

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH CHENNAI**

MA/1261/2019 in CP/941/IB/2017
(Application filed under Sec. 60(5) of the IBC, 2016)

In the matter of M/s. GVR Infra Projects Limited

M/s. SC Jain Construction Private Limited
1310, Old Court Road,
Civil Lines, Ludhiana-141001.

---Applicant

Vs

Vandana Garg
Resolution Professional of
M/s. GVR Infra Projects Limited
252, Veer Savarkar Marg,
Shivaji Park, Dadar,
Mumbai-400070

..... Respondent/RP

Present:

Counsel for Applicant : Shri. N.P Vijay Kumar, Advocate
Counsel for RP : Shri. V. J Arul Raj, Advocate

CORAM:

R. VARADHARAJAN, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 11.09.2020

The Present application is filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 by one of the Operational Creditor of the Corporate Debtor viz., **M/s. SC Jain Construction Private Limited** (hereinafter referred as "**Applicant/Operational**

Creditor") against the rejection of the part-claim of the Applicant by the Respondent / RP. The Applicant prays for the following relief(s):-

A. *To set aside the rejection of the part claim made by the Respondent/RP on 20.09.2019 and allow the claim which are as follows:*

a. *Claim for damages of Rs. 65,00,000/- as agreed at the meeting held on 02.11.2015 and interest at the rate of 18% p.a (Rs. 24,03,375/-) thereon from 02.11.2015 till CIRP commencement date; and*

b. *Direct the RP to allow the claim for damages of Rs. 7,69,42,459/- as determined as preferred by applicant in its claim form filed separately as "**Annexure-A16**"; and*

c. *Interest of Rs. 98,59,535/- in respect of claim, break up of which is given by way of "**Annexure -A17**" for interest determined at the rate of 18% p.a preferred under the heads "Verified Balance as per books of account of the Corporate Debtor as on 31.03.2017; LC discounting charges and Security Deposit"*

B. *Pass such further order or other orders as this Hon'ble Bench may deem fit and proper in the circumstances of the case and thus render justice.*

2. The learned counsel for Applicant submitted that based on the credentials of the Applicant, the Corporate Debtor has entered into two independent "Work-Contract Agreement" with the Applicant Company on 22.12.2014. By virtue of the said agreements, the Applicant became the "Sub-Contractor" and the scope of work in summary is as follows:-

a. The Applicant Company has to Lay "Bypass" roads at six different stretches for a distance of 50 kms in the existing

section Ajmer-Nagaur Road and the Consideration fixed as per the contract was Rs. 40,53,55,625/-.

- b. The applicant Company has to Lay "Bypass" roads in Nagaur-Bikaner Road and consideration fixed as per the contract was Rs.12,30,34,203/-.

3. On perusal of the documents, it is evident that the CIRP of the Corporate Debtor was initiated and the IRP was appointed on 15.10.2018 and the IRP caused public announcement on 18.10.2018 inviting claims from all creditors. It is further submitted that the Applicant has performed works under the Work Order issued by the Corporate Debtor. The Applicant filed its claim with the IRP under various heads on 19.11.2018 for a sum of Rs.12,57,02,981/- under 11 heads. Thereafter, the IRP sought for certain clarifications in respect of the claim preferred by the applicant on various dates. It is further submitted by the Applicant that the Responded/RP after obtaining certain clarifications from the Applicant, vide his email dated 20.09.2019 had admitted the claim only to the tune of Rs.2,93,61,906/- as against the total claim of Rs.12,57,02,981/-. The reasons stated by the Respondent / RP for non-admission of the remaining amount are as follows;

- a. There is a claim of Rs. 65,00,000/- for damages that has been admitted by Corporate Debtor by minutes dated 02.11.2015. RP has disallowed the said damages on the ground that this amount is adjusted as part of differences in

RA bills adjusted by Corporate Debtor in accounts. RP has misunderstood the claim for damages of Rs. 65,00,000/- with differences adjusted in RA Bill. In this regard it is pertinent to note that there is independent correspondence about the damages of Rs.65,00,000 vide minutes dated 02.11.2015 and letter dated 03.11.2015 relating to payment of Rs.65,00,000/- on account of differences in RA bills. RP has misunderstood claim for damages as differences in RA Bill and has disallowed the claim. These are independent claims under independent heads and the Applicant is entitled to each of the claim.

