IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

COURT-II

C.P. (IB) No. 212/KB/2023

An application under section 9 of the Insolvency and Bankruptcy Code, 2016, read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the Matter of:

BLUEFIN MARINE
Through Aslam Ibrahim Pirkhan,
Parikhan Villa, Near Jama Masjid,
Post – Papdi Vasai(West),
Mumbai 401207

Applicant/Operational Creditor

Versus

HITECH CIVIL ENGINEERS PRIVATE LIMITED,
Plot 9, 8.6 Sahajeevan Colony,
Post Box 721,
Haddo Port Blair 744102

…Corporate Debtor

Date of Pronouncement:22.06.2026

CORAM:Labh Singh, Hon'ble Member(Judicial)
Rekha Kantilal Shah, Hon'ble Member(Technical)

Present:

Mr. Karl Shroff Ld. Advocate.] For the Operational Creditor
Mr. Sidhhnath Makkar, Ld. Advocate.]
Ms. Pooja Sah, Ld. Advocate.]

For the Corporate Debtor None Present

ORDER

<u>Labh Singh Member(Judicial)</u>

1. The present Company Petition has been filed by the applicant/operational creditor for initiation of CIRP against the Respondent company, M/s Hitech Civil Engineering Private Limited(hereinafter to be referred as "Corporate Debtor"), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") for the alleged default for an amount of Rs. 1,39,72,910.96/- plus delayed payment interest @21% per annum.

2. The Corporate Debtor is a private limited company incorporated on 20.12.2012 having authorized share-capital of Rs. 50,00,000/- and paid-up share capital of Rs.45,00,000/- having is office situated at Plot 9, 8.6 Sahajeevan Colony, Post Box 721, Haddo Port Blair 744102.

3. Briefly stated the facts of the applicant's case are that the corporate debtor entered into a consortium agreement dated 18th January 2019 with the operational creditor and one Koushic Pressure Vessel Pvt Ltd to set up a low temperature thermal desalination plant, submarine HDPE pipe and marine structures at Kalpeni Island in Lakshadweep.

3.1. The operational creditor raised running account bills from time to time on the Corporate Debtor. The Corporate Debtor made part payments on such bill raised from time to time. The Invoices raised by the Operational Creditor contained a specific provision for payment of Interest @ 21% per annum after 15 days from the date of the bill. The Corporate Debtor failed to make payment for which the Operational Creditor sent several reminders. The Corporate Debtor, vide an email dated 25th July 2022, admitted that an amount of Rs 1,23,50,875.24/- was outstanding for the bills raised;

however, the operational creditor, despite assurance to pay the amount, failed to make payments.

3.2. Thus, the Corporate Debtor has acknowledged and admitted debt payable to Operation Creditor. The Operational Creditor has made repeated requests and written reminders including issuance of legal notice to the Corporate Debtor for making payment of the balance admitted outstanding dues. The Corporate Debtor failed and neglected to make payment of the balance outstanding principal dues amounting to Rs. 1,39,72,910.96 despite receipt of notice and reminders.

3.3. The amount in default is Rs. 1,39,72,910.96 (One Crore Thirty Nine Lakh Seventy Two Thousand Nine Hundred Ten Rupees and Ninety Six Paisa) plus delayed payment interest @ 21% pa. The date of default is 25.07.2022. Therefore, the corporate debtor is liable to be admitted in the CIRP process.

3.4. The applicant issued Demand Notice dated 20.03.2023 under section 8 of the IBC 2016 on 20.03.2023 which was duly served at the registered office of the corporate debtor and to other known addresses of the Corporate Debtor. The applicant has filed an affidavit under Section 9(3)(b) stating that no payment or notice of dispute has been received by the applicant after service of demand Notice.

3.5. The applicant filed a supplementary affidavit in compliance of order dated 31.10.2023 passed by this Tribunal. It was directed to the applicant to file its GST returns with regard to the invoices raised upon the corporate debtor.

