



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 13/MB/2022

[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:

NARNARAYAN INFRASTRUCTURE PRIVATE LIMITED

[CIN: U45200GJ2006PTC048728]

Registered Office: Plot No. 522/1, GH-6 Corner
Sector 22, Gandhinagar-382021, Gujarat.

...Operational Creditor

V/s

ESSEL AHMEDABAD GODHRA TOLL ROADS LIMITED

[CIN: U45200MH2010PLC200541]

Registered Office: 513/A, 5th Floor, Kohinoor City
Kirol Road, LBS Marg, Bandra Kurla Complex, Kurla (West)
Mumbai-400070, Maharashtra.

...Corporate Debtor

Pronounced: 25.04.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Misha Mehta a/w. Adv. Akshay Doctor and Adv.
Manvi Damle i/b. Adv. Maulik G. Nanavati

Corporate Debtor: Adv. Avinash H Fatangare a/w. Adv Sudip Mallick i/b Adv
Sidharth Singh

**ORDER****[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]****1. BACKGROUND**

1.1 This C.P. (IB) No. 13/MB/2022 (Application) was filed on 20.12.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by Narnarayan Infrastructure Private Limited, the Operational Creditor (OC), through Mr. Jagdishchandra Chimanlal Patel, Director of the OC, authorised *vide* Board Resolution dated 10.12.2019, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Essel Ahmedabad Godhra Toll Roads Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.6,16,16,010/- (Six Crore Sixteen Lakh Sixteen Thousand and Ten Rupees), which comprises of the principal amount of Rs.4,24,50,209/- based on OC's invoices along with the amount of Rs. 90,15,013/- as 5% security deposit given by the OC to the CD as well as Rs. 4,40,954/- as TDS amount deducted from prior payments made to the OC, which were not deposited with the tax authorities and the interest of Rs.97,09,834/- calculated at 18% per annum as on 31.03.2019, on account of non-payment of the principal amount. The alleged default amount is based on 41 (Forty-One) invoices issued by the OC in lieu of providing services to the CD as its sub-contractor pursuant to the issuance of 18 (Eighteen) work orders by the CD during the period of July, 2017 to March, 2019.

1.3 The date of default mentioned in Part-IV of the Application is 31.03.2019 i.e., the date on which the period of 15 (Fifteen) days from the raising of the OC's



last invoice dated 15.03.2019 had expired. Since the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

2. CONTENTIONS OF OC

2.1 The OC is engaged in the business of road construction and maintenance works while the CD is a Mumbai-based public company, engaged in the construction of service road and maintenance of Ahmedabad-Godhra section of National Highway (NH)-59. It is submitted that the CD was appointed as Concessionaire for works pertaining to four-laning of Ahmedabad-Godhra section of NH-59 beginning from 4.2 km to 122.42 km (Project) by the National Highway Authority of India (NHAI). The CD's appointment as Concessionaire was done on Design, Build, Finance, Operate and Transfer (DBFOT) basis. To ensure the completion of construction of service road, widening of culvert and minor bridge as well as other maintenance work on the Ahmedabad-Godhra section of NH-59, the OC was appointed as sub-contractor by the CD which had issued 18 work orders during the period of 2017 to 2019 with the first and last work order issued on 10.04.2017 and 04.03.2019 respectively.

2.2 Pursuant to the issuance of work orders, the OC carried out the construction and maintenance work as per the CD's work orders and it raised 41 (Forty-One) invoices for the same. As per the Clause 40 of the General Terms and Conditions of the work orders, the CD would nominate authorised personnel to certify job completion regarding services provided under the work order which shall be binding upon the supplier/seller i.e., the OC. Clause 7 of the



Special Conditions of Contracts of the Work Order (Special Conditions) provides for release of payments on the basis of work done on monthly basis after verification of quantity of work by CD's representative. Further, Clause 8 of the Special Conditions states that retention money would be deducted upto 5% of every running bill and would be released after defect liability period.

