation** letters were addressed to HD Square Techno Engineering Pvt. Ltd and ledger accounts maintained by the Applicant in its **books of account are for the account of HD Square Techno Engineering Pvt. Ltd.** and not of the applicant.
- 9.6 It is submitted that the alleged claims of the applicant are **time barred** and there has been long existence i.e several

bona fide disputes between the parties which requires the taking of evidence and involves several triable issues. It is submitted that the Respondent **Company does not owe any amount of debt or otherwise to the applicant** so as to make them liable in an action under the IBC, 2016. It is reiterated that the alleged debt which the applicant claims outstanding are severely disputed.

10. In response to the present I.B. Petition filed by the Petitioner, **the Petitioner has filed its Affidavit in support of Rebuttal Documents as:**

10.1 It is submitted by the Applicant that the Respondent Corporate Debtor on the ground of limitation is completely fallacious in as much as there is clear acknowledgement on the part of the Respondent when it acknowledges the arrangement through the agreement dated 15.11.2013 and also the acknowledgement of payment of INR.2,08,37,741.00 made by **the Corporate Debtor through the Consultant to the Operational Creditor**. It is further submitted that the Corporate Debtor has also acknowledged in terms the arrangement referred as also has acknowledged its liability which is evident from the contents of letter dated 14.03.2015. The acknowledgement is further evident from the accounts acknowledged in the respective balance sheets as at 31.03.2016 and as at 31.03.2019 of both the Corporate Debtor and the Consultant. These acknowledgements would make it clear that the present petition is not barred by limitation.

10.2 The objection of the Respondent Corporate Debtor on the ground of initiation of arbitration proceedings is not maintainable for a simple reason that the bar to an **Application u/s. 8/9** is when an arbitration proceeding are pending before the issuance of Demand Notice u/s 8 of the IBC, 2016. In the present case the Demand Notice is issued on **13.12.2017**. The Respondent replied to the Demand Notice on

28.12.2017 without mentioning anything about even issuance of notice of Arbitration much less commencement of Arbitration Proceedings as per **Section 21** of Arbitration and Conciliation Act, 1996.

- 10.3 It is further submitted that subsequent to the reply dated 28.12.2017 and as an afterthought action, the Corporate Debtor has sent another letter dated 30.12.2017 and referred to having sent arbitration notice dated 14.12.2017, purportedly the Arbitration notice, only along with the letter dated 31.12.2017 which is much after not only issuance but even receipt of the Demand Notice. It is submitted that the arbitration proceedings have not commenced at all. The objection in relation to arbitration **proceedings** raised by the Corporate Debtor is completely misconceived.
11. In light of the above mentioned facts and circumstance the Applicant's Prayer before this Adjudicating Authority for the initiation of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 to be admitted and be pleased to pass any further order in the interest of justice.
12. Now, the Petition is filed on 11.06.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.53,48,656.81.00**
13. The case was taken up by this Adjudicating Authority. The matter was heard on 09.08.2018, 11.09.2018, 31.10.2018, 13.12.2018, 28.01.2019, 19.03.2019, 29.05.2019, 19.07.2019, 01.10.2019, 22.10.2019, 19.11.2019, & 03.12.2019 Arguments of the counsels of the Operational Creditor and Respondent were heard.
14. The matter was finally heard and during the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of