3.6. As per part-IV of the application, an amount of Rs. 1,39,72,910.96/- with interest @ 21% per annum on delayed payment is still outstanding to be paid by the corporate debtor. Therefore, it has been prayed that the present Company Petition deserves to be allowed and the Corporate Debtor requires to be admitted in the CIRP process.

4. In pursuance of notice issued by this Tribunal, the Corporate Debtor appeared and filed its reply stating therein that respondent company is working in the marine/coastal/offshore construction sector providing end-to-end solutions for coastal, port & harbour, offshore and infrastructure development projects with conceptualization and construction works using unique & project specific methodologies.

5. Respondent entered into a consortium agreement dated 18.01.2019 with the applicant and another participant M/s

Koushic Pressure Vessels Pvt Ltd to pool their resources, cooperate with each other and jointly work towards successful execution and completion of the project “Setting up of Low Temperature Thermal Desalination Plant with components of Process Plant, Submarine HDPE Pipe 2 and Marine Structures in Kalpeni Island of UT Lakshadweep”. This project contract was awarded by the National Institute of Ocean Technology (NIOT) to the parties of the MOU (‘consortium’) being the successful bidders.

6. It is further replied that the role & responsibilities of the consortium with scope of work were clearly described in the contract dated 6th April 2018 executed between NIOT and the consortium. It was agreed that upon completion of each stage work, the applicant and M/s Koushic Pressure shall raise invoices with the Respondent being the lead participant for the work done by each of them. Respondent shall raise the individual invoices containing all works done by each party of the consortium to NIOT. The NIOT shall then process the payment of invoices to the respondent who shall then transfer the same to the respective parties. Thus, each invoice was raised based on completion of each stage of the project. The contract entered between NIOT and the consortium is Annexure R-2.

7. Accordingly, whenever invoices were raised by the applicant, the respondent had raise the same to NIOT, and the concerned invoice amount was transferred to the Respondent. The Respondent, on transfer received from NIOT, immediately transferred the same to the applicant. The bank statements showing the concerned receipts from NIOT and transfers made to the applicant are Annexure R-3. Accordingly, there is no privity of contract for payment between the parties as the invoices were raised upon third party as consortium part and therefore there is no liability.
8. It is further replied that the whole arrangement signifies a partnership of the applicant and respondent in completing the project granted to them by NIOT. It is not a creditor debtor relationship. The applicant and respondent worked together to complete the project; and therefore, whatever is received from NIOT, being the third party, is only transferred to the applicant. The Respondent does not owe any debts to the applicant.
9. The last final payment has yet to be received from NIOT amounting to Rs.2,89,49,802/- (Rupees Two Crores Eighty Nine Lakhs Forty Nine Thousand Eight Hundred and Two only) which is evident from invoices dated 10.11.2023 raised by the Respondent to NIOT. The final payment contains the

applicant's component of Rs. 59,00,253/- (Rupees Fifty Nine Lakhs Two Hundred and Fifty Three only). The final payment has not yet been received from NIOT, and thereby rendering it impossible for the respondent to transfer the applicant's component of the final payment amount to the applicant. The invoices dated 10.11.2023 are annexed as Annexure R-4.

10. The final payment invoices dated 10.11.2023 was raised after the meeting of the Techno Commercial Evaluation Committee (for short 'TCEC') held on 09.11.2023. The TCEC is formed by NIOT to monitor the progress of the project and confirm its completion and initiation. After the said meeting, and after TCEC confirmed the completion of the project in all aspects, the final invoices were raised to the NIOT. The applicant is aware of the fact that the final payment amount is yet to be received from NIOT and only when that is received, the respondent be able to make the said payment. The Respondent has always paid the amount received from NIOT to the applicant immediately upon receipt, without delaying the payment. The applicant, despite all this, has opted to file the present petition before this Tribunal with malafide intentions.

