

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

CP (IB) 273 of 2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.06.2020**

Name of the Company: MASS Infrastructure Pvt Ltd
V/s.
Kunal Structure (India) Pvt Ltd

Section of the Companies Act : Section 7 of IBC, 2016

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

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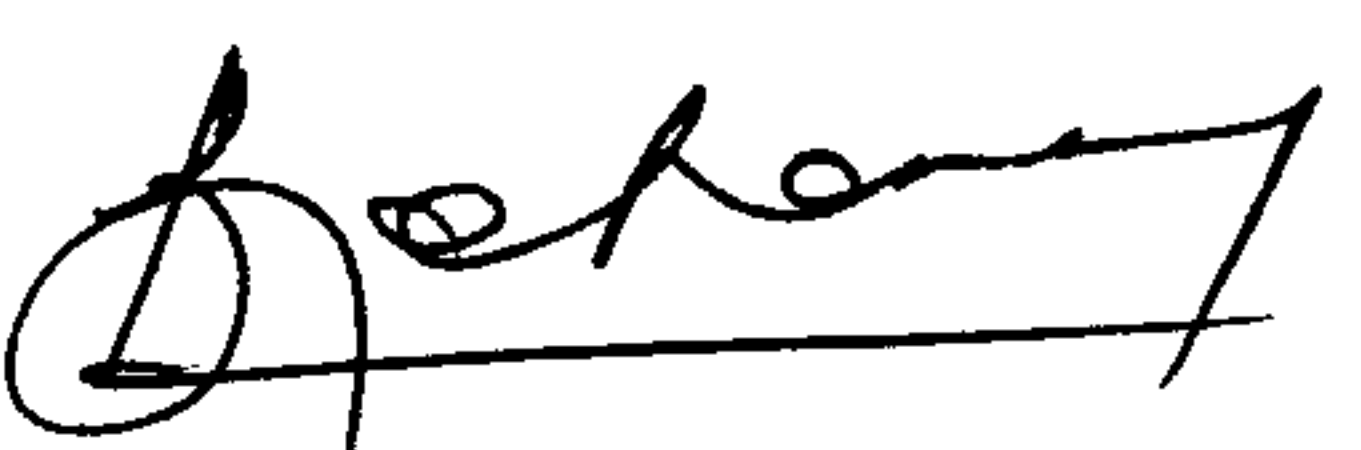
ORDER

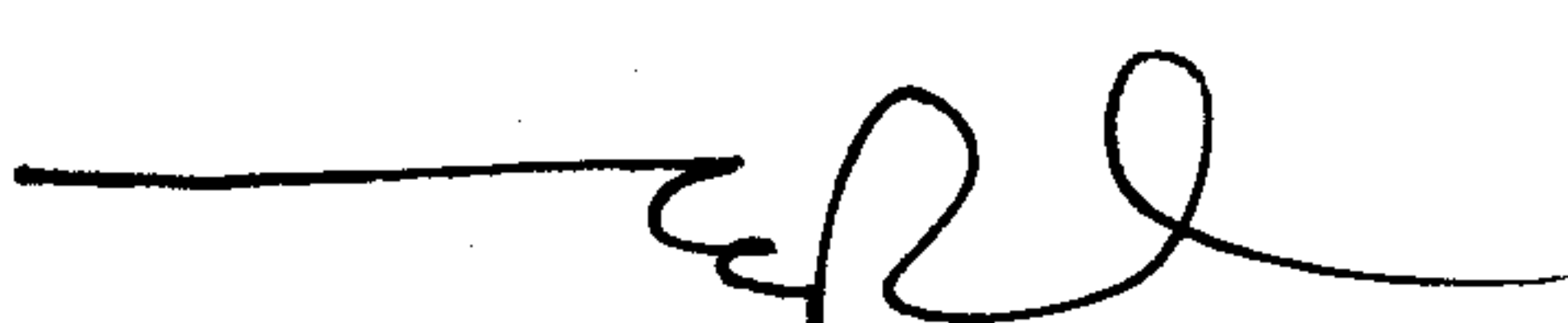
The case is taken through video conferencing.