- b. Admitted amount is due since November 2015. The RP is not providing for any interest including reasonable interest for the failure to pay such amount.
- c. The Applicant has made claim for damages in view of Applicant's machinery remaining idle for more than 2 years and thereafter these machinery were also bounded in litigation proceedings brought against the Corporate debtor. RP has not looked into claim for damages at all.
- d. RP has not looked into final bills submitted by Applicant and which was pending with the corporate debtor. RP on the reply received from the ex-directors of the Corporate Debtor rejected the claim in total preferred under the head "Bills Submitted but not passed". The fact remains Bills have been submitted, work has been completed but there is no approval of these bills at all. Copy of the email dated 20.09.2019 issued by the applicant to the Respondent admitting part-claim of the Applicant and reasons granted for non-admission of remainder of the claim is enclosed as Annexure-A14

4. Apart from rejecting the claims in total under Serial No. 4 to 11 as provided for in the Summary of Claim due from the Corporate Debtor to the Applicant, the Respondent has unduly rejected the interest amounts liable to be disbursed to the Applicant in respect of the claim preferred under the following heads:

- An interest amount of Rs. 91,56,492/- under the head "Verified Balance as per books of account of the Corporate Debtor as on 31.03.2017" from 01.04.2016 till 15.10.2018 at a rate of 18% per annum;
- An interest amount of Rs. 26,116/- under the head "LC Discounting Charges due" from 27.11.2015 till 15.10.2018 at a rate of 18% per annum;
- An interest amount of Rs. 6,76,927/- under the head "Security Deducted" from 30.07.2016 & 14.09.2016 till 15.10.2018 at a rate of 18% per annum.

5. The Counsel for the Applicant further submitted that during the course of the project work, certain amendments were made by the parties to the Work Contract Agreements dated 22.12.2014 and 01.10.2015. By virtue of amendment to both the Work Contract Agreements, the completion date was revised to 21.04.2016, scope of work was modified and contract value was revised. Remaining part of the contract stood intact.

6. It is the contention of the Applicant that the RP has failed to appreciate the settled law that in case the defaulting party fails to repay the debt within the stipulated time, the aggrieved party is entitled for a reasonable amount, even in the absence of any clause stipulating payment of interest. Further, it was also contended by the Learned Counsel of the Applicant that a reasonable interest at the rate of 18% p.a. was preferred by the Applicant from the date of default till the date on which the CIRP was initiated as against the Corporate Debtor. Therefore interest amount of Rs.91,56,492/- under the head "Verified Balance as per books of account of the Corporate Debtor as on 31.03.2017", an interest amount of Rs.26,116/- claimed under the head interest on "LC Discounting Charges due" & an interest amount of Rs.6,76,927/- claimed under the head of "Security Deducted" are liable to be allowed.

7. It has been contended by the learned Counsel for the Applicant that the Respondent has taken into consideration only the Principal amount and has unilaterally rejected the interest portion in all the amounts claimed.

8. The Applicant has claimed a total of 11 claims under various heads which are numbered as Sl. No. 1 to Sl. No. 11 and during the course of submissions, the Learned Counsel for the Applicant has given up the claim preferred by it under the Sl. No. 10 and Sl. No. 11. For the sake

of convenience the claim as submitted by the Applicant in serial number are being dealt with *ad seriatim*.

9. As to the Sl. No. 1, 2 and 3, the heads claimed by the Applicant are in relation to i) Verified balance as per the books of accounts of the Corporate debtor as on 31.03.2017 ii) LC Discounting Charges due iii) Security deducted, and the reason for rejection of the interest amount by the Respondent/RP was that there was no supporting documents produced by the Applicant to claim interest. To counter the same, the Applicant has contended that the RP has failed to appreciate the settled law that in case the defaulting party fails to repay the debt within the stipulated time, the aggrieved party is entitled for a reasonable amount, even in the absence of any clause stipulating payment of interest.

10. In relation to interest, the learned counsel for the applicant submitted that the Respondent had failed to appreciate the settled law that in case the defaulting party fails to repay the debt within the stipulated time, the aggrieved party is entitled for a reasonable interest amount for the defaulting period even in the absence of any clause stipulating payment interest.