2.3 The OC had completed the works as per the terms of the CD's work orders, which was evident from the Completion Certificates dated 30.07.2017; 30.08.2017; 31.01.2018 15.04.2018, 30.04.2018, 30.07.2018, 30.08.2018 31.08.2018, 31.12.2018; and 20.03.2019, issued by the CD after verification of work done by its authorised representative.

2.4 The CD had made part-payments on different occasions with the last payment made on 07.03.2019 to the OC of Rs.38,00,000/-. The amount of Rs. 13,94,00,000/- has been paid by the CD during the period of 21.08.2017 to 07.03.2019. To support its contention, the OC placed its ledger account for the period from 01.04.2017 to 15.10.2019; Bank Certificates dated 08.12.2021 and 09.12.2021, from ICICI Bank Limited and Punjab National Bank (PNB) respectively along with the Statement of Accounts dated 01.05.2018 to 31.10.2018 from the PNB account and Statement of Accounts dated 01.09.2017 to 31.03.2019 from the ICICI Bank account.

2.5 Since the CD failed to clear the outstanding dues, the OC issued demand notice on 16.10.2019, through its advocate, demanding payment of the operational debt for Rs.6,16,16,010/-. The CD, *vide* its reply notice dated 31.10.2019, denied its liabilities towards the OC on the ground of lack of reconciliation of accounts and non-completion of work by the OC.



2.6 Later, the OC a letter dated 23.08.2021 to the Chief Finance Officer of Essel Infra Projects Ltd requesting to clear its dues of Rs. 6,16,16,010/-. However, Essel Infra Project Ltd., by its reply letter dated 02.09.2021, denied its liability citing absence of contractual obligations towards the OC and lack of privity of contract between the OC and Essel Infra Projects Ltd. But the CD admitted the debt due to the OC by its letter dated 03.01.2019, wherein it gave assurance of clearing the outstanding dues and claimed to have made part payment of Rs.2,25,00,000/- as goodwill gesture.

2.7 Since the CD failed to make payments to the OC, the OC requested the NHAI for directing the CD to clear the outstanding dues. Pursuant to the above, the NHAI issued letters dated 09.11.2018 and 12.10.2018 to the CD, for making payments to the OC.

2.8 The OC placed the Affidavit dated 13.12.2021 under Section 9(3)(b) of the IBC, to show the absence of any dispute over the operational debt despite the issuance of the CD's reply to the OC's demand notice. In view of the above, the OC prays that CIRP may be initiated in respect of the CD.

3. CONTENTIONS OF CD

3.1 This matter was pending before Court III of this Tribunal and later got transferred to this Court by order of the Hon'ble President dated 26.03.2024. The OC had placed the Service Affidavit dated 14.02.2022 on record, wherein it was stated that the Application was served on the CD *vide* notice dated 12.02.2022, for appearance before this Tribunal but it did not make any appearance. The OC, through its advocate, had also sent email dated 14.02.2022 to the CD's email ID as per its Master Data available with the



Ministry of Corporate Affairs. Despite the above, no one appeared on behalf of the CD. Due to this, the CD was set *ex-parte* on 08.09.2023 (ex-parte order).

3.2 However, it was later found that the CD had already filed its reply on 01.03.2022 but did not choose to argue the matter, pursuant to which the ex-parte order was passed. However, the ex-parte order was set aside *vide* order dated 12.06.2024 by this Court.

3.3 The CD, in its reply, contended that the alleged debt in the present Application cannot be considered as financial debt for the purpose of IBC. The alleged debt is based on the claims of work orders issued during the period of 2017 to 2019. Since the present Application was filed in 2022, it is barred by limitation.

3.4 There is discrepancy between the dates of work orders produced in the Application and the work orders relied upon by the OC for its alleged claims against the CD. Further, the OC had failed to provide bifurcation of the estimated cost of work order and the actual work carried out by it.

