

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 11/CB/2021

In the matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Sahajanand Marketing Private Limited, A Company incorporated under Companies Act, 1956 having CIN: U51909GJ2001PTC039812 and having its office at 304, Vihav Excelus, Vasna Bhayli Road Nr Bright Day School, Bhayli Vadodra Gujarat- 391410;

...Operational Creditor/Petitioner

-Versus-

Kalinga Commercial Corporation Limited, A company incorporated under the Companies Act, 1956 having CIN: U45201R2009PLC010552 and having its registered office at, C-112, (HIG), Housing Board Colony Baramunda Bhubaneswar Odisha 751003.

...Corporate Debtor/Respondent

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. Sagar Tailor, Adv.
Mr. Piyush Luktuke, Adv.

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In re: Sahajanand Marketing Private Limited V. Kalinga Commercial Corporation Limited

For Respondent (s)

Mr. Amrita Panda, Adv.
Mr. Gopinath Nayak, CS

Order reserved on: 16.03.2022
Order pronounced on: 19.04.2022

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC') for initiation of Corporate Insolvency Resolution Process (CIRP) of respondent/Corporate Debtor i.e., **Kalinga Commercial Corporation Limited (KCCL)** on the basis of default committed in respect of an alleged Operational debt of ₹ 1,96,96,948/-. The Petitioner/Operational Creditor herein i.e., **Sahajanand Marketing Private Limited (SMPL)** is represented by Mr. Nilesh Pradyumnabhai Trivedi, Director of the Operational Creditor.
2. The respondent/Corporate Debtor is **Kalinga Commercial Corporation Limited** registered under Companies Act, 1956 having CIN: **U45201R2009PLC010552**. The registered office of the respondent/Corporate Debtor is within the state of Odisha; hence, this Adjudicating Authority has jurisdiction.
3. The Applicant/Operational Creditor has stated that that they are doing business of Trading manufacturing and transportation of goods. Also, that the Operational Creditor was in continuous supply of services to the Corporate Debtor since August 31, 2015 to January 31, 2018. Since, August 31, 2018 to March 31, 2018 the Operational Creditor issued sales invoices in favour of the Corporate Debtor aggregating to ₹ 7,11,05,687/- against services rendered to Corporate Debtor, whereas the amount of ₹5,32,02,098/- was received from the Corporate Debtor. The amount of

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interest was charged @10% was ₹ 17,93,359/-. The total outstanding paid by the Corporate Debtor is ₹ 1,96,96,948/- details of the same is annexed with the petition and marked as Exhibit-9.

4. The applicant has stated that in the meantime, when the Corporate Debtor was unable to repay the outstanding amount a Demand Notice was sent dated 01.12.2020 demanding the due amount. An acknowledgement of the delivery of Demand Notice to Corporate Debtor is enclosed with the petition and marked as Exhibit-5. Hence, the applicant submits they have enclosed the main Documents, in order to justify the existence of Operational Debt and the amount in default by Corporate Debtor such as TDS Deduction as per Sales invoices reflecting in Form26-AS, which are enclosed with the petition and marked as Exhibit-2. Copy of sales Invoice enclosed and marked as Exhibit 1. A copy of demand notice in Form 3 issued under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016 is enclosed with the petition and marked as Exhibit 4. A Ledger statement of the Corporate Debtor in the book of Operational Creditor in enclosed with the petition and marked as Exhibit-6. Balance confirmation from Corporate Debtor enclosed as per 26-AS is enclosed with the application and marked as Exhibit-2.
5. Subsequently, by an order dated 20.07.2021 of this Tribunal, time was granted to the counsel for respondent to file reply and same has been filed in the registry dated 28.07.2021, wherein it is stated that the Operational Creditor fails to disclose the basic ingredients mandated under the Insolvency and Bankruptcy Code, 2016. It is submitted that the maintainability of application for initiating Corporate Insolvency and Resolution Process chiefly depends on the applicant first satisfying the Tribunal that an Operational Debt as defined under Section 5(21) of the IBC, 2016 is in existence. Its application is based on several conjectures and

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surmises which ought not to be countenanced by the Tribunal. The applicant has averred that it is allegedly entitled to receive a sum of ₹ 1,96,96,948/- from the Corporate Debtor. In this amount the applicant has stated that ₹ 1,79,03,589/- is the principal amount and the remaining ₹ 17,93,359/- it towards interest. However, that is pertinent to note is that the applicant has failed to adduce any documentary or otherwise evidence to buttress its claim(s). It has not provided any records to elaborate upon how it has calculated such a large sum of money towards interest.