11. In that context, the counsel for applicant relied on the Hon'ble Supreme Court's Judgement in ***Secretary Irrigation Department Government of Orissa Secretary &Ors vs G.C Roy***, in Civil Appeal 1403 of 1986, wherein an issue pertaining to situation where the

agreement does not provide grant of such interest. In para 47 of the said judgment it was held as follows:

"...We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

- (i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, C.P.C., and there is no reason or principle to hold otherwise in the case of arbitrator.*

12. The Hon'ble Supreme Court of India at Para 14 of the judgement in **Vijay Industries vs NATL Technologies Limited** concurred with the opinion of Hon'ble Madras High Court in **"Rashid Leathers(P) Ltd. vs Super Fine Skin Traders"** as follows:

".....Even if interest is not payable by way of an agreement, usage or custom, the Company Court will have the requisite jurisdiction to go into such a question and admit a Company Petition for non-payment of interest on the admitted dues".

13. Thus in concurring with the view taken by the Hon'ble Apex Court and Hon'ble Madras High Court, the claim of the Applicant in relation to the Interest, eventhough a separate clause in the agreement in relation to the same has not been provided, the Applicant is entitled to claim

interest and as such, the claim of the Applicant in relation to the interest portion is hereby allowed. However the Applicant has claimed interest at the rate of 18%, which is not an agreed rate of interest between the parties. Hence, the Tribunal is of the opinion that interest element may be considered by the RP and ascertained as per the provisions of Interest Act and within the overall ceiling agreed to between the parties.

14. As regard to the claim made by the Applicant in Sl. No. 4, the reason for rejection of the claim provided by the Respondent / RP is that the ledger extract of the Applicant for the year 2016 – 2017 was enclosed by the Respondent that payment in respect of Five Invoices have already been paid. As regards to the same, the learned counsel for the applicant submitted that the Respondent / RP has misconstrued certain bills which were cleared by the Corporate Debtor with certain other bills which were left unpaid and it was stated that the list of bills furnished by the Applicant does not form part of the Ledger extract as highlighted by the Respondent. It is to be noted here that, in the reasons for rejecting the claim filed by the Learned Counsel for the Respondent, it is stated that the bills which were submitted by the Applicant in relation to Sl. No. 4 were not approved by the Corporate Debtor at that relevant time and hence it was rejected. Thus, the Resolution Professional cannot admit a claim which has already been rejected by the Corporate Debtor and as such the decision taken by the Resolution Professional in relation to Sl. No. 4 does not warrant any interference.

15. As regard the claim made by the Applicant in Sl. No. 5, 6, 7 and 8 it may be seen that the reason for rejection was stated to be that there were no documents to substantiate the claim in respect of the damage preferred by the Applicant and the same is not reflected as a part of Books of Accounts of the Corporate Debtor. The Learned Counsel for the Applicant stated that Clause 7(d) & 7(e) of the work Contract Agreement provides for interest in the case the work is delayed/stopped for more than 5 days in a month due to reasons of the Corporate Debtor. The Clause 7(d) and 7(e) of the Work Contract Agreement is extracted hereunder;

7(d) the total amount of damages for delay will in any case not exceed 6% (Six Percent) of the total contract price.

7(e) in case the work is delayed/stopped for prolonged periods more than 5 days in a month due to the reasons of GVR IPL the same shall be compensated to SCJC.

16. The Learned Counsel for the Resolution Professional submitted that M/s. S C Jain Constructions Private Limited have additionally claimed amounts towards deputation of manpower, hire charges for transporting of machines and other equipment's and stated that those machines were left behind idle at the site as the work stalled and imagined that the work would restart in due course of time. However, there were no documents to substantiate or to state that GVR Infra Projects Limited takes all the liabilities for the machines kept idle and

