

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.01/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

EBPL Ventures Private Limited
[CIN: U60200CT200PTC020033]

...Operational Creditor

v/s.

**Gannon Dunkerley and Company
Limited**
[CIN: U51109MH1924PLC001107]

...Corporate Debtor

Order Delivered on: 15.03.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Ms. Prachi Johri, Advocate

For the Respondent:

Mr.Dibyoo Banerji, Advocate

ORDER

Per: Rajesh Sharma Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by EBPL Ventures Private Limited, ("the Operational Creditor"), [CIN: U60200CT200PTC020033] seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Gannon Dunkerley & Co. Limited ("the Corporate Debtor"), [CIN: U51109MH924PLC001107].

2. The Corporate Debtor is a company incorporated on 11.03.1924 under the Companies Act, 1913, as a Public Company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 3rd Floor, New Excelsior Building, A.K Nayak Marg, Fort, Mumbai Maharashtra-400001. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition is filed by the M/s. EBPL Ventures Pvt. Ltd (“Operational Creditor”) before this Adjudicating Authority claiming the Corporate Debtor failed to make payment of a total sum of Rs.8,23,71,145.79/- (Rupees eight crore twenty-three lakh seventy-one thousand one hundred forty-five and paise seventy-nine only). The date of default is 30.01.2019.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that, the Operational Creditor and Corporate Debtor entered into an LOI dated 07.10.2015. Based on it, the Corporate Debtor has placed two Work Orders; one on its own letter head i.e. GANNON DUNKERLEY & CO., LTD. dated 11.07.2016 and second on the letter head of the consortium i.e. GANNON-FLCL CONSORTIUM dated 11.07.2016.
 - b) The revised Work Order dated 14.11.2016 was issued by the Corporate Debtor in the name of Operational Creditor.
 - c) Pursuant to the above Work Order, the Operational Creditor has raised the following invoices:

SR. NO	INVOICE NO	DATE	AMOUNT
1	EBPL/GFC/BAN/16.10/001	21.01.2017	2,07,19,290

2	EBPL/GFC/BAN/16.10/002	24.01.2017	1,18,77,300
3	EBPL/GFC/BAN/16.10/003	20.02.2017	99,00,000
4	EBPL/GFC/BAN/16.10/004	04.03.2017	17,21,170
5	EBPL/GFC/BAN/16.10/005	22.03.2017	21,00,000
6	EBPL/GFC/BAN/16.10/006	28.03.2017	49,00,000
7	EBPL/GFC/BAN/16.10/007	28.04.2017	73,50,000
8	EBPL/GFC/BAN/16.10/008	06.02.2018	1,29,00,000
9	EBPL/GFC/BAN/16.10/009	23.02.2019	8,23,71,524

- d) The Operational Creditor submits that, LSIS Co. Ltd., Korea through its commercial Manager vide Letter No. FS/OS-719-16060 dated 27.09.2016 advised the Corporate Debtor for new CBI system along with up-to-date control and operational system to desired level with warranty instead of modification of CBI System working at Akhara Junction Station at Bangladesh.
- e) The Operational Creditor submits that, LSIS Co. Ltd., Korea vide its letter dated 19.10.2016 has offered quotation for supply of technical service and on-going service of CBI System for US \$ 502,500, US \$ 200,000 and US \$ 150,000 respectively, together for amount of US \$ 852,500. In acceptance of quotation the Ministry of Railways, Government of Bangladesh approved variation in Part-I and Part-II of the Schedule Item for Construction of 2nd Titas Bridge along with approach rail lines with all other related works for an amount of Rs.14,74,06,926.
- f) The Operational Creditor through its letter dated 27.10.2016 to Corporate Debtor requested issue of Irrevocable LC and sanction of advance for supply of signalling material for telecommunication work

related to Construction of 2nd Titas Bridge work at Akhura Junction at Bangladesh.

g) The 'scope of work' described in the Work Order required the Corporate Debtor to perform work as that of a Principal Contractor. Additionally, there were 3 irrevocable letters of Credit on 24.11.2016 for an amount of Rs,3,50,00,000/-, on 05.12.2016 for an amount of Rs.2,44,00,000/- and on 13.12.2016 for an amount of US \$ 702500 to the Operational Creditor as the first beneficiary. The Letter of Credit are placed on record as follows:

i) letters of Credit on 24.11.2016

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**FEDERAL BANK, MUMBAI FORT, MUMBAI, P B NO. 251 32 BOMBAY
SAMACHAR MARG FORT MUMBAI.**

User Id : 16317
Report Id : 20161124122313
Date : 2016/11/24 12:23:13
IFSC : FDRL0001099

Message Report

OUTGOING MESSAGE

Message Sender Reference : 201611241223FDRL0001099000048990
Sender Sequence Number : 48990
Message Type : IFN700
Receiver Address : (Issue Of Doc. Credit)
: IBKL0000391
: (IDBI BANK, RAIPUR ,CORPORATE
BANKING BRANCH, RAIPUR, IDBI BANK
LTD ,SPECIALISED CORPORATE
BRANCH ,1ST FLOOR , SIMRAN
TOWERS ,OPPOSITE LIC
BUILDING ,PANDRI , RAIPUR
(CHHATTISGARH) ,PIN-492004.)

Unique Transaction Reference (UTR) :
Messages User Reference (MUR) :
Receiver Application ID :
Non-Delivery Warning Requested : ILC
Open Notification Requested : NO
Obsolescence Period (hh:mm) : NO
Message Status :
Priority : DELIVERED
Creator's UserId : 99
Verifier's UserId : USHA
Authorizer's UserId : 16323 (2016/11/24 12:08)
: 16317 (2016/11/24 12:23)

27	Sequence of Total	Number	: 1
		Total	: 1
40A	Form of Documentary Credit	Type	: IRREVOCABLE
20	Documentary Credit Number	Documentary Credit Number	: BBYAINLC31162
31C	Date of Issue	Date	: 20161123
40E	Applicable Rules	Applicable Rules	: UCP LATEST VERSION
31D	Date and Place of Expiry	Date	: 20170221
		Place	: NEGOTIATING BANK
51A	Applicant Bank	IFSC	: FDRL0001099
50	Applicant	Name & Address	: M/S GANNON DUNKERLEY AND CO.LTD : EXCELSIOR BUILDING, 3RD FLOOR, : A.K.NAYAK MARG, FORT : MUMBAI-400023
59	Beneficiary	Name & Address	: M/S EBPL VENTURES PVT LTD : 4/3 NEHRU PARISAR : BHILAI-490020
32B	Currency Code, Amount	Currency	: INR
		Amount	: 3,50,00,000.00

ii) letters of Credit on 05.12.2016

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**FEDERAL BANK, MUMBAI FORT, MUMBAI, P B NO. 251 32 BOMBAY
SAMACHAR MARG FORT MUMBAI.**

User Id : 16317 Date : 2016/12/05 16:05:00
Report Id : 20161205160500 IFSC : FDRL0001099

Message Report

OUTGOING MESSAGE

Message Sender Reference : 201612051602FDRL0001099000052499
Sender Sequence Number : 52499
Message Type : IFN700
(Issue Of Doc. Credit)
Receiver Address : IBKL0000391
(IDBI BANK, RAIPUR ,CORPORATE
BANKING BRANCH, RAIPUR, IDBI BANK
LTD ,SPECIALISED CORPORATE
BRANCH ,1ST FLOOR , SIMRAN
TOWERS ,OPPOSITE LIC
BUILDING ,PANDRI , RAIPUR
(CHHATTISGARH) ,PIN-492004.)

