



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

CP(IBC)/9/KOB/2023

*(Under Section 9 of the IBC, 2016 r/w Rule 6 of
IBBI(AAA) Rules, 2016)*

***In the matter of* Kerala State Electronics
Development Corporation Limited**

MEMO OF PARTIES:

UNIFYLABS SYSTEMS PRIVATE LIMITED,

No: 11, Rainbow Residency,
Sarjapur Road,
Opp. WIPRO Corporate Office,
Bangalore - 560035

... Petitioner/ Operational Creditor

-Vs-

**KERALA STATE ELECTRONICS DEVELOPMENT
CORPORATION LIMITED,**

Keltron house, Vellayambalam, Trivandrum
695033, Kerala

... Respondent No.1/Corporate Debtor

The Managing Director

Kerala State Electronics Development
Corporation Limited
Keltron house, vellayambalam,
Trivandrum - 695033 Kerala

... Respondent No.2

Anoop Sathyapalan (Director)

Kerala State Electronics Development
Corporation Limited
Keltron house, vellayambalam,



Trivandrum - 695033 Kerala

... Respondent No.3

Narayana Moorthy Nilakanta Iyer (Director)

Kerala State Electronics Development
Corporation Limited

Keltron house, vellayambalam,

Trivandrum - 695033 Kerala

... Respondent No.4

Bilu Balakrishna Pillai (Director)

Kerala State Electronics Development
Corporation Limited

Keltron house, vellayambalam,

Trivandrum - 695033 Kerala

... Respondent No.5

Jayaprakash Vasudevan (Director)

Kerala State Electronics Development
Corporation Limited

Keltron house, vellayambalam,

Trivandrum - 695033 Kerala

... Respondent No.6

Narayanan Vannadil (Director)

Kerala State Electronics Development
Corporation Limited

Keltron house, vellayambalam,

Trivandrum - 695033 Kerala

... Respondent No.7



The Branch Manager,

Kerala State Electronics Development
Corporation Limited
20, Ballygunge Circular Road,
Kolkata-700019, West Bengal

... Respondent No.8

Order delivered on: 05.12.2023

Coram:

Hon'ble Member (Judicial) : TMT. (Retd.) Justice T Krishna Valli

Hon'ble Member (Technical) : Shri. Shyam Babu Gautam

Appearances:

For the Petitioner : Mr. Paturi Janardana Rao, Advocate

For the Respondent : Mr. Vijay Narayan (Sr.),
Mr. Pranoy Harilal, Advocates

ORDER

Per Coram

1. This application has been filed under Section 9 of the Insolvency & Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Unifylabs Systems Private Limited (CIN: U72200KA2012PTC066302) (hereinafter 'OC') for initiation of Corporate Insolvency Resolution Process against **Kerala State Electronics Development Corporation Limited**, the Corporate Debtor, (hereinafter 'CD') for alleged default in repayment of Operational Debt of



₹54,78,44,324/- (Rupees Fifty Four Crore Seventy Eight Lakh Forty Four Thousand Three Twenty Four only), due and payable by the Corporate Debtor to the Operational Creditor.

2. Petitioner (OC) submit that the CD was incorporated on 29.09.1972 and is engaged in business of electronic products and components and other IT services. The registered office of CD is in Keltron House, Vellayamabalam, Trivandrum, Kerala. The paid-up capital of the CD is Rs. 203,55,18,100/-

Brief facts of the case are as follows: -

3. The OC state that Asansol Municipal Corporation, West Bengal (hereinafter 'AMC') awarded CD a contract for implementation of Enterprise Municipal System EGIYE Project(hereinafter 'EMS Project') for a consideration of 149,67,66,360/- vide work order dated 3.08.2017 for a warranty period of 5 years after initial 6 months Go Live period. In turn CD subcontracted part of project works to OC, i.e *setting-up infrastructure, Data Center (DC) Primary Cloud and Secondary Cloud Data Recover (DR), placing the supervisory staff to run and maintain the Infrastructure, DC and DR*, for the entire period on 'investment and revenue earning model basis' for a consideration of Rs.50 crore vide Annexure G, Service Level Agreement(SLA) dated 16.08.2017, Annexure H, amendment to SLA dated 17.08.2017 and Annexure I, Work order No. 162 dated 4.08.2017. It is stated that OC completed the aforesaid works and services up to 30.06.2020 whereafter due to difficulty to make payments to its employees, from 01.09.2020, the OC withdrew their



