

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 301
CA(IB)/177(AHM)2022

Order under Section 9 of IBC, 2016

In The Matter Of:

Power & Instrumentation (Gujarat) Ltd.
Vs.
M.S. Khurana Engineering Ltd.

.....Applicant

.....Respondent

Order delivered on: 01/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

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

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP (IB) No.177/AHM/2022

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

IN THE MATTER OF:

**Power & Instrumentation
(Gujarat) Limited**

Registered office at:

B-1104, Sankalp Iconic, Opp.
vikram Nagar, iscon Temple Cross
Road, S.G. Highway, Ahmedabad-
380054

CIN: L32201GJ1983PLC006456

**Applicant/
Operational
Creditor**

VERSUS

**M.S. Khurana Engineering
Limited**

Registered office at:

2nd Floor, "MSK", Near
Kashiramrana Bhavan, Passport
Office – Panjrapole Road,
Ambawadi, Ahmedabad- 380015

CIN:U45201GJ1998PTC034638

**Respondent/
Corporate
Debtor**

Order pronounced on: 01.04.2024

CORAM:

MR. SHAMMI KHAN (MEMBER JUDICIAL)

MR. SAMEER KAKAR (MEMBER TECHNICAL)

APPEARANCE:

For the Operational Creditor : Mr. Rasesh Parikh, Adv.

For the Corporate Debtor : Ms. Ishan Shah, Adv.

O R D E R

1. The Present Application was filed on 25.06.2022 by **Power of Instrumentation (Gujarat) Limited** (hereinafter referred to as “**the Applicant/Operational Creditor**”) against **M/s Khurana Engineering Limited** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Corporate Debtor for having defaulted in payment of its outstanding dues of **Rs.2,11,81,568/-** towards Principal amount of unpaid invoices and Rs. 3,58,49,658/- towards interest @24% from 14.05.2015 to 31.05.2022.

2. On perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is one Power of Instrumentation (Gujarat) Limited having CIN No. L32201GJ1983PLC006456. The registered office of the Applicant/Operational Creditor is situated at B-1104, Sankalp Iconic, Opp. vikram Nagar, iscon Temple Cross Road, S.G. Highway, Ahmedabad- 380054.
3. On perusal of Part-II of Form-V reveals that the Respondent/Corporate Debtor is one **M/s Khurana Engineering Limited** having CIN No. U45201GJ1998PTC034638. The registered office of the Respondent/ Corporate Debtor is situated at 2nd Floor, “MSK”, Near Kashiramrana bhavan, Pssport Office – Panjrapole Road, Ambawadi, Ahmedabad- 380015.
4. Affidavit affirming this application is signed by one Mr. Padmaraj Pillai, Managing Director and authorized representative of Applicant authorized by Board Resolution dated 21.06.2022 which is annexed to the Petition.
5. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not proposed the name of any person to be appointed as Interim Resolution Professional.

6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs.2,11,81,568/- towards Principal amount of unpaid invoices and Rs. 3,58,49,658/- towards interest @24% from 14.05.2015 to 31.05.2022.
7. The averments made by the Applicant in its application are summarized hereunder: -
- a) It is stated that present petition is a transferred petition filed before Gujarat High Court under the provisions of Section 271(2)(1) of the Companies Act, 2013 being Company Petition No. 479 of 2016. Vide Order dated 04.05.2022, (Page No. 122) the Gujarat High Court was pleased to pass order transferring the said petition to this Tribunal.
 - b) It is stated that Petitioner was awarded contract for execution of Electric Work in relation to construction of Phase II, BRTS Corridors for the City of Ahmedabad - Package - 2 Sub-contract.
 - c) It is stated that the Petitioner has produced Statement from 01.10.2010 till 11.06.2012 (for 20 months) demonstrating the amount outstanding out of 83 Invoices. It is stated that

out of Rs.4,62,96,724/-, Rs.4,07,10,239/- is received and an amount of Rs. 55,86,485/- is outstanding then.