Unique Transaction Reference (UTR) :
Messages User Reference (MUR) :
Receiver Application ID :
Non-Delivery Warning Requested : NO
Open Notification Requested : NO
Obsolescence Period (hh:mm) :
Message Status : DELIVERED
Priority : 99
Creator's UserId : USHA
Verifier's UserId : 16323 (2016/12/05 15:46)
Authorizer's UserId : 16317 (2016/12/05 16:02)

27 Sequence of Total Number : 1
Total : 1

40A Form of Documentary Credit Type : IRREVOCABLE

20 Documentary Credit Number Documentary Credit Number : BBYAINLC31230

31C Date of Issue Date : 20161205

40E Applicable Rules Applicable Rules : UCP LATEST VERSION

31D Date and Place of Expiry Date : 20170305
Place : NEGOTIATING BANK


51A Applicant Bank IFSC : FDRL0001099

50 Applicant Name & Address : M/S GANNON DUNKERLEY AND
CO.LTD
: EXCEISIOR BUILDING, 3RD FLOOR,
: A.K.NAYAK MARG, FORT
: MUMBAI-400023

59 Beneficiary Name & Address : BEN:M/S EBPL VENTURES PVT LTD
: 4/3,NEHRU PARISAR,
: BHILAI-490020

32B Currency Code, Amount Currency : INR
Amount : 2,44,00,000.00

<https://10.250.6.25/servlet/DemandReportsServlet?fromList=YES&actionMsg=MR&retrie...> 12/5/2016



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iii) letters of Credit on 13.12.2016

ANNEXURE-K 76

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Possible duplicate delivery
Network : SWIFT
Session Holder : FDRLINBBAXXXF
Session : 4266
Sequence : 852399
Delivery Status : Network Ack

----- Instance Type and Transmission -----
Original
Priority/Delivery : Normal

----- Message Header -----
Swift Input : FIN 700 Issue of
a Documentary Credit
Sender : FDRLINBBOPS
FEDERAL BANK LIMITED, THE
(OPERATIONS DEPT)
ALUVA IN
Receiver : IBKLINBB391
IDBI BANK LIMITED
(RAIPUR BRANCH)
RAIPUR IN

----- Message Text -----
27: Sequence of Total
1/1
40A: Form of Documentary Credit
IRREVOCABLE TRANSFERABLE
20: Documentary Credit Number
BBYAIMLC15949
31C: Date of Issue
161213
40E: Applicable Rules
UCP LATEST VERSION
31D: Date and Place of Expiry
170308, BHILAI
51A: Applicant Bank - FI BIC
FDRLINBBMUA
FEDERAL BANK LIMITED, THE
(MUMBAI FORT BRANCH)
MUMBAI IN
50: Applicant
GANNON DUNKERLEY AND CO. LTD
EXCELSTOR BUILDING 3RD FLOOR
A.K NAYAK MARG
FORT MUMBAI 400 001
59: Beneficiary - Name & Address
EBPL VENTURES PVT. LTD
4/3 NEHRU PARISAR BHILAI 490020
32B: Currency Code, Amount
Currency : USD (US DOLLAR)
Amount : #702500,00#
39A: Percentage Credit Amt Tolerance
0/0
41D: Available With...By... - Name&Addr
ANY BANK IN SOUTH KOREA
BY NEGOTIATION
42C: Drafts at...
180 DAYS FROM BILL OF LADING DATE
42A: Drawee - FI BIC
FDRLINBBMUA
FEDERAL BANK LIMITED, THE
(MUMBAI FORT BRANCH)

SHANE CARDOZ
MUMBAI
INDIA

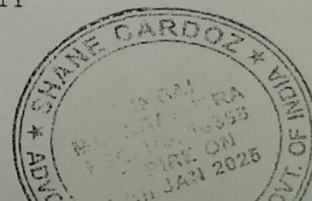
78

13/12/16

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5. PACKING LIST IN DUPLICATE.
6. CERTIFICATE OF SOUTH KOREA ORIGIN ISSUED BY BENEFICIARY CERTIFYING THAT THE GOODS ARE OF SOUTH KOREA ORIGIN
7. TEST CERTIFICATE ISSUED BY THE MANUFACTURER WITH COMPLETE NAME AND ADDRESS OF THE MANUFACTURER
8. PHOTO COPY OF SIGNED TRANSFER CONSENT LETTER ISSUED BY THE APPLICANT ACCEPTING THE TRANSFER OF CREDIT FOR PARTIAL AMOUNT FAVOURING NAMED SECOND BENEFICIARY AS PER THE 47A(6) TERMS INDICATING THE AMOUNT TO BE PAID FOR THE SUPPLY
- 47A: Additional Conditions
- 1) ALL DOCUMENTS SHOULD QUOTE THIS LC NUMBER AND DATE
 - 2) A PENALTY OF USD 150 PLUS SWIFT CHARGES WILL BE CHARGED FOR EACH PRESENTATION OF DISCREPANT DOCUMENTS UNDER THIS LC AND IS FOR THE ACCOUNT OF BENEFICIARY.
 - 3) DOCUMENTS BEARING A DATE OF ISSUANCE PRIOR TO THAT OF THE CREDIT IS NOT ACCEPTABLE.
 - 4) PLEASE BE INFORMED THAT SATURDAY WILL BE TREATED AS A NON BANKING DAY FOR OUR TRADE DEPARTMENT ALTHOUGH OUR BANK MAY OTHERWISE BE OPENED FOR BUSINESS.
 - 5) ALL DOCUMENTS MUST BE IN ENGLISH
 - 6) THIS CREDIT IS TRANSFERABLE. AT THE REQUEST OF FIRST BENEFICIARY AS PER FIELD 59 OF THIS CREDIT, THE ADVISING BANK IS AUTHORISED TO TRANSFER THE CREDIT TO THE NAMED SECOND BENEFICIARY UNDER INTIMATION BY AUTHENTICATED SWIFT TO US.
SECOND BENEFICIARY NAME AND ADDRESS -
'LSIS CO., LTD
LS TOWER, 10266 HOGYE-DONG, DONGAN GU, ANYANG-SI.
GYEONGGI-DO 14119, KOREA'
 - 7) A SIGNED LETTER IN ORIGINAL ISSUED BY THE APPLICANT IS REQUIRED FOR TRANSFER OF CREDIT FOR ANY OTHER BENEFICIARY.
 - 8) PRESENTATION OF DOCUMENTS BY OR ON BEHALF OF A SECOND BENEFICIARY CAN BE DONE BY PRIMARY BENEFICIARY
- 71B: Charges
ALL CHARGES OUTSIDE INDIA ARE FOR BENEFICIARY'S ACCOUNT. CONFIRMED
- 48: Period for Presentation
21 DAYS FROM THE DATE OF SHIPMENT BUT WITHIN THE VALIDITY



- h) The work executed was jointly inspected by the Operational Creditor, Corporate Debtor and Ministry of Railways of Bangladesh and the latest Report dated 14.02.2017 was made available as Annexure A-8 at Pg. No. 49 of the Rejoinder.
- i) As per invoice dated 10.04.2017 an amount of US \$ 5,02,500 by M/s. LSIS co. Ltd in the name of Operational Creditor with the Corporate Debtor as Consignee for supply of C.B.I Equipment and its accessories were raised on dispatch from Bushan Seaport and the same were received by them at Chittagong Port.
- j) As per letter dated 06.05.2017 and letter dated 15.05.2017, both the Operational Creditor and Corporate Debtor consented to transfer partial Credit for US \$ 5,02,500/- for payment to M/s. LSIS Co. Ltd with certification that C.B.I Equipment and its accessories were received by them at Chittagong Port.
- k) The amount in respect of system design, documentation, supervision for installation and test commissioning and project management of CBI System for an amount of US \$ 200,000 was not paid, M/s. LSIS Co. Ltd vide its letter dated 05.02.2018 reminded the Operational Creditor for payment of pending dues.
- l) As per terms of Clause 11 of LOA, stated in Work Order No. D/CE/002859 dated 11.07.2016 the Operational Creditor by its letter dated 23.02.2019 has written to the Corporate Debtor for an amicable settlement of the dispute.
- m) The Operational Creditor submits that, the e-mails were exchanged between 20.02.2019 to 10.10.2019 for the payment of unpaid invoices of the Operational Creditor.

n) The Operational Creditor had issued a Demand Notice under section 8 of the Code dated 07.10.2020 to the Corporate Debtor claiming an amount payable of Rs. 8,23,71,145.79. In relation to this, the Operational Creditor submits that the Corporate Debtor has replied to the Demand Notice vide an e-mail dated 22.10.2020 denying its liability.