services for demanding atleast partial payments for work accomplished. It is stated that the existing infrastructure setup by OC is used by CD from 01.07.2020 till now which is evident from Annexure 'JJ' and 'JJJ' invoices of OC dated 10-09-2018 and 30.03.2019 and Annexure 'J' request for approval of services to CD dated 03.01.2018. It is stated that as per SLA, the CD shall make monthly payment to OC based on revenue realised from January 2018 and that 33.55% of monthly amount realised by CD from AMC shall be paid to OC till realisation of contract price. It is stated that CD is liable to pay interest for delayed payment of more than 30 days. It is stated that till 30.10.2022, CD defaulted a total of ₹54,78,44,324/-including GST. The OC has produced Annexure K, tax invoices dated 15.10.2022 and detailed work sheet and summary work sheet quantifying the default amount. It is stated that CD postponed the payment on account of non-realisation of funds from AMC and requested OC not to raise invoices till informed and hence all invoices were raised towards the end of period of SLA. It is stated that first default occurred on 01.03.2018 though invoice is dated 15.10.2022 and the non realisation of revenue by CD from AMC is not attributable to OC. OC served Annexure N, demand notice dated 15.11.2022 demanding payment of ₹54,78,44,324/- to CD and its directors and Kolkata branch office. It is stated that no payment is made by CD which replied to demand notice on 23.11.2022 taking a contentious stand but no notice of dispute exists in relation to the debts. The OC has produced Bank statement of OC from 01.01.2017 till 14.11.2022



evidencing non-payment of the default amount. The OC state that it is eligible to recover the debts atleast on quantum meriut principle towards the partial work executed by OC.

4. The OC state that the CD is in operational debt exceeding Rs. 1 Crore and the registered office of CD is in Kerala. The date of default starts from 01.03.2018, and the petition filed on 27.12.2022, falls within limitation as per IBC, 2016. The OC has filed the following as evidence of debt: -

- (i) Service Level Agreement (SLA) dated 16.08.2017.
- (ii) Work Order No 162 issued by the CD to Operational Creditor dt. 04-08-2017
- (iii) Amendment to SLA dated 17.08.2017 stating that SLA is w.e.f 4.08.2017
- (iv) Proforma Invoice dated 10.09.2018 for amount of Rs.79,17,800/- acknowledged by the Respondents
- (v) Copy of Tax Invoice No. KELTRON-USPL/2019/001 dated 30.03.2019 for value Rs.5,37,608/- including GST @18%
- (vi) Copy of Tax Invoices dated 15-10-2022 sent to Corporate Debtor together with detailed work-sheets and summary work-sheet of defaulted amounts
- (vii) Copy of e-mail dated 07.11.2022 by CMD of Operational Creditor reminding repayment of defaulted amounts by Corporate Debtor. Reply mail from Corporate Debtor dated 14.11.2022.
- (viii) Demand Notice in Form 3 dated 15.11.2022



- (ix) Reply from Corporate Debtor dated 23.11.2022 to DN
- (x) Bank Statement of OC from 01.01.2017 till 14.11.2022 evidencing non-payment of the default amount
5. CD in its reply state that it is a profit-making state PSU with proved track record and around 1500 employees on its roll and has 2 subsidiaries. It is stated that CD was awarded Annexure B1, contract from AMC for EMS Project on 02.08.2017 and Annexure B2, work order dated 03.08.2017. It is stated that the CD had instructed the then Branch Manager, Mr. Arpan Chakraborty not to proceed with the work order relating to AMC due to issues on another work order relating to Bidhanagar Municipal Corporation in West Bengal. CD has produced email communication dated 13.06.2019 between Arpan and GM of CD stating that the work has not begun till June, 2019. Further Annexure B5 minutes of the monthly review meeting of CD notes Arpan stating that AMC work will only be begun by August, 2019 and state that prior approval of corporate office is required for any project by Kolkata Marketing Office. It is stated that the CD had vide Annexure B6, letter dated 23.09.2019 come of knowledge that Arpan entered into contracts on behalf of CD with one Eden Consultancy Services Pvt Ltd and amounts were due for works undertaken in AMC. It is stated that disciplinary action was taken against Arpan and during the proceedings he admitted to unauthorised execution of AMC project under political pressure. CD has produced Annexure B7 email of Arpan clarifying the same. Arpan was terminated vide Annexure B8 w.e.f