the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

15. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

OBESRVATIONS

16. The Respondent Corporate Debtor is indebted to the Petitioner for **INR.53,48,656.81 (Rupees Fifty Three Lakhs Forty Eight Thousand Six Hundred Fifty Six and Eighty One Paisa Only)** Principal amount of **INR.36,10,191.00** + Simple Interest @14% per annum on the unpaid amount of INR.17,38,465.81 calculated as per Agreement dated 15.11.2013. The Petitioner was approached by the Respondent Corporate Debtor for the purpose of establishing a plant to manufacture TMT Steel Bars Agreement dated **15.11.2013** came to be **executed between the Petitioner Operational Creditor the Corporate Debtor and one consultant HD Square Techno Engineers Private Limited.** As per the agreement, the Consultant is deemed to be the agent of the Corporate Debtor and has accepted the responsibility to manage, supervise and govern the entire contractual privity between the parties.
17. The Corporate Debtor **would make payment to the Consultant and the Consultant in turn would make payment to the Operational Creditor.** Accordingly, the invoices are raised in the name of the Consultant.
18. **Date on which the first Default occurred is 29.12.2013.**
19. The respondent has already **initiated arbitral proceeding vide its letter dated 14.12.2017 with respect to its claim for damages for the breaches committed by the applicant.**
20. All the invoices were raised upon **HD Square Techno Engineering Private Limited. Even the balance confirmation** letters were addressed to HD Square Techno Engineering Pvt. Ltd.

21. It is further observed there **is an E-mail communication on 20.11.2013 between both the parties** the same e-mail has been sent from "Hd Square"hdsqugre@yaho.in to "sumesh chaumal"Sumesh27@yahoo.in . The communication between both parties is being reproduced here-in-below.

"Any Changes in the agreement signed by you, directors of the Labdhi company and by Mr. Amit Patel of our company is not possible now. You already read the same carefully in our office and after that you signed the agreement and now any charges in the same agreement is not possible. Same discussion had on telephone and I already told you that changes in the agreement is not possible. So I request you to follow the agreement as signed by you our Vadodara office".

22. Further on 04.02.2014 at 7.05 AM an e-mail communication between H D Square and the Applicant is being narrated here-in-below.

"I surprised to receive your mail in regards of all points ask by you good self. I thankful to you to visit our site and inspect the work done by you staff which is really in very slow speed. I am very sorry to say that entire work down by you are in very slow speed against schedule given by you. You told me with reference of our work order/work agreement execute between us, in that regards, I would like to clear the following points, and state that all the delayed i.e. in project, in payment, in supply of machinery etc... because of you only. All the points as under.

- 1> I am not receiving the bank guarantee of my earlier payment, till the date, So how company will make the next Payment. So, I request you to arrange the bank guarantee of told payment to release the next payment at your earlier.*
- 2> I am not getting any satisfied correspondence in regards of plant and machinery and also not received any detailed drawings as per our agreement. So, I request you to send the all details as per agreement.*
- 3> I am not satisfied with site work, because the so many things, which are in your scope, were did by our staff.*
- 4> Mrs. Krishna doshi is handling her first project, so she might be not able to understand so many things. I request you to guide her and help her to set up the project.*
- 5> I am not receiving any drawings of p&m for approval expect general layout of the plant. So, I request you to send the call GAD of the each equipment and other drawings if any. I am not able to meet you frequently because of my health, so Mr. Amit and Mrs. Krishna will co operate you in this project. I will try to join the duty as early as possible. I am sending this mail with the help of my son.*


I request you to complete the all above points as early as possible to clear your next payment.

23. It is observed that there are other communications between the Applicant and M/s. Rolltech Engineering Pvt. Ltd and H D Square Technoengineers Pvt Ltd. on different dates as enclosed in the paper book.
24. **Existence of dispute is observed before the Demand Notice was issued by the Operational Creditor.**

ORDER

25. Having gone through all the papers, agreement copy, E-mail correspondence and agreement of the Petitioner, the Respondent Company & the Consultant and the points mentioned in Points No. 16,17,18,19,20,21,22,23 and 24, we are of the considered view that there is **an existence of dispute between two parties before the Demand Notice was issued by the Applicant-Operational Creditor.**
26. **Hence, the present Petition is rejected with the above Directions/Observations and orders as to no costs.**
27. We make it clear that any observations made in this order shall **not be construed as an expression of opinion on the merit of the dispute/controversy and the right of the applicant before any other forum shall not be prejudiced on account of rejection of the instant application.**
28. **The Registry is directed to communicate this order to the petitioner and respondent by Register post/Speed post at the earliest.**


(Prasanta Kumar Mohanty)
Adjudicating Authority
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority
Member (Judicial)

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