5. The case of the Corporate Debtor is as under:

- a) The Corporate Debtor has submitted that, it is a 96 years old construction company undertaking construction of Engineering Projects for both Public & Private Sector clients, having executed major Industrial Projects like Power, Steels, Cement, Aluminium, Sugar Textiles plant, Building projects like Industrial, Commercial and Residential buildings, Water Treatment and Effluent Treatment Plants and Infrastructures projects like Roads & Highways, Railways, Airports and Bridges and Flyover in India and abroad.
- b) All the alleged invoices which are annexed by the Operational Creditor were raised on Consortium i.e GANNON-FLCL CONSORTIUM.
- c) The Corporate Debtor submits that even though the Operational Creditor addressed its dispute via a letter dated 23rd February 2019 in terms of Clause 11 of the LOA for an amicable resolution of the disputes, it failed to invoke arbitration as per the provisions of Clause 11 of the LOA when the amicable resolution mechanism failed.
- d) The Corporate Debtor submits that, the alleged claim of the Operational Creditor in the Petition is Rs.5,17,89,760/- (principal amount) along with interest of Rs.3,08,76,523.87/- totaling to

Rs.8,26,66,283.87/- . The sum total of the allegedly unpaid invoices i.e., D-1 to D-8 is coming to Rs.3,65,67,760/-. Whereas the alleged consolidated invoice (D-9) which is raised on the consortium is of principal amount of Rs.8,23,71,524.69/-. This amount is devoid of interest. As per the invoices there are three different amounts coming at three different places. There is no amount due and payable by the Corporate Debtor to the Operational Creditor.

- e) The Corporate Debtor submits that, on 26-09-2013, Gannon-FLCL Consortium entered into a contract with Bangladesh Railway vide Agreement no. PD/DA/AGT/TITAS/3 for construction of IInd Titas Bridge Work-at Akhaura Junction along with approach rail line at Bangladesh. As per the said contract, the invoices to be submitted by the Consortium was to be certified by the officials and thereafter only certified amount was payable. The said clause is reproduced for ready reference

“ Clause 69.1of the General Conditions of Contract to the Contract Agreement dated 26-09-2013 – *The Employer shall pay the Contractor the **amounts certified by the Engineer** within twenty eight (28) days of the date of each certificate after due adjustments for deductions for advance payments, retention and any other additions or deductions which may have become due under the Contract or otherwise, including those under GCC Clause 99.*”

- f) The Corporate Debtor submits that, the Consortium entered into a contract with the Operational Creditor on back to back basis. The LOA dated 11th July, 2016 was for BDT 8,67,50,400/-. Thereafter there was an amendment made and as per 1st amendment dated 14th November, 2016 the said amount was increased to Rs. 12,00,00,000/- (Rupees Twelve crores only). The total amount

20.50% was to be deducted. The Corporate Debtor has replied to the demand notice vide advocate's letter dated 22nd October, 2020. The said reply was delivered to the Operational Creditor through email dated 23rd Oct, 2020 at both the e-mail addresses mentioned in the demand notice. As per the statement annexed, nothing is due and payable from the Corporate debtor to Operational Creditor. The work quality was below par and had a lot of defects and deficiencies were also pointed out by Bangladesh Railway (letters dated 18.07.2018 and 09.01.2019 issued by the Corporate Debtor to the Operational Creditor and also that there was delay in the completion of contract by the Operational Creditor. There was apathy on the part of the Operational Creditor to take up the works since very beginning which forced the Corporate Debtor to issue a notice on 17th September 2016 to the Operational Creditor to start the works within seven days of the receipt of the letter.

- g) The Corporate Debtor submits that, in the BOQ attached to the contract dated 11th July, 2016 at Item no. 15 Specific reference A5(a) Supply of CBI/SSI equipment for modification of Akhaura junction station, refurbishing and reuse of existing hardware components, operators' console etc was certified by the Bangladesh Railway at the original BOQ amount i.e., Rs. 40,00,000/- and not at the amount raised in the invoice for Rs. 6,74,57,211/-. Since the payment under the work contract with Operational Creditor was on back to back basis, the Corporate Debtor paid the aforesaid amount.
- h) The Corporate Debtor submits that, as per the clause 2(e) of the LOA dated 11th of July 2016, if any new item was required to be executed as per the requirement of site condition, it was the duty of the Operational Creditor to take prior approval of client and consultant.

- i) The Corporate Debtor submits that, as per clause 4(n) of the LOA dated 11th of July 2016, no claim of extra items will be entertained unless agreed in writing by the Engineer in charge of the GDCL/Bangladesh Railway and the same shall be on back to back basis with client. As per the Clause 4(u) of LOA all liaison work with client / consultant and local authorities for obtaining permission / approvals required towards successful completion of the project was in the scope of the Operational Creditor.
 - j) The Corporate Debtor submits that, LSIS was a vendor / supplier of the Operational Creditor and there was no privity of contract of LSIS with the Corporate Debtor. The responsibility of making payments to LSIS was of the Operational Creditor and not of the Corporate Debtor.
6. Rejoinder on Behalf of Operational Creditor to the reply filed by the Corporate Debtor:
- a) With respect to the letter of award:
 - i. The Corporate Debtor in its reply denies to pay the debts but the reply simply states that since the LOA was placed by the Gannon-FLCL consortium so debt is not payable by any one party. As such, claim can be made against either of the consortium members by the Operational Creditor and the adjustment between the Consortium members is not the concern of the Operational Creditor. Therefore, there has been default at the end of the consortium and its constituents and the operational creditor is free to proceed against one or both members of the consortium.

- ii. The Operational Creditor submits that, the Letter of Award and the amendment was placed to the Operational Creditor by the Corporate Debtor under the name of the company Gannon Dunkerley & Co. Ltd. In this regard, email dated 19.11.2016 sent by one Mr. K K Khanra of the Corporate Debtor addressed to their officer Mr Somnath Pandit is relevant whereby the original copies of Work Order issued by Corporate Debtor in the name of Operational Creditor are attached. Pertinently these work orders are issued by the Corporate Debtor only. Actually, for the sake of billing abroad i.e., billing to Bangladesh Railways and for availing the Claims from the Incentive Scheme for the export of goods under the Merchandise Exports from India Scheme (MEIS) notified by the Director General of Foreign Trade (DGFT), such practices of issuance of duplicate copy of work order in the name of the Gannon-FLCL Consortium to the Operational Creditor was followed. Therefore, same work order highlighting obligations of the Corporate Debtor and the Operational Creditor, and not that of the consortium, was circulated and furnished by the Corporate Debtor. The Invoices are required to show the name of the basic supplier which in this case was the Operational Creditor. Thus, the aforesaid clarifies that the LOA was placed by the Corporate Debtor only to the Operational Creditor.
- iii. Initially the LOI was placed by the Corporate Debtor on dated 07-10-2015 stating that the Delhi office of Corporate Debtor shall release a detailed work order . The LOA dated 11-07-2016 is in fact based on a letter of Intent dated 07.10.2015 that states in details the terms of work. The said letter of intent and the Letter of Award has been issued by the Corporate Debtor alone. A copy of the LOI

and LOA dated 07-10-2015 and 11.07.2016 is annexed as Annexure A-3 of the rejoinder filed by the Operational Creditor.

b) With respect to the Credibility of the parties:

- i. This position of the work order in fact having been issued by the Corporate Debtor and not the consortium is admitted and again stands proved by the 1st amendment to the said order issued by the Corporate Debtor alone. There is no mention of the consortium on this amendment to the work order whereby contract price was increased to Rs. 12 crores. Moreover, the amendment issued on 14.11.2016 refers to the initial work order as “our work order no. D/CB/002858 dated 11.07.2016”. Therefore, it stands proved and admitted that the work order was in fact issued by the Corporate Debtor only.
- ii. The Corporate Debtor has claimed that the debt is not due and payable by the Corporate Debtor alone and hence the debt being due and the default is admitted and the only issue is whether the Corporate Debtor owes it alone or along with its consortium partner. The arrangement between the Corporate Debtor and its consortium partner is an internal issue between those parties and the Operational creditor’s claim on the Corporate Debtor is perfectly valid.
- iii. Throughout the tenure of the contract Operational Creditor always remained in constant touch with the Corporate Debtor as the Signalling and Telecommunication works was getting carried out by the Corporate Debtor only in Bangladesh Railways so the question of asking Gannon-FLCL Consortium for payments never arose, as all the payments were made by

Corporate Debtor till the end of the project without the consent of the Consortium. FLCL is Fedders Lloyd Corporation Ltd, the consortium partner of the Corporate Debtor. No communication was ever done with the company FLCL by the Operational Creditor throughout the tenure of the contract. The internal arrangement between the Corporate Debtor and FLCL is the concern of those parties only.