6. The respondent has stated in his reply that the applicant has twisted facts and the instant application is based on surmises and conjectures to buttress the meritless and baseless claims of the applicant and the applicant has concealed material facts and events that depict the true representation of the dispute in hand. The Corporate Debtor submits that the instant application is liable to be dismissed in view of the fact that no 'default' has occurred in respect of an 'Operational Debt' as contemplated by Section 8(1) read with Section 3(12) of the IBC, 2016. In fact, it is crucial to note that an amount of Rs. 78,75,157 is owed by the Operational Creditor to the Respondent and the same is reflected by the Agreement dated January 27, 2018 signed and executed by the parties in terms of their mutual discussion/deliberation. Therefore, it is submitted that the instant application has been filed by the Applicant by suppressing material facts and entertaining the same would amount to according a premium to its misdeeds. A copy of the Agreement dated January 27, 2018 is enclosed with the application and marked as Annexure-R1.
7. Further, that the respondent has found major mismatch in the Ledger Account maintained by the applicant when an attempt for tallying ledger accounts was made. It is submitted that there are significant inconsistencies in the ledger accounts maintained by the applicant, and it has been found

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that several payments made by the Respondents to the applicant are not reflected in the latter's books of accounts. In view, of the pre-existing disputes between the parties, it is submitted that this application is beyond the scope of jurisdiction of this Tribunal and the same may be considered by a civil court or such other forum having jurisdiction to adjudicate the same.

8. Respondent has further stated that the amount of iron ore extracted by KCCL during the year 2015-16 is 5,19,817.100 MT through all the months, whereas SMPL is claiming that the total amount of iron ore it has transported is 5,29,044,630 MT. This is naturally impossible thereby demonstrating the falsity of SMPL's plea. The KCCL had employed a total of more than 15 transporters for the year 2015-2016 and SMPL is only one of them. The total list of all transporters and the quantum transported by them month wise has been enclosed with the reply and therefore claims that SMPL could not have alone done all the transportation. That in order to claim a total sum of Rs. 5,26,04,250/- the bills raised by SMPL demonstrate that what SMPL is claiming is virtually impossible. Mr. Trivedi, the MD of SMPL had provided a list of vehicles for transportation of different companies which were engaged at different mines in Orissa. From this list it is apparent that SMPL had about 15 vehicles engaged for different mines in Odisha.
9. The respondent states that SMPL engaged some of the vehicles for transportation of Iron Ore CLO & Fines from Baliparbat to Railway Siding a distance of around 6 KM with a rate of Rs. 50/- per M.T. The invoice submitted by SMPL @ page No.71 is the proof of that. Therefore, total transportation work executed by SMPL was 3002.070 MT. Details of the same have been enclosed with the reply. The above document also lists the Weighment Chalan which issued by i3MS. SMPL has not provided weighment chalan for the quantities it has allegedly transported. The

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Respondent has stated that the applicant has raised a high bill and compelled KCCL to deposit TDS for the same only to show a high turnover so as to enable the company to take some loans. Due to a personal relationship and acting in trust KCCL had deposited TDS. However, SMPL failed to execute the works for the bills raised and thus its claim is totally false and illegal and can't be sustained. That in any case after settlement in 2018 an amount of over 78 lakh is actually due from SMPL to KCCL which they have agreed to. Otherwise, if work was done after 2018 there was no point in the settlement. Thus, clearly no work was executed after 2018 and the settlement of account had been signed by the parties accordingly whereby SMPL undertook to make payments to KCCL. From the above submissions of the respondent, it is apparent that both the parties have entered into some private arrangement to defraud the Government exchequer and others.

10. Heard the learned counsel of both sides in detail. Material on record perused. The petitioner has failed to establish that it has transported 5,29,044,630 MT of ore, in respect of which amounts have been claimed. The Petitioner has failed to provide weighment chalans in respect of the aforesaid quantities it has allegedly transported. The respondent has provided the relevant details that amount of iron ore extracted by KCCL during the year 2015-16 is 5,19,817.100 MT through all the months and they had more than 15 transporters transporting the ore. Petitioner was one of those transporters. Therefore, there is no justification that out of so many transporters just one transporter would have transported more ore than has been extracted during the period. Further, this Tribunal notes that an amount of Rs. 78,75,157 is owed by the Operational Creditor to the Respondent and the same is reflected by the Agreement dated January 27, 2018 signed and executed by the parties. Further, the respondent has been able to establish that there are significant inconsistencies in the ledger

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accounts maintained by the applicant wherein, it is found that several payments made by the Respondents to the applicant are not reflected in the latter's books of accounts.

11. In view of the submissions made by the respondent it is evident that there is something more than that has been brought before this Tribunal. For **inflated bills and corresponding TDS payments to record more turnover as referred to at Para 9 above, the matter needs to be examined by the concerned Income Tax Authorities, who may take suitable action under the appropriate provisions of law, if deemed appropriate.**
12. In view of the forgoing the petition is **DISMISSED**.
13. Registry is directed to forward a copy of this Order to the relevant Income Tax Authorities for actions (Ref. para 9 and para 11 above) as deemed appropriate.
14. The registry is also directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
15. Certified Copy of this order may be issued on payment of fee, if applied for, upon compliance of all the requisite formalities

सत्य प्रति प्रमाणित होना
CERTIFIED TO BE TRUE COPY

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed this 19th day of April, 2022.

Ravijeet_P.S.

उप कुलसचिव
Deputy Registrar
राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
कटक बेंच
Cuttack Bench
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