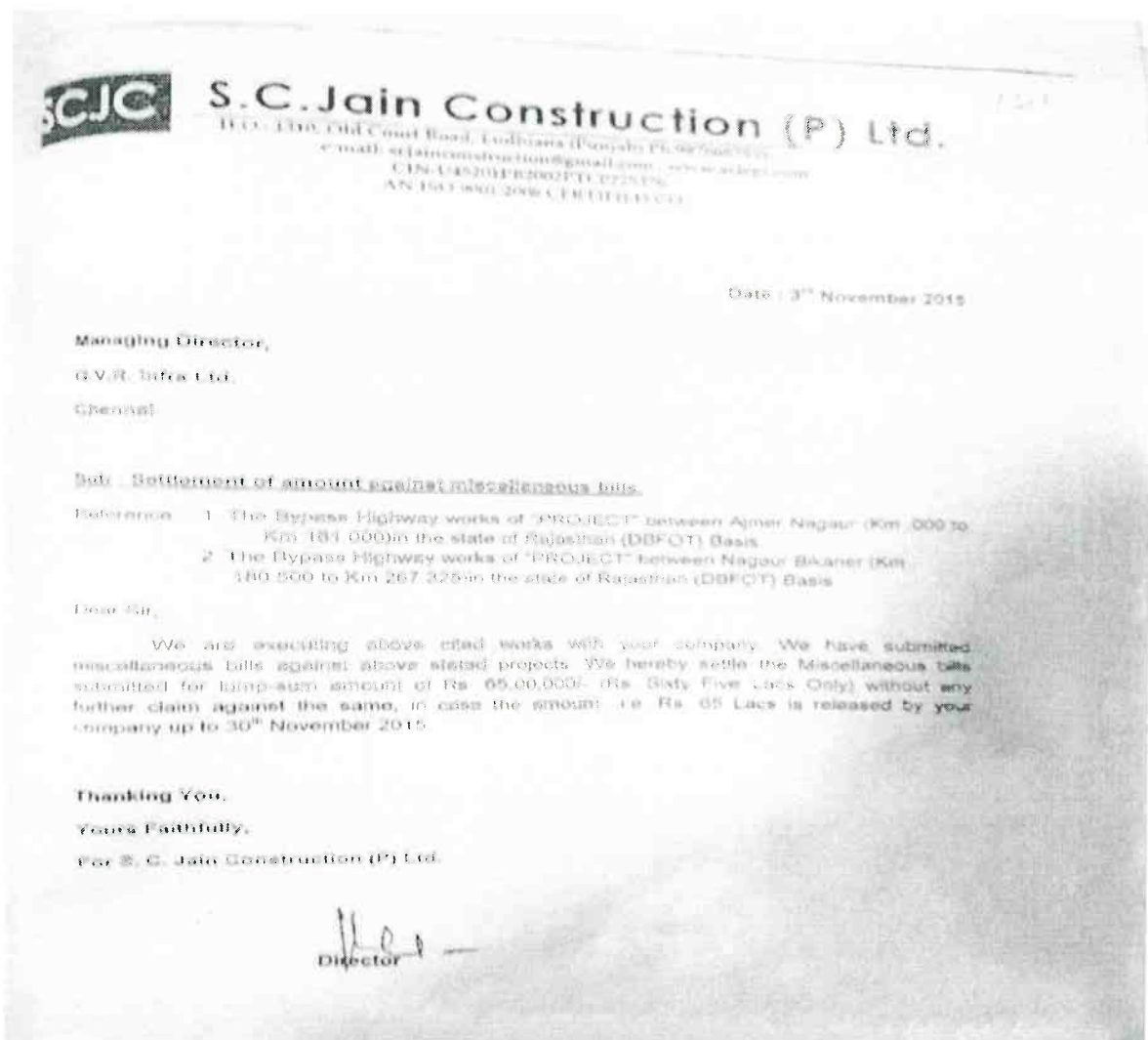
those will be safeguarded at the project site. Since there were no agreements entered between GVR Infra Projects Limited and SC Jain Construction, the claim amount shall not form part of the claims of GVR Infra Projects Limited. No dates regarding the period for which the claims pertain to have been furnished. Hence, the Tribunal is not able to arrive at a definitive conclusion regarding the claims made under the items at SL No. 5,6,7, & 8. However, in view of the minutes of the meeting held on 02.11.2015, these items of claim apparently are also included and has been ascertained at an overall amount of Rs.65,00,000/- vide minutes of the meeting held on 02.11.2015.