- c) With respect to the pursuing claim against the Corporate Debtor:
- i. The internal arrangement between the Corporate Debtor and FLCL is the concern of those parties only. As far as the Operational Creditor is concerned the LOA was issued by the Corporate Debtor and the payments were made by the Corporate Debtor. It seems that only in order to deny the liability in the present case, the theory of billing to the consortium has been evolved by the corporate debtor.
 - ii. The LOA dated 11-07-2016 is entirely based on a letter of intent dated-07-10-2015, which was issued by the Corporate Debtor alone.
 - iii. The Clause 1 of the LOA states that while expenses of the scope of work are to be borne by the Operational creditor the VAT is to be borne by the Corporate Debtor, not the consortium. Similarly, under clause 2, custom duty and other taxes as applicable in Bangladesh were to be paid by the Corporate Debtor, not the Consortium. Under clause 4 of the LOA detailed BOQ and drawings etc were to be submitted by the Operational Creditor to the Corporate Debtor and not the Consortium. Under clause 4(h) work was to be performed in good quality manner subject to the approval of the Corporate Debtor. Clause 4(k) further makes it clear

that the work was being got done by the Corporate Debtor only as this clause gives power to the Corporate Debtor to get work done through other agencies.

- iv. Further clause 9 again unequivocally states that all plant and equipments, material, staff, labour, etc. brought at site by the Sub contractor shall be working under the banner M/s GDCL, i.e., the Corporate Debtor (not the Consortium).
 - v. Lastly, the dispute resolution clause i.e., clause 11 also only refers to the managing directors of GDCL (Corporate Debtor) and EBPL (Operational Creditors) are empowered to resolve disputes.
 - vi. Therefore, it is abundantly clear that the contract is in effect a real contract between the Corporate Debtor and the Operational Creditor only. And the arrangement between the Corporate Debtor and its consortium partner is an internal issue between those two.
 - vii. This position of the work order in fact having been issued by the Corporate Debtor and not the consortium is admitted and stands proved by the LOI, LOA & the 1st amendment to the said order issued by the Corporate Debtor alone. There is no mention of the consortium on these documents including the amendment to the work order whereby contract price was increased to Rs. 12 crore. Moreover the amendment issued on 14.11.2016 refers to the initial work order as “our work order no. D/CB/002859 dated 11.07.2016”.
- d) With respect to email dated 23.02.2019, it is submitted that mere issuance of a letter noting no payment is not a notice of “dispute” under the IBC. The Operational creditor in fact followed the

contractual remedy and informed the Corporate Debtor vide letter dated 23.02.2019 that it had not received its payment. As laid down by the Hon'ble Supreme Court, a dispute is one where a plausible legal contention is raised. Merely raising issue of non-payment is not a dispute and thus is consistent with the Operational creditor availing remedy under the IBC for debt and default.

- e) As Corporate Debtor was not responding to the requests of the Operational Creditor therefore Operational Creditor submitted the final bill along with dispute settlement request, if any, on 23.02.2019 . However the Operational never pursued the matter nor did the Corporate Debtor reply to the letter as there were actually no disputes between them.
- f) It is relevant to note that the completion certificates of the works were issued by the Consortium, Bangladesh Railways and the Consultant M/s STUP Consultants Pvt. Ltd. A copy of the completion certificates is annexed as Annexure A5 to the Re-joinder.
- g) With respect to the Limitation:
 - i. Additionally it is submitted that the debits were regularly getting done and accounted under the consent from the Operational Creditor by the Corporate Debtor till the date of 13.11.2018 and the final debit statement was issued by the Corporate Debtor . A copy of the final debit statement issued by the Corporate Debtor is annexed as Annexure A-6 of the rejoinder. Even on the basis of this admission the petition is within limitation period of 3 years.

- ii. Moreover, the Hon'ble Supreme Court in suo moto writ petition has suspended limitation from 24.03.2020 onwards in view of the Covid 19 pandemic. Hence, the invoices are within limitation and payable by the Corporate Debtor.
- h) With respect to reply to Demand Notice:
- i. any past letters issued with respect to work to be completed/repairs are irrelevant as final completion has been issued by Bangladesh Railway and all work stands finally completed. It is denied that the Corporate Debtor has paid the entire amount. As far as the communications to the letters of the Corporate Debtor are concerned for dates 17.09.2016 , 18.07.2018 & 09.01.2019, prompt replies to the e-mail of the Corporate Debtor had been given by the Operational Creditor One such 'Deficiency clearance letter' is contained in e-mail dated 14.11.2018 which was acknowledged by the Manager Mr Humayun Kabir, of the Corporate Debtor, and is annexed as Annexure A-7 of the Rejoinder.
- i) The detailed chart showing the balance for Rs.8,23,71,145.79/- is final & interest portion is Rs.3,08,76,523.87/-. The same may be read as final and Correct.
- j) The final bill has been raised as per the final variation signed. After the completion of the works, the Final Variation Statement was then signed by Mr Humayun Kabir the Manager (Signal and Telecom) of Corporate Debtor along with the Signal Engineer Md. Khalequazzaman of the EIC(Engineer In Charge) ie., M/s Stup Consultants Pvt. Ltd. in Bangladesh. The E-mail was also sent to the Operational Creditor on dated 15-01-2018 by Mr Humayun Kabir the Manager(Signal and Telecom) of the Corporate debtor

confirming the details of the Final Variation Statement (Copy of e-mail is attached with the rejoinder). The Signal Engineer of the Consultant M/s STUP Consultants Pvt. Ltd. also signed and verified the final variation statement who was the authorised representative of the Engineer In Charge (EIC) of the Project appointed by the Bangladesh Railways as per the Contract Agreement no-PD/DA/AGT/TITAS/3 DT 26-09-2013. Therefore, it was never expected that the Corporate Debtor at the later date shall avoid making due payments to the Operational Creditor.

k) Supply of new CBI/SSI equipment installed by LSIS has been later on certified by the Consultant as well as the officer of the Corporate Debtor Mr Humayun Kabir. Copy of final variation statement sent in email to the Operational Creditor on 15.01.2018 is attached as Annexure A-9 of the rejoinder. Hence the variation amount so increased due to the installation of the CBI equipments and other items were duly certified for making the balance payments to the Operational Creditor.

l) With respect to the role of LSIS:

i. The Work order issued to LSIS by Operational Creditor clearly mentions that the payments for the equipments shall be made by Corporate Debtor through Operational Creditor by LC as Transferrable LC wherein the first beneficiary shall be the Operational Creditor and the Second beneficiary shall be LSIS. Copy of Work order of Operational Creditor and LC is attached as Annexure A-11 of the Rejoinder.