15.05.2020 on account of unauthorised execution of projects at AMC. A public notice dated 03.10.2020 was issued in Kerala and Kolkata. Criminal complaint is also preferred against him with DGP, Kerala and Kolkata Police vide Annexure B10 dated 15.09.2021 and B11 dated 29.12.2021.

6. The CD state that the Annexure G, H and I contract are null and void and no work order is made with OC. The CD only came to know of work order on 07.11.2022 vide Annexure L email. Immediately vide Annexure B12 email dated 14.11.2022, CD replied its stand setting out true facts. CD state that on day of signing SLA dated 16.08.2017, Arpan was on leave as per Annexure B15 attendance register of CD and seal used is counterfeited. It is stated that Annexure F power of attorney authorising Arpan is clear to the effect that he is not authorised to take action for execution of AMC project. Also Annexure B16 Dispatch register of CD's Kolkata marketing office does not show any such work order issued. It is stated that since no privity of contract exist and the contract is void, the CD does not answer as 'operational creditor' as there exist no 'debt'. Also there is pre existing dispute as the subject matter is under investigation by police authorities. It is stated that Annexure B13, complaint against Arpan dated 23.11.2022 is under investigation. The CD has also informed the State GST department as to fraudulent invoices issued by OC vide Annexure B14 letter dated 13.12.2022. It is hence stated that the present petition is a well thought out conspiracy by OC and Arpan among others.



7. It is also contended that the application is incomplete as mandatory statement of information utility is not produced under regulation 20(1A) of IBBI information utility regulations. It is stated that OC has not sent any invoices pertaining to work to CD and no proof exist as to execution of AMC project. CD relies on judgements of apex court in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [2018 (1) SCC 353]** and **Radha Exports (India) Pvt. Ltd. v. K P Jayaram & others|2020 (10) SCC (538)**. CD categorically denies subcontracting to OC and denies having receipt of Annexure JJ invoices at its registered office. It is further stated that no mail communications with CD in relation to pending dues are on record. Further it is contended that principle of quantum meruit is not applicable as there is no privity of contract as alleged by OC.
8. The petitioner in his rejoinder state that vide Annexure 1 to rejoinder, Affidavit Mr. Arpan swore that he has signed the SLA with proper authority from CD. It is stated that on one side CD relies on Arpan's letter dated 13.06.2019 to show work had not commenced till June, 2019 but on other side fails to clarify on political pressure and influence stated by him. OC relies on work order dated 3.08.2017 which show that work on AMC was to commence immediately but never showed reason to delay the project till June, 2019 which show that political pressure was a lie created by CD. It is stated that CD has acted unethically after completion of project with foul play. OC also state that CD raised Annexure 15 invoices on AMC dated 26.11.2019 for works done in



May to July, 2019. It is stated that Annexure 16 email communication to MD dated 30.07.2022 shows that they were aware of AMC project and dues. It is stated that pre existing dispute does not exist as the criminal complaints dated 15.09.2021 and 29.12.2021 by CD was against Mr. Arpan, Eden Consultancy Pvt Ltd and Touchstone Tie Up Pvt Ltd but not against OC. Further that the criminal cases against OC on 23.11.2022 does not exist as on date of notice of demand by OC dated 15.11.2022 under IBC and no such dispute is raised by CD in reply to the Notice. OC relies on **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [2018 (1) SCC 353]** to clarify definition of pre existing dispute that it should be raised before demand notice. It is stated that the public notice as to Mr Arpan's termination was only raised much later and not on date of signing SLA. It is stated that the power of attorney validly authorises Mr. Arpan to sign the contract and in consequence the work order No.162 was released. The OC urges to interpret the POA in the last part which gives him permission to sign all documents pertaining to Keltron Marketing office. It is contended that this POA was not revoked not to the knowledge of the OC. Further it is stated that Mr Arpan also released Letter of Intent to another company Oroprise Solution Pvt Ltd dated 17.01.2020 relying on this POA. It is further contended that the OC issued Annexure 21 cheating notice to CD dated 23.09.2020 for issuing work order to Oroprise Solution Pvt Ltd while the contract with OC was continuing and that the CD is being conducted as a habitual offender evading contractual payments.