17. As regards to the claim made by the Applicant in Sl. No. 9, it may be seen that the reason for rejection was stated to be that the said amount is already booked in the GVR Infra Ledger vide JRN 8501/12-100 dated 31.12.2015. The Learned Counsel for the Applicant submitted that the said amount was claimed based upon a meeting with the Corporate Debtor held on 02.11.2015 and the Respondent has misconstrued the sum of Rs.65,00,000/- paid to the Applicant on 31.12.2015 as the same amount which was to be paid on account of certain miscellaneous bills raised by the Applicant on 03.11.2015. The relevant portion of the minutes of the meeting held on 02.11.2015 at the Corporate Office of the Corporate Debtor is extracted hereunder;

"Based on the agreement conditions and considering deletion of scope of works, categorically it was decided and agreed by both the

parties that GVR IPL shall pay S.C. Jain Construction (P) Limited a lumpsum amount of Rs.65,00,000/- (Rupees Sixty Five Lacs Only) as per the details enclosed. This amount has been assessed duly considering the effective idling of the resources as per the contract agreement and effect of all other factors including demobilization due to reduction in scope of works, S.C. Jain Construction Private Limited has accepted this amount as full and final settlement on account of this contract agreement except for balance executable items which shall be paid as per original contract rates”.

18. The relevant extract of the miscellaneous bill raised by the Applicant on 03.11.2015 is extracted hereunder;



19. Thus, a prima facie perusal of the documents submitted by the Applicant show that they are two components of Rs.65,00,000/- and the Resolution Professional without applying his mind has unilaterally rejected the claim of the Applicant. Under these circumstances, in relation to claim made by the Applicant in Sl. No. 9, this Tribunal directs the Applicant to submit the claim before the Resolution Professional for consideration and the Resolution Professional after going through the documents and records, will accordingly admit the claim of the Applicant, to such extent they are legally permissible and within the overall limit agreed to between the parties..

20. The minutes of the meeting held on 02.11.2015, in relation to amount determined by both parties as per the contractual agreement and it cannot be classified separately as "damage" outside of the scope of the Contract. Hence, the bill prepared by the applicant based on the minutes of meeting is a "running bill" and the work was not completed/terminated. The Final Bill was submitted in March, 2016. Hence, the question of payments being hit by limitation does not arise. The applicant has also clarified on 20.07.2020 that the account is a running account and the last payment was made up to 01.02.2017. The applicant has made the claim before the IRP within the time period mentioned in the public announcement. The RP will consider the claims as directed above and will include it as part of the amount owing to

8/

Operational Creditors in terms of terms of the Resolution Plan approved by this Tribunal on 20.07.2020.

21. In relation to aspect of limitation, the Hon'ble High Court of Delhi **Fresh & Healthy Enterprises Limited vs R.K Brothers RFA No. 319/2017** has stated wherein an issue pertaining to limitation, the Trial Court has committed a gross illegality in dismissing the suit as the time barred without reference to the statement of account and without reference to the law under Article 1 of the Limitation act and which states that once a suit is filed on the basis of an open, mutual and current account, then limitation commences from the end of the financial year and which last transaction is provided or admitted. It is further clarified that no judgments need to be cited on the proposition of law which is not disputed, and the undisputed position of law is the account relied upon the by the appellant/plaintiff must be open, mutual and current account. The meaning of an open, mutual and current account has been dealt with by the Hon'ble Supreme Court in the judgments in the case of **Hindustan Forest Company vs Lal Chan & Others, MANU/SC/0147/1959: AIR 1959 SC 1349** and **KesharichandJaisukhlal Vs. Shillong Banking Corporation MANU/SC/0351/1965: AIR 1965 SC 1711**, and the law is that shifting balance will create and open, mutual and current account"

22. Thus, to sum up, as regards the claims made by the Applicant in Sl. No. 4,5,6,7 and 8 are "**rejected**" and the claims made in Sl. No.

1,2,3 & 9 are to be considered by the RP. Rest of the decisions of the Resolution Professional need no interference at this stage.

23. Accordingly, the Application stands **disposed of** with the above directions.

-SD-
[S. VIJAYARAGHAVAN]
MEMBER (Technical)

TJS

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. While I concur with my brother Hon'ble Member (Technical) in relation to the claims made by the Applicant / Appellant falling under the heads SI.No.(1) to SI.No.(8) and the decision thereof, however, in relation to the claim of Rs.65,00,000/- falling under SI.No.(9), I am unable to subscribe to the reasons for sustaining the claim and for which a stand alone prayer has been made in the Appeal as is evident from the prayer portion extracted in the order of the Hon'ble Member itself under Paragraph 1 (A) (a) which reads as follows:-

“a. Claim for damages of Rs.65,00,000/- as agreed at the meeting held on 02.11.2015 and interest at the rate of 18% per annum (Rs.24,03,375/=) thereon from 02.11.2015 till CIRP commencement date;”