3.5 There was pre-existing dispute over discrepancy in the claimed amount and non-performance of work by the OC, which led to the cancellation of Concessionaire Agreement dated 18.03.2010 by NHAI, *vide* its termination letter dated 26.08.2019 (Termination Letter). This caused huge monetary losses to the CD. The CD placed the NHAI's termination letter and its reply dated 31.10.2019 to the OC's demand notice on record to highlight the pre-existing dispute between the parties.

3.6 The filing of the Application by the OC despite existing provision for dispute resolution through arbitration in the work order reveals the malafide intention



of the OC and thus, the present Application is nothing but sheer misuse of IBC proceedings.

4. REJOINDER OF OC

- 4.1 The CD's objection regarding discrepancy in dates of the produced work orders with that of dates mentioned in the memo to the Application is mere technical in nature, which arose out of typographical error and the CD has neither denied the fact regarding the issuance of work orders nor challenged their genuineness.
- 4.2 The Application is filed within the limitation period since the first completion certificate was issued on 09.08.2017 and the limitation period of three years from the date of first completion certificate had expired on 09.08.2020, which is within the period of 15.03.2020 to 28.02.2022, i.e., COVID-19 Pandemic period, which has to be excluded for the purpose of determining limitation as held by Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation* [M.A. No. 21 of 2022 in M.A. No. 665 of 2021 in *Suo Motu* Writ Petition (C) No. 3 of 2020].
- 4.3 The CD has misread the Application and had mistaken the alleged operational debt as financial debt whereas the OC has clearly stated its status as an operational creditor and its claims as operational debts, which are covered under Section 5(20) and 5(21) respectively of the IBC. The OC is an operational creditor since its claims are based on services provided to the CD as sub-contractor under the aforesaid work orders issued by the CD.



- 4.4 The mere existence of arbitration clause in the work order does not preclude the OC from filing the Application under Section 9 of the IBC before this Tribunal.
- 4.5 There is no issue regarding reconciliation of accounts since the CD itself had issued the reconciliation sheet, which was shared with the OC by CD's email dated 04.03.2019 and the OC's bills were duly reconciled by the CD's deputed officer on site, after proper verification, which was highlighted by the OC in its letter dated 23.08.2021 to Essel Infra Projects Ltd. In fact, the CD had already admitted its liability towards the OC *vide* CD's letter dated 03.01.2019, and contended that the practice of reconciling accounts and making payments thereafter post verification was an old practice followed by both the parties.
- 4.6 The OC cannot be blamed for termination of contract between the CD and NHAI by the latter over alleged non-completion of work since the OC was assigned merely a small portion of the work related to maintenance of NH-59 and the OC had successfully completed the work as evident from several completion certificates given by the CD after verification on site by its then authorised representative, Mr. Sanjay Kumar Singh. The OC placed the communication dated 27.05.2022 between the OC and Mr. Sanjay Kumar Singh, the then authorised representative during the period of 2017 to 2019 on record to highlight the fact regarding non-denial of veracity of the CD's work completion certificate.
- 4.7 The CD has shown hostile attitude towards the OC, which was observed even by NHAI through its independent engineers in their letters dated 18.09.2018 and 14.07.2020 and this not only reveals the fact about completion of work



by the OC but also establishes the issuance of reconciliation sheet by the CD itself.

5. ANALYSIS AND FINDINGS

5.1 We have perused all the documents and pleadings and heard the Ld. Counsel for the OC. Since none was available to argue the case of the CD on the date fixed for final arguments, the reply filed by the CD has been duly considered for analysing the matter on hand.

