

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 1503/2023  
and  
CP (IB) No. 288/Chd/Hry/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In the matter of CP (IB) No. 288/Chd/Hry/2019:**

**Trutech Constructions Private Limited**

612, Chiranjiv Tower, Building No. 43  
Nehru Place, New Delhi 110 019  
Through its Director, Shri Vipul Dewan

...Petitioner-Operational Creditor

Vs.

**Lanco Enterprise Private Limited**

having its registered office at  
Plot No. 397, Udyog Vihar Phase-3  
Gurgaon, Haryana  
CIN No. U74900HR2010PTC041120

...Respondent-Corporate Debtor

**In IA No. 1503/2023**

**Lanco Enterprise Private Limited**

having its registered office at  
Plot No. 397, Udyog Vihar Phase-3  
Gurgaon, Haryana  
CIN No. U74900HR2010PTC041120

...Applicant-Corporate Debtor

Vs.

**Trutech Constructions Private Limited**

612, Chiranjiv Tower, Building No. 43  
Nehru Place, New Delhi 110 019  
Through its Director, Shri Vipul Dewan

...Respondent-Operational Creditor

**Judgement delivered on: 20.11.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-  
Operational Creditor  
and respondent in  
IA No. 1503/2023

: Mr. Aditya Jain, Advocate

For the Respondent-  
Corporate Debtor and  
applicant in IA No. 1503/2023

1). Mr. Aalok Jagga, Advocate  
: 2). Mr. APS Madaan, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**IA No. 1503/2023**

The present application is filed by the Corporate Debtor under Rule 49(2) read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking the recalling of the order dated 30.05.2023 wherein the respondent proceeded ex-parte.

2. The brief facts of the case are that the respondent Corporate Debtor on receipt of the notices from this Adjudicating Authority engaged a counsel located at New Delhi who assured regular appearances and also the engagement of local counsel. However, due to some personal difficulties, the counsel sought adjournments. Due to a communication gap the counsel did not appear on behalf of Corporate Debtor which led to the hearing of the matter in the absence of the counsel. The non-appearance was neither wilful nor intentional or deliberate.

3. The reply was filed by the Operational Creditor vide diary No. 02027/2 dated 10.08.2023 wherein it is stated that despite many opportunities given, the Corporate Debtor failed to appear. The record illustrates that no representative of the Corporate Debtor had attended any hearing and only proxy counsels were appearing.

4. After hearing the counsels and carefully going through the records, we hold that the reply dated 20.02.2020 and the short written submissions dated 16.08.2022 were filed by the applicant much prior to the order dated 30.05.2023 wherein the respondent proceeded ex-parte. Therefore, it shows that the respondent was interested in proceeding with the said matter. Moreover, a party already proceeded ex-parte can be allowed to join the proceedings at any stage of the hearing when pleadings are already complete.

5. Thus, in view of the above, order dated 30.05.2023 is recalled and arguments on main petition heard. Resultantly, IA No. 1503/2023 stands allowed and disposed of accordingly.

**JUDGMENT in CP (IB) No. 288/Chd/Hry/2019**

6. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Trutech Constructions Private Limited** through its Director, Mr. Vipul Dewan (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **LANCO Enterprise Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

7. The Corporate Debtor, namely, **LANCO Enterprise Private Limited** is a Company incorporated on 27.08.2010 under the provisions of Companies Act, 1956 with CIN No. U74900HR2010PTC041120 with its registered office at Plot No. 397, Udyog Vihar Phase-3 Gurgaon, Haryana. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of

the master data of the corporate debtor is attached with the main petition and marked as Page 1.