2. Carefully browsing through the documents filed in support of the Appeal as well as the reliance heavily placed at the time of oral submissions made by Learned Counsel for the Appellant as well as in its written submissions filed on behalf of the Appellant of the documents annexed at Page No.52 and Page No.53 of the typed set of documents annexed with the Appeal in order to sustain the above claim of Rs.65,00,000/- and which for ready reference Annexure A4 (Page Nos.52 and 53) is extracted hereunder:-



mailing

SCANNED COPY OF S.C. JAIN CONSTRUCTION'S MINUTES OF MEETING AT CORPORATE OFFICE Reg:

Approved

Gmail

Nimit Jain <scjainconstruction@gmail.com>

SCANNED COPY OF S.C. JAIN CONSTRUCTION'S MINUTES OF MEETING AT CORPORATE OFFICE Reg:

2 messages

Madhu Raj <madhu.adluru@gmail.com>
To: kv <kv@gvrinfra.com>, svs@gvrinfra.com, scjainconstruction@gmail.com
Cc: sri_12m <sri_12m@gvrinfra.com>

Tue, Nov 3, 2015 at 2:40 PM

Dear Sir,

Please find the attached Scanned copy of S.C. Jain Construction's Minutes of Meeting held on 02.11.15 at Corporate Office.

Thanks & Regards
Madhusudhan Adluru,
Engineer (Qs),
GVR/PL

2 attachments

- S.C JAIN CONSTRUCTION.pdf
254K
- S.C.JAIN CONSTRUCTION2.pdf
158K

Nimit Jain <scjainconstruction@gmail.com>
To: bhupisaini_007 <bhupisaini_007@yahoo.com>

Sat, Jun 16, 2018 at 6:41 PM

[Quoted text hidden]

For S.C. Jain Construction (P) Ltd.

[Signature]
Director

2 attachments

- S.C JAIN CONSTRUCTION.pdf
254K
- S.C.JAIN CONSTRUCTION2.pdf
158K

85

gmail.google.com/mail/attach?ui=2&ik=12031ef478&svr=nc7nc4rwc.en.Scbi-gmail_fm_18051209_p561ow-p45q-in33Aant5ZDMdaj5searcrqta...

[Handwritten mark]

5

Minutes of meeting held on 2nd November-2015 at Corporate office, GVRIP, Chennai

Representatives:

Mr. K.V. Rambabu - GVR Infra Projects Limited
Mr. K. Nageswar Rao - GVR Infra Projects Limited
Mr. Nimit Jain - S.C. Jain Construction (P) Ltd

Ref. S.C. Jain Construction (P) Limited agreement dated 22nd Day of December 2014 for Ajmer-Nagaur & Nagaur - Bikaner Projects.

Based on the various correspondences between GVRIP & SC Jain Construction (P) Limited, the following points have been discussed and agreed to

A. Execution:

1. It was observed that by GVR IPL that progress was not proportional even though the working space and other support provided by GVRIP.
2. Based on ROW availability as on date and the mobilization of resources by SC Jain, it was mutually decided to modify/restrict the scope of the work and conclude the contract after performing the following works by Nov-15:

- a) DBM laying on Thanwala Bypass of Ajmer-Nagaur Project including approaches will be completed by 10th Nov-15
- b) DBM laying on Kuchera Bypass of Ajmer-Nagaur Project including approaches will be completed by 20th Nov-15
- c) BC will be laid on available length of Ajmer-Nagaur Project as on date will be completed by 25th Nov-15
- d) Final bill will be submitted for the works completed till 25th Nov-15 will be submitted by 30th Nov-15

B. Based on the agreement conditions and considering deletion of scope of works, categorically it was decided and agreed by both the parties that GVRIP shall pay S.C. Jain Construction (P) Limited a lumpsum amount of Rs. 65,00,000/- (Rupees Sixty five lacs only) as per the details enclosed. This amount has been assessed duly considering the effective idling of the resources as per the contract agreement and effect of all other factors including demobilization due to reduction in scope of works. S.C. Jain construction (P) has accepted this amount as full and final settlement on account of this contract agreement except for balance executable items which shall be paid as per original contract rates.

C. The running bill No. 7 & 8 will be processed and paid at the earliest.

D. Wherever it is required, GVR will hire the necessary / required equipment from SC Jain constructions as per the prevailing market rate.