- d) It is stated that Petitioner sent "soft copy completion certificate" to Respondent. Based on this email, deponent of the Respondent who affirmed Reply on behalf of Respondent in the present petition, instructed his fellow colleague to issue certificate as per last certified bill. The Petitioner was also requested to send Power of Attorney in favour of Padmaraj Pillai and request letter for issuing certificate. This email from Respondent clearly demonstrates that there is no dispute with respect to work executed by Petitioner and subsequent grievance raised by Respondent is only an afterthought and moonshine defence.
- e) It is stated that Final bill was issued by Petitioner to Respondent.
- f) After about 25 days from institution of Petition final Bill and almost after 08 months from email dated 11.09.2014, Respondent issued letter to Petitioner. Perusal of the said letter reveals that averments in the said letter are vague

and an attempt is made to dispute liability without citing any defect as alleged.

- g) It is stated that Three notices were issued by Petitioner to Respondent. The first Notice for recovering outstanding amount of Rs.2,11,81,568/- dated 27.02.2016 was issued by Petitioner to Respondent.
- h) It is stated that Second notice dated 08.04.2016 was issued by Petitioner to Respondent. Notice under section 271 of the Companies Act, 2013 was issued by the Petitioner. Respondent replied to Petitioner wherein no averments specifying defect in the work executed by Petitioner was pointed but baldly, liability to pay Rs.2,11,81,568/- was denied.
- i) It is stated that The Petitioner gave a rejoinder to the reply dated 29.06.2016 of Respondent and on 20.10.2016, Petition being Company Petition No. 479 of 2016 was instituted by Petitioner before Gujarat High Court.
- j) Petitioner issued Form No.3 to Respondent under the provisions of Insolvency and Bankruptcy Code, 2016 seeking an amount of Rs.2,11,81,568/-. This Form No. 3 had no legal consequence because on that day Company

Petition No. 479 of 2016 was pending before the Gujarat High Court.

- k) It is stated that Respondent has replied to Form No. 3 wherein Respondent has contended that due to pendency of Company Petition No. 479 of 2016 Demand Notice in Form No. 3 is bad in law.
- l) It is stated that After Company Petition No. 479 of 2016 was transferred to this Hon'ble Tribunal (04.05.2022), Form No. 3 and 4 were issued by Petitioner to Respondent on 30.05.2022 which was delivered to Respondent on 25.06.2022
- m) It is stated that the present Petition is presented to this Hon'ble Tribunal and a copy of the petition was served upon Respondent at the time of filing of the petition. Respondent replies to Form No. 3 dated 30.05.2022 i.e. after lapse of statutory period to reply the same as prescribed in Section 8 of the Code.
- n) It is stated that in view of email dated 11.09.2014, there remains no dispute with respect to work executed by Petitioner as per the work order issued by Respondent. The averments with respect to alleged deficiency in the work are

an afterthought to wriggle out of the liability to pay outstanding amount. As stated above, such reply of Respondent is in June - 2015, which is about after 08 months from email dated 11.09.2014.

- o) The Applicant relies upon below mentioned documents to prove its case:

7.	A STATEMENT OF BANK ACCOUNT WHERE DEPOSITS ARE MADE OR CREDITS RECEIVED NORMALLY BY THE OPERATIONAL CREDITOR IN RESPECT OF THE DEBT OF THE CORPORATE DEBTOR (ATTACH A COPY)	Copy of Bank Statement is provided as Annexure	
8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT	ANNE.	PARTICULARS
			Copy of letter awarding contract
			Copy of outstanding bills
			Copy of ledger accounts of the Corporate Debtor
			Completion certificate issued by M.S. Khurana Engineering Limited
			Copy of interest calculation sheet

8. The Respondent has filed its reply on **13.03.2023** **under Inward Diary No. D893** the averments of the Respondent in the reply are stated below: -

- a) It is stated that the present petition is barred by the limitation
- b) It is stated that Petitioner has not completed work as per the contract;
- c) It is stated that a complaint was received for the electric work in December 2010;
- d) It is stated that Petitioner has carried out unsatisfactory work throughout and other incidents arose of backfilling the road;
- e) It is stated that Petitioner has a lackadaisical approach to the work at hand;
- f) It is stated that Petitioner was not following the timeline to carry out work;
- g) It is stated that Petitioner issued unilateral bills without carrying out work;
- h) It is stated that Arbitration proceedings between Respondent and Ahmedabad Municipal Corporation were initiated due to work carried out by Petitioner;