8. The facts of the case, briefly, as stated in the petition are that the Operational Creditor was engaged in the business of infrastructure developments and works. The Corporate Debtor was engaged in the development of infrastructure projects and civil engineering. The Operational Creditor sought payment for the RA-1 bill along with the interest from the due date of payment on 31.03.2017 till 15.03.2019. Vide Letter of Award dated 01.02.2016 the Corporate Debtor granted to the Operational Creditor the contract for 2x 38 MW, Phata Byung Hydro Electric Project at Uttarakhand for Reconstruction of Dam, Intakes and Allied Structures for a total contract price of Rs. 25,42,33,365/-. The entire scope of work was to be completed on or before 30.06.2017. The Work Order was amended on 04.01.2017 as per which the contract price was changed to Rs.25,57,50,165/-.

The Corporate Debtor vide Work Order dated 08.10.2016; awarded to the Operational Creditor a contract for the construction of Cofferdam and River Diversion Works at 2 x 38 MW Phata Hydro Electric Power Project, Rudraprayag for an all-inclusive contract price of Rs. 81,08,080/-. The entire scope of work was to be completed by 30.06.2017. Further, the Corporate Debtor vide work order dated 10.10.2016 awarded an Operational Creditor contract for hiring of an Excavator for PH Road Protection Works at 2 X 38 MW Phata Hydro Electric Power Project, Rudraprayag for the contract price of Rs. 6,39,300/-. Measurement books were maintained by the Corporate Debtor in terms of Clause 56.1 of the contract and were signed by both the representatives of the parties. Monthly statements were furnished in terms of

Clause 60.1 of the contract. Vide letter dated 16.08.2017 Operational Creditor requested Corporate Debtor to confirm balance payment. Vide e-mail dated 11.12.2017 Operational Creditor was asked to provide RA-2A and Escalation Bills. Despite repeated requests, the Corporate Debtor failed to make the payment which was acknowledged in the statement of account of 01.04.2017 to 12.10.2017.

9. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 83,39,584/- (Rupees eighty three lakh thirty nine thousand five hundred eighty four only) including principal amount of Rs. 61,05,980/- and Rs. 22,33,604/- being interest 18% per annum from 31.03.2017 till 12.04.2019. The amount claimed is above the threshold of Rs. One lakh (before amendment). The default occurred on 22.03.2017 i.e. date on which last invoice was raised. Copy of claim of principal sum plus interest upto 12.04.2019 (Annexure-II), contract dated 01.02.2016 (Annexure III), work order dated 08.10.2016 and 10.10.2016 (Annexure IV, V), invoice RA Bills (Annexure VI), Ledger Account from 01.04.2017 to 12.10.2017 (Annexure VII), bank statement issued by Kotak Mahindra Bank in respect of account of Operation Creditor showing payments made by the Corporate Debtor including last payment (Annexure XI) are attached with the main petition.

10. A demand notice in Form 4 is stated to be issued by the operational creditor on 25.04.2018 and the same has been delivered to the corporate as the corporate debtor gave reply dated 08.05.2018 to demand notice stating the same contentions as mentioned in the reply.

11. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy Nos. 6350 dated 15.11.2019 and 02027/01 dated 09.08.2023. The corporate debtor has filed reply vide diary No. 1416 dated 20.02.2020, wherein it is stated that there was pre-existing dispute between the parties regarding the delay and deficient services rendered by Operational Creditor. The Operational Creditor failed to inform about various communications e-mail and other correspondence exchanged between the parties. There were discrepancies and deficiencies in the work which were pointed out by Corporate Debtor vide letters dated 19.05.2016 and 06.06.2016 regarding lack of quality in the plasticizer, shortage of labour, delay in the performance of green-cutting. The Operational Creditor is liable to pay liquidated damages to the tune of Rs. 1.27 crores on account of delay in completion of work. In terms of the Contract dated 01.02.2016, specifically Clause 46.1 and Clause 46.2 (Main Contract- Clause 47.1 & 47.2 of FIDIC 1987 and Sub Clause 47.1 of Special Conditions of Contract), on account of delay the Operational Creditor was liable to pay liquidated damages at the rate of 0.05% per day of delay, subject to a maximum of 5% of the Contract price. There is no amount due to be paid by the Corporate Debtor on account of substandard work done by the Operational Creditor as this has caused heavy seepage in the dam body and erosion of concrete. Therefore, additional cost and expenditure to the tune of Rs. 40 lakhs for the refurbishment of dam through another agency was incurred. There is a violation of his statutory condition as the Operational Creditor failed to provide Provident Fund challans.

