

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD**

**COURT - 2**

ITEM No.302

**CP(IB)/84(AHM)2021**

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Jay Infraspac Pvt Ltd

.....Applicant

V/s

Aashir Engineering Pvt Ltd

.....Respondent

**Order delivered on: 21/03/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

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**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

-sd-

**CHITRA HANKARE  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD (COURT - II)  
C.P. (IB) No. 84 of 2021**

(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 r.w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016)

**IN THE MATTER BETWEEN**

**Jay Infraspac Pvt Ltd through**

**its Director Mr. Dhawal A. Chavda** ... Operational Creditor

Vs.

**Aashir Engineering Pvt Ltd** ... Corporate Debtor

**Order pronounced on 21.03.2024**

**Coram:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**Mr. Dhawal A. Chavda**

**Director Jay Infraspac Pvt Ltd**

Plot No. 1037, Flat No. 5,

Sector – 2/D, gandhinagar 382007

Email Id: [jayinfraspac@gmail.co](mailto:jayinfraspac@gmail.co)

**...Applicant/Operational Creditor**

**Versus**

**Aashir Engineering Pvt Ltd**

504, Parshwanath Business Park  
Opp. Pushpak Hills, Prahladnagar,  
Satellite, Ahmedabad,  
Gujarat, India – 380015.  
Email Id: aashir89@gmail.com

**.....Respondent/ Corporate Debtor**

**Present:**

For the Applicant : Mr. Jaimin Dave, Adv. a.w & Ms. Hirwa  
Dave, Adv. Mr. Vinodkumar Shah, PCS

For the Respondent : Mr. Pavan Godiawala, Adv. a.w Mr. Naishal  
Mody, Adv.

**JUDGEMENT**

1. Under consideration, is an application filed by the Operational Creditor viz. M/s Jay Infraspaces Pvt Ltd through its Director Mr. Dhawal A. Chavda under Section 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Aashir Engineering Pvt Ltd seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor - Aashir Engineering Pvt Ltd

2. The applicant is a MSME having registration certificate dated 03.06.2019. The Corporate Debtor was incorporated on 18.10.2007 with the Authorised Share capital of Rs.5,00,000/- (Rupees Five Lakhs only) and the paid up share capital of Rs.1,00,000/- (One Lakhs only). The default amount is stated to be Rs. 1,25,32,630/- and date of default is mentioned as 45th day of the date of issue of Abstract.
3. Applicant submitted that it is engaged in construction of civil infrastructure work such as building work, pipeline work, restoration work, crossings etc. including sub-contracts of civil work. The Corporate Debtor was allotted work contract in connection with 4.5 MLD Capacity water supply system for Zydus Cadila. Out of the work allotted to the Corporate Debtor, work relating to laying pipelines and RCC U/G Sump & Pump House & Water Treatment Plant Civil Work were assigned by the Corporate Debtor by way of oral work orders to the Operational Creditor. Accordingly, the Operational Creditor had supplied material and provided services during the period October 2017 till 15.11.2019 at the work site of Zydus Cadila. Operational Creditor is required to issue Abstract after completion of

work with the details of work done and amount due for the work done. Upon receipt of Abstract, the Corporate Debtor is required to make payment within 45 days of the date of issue of Abstract. Invoice for the amount shown in the Abstract is generally issued after the receipt of payment from the Corporate Debtor as per Trade Practice and oral understanding between the parties.

4. It is stated that during the period October 2017 till 15.11.2019, total value of the material supplied and work done for Corporate Debtor comes to Rs. 6,80,28,179.57/- for which Corporate Debtor had been making payments on adhoc basis and last such payment was made on 24.10.2019. Total payment made is Rs.5,61,62,225.57/-. Balance amount payable comes to Rs.1,18,65,954/- being Principal amount and Rs.6,96,676/-interest thereon a 12.75% p.a. as per MSMED Act, 2006. Applicant submitted that Corporate Debtor vide its mail dated 13.01.2020 confirmed the dues in the attached summary. As per the mail, the Corporate Debtor shown amount recoverable from Operational Creditor which was equivalent to the amount of GST for which details were not provided. The said amount of

GST comes to Rs.85,80,237.90/-. The amount of dues admitted by the Corporate Debtor is Rs.1,01,24,680.84/-.

5. The Applicant submitted that vide letter dated 25.02.2021 it requested Corporate Debtor to release outstanding principal amount of Rs. 1,18,35,954.28/- which Corporate Debtor failed to reply. Hence, Operational Creditor issued demand notice on 09.04.2021 which was replied by the Corporate Debtor vide its letter dated 27.04.2021. The Operational Creditor replied to the same vide letter dated 03.05.2021. Applicant affirm that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt as per Sec.8(2) of IBC.
6. The respondent denied claim by filing its affidavit in reply. It is contended that the dues for the period after 25.03.2020 are not maintainable as per notification issued by the Central Government. The notice issued was also illegal. It is further stated that the Cadila Health Limited terminated their services by email dated 14.08.2019 and thereafter no services were availed and all pending bills of the applicant were cleared. Last bill was raised on 15.10.2019 and last payment was made on 16.11.2019 by clearing all bills.

Alleged invoice dated 26.02.2021 was issued after termination of services. It is also not supported by any documents or correspondence. The applicant's ledger also shows all payments were cleared. The applicant has not done any work as per invoice dated 26.02.2021. Due to untimely and defective service of the applicant as a sub-contractor, the respondent has suffered huge loss. The applicant was aware of termination of contract and to avoid legal action by the respondent and after thought file this invoice raising bills.