- i) It is stated that The petitioner was unable to meet the extended deadlines as well and even the quality of work being carry out was extremely poor. Thereafter the Petitioner company abandoned the work entirely and the Respondent Company was forced to have the work carried out by its own workforce at the risk, for the technical work employed certain labor, equipment, and material contractors;
- j) It is stated that Respondent Company was also required to hire certain material vendors since Petitioner Company stopped purchasing material much prior to abandoning the work;
- k) It is stated that at every stage debit notes were issued on account of Petitioner Company for the amounts which formed extra costs
- l) It is further stated that the Petitioner Company had raised the claim before this Tribunal for the full amount at the rate of Rs.2,35,000/- per unit of the Item referred to as "SITC of the IP-65 Section Feeder Panel for the Street Lighting consisting of following:

..". The said rate contract mentions the quantity as 94 Units. Admittedly not all 94 Units were installed by the Petitioner Company and in fact even, on renegotiation the Petitioner Company had agreed to a reduction of rate qua the same to Rs. 1,75,000/- as signified in the letter of credit entered into with the Bank by the Respondent Company, and as acknowledged by the Petitioner Company.

9. The Applicant filed a rejoinder to the reply of the Respondent on **27.06.2023** and made the following submissions:

a) The Applicant states that the Respondent has failed to demonstrate in Affidavit in Reply that Petitioner has not carried out work for the unpaid invoices that are part of the petition. In fact, Respondent has availed work executed by Petitioner without any demurer and there is no document produced by Respondent that demonstrate lack of quality of work by Petitioner before issuance of winding up notice dated 01.06.2016. All the contentions urged with

respect to alleged deficiency in services by Petitioner are afterthought and aimed to create dispute that otherwise does not exist between Petitioner and Respondent in relation to work out by Petitioner.

- b) It is stated that the no bar of limitation can be urged by Respondent as present proceedings are the continuation of the said Company Petition No.479 of 2016. The fresh issuance of Form No. 3 and 4 dated 30.05.2022 is necessary given provisions of the Code before filing of Form No. 5 before this Tribunal.
- c) The Applicant states that the notice for winding up of Respondent under the Companies Act, 2013 was issued to the Respondent on 01.06.2016 (Page No.223 of the petition), and no bar of limitation can be pressed by Respondent. At this stage, it is relevant to note that in reply to said notice (Page No. 232), Respondent has not averred a word about the bar of limitation about the claim for winding up of Respondent

concerning outstanding dues. Thus, contention about the bar of limitation is not only untenable but is raised to distract present proceedings from moot questions about the Corporate Insolvency Resolution Process of Corporate Debtor.

- d) It is stated that the Respondent is put to strict proof for alleged suppression of relevant facts and communication exchanged between Petitioner and Respondent.
- e) It is stated that averments in para 12 b onwards up to 12 n, are aimed to create a dispute that does not exist between the Petitioner and Respondent and to take the present petition out of the purview of provisions of Section 9 of the Code. It is stated that extensively repeating facts and making unsubstantiated averments with respect to the alleged deficiency in services of Petitioner cannot make an 'undisputed claim', a claim with 'pre-existing dispute'.

- f) It is stated that the Respondent has refused to admit signature at Page No. 140 of the petition whereby it is unequivocally admitted by the Respondent that Petitioner has completed work for an amount of Rs.7,36,99,665/- up to 31.05.2012. A perusal of the statement on Page No. 153 of the petition and outstanding invoices clearly reveals that the Petitioner has claimed payment for an amount of Rs.2,11,81,568/- that has remained unpaid out of the said work.
- g) It is stated that the issuance of Form No. 3 dated 27.04.2017 by Petitioner is of no consequence as then the Company Petition No. 479 of 2016 was pending and the order of transfer of Company Petition No. 479 of 2016 occurred as late as 02.05.2022. Therefore, Petitioner was required to issue fresh Form No.3. It is germane to note that Respondent has not replied to Form No. 3 and 4 issued by the Petitioner dated 30.05.2022 and therefore,

contention urged in present Affidavit in Reply are devoid of any merit.

h) It is stated that Respondent is subjected to double jeopardy in view of filing of winding up petition as well as present petition. It is stated that Respondent has misunderstood and misconceived principle of double jeopardy as principle of double jeopardy is embodied in Article 20 of Constitution of India, 1950, that has application in criminal prosecution. Apart from this, as stated above, present petition is continuation of Company Petition No. 479 of 2016 and therefore, Respondent is not subjected to two proceedings for one cause of action. It is further submitted that reliance placed on principle of res-judicata by Respondent is far from its application in the facts of the present case as no competent court has decided rights and liabilities of Petitioner and Respondent in earlier proceedings that can bind both of them. Therefore, the said contention is devoid of merit.