Accepted & agreed by,

(for SC Jain constructions (P) Ltd)

Authorized Signatory,

(for GVR Infra Projects Ltd)
(for S.C. Jain Construction (P) Ltd)

Director

86

3. It is pertinent to pay particular attention to Paragraph 'B' of the Minutes of meeting held on 2nd November 2015 from which it is evident that a lump sum amount of Rs.65,00,000/- has been agreed to be paid in view of deletion of scope of works pertaining to the agreement dated 22nd December 2014 referred to in the said minutes itself under the caption – "Ref." and the amount arrived at as an Assessment after duly considering the effective idling of the resources as per the contract agreement and the effect of all other factors including demobilization due to reduction in scope of works and the Applicant under the circumstances has accepted the said sum of Rs.65,00,000/- as full and final settlement on account of this contract agreement save for the balance executable portion under the contract. Thus the above clause (B) contained in the Minutes of the meeting held on 2nd November 2015 between the Applicant and the Corporate Debtor purports that Rs.65,00,000/- is to be treated as a compensation or damages, by whatever name it may be called, as nothing has been spelt out therein, apart from the usage of the term, "effective idling of resources", "other factors including demobilization due to reduction in scope of works" in relation to contract for execution of larger quantum of work, however, which stood scaled down. Further a careful perusal of the said paragraph also connotes that a clear line has been drawn by the agreement of the parties themselves that only the portion of the work, after scaling down is considered as the balance work executable. Thus it is evident Rs.65,00,000/- arrived at as a full and final settlement as per the volition of the parties is in relation to quantum of work which should have been undertaken and executed but, however, came to be shelved due to deletion of scope of works and attendant loss / damage / suffered by the Applicant towards mobilization and idling of resources, due to the Corporate Debtor.



It is also required to be noted that the project per se has not been shelved and will continue only for the balance executable items as per original contract rates and for which running bills are to be raised.

4. Further, careful reading of Paragraph (B) of the Minutes dated 02.11.2015 also discloses that the said sum of Rs.65,00,000/- is required to be paid "as per the details enclosed". However, in the typed set filed by the Appellant as "Annexure A4", I am unable to locate separate details enclosed which seems to be a gross omission on the part of the Appellant and which shows that the Appellant has not disclosed before this Tribunal the full particulars as is required to be done. Be that as it may, for the reasons above recorded, the sum of Rs.65,00,000/- claimed under Item No.9 as elucidated in the order of the Hon'ble Member (Technical) is to be treated as a stand alone amount and even according to the volition of the parties as reflected in the Minutes dated 02.11.2015 (Annexure - A4) cannot be treated as part of "running bill" in relation to the balance of the project executable. At the cost of repetition, the claim of Rs.65,00,000/- is required to be treated as separate and distinct as it is in relation to amount agreed to be paid as a compensation / damages for the loss occasioned as stated in Paragraph 'B' of the Minutes dated 02.11.2015 itself and cannot be clubbed in relation to the running bills raised for the balance work executable and executed by the Appellant.

5. It is further pertinent to note that in relation to the payment of the said amount of Rs.65,00,000/- the date within which the payment is to be made has not been specified and in the circumstances the same becomes payable on and from the said date itself. Thus for all purposes the period of limitation for the said amount of Rs.65,00,000/- is to be reckoned from 02.11.2015 itself namely the stand alone



amount of Rs.65,00,000/- and cannot be sought to be clubbed with the dates of running bills raised from time to time for the balance work executed by the Appellant.

6. However, certain e-mails issued dated 24.11.2015 as well as 08.12.2015 have been annexed as Annexure 'A-5' (Colly) at Page No.54 and Page No.55 as well as thereafter from which it is pointed out that the amount of Rs.65,00,000/- being the settlement amount is required to be paid by 30th November 2015. It is equally pertinent to note that no response had been received to any of the said e-mails from the Corporate Debtor as none is placed on record, if any. It is equally pertinent to note that in relation to the e-mails dated 24.11.2015 as well as 08.12.2015, the Appellant has sought to treat the claim of Rs.65,00,000/- as agreed in the Minutes dated 02.11.2015 to be payable only as a stand alone amount and not as part of running bills for the balance works executed. Similar is the position in relation to the other Annexures filed and consistently reflected in the Annexures for (eg.) page Nos.56, 58, 60, 65 and 68. Page Nos.65 of e-mail dated 11.08.2016 and 68 of e-mail dated 02.03.2017 specifically gives out even the number of months / delay in making the payment computed from 02.11.2015 (i.e.) minutes of the meeting (Annexure A4) as 9 months and 16 months respectively.