12. The rejoinder was filed vide Diary No. 00137/1 dated 15.02.2021, wherein it is stated that there was no pre-existing dispute between the parties. There was no dispute regarding the measurement of work done. The work order was amended on 04.01.2017 and the contract price was revised to Rs. 25,57,50,165/-. The Corporate Debtor has deliberately avoided giving its response to the Statement of Account of 01.04.2017 to 12.10.2017 issued by the Corporate Debtor acknowledging an unpaid amount of Rs. 61,05,980/- towards the Operational Creditor. The Corporate Debtor issued a certificate dated 30.06.2017 towards mobilisation advance for the purchase of the machinery and certifying that it had recovered 92 lakhs and nothing remained to be adjusted by the Corporate Debtor. The RA Bills were audited from time to time. The Corporate Debtor failed to prove the pre-existing dispute between the parties.

13. The short written submissions have been filed by the petitioner vide Diary Nos. 00137/2 dated 09.05.2022, 00137/4 dated 20.02.2023 and by respondent corporate debtor vide diary No.00137/3 dated 16.08.2022.

14. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records carefully.

15. The first issue for consideration is whether the demand notice in Form 3 dated 25.04.2018 was properly served. The demand notice has been delivered to the corporate debtor as the corporate debtor gave reply dated 08.05.2018 to the demand notice (Annexure IX and X). Therefore, the demand notice was duly served upon the Corporate Debtor.

16. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit

under section 9(3)(b) by the Operational Creditor that there is no notice given by the corporate debtor relating to the dispute of the unpaid operational debt. It is further deposed that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities on the date of filing of the petition.

The various judgments that have been relied upon by the operational creditor are as under:-

- ***CA(AT) (Ins) No. 1026 - 2019 titled "Rajat Saini Anr. V. Pret Study by Janak Fashions Private Limited dated 14.10.2019 passed by the NCLAT, New Delhi***
- ***"Pedersen Consultants India Pvt. Ltd. V. Nitesh Estates Limited" 2019 SCC OnLine NCLAT 422***
- ***"Official Liquidator of Amfort Agro Finance Ltd. vs Shishpal Singh" (2004) 49 SCL 597***
- ***"Rajesh Singh vs M.P. Rajya Krishi Vipnan Board' 2003 (96) FLR 722***
- ***Judgment dated 19.01.2021 "Naresh Sevanti Lal Shah vs Malharshanti Enterprises & Anr.33 Company Appeal (AT) (Insolvency) No.415 of 2020***
- ***"Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407***

On the other hand, it is contended by the learned counsel for the respondent-corporate debtor that there was a pre-existing dispute between the parties regarding the quality and deficient services rendered by the operational creditor. The emails dated 24.02.2017, 27.03.2017,29.04.2017,

15.05.2017,16.03.2017 show that there were several times when the dispute has been raised by the corporate debtor regarding the deficiency in service. Learned counsel for the corporate debtor has placed reliance upon the judgments i.e. ***International Road Dynamics South Asia Pvt. Ltd. vs. Reliance Infrastructure Limited, Comp (At) (Ins) 72/2017, Mitcon Consultancy & Engineering Services Pvt. Ltd. vs. Pingale Sugar & Agro Products Pvt. Ltd. CP(IB) 1383(MB)/2017, Hassan Brothers vs. Sammon India Limited CP(IB) 1677(MB)/ 2017, Supreme Infrastructure vs, Ramprasta Promotors CP(IB) 137/CHD/HRY/2017, Mobilox Innovations Private Limited vs Kirusa Software Private Limited Civil Appeal No. 9405 of 2017, KK Continental Trade Ltd. vs. Diamond traexim Pvt. Ltd. CP (IB) 172/ND/2021.***