10. It is stated that the Applicant filed a synopsis on 05.03.2024 stating under:
- i. That the Respondent made fresh submissions in synopsis dated 01.03.2024 which are not part of the affidavit in reply dated 07.03.2023.
 - ii. It is stated that the contentions that are highlighted are more than what is stated on those points in Affidavit-in-reply.
 - iii. It is stated that contentions are bodily lifted from averments in affidavit-in-reply and therefore, beyond ambit of synopsis.
 - iv. It is stated that the points that were not canvassed during oral hearing dated 27.02.2024.
11. It is stated that the Respondent filed another synopsis on 12.03.2024 stating that this tribunal vide its order dated 27.02.2024 directed only the respondent to file a synopsis but the petitioner had filed 3rd synopsis which was against the order.
12. We have heard the Ld. Counsel for both parties and perused the material available on record.

13. It is noted that the Petitioner was awarded a sub-contract for electrical works for approximately Rs. 12.28 Crs. by the Respondent via letter dated 14.06.2010. It is seen that 83 invoices were raised by the Petitioner from 01.10.2010 to 11.06.2012 against the Respondent. It is stated that the total amount of which the contract was formed is Rs. 12.28 Crs. and the Petitioner has only part performed his contract of value up to Rs. 7,36,99,665 as on 31.05.2012 out of which 5,21,40,581 is paid and only 2,11,81,568 is unpaid.
14. It is observed that no specific date of default is mentioned in the application therefore, we proceed to consider the date of default to be 20.05.2015 which was when the final bill was raised. The Respondent defaulted in paying the said amount, Subsequent to that the Applicant filed a Company Petitioner bearing No. 479 of 2016 before the Hon'ble Gujarat High Court under provisions of the Companies Act, 2013 which was transferred to this tribunal vide order dated 02.05.2022. The High Court proceeding was instituted

within the limitation period and the matter was transferred to this Tribunal. Therefore, the demand notice which was issued on 30.05.2022 claiming an amount of Rs.2,11,81,568/- towards the principal amount of unpaid invoices and Rs. 3,58,49,658/- is well within the Period of limitation as on that day the matter was pending before the Hon'ble High Court.

15. The claim of the Applicant stands established as there is a default in payment of the amount due to the Applicant. The Statement of invoices from 30.06.2012 to 14.05.2015, email dated 15.06.2012 Confirmation by the Respondent to the part-work completion certificate of Rs. 7,36,99,665/- indicates acknowledgment of the debt. The existing default amount is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present Application.
16. It can be seen from the pleadings that the Completion Certificate was never issued by the Respondent. Bald averments were made by the Respondent that the

remaining part of the work was completed by the Respondent but no proof is attached to the pleadings regarding the same. During the course of the final hearing, the same query was put before the counsel for Respondent by the Bench but nothing was put forward by the Counsel in the same regards.

17. The Respondent in his reply before the Hon'ble High Court pleaded Moon Shine's defense against the Demand Notice dated 27.04.2017 stating the pre-existing disputes between parties before the Hon'ble High Court, but same cannot be applicable in the present matter the petitioner had already provided the letter dated 15.06.2012 from the Corporate Debtor **confirming** that the Petitioner had completed Part-work i.e. of Rs. 7,36,99,665/- out of Rs. 12,28,85,693/- up to 31st May 2012.
18. In our view the application is complete in terms of Section 9 of the Code. The Applicant has proved that there is debt and default has occurred. We have also seen that the amount defaulted is more than Rs. 1.00

Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent deserves to be admitted.

19. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under: -

(i) The **Respondent/Corporate Debtor M.S. Khurana Engineering Ltd.** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.

(ii) As a consequence, thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of

- law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a

surety in a contract of guarantee to a Corporate Debtor.

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint Nandish Sunilbhai Vin, Registered Insolvency

Professional having Reg. No. IBBI/IPA-001/IP-P02117/2020-2021/13270 under section 13(1)(c) of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of

the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical

report with regard to the progress of the CIRP in respect of the Corporate Debtor.

- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/-** (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding

admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

20. Accordingly, this Application **CP(IB)/177/AHM/2022** is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)
Shubhanshu-LRA

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)