7. The Corporate Debtor has filed Sur-Rejoinder and submits as under:

- a) The Corporate Debtor submits that, the alleged debt was payable by 2 legal entities. However, the Operational creditor chose to file the present Petition against one legal entity. Once the bills were raised by the Operational Creditor on the consortium, the Operational creditor could not have filed the present Petition against the Corporate Debtor as per the Operational creditor's whims and fancies.
- b) The e-mail dated 19.11.2016 is sent by Mr. Somnath Pandit to Mr. Khanra and not by Mr. Khanra. The initiator of the mail was the Operational Creditor on 14.11.2016 (page 18 of the Affidavit-in-rejoinder) with two attachments, viz., the draft letter for issuance of Transferrable L.C. to the Operational Creditor and the sample Transferrable LC of the IDBI Bank for the reference and the understanding of the Corporate Debtor.
- c) In LOI dated 07.10.2015, it is clearly stated that, "This work shall be executed based on the terms, conditions, specifications, etc. complete on back to back basis on contract between GDCL – Lloyd (JV) and Bangladesh Railway @10% less than our BOQ rates." In the Amendment dated 14.11.2016, it is stated that, "All other terms and conditions of the original order shall remain unchanged.". The Corporate Debtor issued the said LOI and Amendment on its own letter head, it was made clear in writing that the terms and conditions of the Contract between the Consortium and Bangladesh Railway and the Original Work Order would prevail. The Operational Creditor afterwards raised bills to Consortium, which clearly shows the understanding of the Operational Creditor that payment was to be made by the Consortium.

- d) The Operational Creditor in its rejoinder has contended and also quoted that it was the responsibility of the Corporate Debtor to open LCs for making payments against supplies of major materials, it has not brought on record that all LC charges including second beneficiary were to be borne by the Operational Creditor itself. As per clause 2 of the Amendment dated 14.11.2016, though payment for supplies of major materials from eminent manufacturer were to be made through LC to be opened by the Corporate Debtor, the Operational Creditor had to bear all charges for the same including that of the second beneficiary. It was only because the Operational Creditor didn't have the monetary resources to fund the supplies of such costly items, the Corporate Debtor agreed to its request to open LCs.
- e) The Operational Creditor has stated in its Rejoinder that pursuant to the Work Order issued to LSIS by Operational Creditor, payments for the equipment shall be made by the Corporate Debtor through Operational Creditor by way of LCs. It is submitted that the said Work Order does not bear the signature of the Corporate Debtor. Therefore, the Corporate Debtor was not a party to the Work Order and as such there is no privity of contract of the Corporate Debtor with LSIS.
- f) Mr. Humayun Kabir (staff of the Corporate Debtor) vide email dated 20th Feb, 2019 (page 121 of the Petition) had categorically told Mr. Ajay Agarwal of the Operational Creditor that final bill submitted by the Operational Creditor had been certified for an amount of BDT 15,14,50,000/- and all payments would be released to the Operational Creditor on back to back basis and that the extra claims submitted by the Operational Creditor beyond the contractual terms were not acceptable.

8. The Operational Creditor and the Corporate Debtor have filed Written Submissions and the same are taken on record.


Findings

9. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
10. It is observed by the Bench that the Corporate Debtor entered into an LOI dated 07.10.2015. Based on it, the Corporate Debtor has placed two Work Orders; one on its own letter head i.e. GANNON DUNKERLEY & CO., LTD. dated 11.07.2016 and second on the letter head of the consortium i.e. GANNON-FLCL CONSORTIUM dated 11.07.2016. The invoices raised by the Operational Creditor were to the Consortium. There are total nine (9) Invoices, out of which two (2) Invoices were acknowledged by the Corporate Debtor alone and not the other partners inward in the consortium. It is pertinent to note that even though the Invoices are in name of the Consortium, the letters and the e-mails were sent by Gannon Dunkerley & Co. Limited i.e. the Corporate Debtor. The LOI and Work Order was also issued by by the Corporate Debtor. To further explain the above observations, it is important to highlight the actions of the Corporate Debtor as well as the transactions undertaken by Corporate Debtor for which the following e-mails and documents need to be considered.

a. Letter of Intent dated 07.10.2015:

Phone 91-11-42785500
Fax 91-11-42785512

30



DELHI DIVISION
E-Mail : delhiced@gdcl.in
Website : www.gannondunkerley.com

GANNON DUNKERLEY & CO., LTD.
CIN : U51109MH1924PLC001107 / PAN : AAACG1846P
(An ISO 9001:2008, ISO 14001:2004 and OHSAS 18001:2007 Certified Company)
B-228, OKHLA INDUSTRIAL AREA PHASE-I, NEW DELHI-110020

Ref: D/CE/ 05533

Date: 7th October, 2015

The Director,
M/s. EBPL Ventures P. Ltd.,
4/3 Nehru Park, Bhalai - 490 020
Tele Fax: 0788 - 4016905, 4035612
E-mail: ebpl.ajay@gmail.com

Kind Attn: Mr. Ajay Agarwal

Sub: **Signal and Telecommunication works related to Construction of IInd Titas Bridge - Akhaura Junction along with approach rail line at Bangladesh.**
SH: **Letter of Intent**
Ref: **Your Offer vide Letter NO. EBPL/GDCL/Bangladesh/15-16/02 dated 07.10.2015**

Dear Sir,

With reference to your above mentioned offer and on date discussions held with your S&T experts, we are pleased to place this "Letter of Intent (LOI)" to your Company for execution of all Signal & Telecommunication works related to construction of IInd Titas Bridge along with approach rail line at Akhaura Junction at Bangladesh subject to approval of the Engineer (i.e. M/s STUP Consultant) and the Bangladesh Railway. You are requested to submit PBG @ 2% on contract value for issuance of detailed LOA.

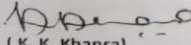
Scope of Work:
This work shall be executed based on the terms, conditions, specifications, etc. complete on back to back basis on contract between GDCL- Lloyd (JV) and Bangladesh Railway @ 10% less than our BOQ rates.

Rates:
Detailed work order shall follow on approval by the Bangladesh Railways/Consultant for the work. You are advised to visit at site and to study the details of site to prepare the S.I.P./Design/Drng./Docs till we get your profile approved to depute as a " Specialised Contractor."

All other terms & conditions shall be detailed in the Final work order to be released from our Delhi Office and shall follow a formal agreement between GDCL and EBPL Ventures P. Ltd.

Kindly acknowledge receipt and acceptance of this LOI by signing and stamping with Firm's Name and to return the same to our office by e-mail followed by Hard Copy.

Thanking you,

Yours faithfully,
For **Gannon Dunkerley & Co., Ltd.**

(K. K. Khanra)
Vice President (Co-ordination)



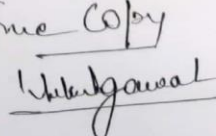


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N.S. RAJPUT
NOTARY, DURG (C.G.)

REGISTERED OFFICE : NEW EXCELSIOR BUILDING (3RD FLOOR), FORT, MUMBAI-400002
OFFICES : AHMEDABAD • CHENNAI • COIMBATUR • MUMBAI

True Copy

18 SEP 2020

CS Scanned with CamScanner

b. Work order dated 11.07.2016:

Phone : 91-11-42785500
Fax : 91-11-42785512

DELHI DIVISION
E-Mail : delhiced@gdcl.in
Website : www.gannondunkerley.com

GANNON DUNKERLEY & CO., LTD.
CIN : U51109MH1924PLC001107 / PAN : AAACG1846P
(An ISO 9001:2008, ISO 14001:2004 and OHSAS 18001:2007 Certified Company)
B-228, OKHLA INDUSTRIAL AREA PHASE-I, NEW DELHI-110020

D/CE/002859 Date: 11.07.2016

To
The Director,
M/s EBPL Ventures Pvt. Ltd.,
4/3, Nehru Park,
Bhilai - 490 020

Kind Attn: Shri Ajay Agarwal

Sub:- **Signal and Telecommunication work related to Construction of IInd Titas Bridge Work - at Akhaura Junction along with approach rail line at Bangladesh**