9. Heard arguments and perused documents on record. The point for consideration is:

I. Is there pre-existing dispute between the parties?

10. Before going into merits of the case, it is worthwhile to note that this Tribunal in **CP/47/KOB/2022** by operational creditor under section 9 IBC against the same respondent- Keltron had dismissed the application pertaining to similar contract work in AMC, West Bengal, on the ground of 'pre-existing dispute'. It is observed that this petition arises out of the alleged default of payment of Rs. 54,78,44,324/- to OC arising out of a contract dated 16.08.2017, its amendment dated 17.08.2017 and the work order dated 04.08.2017 issued by one Mr. Arpan Chakraborty, the Branch head of Kolkata Marketing Office of CD, in exercise of powers conferred by power of attorney dated 24.08.2015 for work to be carried out in AMC, West Bengal. It is noticed that the facts pertaining to **CP/47/KOB/2022** and this petition are similar to the extent both are by OC's of subcontracted work in AMC, West Bengal issued under sign by the Kolkata Branch head of CD, Mr. Arpan Chakraborty. It is further noted that the present petition arises from alleged default of the larger chunk of invoices dated 15.08.2022 just before the issue of demand notice dated 15.10.2022. The cause for delay in raising the invoices is stated to be as per request of CD. As per the impugned contract the OC shall receive payments starting January 2018 based on revenue earned by CD from AMC. However, despite inordinate delay in raising



invoices without plausible reasons, the default is alleged to have occurred from 01.03.2018 onwards. It is noted that even prior to the notice of demand dated 15.11.2022, a public notice regarding termination of Mr. Arpan Chakraborty and a cautionary statement is issued by CD on 03.10.2020 apart from criminal action initiated against him. Further Annexure B12 email dated 14.11.2022 by CD clearly objects to the claim by OC which is prior to demand notice dated 15.11.2022. It is also noteworthy that another enterprise Oroprise Solution Pvt Ltd had been selected by CD for the same work as undertaken by OC and the OC themselves have objected to the action vide letter dated 23.09.2020. Hence as considered by this Tribunal in **CP/47/KOB/2022**, it is found that there exist disputed questions in this matter especially in relation to the authority of the Branch manager, Mr. Arpan Chakraborty and his involvement in AMC project in violation of CD's instruction, and the binding nature of the Annexure G, H and I contracts, as well as the validity of Annexure 'K' invoices dated 15.10.2022 raised just before the demand notice, all of which can only be decided after appreciating veracity of each evidences under a regular civil suit and not in a summary procedure. We also find that the petitioner has failed to append with application the 'record of default' filed with information utility as per regulation 20(1A) of IBBI information utility regulations which also acts as an impediment for entertaining this petition under section 9 of IBC. Lastly, the petitioner's plea that the debt should be considered in quantum



meruit principle cannot be considered by this Tribunal under section 9 of the IBC not being a recovery procedure.

11. In the situation as held by **Apex court in Mobilox Innovations 2018 (1) SCC 353**, the defence/dispute raised by the respondent is plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed. In fine it is answered to the point framed that pre-existing dispute prevails between the parties.
12. In the result, the petition is **DISMISSED**.
13. 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.
14. Let the certified copy of the order be issued upon compliance with requisite formalities.
15. File be consigned to records.

SHYAM BABU
GAUTAM

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GAUTAM
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SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T.KRISHNA
VALLI

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T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 5th day of December, 2023.

Rohit/LRA