7. Curiously and contrary to its own e-mails and documents filed and referred to above, I find that in Form B relating to the claim preferred by the Appellant as an 'Operational Creditor' of the Corporate Debtor before the Respondent as given at Page No.76 Paragraph 5 Clause 6, the minutes of the meeting is said to be dated 30th November 2015, however, no such copy of minutes dated 30th November 2015 is available on record. Further from the statement of accounts annexed for the period between 01.04.2015 and 31.03.2016 annexed at Page Nos.84 to 91, I do not also find the same being acknowledged by the Corporate Debtor. In the circumstances,



the amount of claim in a sum of Rs.65,00,000/- becomes payable on and from 02.11.2015 and the period of limitation is required, if at all, to be computed from the said date.

8. Now considering the chronological sequence of dates as can be discerned from the records available before this Tribunal, the following position emerges:-

(i)	02.11.2015	A sum of Rs.65,00,000/- is agreed between the parties as per the minutes to be paid by the Corporate Debtor to the Appellant under the head as reflected in Para (B) of the said minutes.
(ii)	02.11.2018	Expiry of three years period in view of the applicability of the Provisions of Limitation Act, 1963 by virtue of Section 238 A of IBC, 2016 to the proceedings or appeals before the Adjudicating Authority, namely this Tribunal.
(iii)	19.11.2018	Filing of the claims by the Appellant, including that of Rs.65,00,000/- made under Item (9) of the claims numbering in all under 11 different heads.

9. Thus in the normal course, the above claim of Rs.65,00,000/- is required to be dismissed as barred by limitation, even though limitation not being raised as a defence by the Respondent to avoid the claim, however, this Tribunal is still required to consider the aspect of limitation by virtue of Section 3 of the Limitation Act, 1963 and as held by Hon'ble NCLAT in its decision rendered in the matter of **C.R. Badrinath –vs- Eight Capital India (M) Limited and another in Company Appeal (AT) (Insolvency) No.132 of 2020.**

10. However, it is evident from the order of my brother, Hon'ble Member (Technical) that the Corporate Insolvency Resolution Process (CIRP) had been initiated by this Tribunal on 15.10.2018 in relation to the Corporate Debtor as a consequence of which by applicability of Section 14 of the IBC, 2016, moratorium

came to be also ordered. In the circumstances, the institution of suits came to be expressly prohibited and even if the Appellant wanted to have its claim of Rs.65,00,000/- enforced before the date of expiry of the limitation on 02.11.2018, it could not have taken any action in this regard, even disregarding any action which could have been initiated by the Appellant prior to initiation of CIRP on 15.10.2018. It is to be noted further that IBC, 2016 recognizes the above position and by virtue of Section 60 (6) of IBC, 2016 the applicability of the provisions of Limitation Act, 1963 for the time being when the moratorium is in force virtually stands suspended. For ready reference Section 60 (6) of IBC, 2016 alone is reproduced hereunder:-

"60. Adjudicating Authority for corporate persons. –

(1) XXX

(2) XXX

(3) XXX

(4) XXX

(5) XXX

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

11. Thus in totality, taking into consideration the above discussion, even though I disagree with my brother Hon'ble Member (Technical) in relation to the observation that the claim in effect is required to be correlated with the statement of account on the basis of an open, mutual and current account basis which is said to apply in the instant case including the stand alone claim of Rs.65,00,000/- as agreed between the parties by virtue of minutes dated 02.11.2015, and once the same is applied the claim is within limitation as a running account and the last payment was made up to



01.02.2017, however, for the reasons given in the earlier paragraphs I am unable to concur, however, the claim of the Appellant in a sum of Rs.65,00,000/- looking from another angle, prima facie seems to be saved from being barred under the Limitation Act, 1963 by virtue of Section 60 (6) of IBC, 2016 and in the circumstances I concur with the ultimate conclusion reached in relation to the claims as extracted in Paragraph 22 of the order rendered by the Hon'ble Member (TECHNICAL Tribunal).

-SD-

(R. VARADHARAJAN)
MEMBER (JUDICIAL)

ghk