Ref:- **Our LOI no. D/CE/005658, dated 07-10-2016**

Dear Sir,

With reference to our above mentioned LOI dated 07-10-2016, we are pleased to issue detailed LOA for Supply, Laying, Installation, testing and Commissioning of Signal and Telecommunication system in connection with the Construction of IInd Titas Bridge Work-at Akhaura Junction along with approach rail line at Bangladesh as agreed on 10% less than our BOQ rates as per contract agreement with GDCL and Bangladesh Railway (enclosed as Annexure-1) at a total cost of INR 7,20,02,832.00 only (Rupees Seven Crore Twenty lakhs Two Thousand Eight Hundred Thirtytwo only) on back to back basis with the following terms and conditions :-

1. **The Scope of work** shall include but not limited to the following:-
Supply, Laying, installation, testing and commissioning of Signaling and Telecommunication work at Akhaura Railway Junction in Bangladesh including labour, materials, machinery & plant, departmental expenses and all other expenses including 10.5% towards Taxes & VAT shall be borne by EBPL. Detailed scope of work is enclosed as Annexure-"A"
2. **Cost Of Work**
 - a) The agreed rates are inclusive of all taxes and duties like excise duty, Custom duty, Vat and taxes required for export the goods as applicable in India and Bangladesh. However custom duty and other taxes as applicable in Bangladesh will be initially paid by GDCL to the extent admissible in terms of the contract agreement and will be debited to you.

Contd..P/2..

[Handwritten Signature]

[Handwritten Signature]

NOTARY
N.S. RAJPUT
NOTARY
DURG (C.G.) INDIA
R.No. C.G. 04/25
29.06.2020
Govt. Of Chhattisgarh

PHOTO COPY ATTESTED
[Handwritten Signature]
N.S. RAJPUT
NOTARY, DURG

True copy
[Handwritten Signature]

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--: 4 :-

- s) On award of the work the Supplies shall be commenced immediately as the approval and period for manufacturing from Railway approved vendors consumes lot of time in finally dispatching the materials to site.
- t) EBPL shall strictly follow the GDCL/STUP/BANGLADESH Railway's instructions regarding Quality Assurance/Quality control, Health, Safety & Environment.
- u) All liason work with Client/Consultant and Local authorities for obtaining permission/approvals required towards successful completion of the project will be done by EBPL.
- v) All other terms and conditions will be guided by the Contract agreement and specifications of GDCL and BANGLADESH railway for this work.

5. Inspections:

Goods shall be subjected to inspection by STUP/Employer or its Nominated Agency as per Tender specifications. The Employer's and/or Buyer's representative shall be entitled to attend the aforesaid test and/or inspection. Under these conditions, each and every item shall be duly inspected and accepted by Employer / Buyer. Two Engineers from Bangladesh Railway will be visiting Manufacture's works to see the manufacturing process of the ordered goods. Inspection charges to be borne by you.

6. Payment terms :

- a) **All payments** against work done shall be made on back to back basis as per contract agreement between GDCL and Bangladesh Railway.
- b) Deduction of **5% security deposit (S.D.)** and Income tax (as applicable) will be done from your each on account bill. The security deposited will be released to you after 12 months defect liability period from the date of issue of completion certificate in all respect of work.
- c) **Performance Bank Guarantee** equivalent to 2% of contract value valid till expiry of defect liability period of our contract with Bangladesh railway i.e. one year from the date of completion of entire work. The bank guarantee shall be furnished in the approved format provided by us from any nationalized bank.
- d) For supply of Major materials payment will be made through LC to be opened by GDCL unless otherwise decided at a later date.

Contd..P/5..

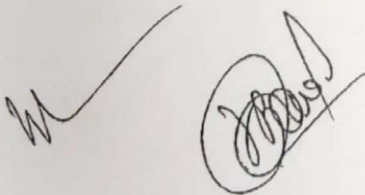

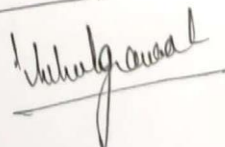


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GANNON DUNKERLEY & CO., LTD.

SHEET NO.....

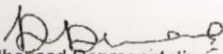
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11. Dispute Resolution:

In the event of any disputes between the parties which are not mutually resolved and settled, such disputes shall be referred for resolution to the Managing Director of M/s. GDCL & Managing Director of M/s. EBPL Ltd. or any other persons nominated or appointed by them. In case of failure of resolution of dispute amicably the same shall be referred to Arbitration as per Indian Arbitration Act.

This work order is being issued in duplicate. Please acknowledge and return the duplicate copy duly signed as a token of unconditional acceptance of this Work order.

For GANNON DUNKERLEY & CO. LTD.


Authorised Representative

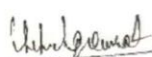
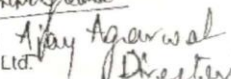

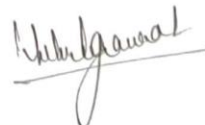
Accepted 
(Jayesh Rawat) 
For EBPL Venture Pvt. Ltd. Director



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N.S. RAJPUT
NOTARY, DURG (C.G.)


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18 SEP 2021

c. Letter of Amendment dated 14.11.2016 in the Work Order dated
11.07.2016:

37

Phone : 91-11-42785500
Fax : 91-11-42785512



DELHI DIVISION
E-Mail : delhiced@gdcl.in
Website : www.gannondunkerley.com

GANNON DUNKERLEY & CO., LTD.

CIN : U51109MH1924PLC001107 / PAN : AAACG1846P
(An ISO 9001:2008, ISO 14001:2004 and OHSAS 18001:2007 Certified Company)
B-22B, OKHLA INDUSTRIAL AREA PHASE-I, NEW DELHI-110020

D/CE/005893

Date: 14.11.2016

The Director,
M/s EBPL Ventures Pvt. Ltd.,
4/3, Nehru Parisar,
Bhilai-490020.

Kind Att:- Shri Ajay Agarwal

**Sub: 1st Amendment to the work of Signal and Telecommunication related to
Construction of IInd Titas Brigde Work – at Akhaura Junction along with
approach rail line at Bangladesh**

Ref: Our LOA No. D/CE/002859, dated 11.07-2016

Dear Sir,

With reference to our Order No. D/CE/002858 dated 11th July, 2016 on the above subject, the following amendments are hereby made :-

- 1) The total value of the above order is increased to approx. INR.12,00,00,000/- (Rupees Twelve Crore only) in place of INR.7,20,02,832/-
- 2) Clause No. 6(d) is substituted as under:-
"For supply of major materials from eminent manufacturer, payment will be made through L/C to be opened by GDCL with 180 days credit. All L/C Charges including 2nd beneficiary will be borne by EBPL".

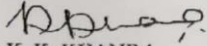
This variation order is issued in terms of Memo No. BD/CS/9393/LB/TL/782 dated 06/09/2016 of Team Leader, STUP Consultant Pvt. Ltd, Bangladesh.

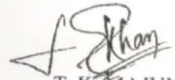
All other terms and conditions of the original order shall remain unchanged.

Kindly return the duplicate copy of the amended order duly signed as a token of your acceptance of the same.

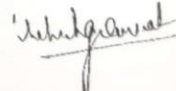
Thanking you,

Yours faithfully,
For GANNON DUNKERLEY & CO. LTD


K. K. KHANRA
AUTHORISED REPRESENTATIVE


T. K. MAJUMDAR
SR. MANAGER (PURCHASE)

Cc: Sr. Manager (Accounts)





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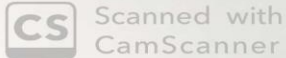
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**N.S. RAJPUT
NOTARY, DURG (C.G.)**

18 SEP 2021







d. Completion Certificate dated 02.07.2018:

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GANNON – FLCL CONSORTIUM



B-228, Okhla Industrial Area, Phase-I, New Delhi- 110020, (India)
Phone: +91 11 427 8550, Fax: +91 11 427 85512
Local Office: Suite-4A, Nakshi Homes, 6/1/A Topkhana Road, Segunbagicha, Dhaka-1000

D/CE/TITAS/2018-19/FLCL/DEL/045

Date: 02.07.2018

TO WHOMSOEVER IT MAY CONCERN

References:

1. PROJECT : "Construction of 2nd Titas Railway Bridge along with approach rail lines with all other related works" through Contract Agreement No. PD/DA/AGT/TITAS/3 Dt 26-09-2013 between Bangladesh Railway & Gannon-FLCL Consortium, New Delhi, India.
2. Work order vide ref no.- D/CE/002859 Dt 11-07-2016 and LOI no.- D/CE/005658 dt. 07-10-2015, agreed between M/s Gannon Dunkerley & Co. Ltd., New Delhi, India and M/s EBPL Ventures Pvt Ltd.