After hearing both the parties and careful perusal of the facts and law cited before us from both sides, we are of the considered view that there is a pre-existing dispute between the parties. It is evident from the following emails:-

- a. As per the mail dated 24.02.2017, the Corporate Debtor had raised concerns regarding delay in work and therefore, requested the Operational Creditor to submit a Revised Construction Schedule to deliver the work on time.
- b. As per the mail dated 27.03.2017 Corporate Debtor informed the Operational Creditor that manpower mobilisation for round the clock work was still not done. Concerns were further raised that the work was being done during the day only and nothing was

happening at the night which was not at all acceptable to the Corporate Debtor.

- c. As per mail dated 29.04.2017 (this email does not belong to LEPL-Trutech W.O. period, the order ends at 31st March, 2017) further concerns were raised that the Operational Creditor could pour only 100 M3 concrete in the dam body since 12.04.2017 and no work was being carried out in the night shift.
- d. As per mail dated 15.05.2017 (this email does not belong to LEPL-Trutech W.O. period, order ends at 31st March, 2017) the Corporate Debtor informed the Operational Creditor that no work was being carried out at the site and workers had left for the Kedarnath Shrine. The Corporate Debtor further asked the Operational Creditor to get the workers back to the site because dam construction season was likely to be ending soon due to rise in river discharge.
- e. As per email dated 16.03.2017 the Corporate Debtor informed the Operational Creditor that no improvements had taken place regarding rate of progress in Dam concreting.

Thus, the emails mentioned above depict that there was pre-existing dispute between the parties which was much prior to the issuance of the demand notice dated 25.04.2018. The reliance can be placed upon the judgment of Hon'ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353** wherein it was held that:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

*43. ....We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).*

*45. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense 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, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.*

(Emphasis Supplied)

The definition of a ‘dispute’ as provided in the Insolvency and Bankruptcy Code, 2016 is as follows-

*“5. Definitions. – In this Part, unless the context otherwise requires, –  
(6) “dispute” includes a suit or arbitration proceedings relating to–  
(a) the existence of the amount of debt;  
(b) the quality of goods or service; or  
(c) the breach of a representation or warranty;”*

Therefore, the contention of learned counsel for petitioner that no notice about the pendency of dispute in any court of law or authorities was received is devoid of legal force because when there is deficiency in quality of goods

or services as in case hand amounts to a dispute. If there is any pre-existing dispute then the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 cannot be admitted to recover any amount due towards the petitioner. It is a settled proposition that the National Company Law Tribunal is not a recovery forum. If at all, there is any dispute between the parties regarding the said claim then the parties are at liberty to approach the appropriate Forum. Reliance can be placed upon the decision of the Hon'ble Supreme Court in the case of ***Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors & Cables Ltd. [2018] ibclaw.in 33 SC.***

Therefore, the judgments (supra) relied upon stated by the operational creditor are distinguishable and not relevant as the facts of these judgments are different to the facts of the present case.

Thus, it can be concluded that there was a pre-existing dispute between the parties.

17. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 25.04.2018 in Form 3 attached as Annexure IX was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 31.03.2017 i.e. date on which last invoice was raised. The amount was to be paid within 60 days of issuance of notice. This application was filed vide Diary No. 2574 on 21.05.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

18. As a sequel to the discussions and reasons recorded hereinbefore, the claim is liable to be rejected, in terms of Section 9 of IBC, 2016 as there

is a pre-existing dispute between the parties. Consequently, the claim of the petitioner is rejected and the petition stands dismissed, however, without any order to the costs. Both parties are at liberty to approach the appropriate forum for recovery or settling of the rival claims in hand.

Sd/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

November 20, 2023  
PKA/TB