11. It has further been replied that the allegation that the respondent has admitted its debt in the email dated 25th

July 2022 is false. Respondent had mentioned the outstanding amount to be paid which includes the final payment component yet to be received from NIOT. The transfer of said final component can be made to the applicant once the same is received from NIOT. Therefore, the said outstanding amount comes to Rs. 64,50,622/- (Rupees Sixty four lakhs fifty thousand eight hundred and twenty two only) as per the calculations of the Respondent. This can easily be paid by the respondent once the final payment is received from NIOT. Thus, the alleged amount claimed though not admitted to be dues is less than the minimum threshold limit of One Crore. Therefore the present petition is liable to be dismissed on the grounds that firstly the relationship between the applicant and the respondent is not that of a Creditor-Debtor, and secondly the rest minor payments which is to be paid to the applicant constitutes an amount lesser than the amount required to file a petition before this Tribunal.

12. It is further replied by respondent that the amount due to the applicant is not in the nature of a debt and does not qualify the conditions of Debt under the provision of IBC. The applicant has fraudulently added interest at 21% and claimed an exaggerated amount. The interest is not payable

and applicable as this is not a Debtor Creditor relationship as all were partners working for a common third party.

13. The respondent and the applicant has done various projects in the past together and maintains a decent business partnership till date. The applicant very well knows that the respondent has never defaulted in making payments on time for every project on which they have worked together on in the past. There is no default committed by the Respondent. Respondent is not in the nature of a Debtor to the applicant, and the respondent is a partner of the applicant as far as the project granted by NIOT is concerned.

14. The applicant has merely misused the process of law and wasted the time of this Tribunal by filing the present application wrongly without any valid grounds. Therefore, the present Application deserves to be dismissed with costs.

15. The respondent filed a supplementary affidavit wherein it has been submitted that when the applicant demanded payment, the corporate debtor did not raise an issue suggesting no payment from the client. It is stated that they were in the process of renewing their bank account and requested the petitioner to await the bank process and assured payment will be made shortly.

16. From pleading of the parties, following question arise for consideration and decision by this Tribunal:-

    (i) Whether the present petition is maintainable at law?

    (ii) Whether there is debt and default as defined in IBC Code 2016?

    (iii) Relief to which the applicant is entitled?

17. Despite having appeared in the present matter and reply filed, the Corporate Debtor opted not to appear further in the present matter; and accordingly, the matter was taken up for hearing on the basis of pleading and documentary evidence available on record.

18. Heard Learned Counsel appearing on behalf of the Operational Creditor. We have gone through the pleadings of the parties and documents placed on record. We have duly appreciated the law applicable on the facts and circumstances of the present case.

<u>Issue No. (i) & (ii)</u>

19. The Corporate Debtor, in its reply affidavit filed in the present petition, has alleged that there is no relationship of creditor and debtor between the parties. It has also been submitted that the interest is not payable and applicable as

this is not a Debtor Creditor relationship as all were partners working for a common third party.

20. Before we proceed to decide the issue involved in the present matter, it is relevant to refer provision of Section 3(11) of IBC 2016, wherein the debt has been defined as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operation debt. The said relevant provision reads as under:

> *(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

21. The operational debt has been defined in Section 5(20) of IBC 2016 which means a claim in respect of the provision of goods and services including employment or a debt in respect of the payment of dues arising under any law for the time being in force. The relevant provision of Section 5(20) of IBC 2016 read as under:

> *(21) "*Operational Debt*" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in*

force and payable to the Central Government, any State Government or any local authority;"

22. It is pertinent to refer relevant clauses of consortium agreement dated 18.01.2019 which has been entered between M/s Koushic Pressure Vessel Pvt Ltd being the lead partner, M/s Hltech Civil Engineers Pvt Ltd, the respondent/Corporate Debtor being the second partner and the applicant M/S Bluefin Marine being the third partner. The said agreement was entered between the parties for completion of awarded work of setting up of Low Temperature Thermal Desalination Plant, Submarine Hdpe Pipe and Marine Structures at Kalpeni, Kiltan and Androth of Kiltan Island of Lakshdweep as per order granted by M/s National Institute of Ocean Technology.
23. It has specifically been provided in Clause (1) of the said agreement dated 18.01.2019 that the applicant has agreed to pay Bank Guarantee of Rs. 1,47,50,000- in lumpsum for all three Islands as agreed by M/s Koushic Pressure Vessel Pvt Ltd, the First Partner and the respondent/Corporate Debtor. It has further been agreed in Clause (3) of the said agreement that all running bills and final bills will be paid to each of them back to back with respect to their part

of work done when the payment is received from 'NOIT'. The relevant clause is reproduced verbatim as under:

> "*3. All the running bills and final bills will be paid to M/s Bluefin Marine, M/s Kouschic & M/S Hitech back to back as per NIOT BOQ with respect to their part of work done when the payment is received from NOIT.*
>
> 4.*On Successful completion of entire work and handing over the plant to NIOT, The incentive will be shared with Bluefin Marine on Submarine pipe line part, as per the incentive terms.*
>
> *6. All the other terms and condition as per the agreement executed with the lead partner with M/s. NIOT is applicable to all other consortium partners*".

24. The question arises whether such type of arrangement entered between partners of consortium agreement for execution of contract work hired from an owner of work culminates into creditor debtor relationship for which an application under Section 9 of the IBC 2016 may be filed.

25. It is very much clear from the agreement dated 18.01.2019 that upon completion of each stage of work, running bills

and final bills with respect to their part of work done will be paid when payment is received from the NOIT/the owner of project. The incentive was required to be shared with the applicant upon successful completion of entire work.

26. The applicant and M/s Koushic Pressure had to raise invoices with the Respondent, being the lead participant, for the work done by each of them. It is an admitted case of the respondent that it had to raise invoices containing all works done by each party of the consortium to NIOT. It is also admitted that the NIOT had to process the payment of invoices to the Respondent who was bound to transfer the same to the respective parties. It is also admitted that respondent, upon receipt of the amount from NIOT, immediately transferred the same to the applicant. Therefore, the applicant is the operational creditor of the respondent/Corporate Debtor.

27. It is pertinent to note that the respondent/Corporate Debtor, during pendency of the present petition, entered into settlement with the applicant vide settlement agreement dated 09.05.2024 wherein it has clearly been admitted that a total outstanding amount is Rs. 1,39,72,910 and the same has been settled for an amount of Rs. 1,23,50,875/-(Rupees One Crore Twenty Three Lakhs Fifty Thousand Eight Hundred

Seventy Five Only). The entire settlement amount was required to be paid in two tranches on or before 01.11.2024. The respondent has failed to make payment of the default amount despite entering a settlement agreement with the applicant.

28. A similar question came up for decision before Hon'ble NCLAT in case of Amarendra Mohapatra Vs. Daga Power Systems and Constructions Pvt. Ltd Company Appeal No. 1660 of 2025 decided on 04th May 2026 wherein Hon'ble NCLAT distinguished its own judgment in case of Prashanth Shekara Shetty Designated Partner of Abmay Health Ventures LLP, Vs. 'Alcuris Healthcare Private Limited & Anr. 2022 SCC OnLine NCLAT 4786. Hon'ble NCLAT, referred para no. 28 of the said judgment wherein it was held that:

> *"28. In the present matter, the clauses of the agreement entered between the two parties, who are described as "general profit sharing partners" therein, furnish the key to the minds of the makers of this agreement. The clauses of the agreement disclose an intent that both parties shall exercise joint control over the SRV Heart Centre and will be accountable to each other for their respective acts with reference to the functioning of the Cathlab.*