Further to above references, This is to certify that **M/s EBPL Ventures Pvt. Ltd.**, Bhilai, Chhattisgarh, India had completed the "Signalling and Telecommunications works sub-contracted through M/S Gannon Dunkerley & Co. Ltd., New Delhi, India on behalf of Gannon-FLCL Consortium, New Delhi, India.

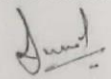
The complete scope of work includes "Design, Supply (including Import of Equipment's), Erection and Commissioning of all equipment's like Computer Based Interlocking System (Electronic Interlocking), Point Machines, Track Circuits, S&T Cables, Signals (Outer, Advance Starter, Home, Shunt), SMPS IPS, UPS, Batteries, LC Gate, etc.

Location of Project / Work	Akhaura Station located in District Brahmanbaria, Bangladesh
Value of Work Executed	INR 12,00,00,000/- (Rupees Twelve Crores) (Referring to revised work Order No:- D/005892 dt. 14-11-2016).
Commissioned on	Akhura By-Pass Station: 08-11-2017 & Akhura Junction Station: 09-01-2018

This completion certificate is issued on the request of M/s EBPL Ventures Pvt. Ltd., for further business purpose. The above referred work has been completed satisfactory in compliance to contract conditions.

Thanking you.

For GANNON-FLCL-CONSORTIUM


(Sunil Saini)
Authorized Signatory
Mobile : +91-11-9868209718



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**N.S. RAJPUT
NOTARY, DURG (C.G.)**

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18 SEP 2021

- e. E-mail dated 14.11.2018; and
 - f. E-mail dated 20.02.2019.
11. There were several letters, LOI and LOA issued which were in the name of the Corporate Debtor only. This shows that all the transactions are made by the Corporate Debtor only and no other person.
 12. With respect to the contentions of the Corporate Debtor relating to the consortium work order and Invoices, it is clear from the act of the Corporate Debtor that, if the Corporate Debtor is not liable for the Invoices raised by the Operational Creditor, the Corporate Debtor should not have made payment to the Operational Creditor in its own name instead he should have raised objection at the prior stage or before issue of Demand Notice by the Operational Creditor.
 13. The Operational Creditor has filed the Ledger Accounts of the Corporate Debtor which clearly shows the payment made by the Corporate Debtor and not by the consortium. This clearly shows that, if the Corporate Debtor is not liable to pay the debt, he should not have made any payments to the Operational Creditor and also to third parties in its individual capacity.
 14. It is also observed by this Bench that the Corporate Debtor taking the excuses of consortium work order and Invoices. The Corporate Debtor nowhere in its reply has disputed, the LOA and LOI issued by the Corporate Debtor in the favour of Operational Creditor.
 15. In nutshell, what has been observed by the Bench after taking into account the pleadings of both the sides and after hearing the arguments of both sides, that the Corporate Debtor has been communicating with Operational Creditor as per its own sweet will and also as per need of contract executed by him in Bangladesh along with JV partner in

Consortium. The Corporate Debtor collected documents, invoices and other papers in the name of JV for claiming the amounts from contract awarding agency of Bangladesh and has gone to the extent of reducing it in the writing that the Operational Creditor is entitled to payments for the BOQ value minus 10% and further minus 10.9%. The very fact that the Ledger Accounts of the Operational Creditor has been maintained by the Corporate Debtor in its own Books and all transactions between Corporate Debtor and Operational Creditor entered in this Ledger, with respect to execution and the payments of this project makes abundantly clear that Corporate Debtor just cannot shed his responsibility by taking excuse of Joint Venture. Corporate Debtor and Joint Venture have interchangeably being used by the Corporate Debtor as per its own convenience.

16. The Corporate Debtor has been manipulating the status of Consortium Partner and has executed the documents sometimes as Corporate Debtor and sometimes as Consortium Partner. In any case the Operational Creditor is to collect payments for the supply made by the Operational Creditor to the Corporate Debtor. The Corporate Debtor has not been able to show on record from his pleadings that the payments have been made by the Consortium and not by the Corporate Debtor.
17. The Operational Creditor has also enclosed copy of the Ledger Accounts of Operational Creditor as maintained by the Corporate Debtor in its own Books of Account confirming the payment made by the Corporate Debtor to the Operational Creditor as well as the payments made by the Corporate Debtor to the third party on behalf Operational Creditor. The details of the Ledger Accounts are as follows:

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.01/MB-IV/2021

44

M/S GANNON DUNKERLEY & CO. LTD.					
NAME OF THE WORK SITE		: 2ND TITAS RAILWAY PROJECT, AKHARA, BANGLADESH			
NAME OF THE SUB-CONTRACTOR		: M/S EBPL VENTURE PVT. LTD.			
NATURE OF THE WORK		: EXECUTION OF S & T WORK (INCLUDING SUPPLY)			
SL. NO.	PARTICULARS	DATE	DEBIT (BDT)	CREDIT (BDT)	REMARKS
1	Cash paid to Mr Istayak Khan	09.05.2016	17,000.00		
2	Cash paid to Mr Istayak Khan	05.06.2016	10,000.00		
3	Cash paid to Mr Istayak Khan	13.06.2016	20,000.00		
4	Cash paid to Mr Istayak Khan	27.06.2016	8,000.00		
5	Through Mr Agarwal during their visit in Dhaka (1,50,000+50,000)	23.08.2016	2,00,000.00		
6	Site expenditure (As requested by mail)	25.11.2016	1,50,000.00		
7	Debit Note against foundation work (Cement, Aggregates & Coarse Sand)	31.03.2017	3,89,160.00		
8	Paid to M/s Khan Enterprise for Local exp. (Ch. No 4886356)	02.04.2017	3,00,000.00		
9	For Misc. exp. at site etc (Ch.No 6125574)	18.04.2017	10,00,000.00		
10	Adv. for Insulation joint (Ch.No 4886385)	06.05.2017	2,50,000.00		
11	Paid to Poly Cab for Cable as advance (Ch.No.4005388)	13.05.2017	10,00,000.00		
12	Staff Salary & others misc (Ch.No 6870422)	28.05.2017	4,20,000.00		
13	Paid to Poly Cab for balance pymt Tk. 12.00 Lacs (Ch.No.4886388) & A S Industries Tk. 2.5 Lacs (Ch.No 6870429)	04.06.2017	14,50,000.00		
14	Indian & Bangladesh part C&F Agent M/s Jomal & Sons (Ch.No.6870435)	13.06.2017	8,00,000.00		
15	S&T Work paid to Khan Enterprise (Ch.No.5548411)	21.06.2017	5,00,000.00		
16	CBI (LSIS) Transporting & others (Ch.No 6870449)	10.07.2017	6,34,800.00		
17	S&T Work paid to Khan Enterprise (Ch.No.6125581)	18.07.2017	20,00,000.00		
18	Advance against Charger, battery etc. (Ch.No.6125597)	29.07.2017	1,70,000.00		
19	Misc exp. (Mr Khorsheed Tk 5 Lacs & Rail Tk. 5.65 Lacs) Ch.6125600	30.07.2017	10,65,000.00		
20	Railway Staff Salary & others misc (Ch.No.6125602)	31.07.2017	3,12,000.00		
21	CBI (TVM) Transporting & others (Ch.No.6125604)	02.08.2017	1,50,000.00		
22	A S Industries (Ch.No.6125609)	07.08.2017	7,00,000.00		
23	Paid to M/s Khan Enterprise (Cheque No.6870451) against S&T work	16.08.2017	5,00,000.00		
24	Paid to M/s A S Industries (Cheque No.6870452) purchased of Cable	16.08.2017	2,00,000.00		
25	Through LC Payment Rs. 2.20 Crore equivalent Tk.2.64 Crore	16.08.2017	2,64,00,000.00		
26	Paid to Poly Cab for Cable as advance (Ch.No.4886388)	17.08.2017	6,20,000.00		
27	Paid to Poly Cab for Cable as balance payment (Ch.No.5548421)	28.08.2017	6,20,000.00		
28	Staff Salary for the month of August-18 (Ch.No.6870494)	28.08.2017	1,60,000.00		
29	Purchased of Flexible Wire (Cheque No.C6870517)	30.08.2017	2,10,040.00		
30	Paid to A S Industries (Cheque No.C6870517)	30.08.2017	94,960.00		
31	Purchased of Petrol for DG Set	09.09.2017	2,070.00		
32	Paid to M/s TVM (Through Delhi office) dt.20.06.17 Tk.9 & dt.11.07.17 Tk.11	30.09.2017	22,80,000.00		
33	Paid to M/s LSIS (Through Delhi office) against CBI	30.09.2017	3,91,95,000.00		
34	Sim Plate fixing Tk. 38.5, CT Reck Tk. 35.0 & Wiring of mini Pannel Tk. 25.0	08.10.2017	98,500.00		
35	M/s EBPL's staff Salary m/o Sept-17 (Ch.No.7264814)	18.10.2017	1,57,000.00		