7. It is further contended that the applicant has not paid requisite tax amount to the GST Department for all invoices raised by it. By not discharging statutory liability towards GST, the respondent will be burdened with serious consequences, if the applicant has not deposited GST amount of Rs. 8580238/- as on 18.01.2020. Accordingly, they have informed GST Department by mail.
8. The averments of applicant that payment were made only on the basis of receipt on abstract and not on the invoice is totally false. The amount only becomes due and payable once the invoice is raised. The work done by the applicant

was unsatisfactory. Still the payments were cleared and the applicant could not have waited to make the claim after more than a year if the amount was in fact due and payable. There was no practice of making any payment on adhoc basis. There is no question of making any claim of interest as per MSME. There is no payment due hence, prayed for dismissal of the application.

9. Heard both the counsel for the applicant and the respondent and also perused the written submission filed by both the parties. It is an admitted fact that the respondent got civil work from Zyduş Cadila Company and it was sub-contracted to the applicant. It is also admitted fact that the applicant did work for the respondent issued abstracts containing details of material supplied and services rendered as well as some payments were made by the respondent towards work done. According to the applicant, there was practice of issuing only abstracts and the payment becomes due 45 days thereafter, after receiving payment only tax invoices were raised. However, the respondent denied that there was any such practice. It is pertinent to note that there is no written contract between

the parties and the work was done only on the basis of oral contract and mutual understanding. There is also no dispute regarding last payment made by the respondent on 16.11.2019.

10. The respondent denied any payment is due to the demand notice issued by the applicant. The applicant relied upon the email addressed by respondent dated 13.01.2020 to the petitioner acknowledging the date. Email dated 13.01.2020 raised as under:

“Pl. find attached summary for work done at ZyduS corporate House, Narmada pipeline and water tank

Pl. note that we have to recover mentioned amount in attached file from JIPL, as JIPL is unable to provide us GST details like monthly 38 returns, Tax paid Challans & GSTR-1

Balance payment (subject to verification by ZyduS) will be released only after same are provided.

If GST details provided, balance payments will be made once the final bill is approved by client”.

11. This mail only mentioned that whatever payment is claimed, it will be cleared after receiving certain information. It does not show admission of specific amount due and payable. In the attached file it is mentioned that some bills are under

verification process while some were retained. The respondent in its written submission mentioned that the said Gmail is not an acknowledgment of liability but it shows default of applicant by not providing GST details like monthly 3B returns, tax paid challan and GSTR- I. The respondent in fact has to recover said amount. The respondent further stated that they had cleared invoices which includes the GST but the applicant has not deposited said GST amount for which respondent will be liable for default. The respondent further stated in the written submission that the applicant defaulted the indirect tax authority and apprehended its fraud will be caught and legal action shall be undertaken by the respondent. Therefore, smartly raised the invoice dated 26.02.2021 for some alleged work while the work was terminated a year back. The raising of said invoice is an afterthought. No businessman will wait for two years to raise invoice. The applicant has not given any reply to email dated 13.10.2020, the respondent further made it clear that the registration of applicant with the GST is cancelled from 01.07.2018. GSTIN/UIN status shows cancelled suo moto

effective from 24.06.2020. Thus, it appears that there is a serious dispute regarding payment of GST by the petitioner.

12. The respondent also brought to the notice that their contract was cancelled by Zydus Cadila Health Limited as per email dated 14.08.2019. It states as under:

“as informed you, mention were is awarded the other agency on merit, please do not start any work and ask your sub-contractor to demobilise site”.

In view of the termination of work of respondent there was no question of doing any further work by the petitioner on the site. According to respondent due to sub-standard work done by the applicant his contract was cancelled and to avoid any liability to pay to the respondent such an afterthought invoice was raised. The respondent also questioned that when there was a practice to raise invoice only after receiving payment then how this invoice was raised without receiving any payment. The respondent repeatedly submitted that the GST amount was not paid and the registration of applicant is cancelled, the applicant has not given any answer to it nor submitted its GST number or payment of GST to the authorities.

13. The applicant submitted that it could not deposit GST amount as on account of non-payment of invoice dated 26.02.2021, he has further stated that he has received intimation regarding tax liability of Rs.38,70,000/- on 08.05.2023 but it does not mean that it was his liability.
14. Thus, there appears pre-existing disputes between the parties the same is also brought to the notice of the applicant in reply to demand notice as per Section 8.
15. Nowhere in the application, reason for raising the invoice dated 26.02.2021, after termination of the contract, is stated by applicant.
16. In the written submission filed by the applicant also he has only mentioned that though the GST department issued him intimation he is not at all at fault. Further, the respondent also incurs a huge GST liability.
17. No serious dispute is raised by the respondent regarding Section 10A period as there is no invoice due and payable. In view of the disputes raised it is not necessary to go in detail whether the invoice is raised is during the Section 10A period or not.

18. There have been a series of payments made on various invoices. Hence on account of existing dispute conveyed to the applicant, and none of the bills are due to be paid as per respondent after termination of contract, absence of any formal agreement on the clauses needed to examine if the rejection is valid, the application for initiating Corporate Insolvency Resolution Process under Sec 9 of IBC 2016 is not sustainable.
19. Hence, we pass the following order:

**ORDER**

The CP(IB) No.84 of 2021 is rejected.

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**DR.V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

**-sd-**

**CHITRA HANKARE  
MEMBER (JUDICIAL)**