We also note that both the parties also combined their investments, property, efforts, resources, skill and knowledge in this unit. There are unmistakeable signs of reciprocal rights and obligations contained in the agreement besides evidence of common participation/joint control in the management as well as sharing of profits and losses. When shared control of interest or enterprise and shared liability for profit and losses is so clearly manifested, it cannot be denied that both parties are implicit partners and co-adventurers in the Cathlab venture rather than one being a consumer and the other a service provider. From the material on record, facts and circumstances there arises no clear or unambiguous jural relationship between the two parties as one of Corporate Debtor and Operational Creditor. Rather both the Corporate Debtor and Respondent No. 1 are like the principal as well as the agent of the other party. This spirit is not only captured in the body of the agreement but also demonstrated in the actions and conduct of both parties in their role as "general profit sharing partners". Thus, *for the above reasons, we are not inclined to agree with the contention of the Respondent No. 1 that the outstanding amount so claimed constitutes an operational debt under the IBC. As we hold that the claim is not in the nature of Operational debt, we need not go further to examine whether there was any default in respect of a debt which had become due and payable and whether it was laced with preexisting dispute."*

18. When we look into the above case, the Agreement between the parties was general profit sharing partners who had combined their investment property efforts in the units. In the above circumstances, this Court held that the said claim was not in the nature of operational debt."

19. When we look into the facts of the present case, in the present case both the parties formed JV/Consortium to submit the bid to OPTCL as corporate debtor lead member of the consortium. Contract was awarded to both corporate debtor and operational creditor. Corporate debtor and operational creditor thereafter entered into separate Agreement dated 04.01.2019. As noted above *with Addendum dated 11.02.2020. The Contract awarded by OPTCL consisted of three components, as noted above, one of the components was supply component under the Contract as agreed between the operational creditor and corporate debtor supply component was obligation of operational creditor and Clauses of Addendum dated 11.02.2020 clearly mentions that supply shall be made by operational creditor with respect to which the corporate debtor shall raise bill to the OPTCL and corporate debtor shall make payment to the operational creditor after receiving the payment from OPTCL. The facts of the present case thus are clearly distinguishable from the above judgement where obligations of both the parties were clearly differentiated and obligation and liabilities were clearly spelled out in the Agreement dated 04.01.2019 and the Addendum as noted above.*

29. Therefore, in view of aforesaid observation and law applicable thereon, we come to final conclusion that there has been default for an amount Rs. 1,39,72,910.96 (One Crore Thirty Nine Lacs Seventy Two Thousand Nine Hundred Ten Rupees and Ninety Six Paisa) as on 25.07.2022.

30. In view of the above said discussion, we allow the present CP (IB) No. 212/KB/2023 filed under Section 9 of the IBC, and accordingly, order the initiation of Corporate Insolvency Resolution Process (CIRP) with the following directions. The Petition filed by Bluefin Marine (Operational Creditor), under Section 9 of the IBC, is hereby admitted for initiating the Corporate Insolvency Resolution Process(CIRP) of the Corporate Debtor, Hitech Civil Engineers Pvt. Ltd.

31. The applicant has not proposed any particular Interim Resolution Professional and has requested this Tribunal to appoint one. Hence, we appoint Mr. Pratim Bayal, having registration number IBBI/IPA-003/IP-N00213/2018-2019/12385, email: pratimbayal@gmail.com the Interim Resolution Professional (IRP) of the Corporate Debtor, to carry out the functions as per the IBC. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

32. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under

the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, Thus, the following prohibitions are imposed:

"(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 Securitization 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."

33. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

34. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

35. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and call for the submission of claims under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

36. During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The suspended Board of Directors is directed to extend all cooperation to the Interim Resolution Professional/Resolution Professional and to provide access to all books of accounts, documents, records, and assets of the Corporate Debtor as required for smooth conduct and

completion of the CIRP. The officers and managers of the Corporate Debtor shall also provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

37. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance, as may be required by the Interim Resolution Professional in this regard.

38. The Operational Creditor shall initially deposit a sum of Rs. three lakh with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC and in accordance with Regulation 34B of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

39. In terms of sections 9(5)(i) of the Code, the Registry of this Adjudicating Authority is hereby directed to

communicate this Order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

40. The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

41. The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

42. The order of moratorium shall cease to have effect as per Section 14(4) of the IBC.

Rekha Kantilal Shah	Labh Singh
Member(Technical)	Member(Judicial)

T.Roy (LRA)