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N.S. RAJPUT
NOTARY, DURG (C.G.)

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18 SEP 2021

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.01/MB-IV/2021

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SL. NO.	PARTICULARS	DATE	DEBIT (BDT)	CREDIT (BDT)	REMARKS
36	Paid to System & Service Ltd (Gross value Tk 437439 Pymt 50%) Ch.5548428	19.10.2017	2,16,219.00		
37	Purchased of Air Ticket of Mr Agarwal of M/s EBPL Venture - DAC-CCU	24.10.2017	6,225.00		
38	Cost of Mobil for DG Set	25.10.2017	3,600.00		
39	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.7264825)	31.10.2017	5,00,000.00		
40	Paid to A.S Industries (Cheque No.7264825) against Purchased of UPS	31.10.2017	2,10,000.00		
41	Paid to M/s TVM (Through Delhi office) against CBI	31.10.2017	7,73,77,600.00		
42	Paid to M/s TVM (Through Delhi office) against CBI	31.10.2017	15,39,446.40		
43	Paid to staff members who has deputed block hut station as per advised	11.11.2017	3,11,000.00		
44	M/s EBPL's staff Salary m/o Oct-17 (Ch.No.7264836)	13.11.2017	1,57,000.00		
45	Purchased of Air Ticket of Mr Agarwal of M/s EBPL Venture - DAC-CCU	16.11.2017	8,512.00		
46	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.7264856)	13.12.2017	7,00,000.00		
47	Paid to System & Service Ltd (Gr. value Tk.432439 bal Pymt 50%) Ch.7264907	14.12.2017	2,16,219.00		
48	Various maintenance & running exp. of DG set	14.12.2017	24,350.00		
49	M/s EBPL's staff Salary m/o Nov-17 (Ch.No.7264858)	19.12.2017	1,42,000.00		
50	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.7264864)	30.12.2017	5,00,000.00		
51	M/s EBPL's staff Salary m/o Dec-17 (Ch.No.7264870)	08.01.2018	1,14,000.00		
52	Paid to Ripon for labour supply against S&T work	15.01.2018	15,800.00		
53	NI Staff wages (Vide Cheque No.7264871) 14/12/17 - 30/12/17	15.01.2018	1,95,000.00		
54	Various maintenance & fuel exp. of DG set	16.01.2018	20,566.00		
55	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.7264875)	21.01.2018	5,00,000.00		
56	Paid to M/s Khan Enterprise for purchased of S&T materials (Ch. No.7264875)	21.01.2018	1,50,000.00		
57	Misc exp. at site vide Cheque no.7264876	24.01.2018	2,73,960.00		
58	Cost of Fuel for DG set	25.01.2018	7,250.00		
59	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.7264879)	05.02.2018	15,00,000.00		
60	Paid to Ripon for labour supply against S&T work	18.02.2018	800.00		
61	Training of Rip staff (6*500-3000 * 15 days)	17.04.2018	45,000.00		
62	Purchased of 2 Ton capacity A C for CBI Room	09.05.2018	50,000.00		
63	Cost of Fuel for DG set	09.05.2018	2,250.00		
64	Paid to A.S Industries for purchased of earthing wire 200Mtr (612561)	13.05.2018	41,600.00		
65	Cost of Fuel for DG set	24.05.2018	2,600.00		
66	Purchased of 70 Mtr Cable for shifting of DG Set (Ch.6125617)	04.06.2018	35,000.00		
67	Cost of Fuel for DG set & repairing of level crossing gate	07.06.2018	6,300.00		
68	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.6125623)	10.06.2018	15,00,000.00		
69	Paid to M/s Khan Enterprise for S&T work exp.	27.06.2018	1,00,000.00		
70	Paid to M/s Khan Enterprise for S&T work exp. (Ch. No.6125638)	26.07.2018	5,00,000.00		
71	Cost of Fuel for DG set	09.08.2018	2,520.00		
72	Cost of Fuel for DG set	30.09.2018	4,000.00		
73	Labour Charges for Protection Wall at Location box (As per bill Ripon)	13.11.2018	41,790.00		
74	Provision against Final bill of M/s Khan Enterprises (108,00,000-91,00,000)		17,00,000.00		Full Paym
75	Final S&T bill Tk 15,14,50,000*79.5% pay back to M/s EBPL as per work order			12,04,02,750.00	
TOTAL TAKA====>>>			12,07,49,237.40	12,04,02,750.00	
Balance Payment as on date				(3,46,487.40)	DR



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NOTARY, DURG (C.G.)

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18 SEP 2021

18. The question as to how much the Corporate Debtor is liable for the debt due and payable to the Operational Creditor is the matter of verification and admission of debt of the Operational Creditor by the Resolution Professional. As far as the debt and default is concerned, it is for the Adjudicating Authority which is to satisfy itself that it is more than the threshold limit as per section 4 of the Code. Once this Bench is satisfied about the existence of debt and default committed by the Corporate Debtor and it exceeds the threshold limit, Section 9 application has to be admitted.
19. It is observed by the Bench that there are lame excuses taken by the Corporate Debtor just to avoid payments under the garb of Consortium.
20. In view of the above observations, this Bench is of considered view that the Corporate Debtor in the matter is not only liable for the debt but also the only one who was acting as the main Contractor and involved with all the transaction done between the Operational Creditor and Corporate Debtor.
21. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of Rupees one crore stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority need to admit this Petition and order initiation of CIRP against the Corporate Debtor.
22. The application is complete and has been filed under the proper form. The debt amount is more than rupees one crore and default of the Corporate Debtor has been established.

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23. The Operational Creditor has proposed Mr. Navjit Singh an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00314/2017-18/10578 as Interim Resolution Professional to carry out functions as mentioned I&B Code and has also given his declaration no disciplinary proceeding are pending against him.

ORDER

- (a) The Petition bearing CP(IB) 1/MB-IV/2021 by EBPL Ventures Private Limited, (“the Operational Creditor”), [CIN: U60200CT200PTC020033] seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Gannon Dunkerley & Company Limited (“the Corporate Debtor”), [CIN: U51109MH924PLC001107] is admitted.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Navjit Singh an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P00314/2017-18/10578 is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in

this regard. The IRP shall carry out functions as contemplated by sections 15,17,18,19,20 & 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) 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).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
Kishore Vemulapalli
Member (Judicial)
15.03.2022

Sd/-
Rajesh Sharma
Member (Technical)