

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 198/KB/2022

***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) Rule, 2016.***

IN THE MATTER OF:

**Mr. PRAMOD SINGH,
Sole Proprietor of M/s. N.P. Construction.
... Applicant/ Operational Creditor.**

Versus

**M/s. MECON LIMITED.
... Respondent/ Corporate Debtor.**

Date of Pronouncement: March 05, 2024.

CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

**For Applicant: Ms. Aritra Basu, Adv.
 Mr. Souradeep Banerjee, Adv.
 Mr. Rupam Gupta, Adv.
 Mr. Arka Banerjee, Adv.**

**For Respondent: Ms. Pooja Chakraborti, Adv.
 Ms. Kiran Sharma, Adv.
 Ms. Akshita Bohra, Adv.**

ORDER

PER D. Arvind, Member (Technical):

1. This Court is assembled through blended mode.

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2. Heard the Learned Counsel for both parties at length.
3. This application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016, for brevity "AA Rule" by **Mr. Pramod Singh**, Sole Proprietor of M/s. N.P. Construction, hereinafter referred to as "Applicant"/ "Operational Creditor" against **M/s. MECON Limited** (CIN: U74140JH1973GOI001199), hereinafter referred to as "Respondent"/ "Corporate Debtor" seeking the direction to initiate Corporate Insolvency Resolution Process, for brevity "CIR Process" in respect of M/s. MECON Limited (Corporate Debtor).
4. The total amount of Debt claimed to be in default is of Rs. 66,27,45,488/- in which the principal sum is of Rs. 7,79,25,442/- as awarded by the Jharkhand Micro Small and Medium Enterprises Facilitation Council, for brevity "JMSMEFC". The interest claimed on and from September 24, 2021, is of Rs. 58,48,20,066/-. The Date of Default is claimed as on "August 24, 2021".
5. **It is an admitted position that:**
 - i. **On May 24, 2005**, work order issued to the Operational Creditor for erection of mechanical P&E and Structure, rendering services during heating and commissioning etc. of Coke Oven Battery No. 1 at Bokaro Steel Plant, Bokaro Steel City.

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- ii. October 01, 2008**, work order issued to the Operational Creditor for handling, storage, erection, testing and commissioning of Coke Over Battery No. 1 at Bokaro Steel Plant, Bokaro, Steel City.

- iii. October 27, 2008**, work order issued to the Operational Creditor for handling, storage, erection, testing and commissioning of Coke Over Battery No. 1 at Bokaro Steel Plant, Bokaro, Steel City.

- iv. May 08, 2008**, work order issued to the Operational Creditor for civil works required for rebuilding of Coke Over Battery No. 2 at Bokaro Steel Plant, Bokaro, Steel City.

- v. July 15, 2009**, work order issued to the Operational Creditor for handling, storage, erection, testing and commissioning of Coke Over Battery No. 2 at Bokaro Steel Plant, Bokaro, Steel City.

- vi.** Pursuant to the work orders furnished by the Corporate Debtor, the Operational Creditor has completed the work and issued invoices annexed at Pages 152-163 to the Application between November 2011 to August 2018 claiming the payment of its work. As no payment was made by the Corporate Debtor after several request, the Operational Creditor filed an application before the Jharkhand Micro Small and Medium Enterprises Facilitation Council (“JHMSEFC”) on June 05, 2020, being Case No. JHMSEFC-

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09/2020 (New Case No. JH/01/S/JKH/00195) and consequently, the JHMSEFC passed an order on August 24, 2021, in favour of the Applicant herein based on which, the Respondent is liable to pay of sum of Rs. 7,79,25,422/-, as principal amount. The relevant para of the impugned order dated 24.08.2021, passed by the JHMSEFC reproduced herein that:

“iii. Therefore, the net outstanding principal as at the end of Contract works out comes to total Rs.7,79,25,422/- and is allowed along with applicable rate of interest after 45 days of submission of bill date shown under column no.4, till date of payment shown under column no.6 and thereafter applicable rate of interest on the outstanding amount shown under column no. 7 of the table shall be calculated @ 3 times of Bank rate notified by RBI u/s 16 of MSMED Act 2006, compounded with monthly rest till the final payment is made.”

“iv. We direct the opposite party to pay Rs. 7,79,25,422/- as principal outstanding amount and interest as stated above manner, to be got computed by the claimant by Chartered Accountant/Cost Accountant, within 30 days from the date of receipt of this order failing which the claimant is entitled to realize the amount through process of Law.”

6. Further, it is an admitted position that the *legitimacy of the Award is under challenge before the Hon’ble Jharkhand High Court in W.P.*

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(C) No. 3514/2021 in **Mecon Ltd. vs. Jharkhand Micro and Small Enterprises Facilitation Council**, W.P. (C) No. 3514/2021 reported in **MANU/JH/1395/2022**, wherein the Hon'ble Single Bench dismissed the writ petition as not maintainable at this stage.

7. Further, an appeal being LPA No. 400/2022 has been preferred before the Hon'ble Division Bench of the High Court of Jharkhand and vide an order dated 09.02.2023, the same has also been dismissed (**MECON Ltd. vs. Jharkhand Micro and Small Scale Enterprises Facilitation Council, Ranchi in LPA 400 of 2022** reported in **MANU/JH/0146/2023**).
8. At hearing, the party mentions that a petition for **Special Leave to Appeal being (C) No. 5048/2023** has preferred before **the Hon'ble Supreme Court of India**, challenging order dated 09.02.2023 in LPA 400/2022 by the Hon'ble Division Bench of the High Court of Jharkhand and vide an order dated 17.03.2023, the Hon'ble Apex Court has directed:

“In the meantime, respondent No.1 shall not precipitate the revenue recovery proceedings at the behest of the respondent No.2 subject to the petitioner paying a sum of Rs. 7 Crores to the Respondent No.2 within two weeks from this date without prejudice to their rights. The said payment is made subject to the condition that the respondent No.2 shall file an undertaking to this Court indicating therein that the said amount would be refunded if the petitioner herein ultimately succeeds in the proceedings.”

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9. At this juncture, it would be appropriate not to take any decision as the concerned matter is still pending for consideration before the Hon'ble Apex Court and until the final result of the matter is known, we cannot take up this matter for consideration.
10. In view of the foregoing, we would feel it appropriate to adjourn the matter Sine-die. Hence, the matter is **adjourned sine-die**.
11. Liberty is given to the Petitioner to mention the matter before this Bench when the issue before the Hon'ble Apex Court reaches at its finality.
12. The certified copy of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties, subject to compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 05th Day of March 2024.

Bose, R. K. [LRA]