5.2 The major issues raised by the CD in the present application are (i) Limitation; and (ii) Pre-existing dispute.

5.3 With respect to limitation, the OC pleaded 31.03.2019 as the date of default in Part-IV of the Application while it is filed on 20.12.2021. The CD, *vide* its reply dated 01.03.2022, vehemently challenged the maintainability of the Application on the ground of limitation as the work orders were issued during the period between 2017 and 2019. It is the case of the CD that the limitation period for filing a Section 9 application over claims based on work order dated 30.07.2017 had expired on 09.08.2020. However, upon perusal of documents, we find that the CD had not only made part-payments to the OC with the last payment made on 07.03.2019. Further, the CD also had acknowledged the debt by its letter dated 03.01.2019. The acknowledgment of debt and part-payments were made by the CD during the limitation period of three years from the date of the work order dated 30.07.2017, which extended the limitation period to file the present Application. Moreover, the period of 15.03.2020 to 28.02.2022 i.e., CIRP suspension period due to COVID-19 Pandemic would be excluded to determine limitation, even if we



disregard the OC's contention of treating 31.03.2019 as default date i.e., the date on which the period for execution of last work order dated 04.03.2019 was to expire and the OC issued the last invoice dated 15.03.2019. In view of the above, we hold that the Application is not barred by limitation and thus, the issue (i) is decided in favour of the OC.

5.4 As far as the issue regarding pre-existing dispute is concerned, the CD disputed the alleged operational debt over lack of reconciliation of accounts and non-completion of work by the OC. The CD had raised this in its reply to the OC's demand notice as well as in the affidavit-in-reply to the Application. However, we find that the CD had issued the completion certificates for all the work orders on various dates, wherein it was clearly stated that "*The contractor has completed the work satisfactory and as per specification*" and the completion certificates were duly signed by its authorised representative of the CD and the stamp of the CD was affixed over the certificates. Further, the communication dated 27.05.2022 between the OC and Mr. Sanjay Kumar Singh further negates the CD's contention about any fault in services provided by the OC. The mere fact that the NHAI terminated the contract with the CD through its termination letter dated 26.08.2019 does not amount to OC's fault when it was not even the party in the said Concessionaire Agreement. Further, paragraphs 4 to 6 of the NHAI's termination letter states the defaults committed by the CD during the subsistence of the Concessionaire Agreement and paragraph 7 of the said letter states that the CD itself requested to the NHAI from exiting the project pursuant to which the NHAI served the show-cause notice dated 25.06.2019 to the CD. Although, copy of the said letter dated 17.12.2018 has not been made available to the



Tribunal by either of the parties, the CD has produced the termination letter dated 26.08.2019, which refers to the letter dated 17.12.2018. Hence, it is only to be presumed that NHAI terminated the Concessionaire Agreement with the CD at CD's request and not because of any dispute arising out of quality of work undertaken by the OC. Regarding the issue of reconciliation of accounts, it is evident from the CD's email dated 04.03.2019 as well as NHAI's letters dated 09.11.2018 and 12.10.2018 along with the letter dated 18.09.2018 and 14.07.2020 of the NHAI's independent engineers that the CD had not only duly reconciled the bills and invoices raised by the OC in lieu of its services but also it was aware of such details. The CD, in fact, never raised the issues of reconciliation of accounts or non-completion of work before the issuance of its own letter dated 03.01.2019 and OC's demand notice. This shows that the CD's contention of pre-existing dispute is nothing but moonshine in nature, which is not backed by any substantial evidence and cannot be accepted. In view of the above, we hold that the CD's contention of pre-existing dispute is not acceptable and thus, the issue (ii) is also decided in favour of the OC.

5.5 The OC has thus successfully demonstrated and proved the debt and default in this case. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 9 of the IBC. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.



ORDER

This Application bearing C.P. (IB) No. 13/MB/2022 under Section 9 of the IBC read with Rule 6 of the AAA Rules, filed by Narnarayan Infrastructure Private Limited, the OC, for initiating CIRP in respect of Essel Ahmedabad Godhra Toll Roads Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan



under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.

- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. R. S. Balasubramanyam**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-001/IP-P-02601/2021-2022/13978** and e-mail- **rsbalasubramanyam7@gmail.com** having valid Authorisation for Assignment up to **31.12.2025** as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs. 5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing



public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//