The Parties are represented through their respective counsel(s)

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 3rd June of 2020

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**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 273/7/NCLT/AHM/2018

In the matter of:

MASS Infrastructure Pvt. Ltd.,
Having its registered office at:
1st Floor, Kalapi Avenue,
B/h Malhar Point,
Opp. Vaccine Institute,
Old Padra Road,
Baroda – 390 015

..... **Financial Creditor**

Versus

Kunal Structure (India) Private Limited
“Mondeal Heights”,
B Wing, 15th Floor,
Near Hotel Novotel,
S.G. Highway,
Ahmedabad 380015

..... **Corporate Debtor**

Order delivered on 03.06.2020

**Coram: Hon’ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon’ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

**Appearance: Mr. Arjun Sheth, advocate and Solicitor with Vidhi
Thakkar, Advocate led by Mihir Thakore, Senior Advocate.**

ORDER

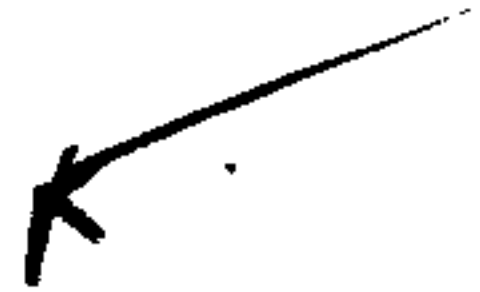
[Per: Mr. Prasanta Kumar Mohanty, Member (Technical)]



1. The present I.B. Petition is filed by the Financial Creditor **Mass Infrastructure Private Limited** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), **seeking initiation of Corporate-Insolvency Resolution Process** ("CIRP" in Short) against the Corporate Debtor Company namely, Kunal Structure (India) Private Limited for the default committed by the Corporate Debtor in making repayment of the deposit of Rs. 92,40,600/- (Rupees Ninety-Two Lakhs Forty Thousand Six Hundred) given towards creation of FDR and Rs. 36,96,240/- (Rupees Thirty-Six Lakhs Ninety-Six Thousand Two Hundred Forty) towards Bank Guarantee). However, the amount claimed to be in default is Rs. 2,15,31,062/- (Rupees Two Crores Fifteen Lakhs Thirty-One Thousand Sixty-Two only) which includes interest as on the date of default which is 10.10.2017. The application is filed by the Managing Director of the Financial Creditor Company Shri Arvindbhai Madhubhai Patel.

2. The Respondent- Corporate Debtor Company, namely Kunal Structure (India) Private Limited Ltd. was incorporated on 05.04.2006 with CIN: U45200GJ2006PTC048080.

3. The Authorised Share capital of the Respondent (CD) Company is Rs.5,50,00,000/- (Rupees Five Crores Fifty Lakhs only) and the Paid-up Share Capital of the Respondent Corporate Debtor Company is Rs.5,03,00,000/- (Rupees Five Crores Three Lakhs only). The Registered Office of the Corporate Debtor Company is situated at: "Mondeal Heights", B Wing, 15th Floor, Near Hotel Novotel, S.G. Highway, Ahmedabad 380 015
4. It is stated that in December, 2011 the Superintending Engineer, Narmada Project Head Works Circle, Kevadia Colony (hereinafter referred to as "Employer"), acting for and on behalf of Sardar Sarovar Narmada Nigam Ltd. ("Employer") issued tender for constructing 3.5 m wide WBM road on inspection path and providing 5.75 m wide SDBM on service road with CC parapet wall about lining key on Narmada Main Canal, passing through Vadodara - Halol area for chainage 67.153 km to 105.344 km (Package No. 3). It is further stated that along with the case Tender, the Employer also issued following two tenders for the construction of the following other roads:
- A. 3.5 m wide WBM road on inspection path and providing 5.75 m wide SDBM on service road with CC



parapet wall about lining key on Narmada Main Canal, passing through Vadodara – Timba area for chainage 105.344 km to 144.500 (package no.4)


B. 3.5 m wide WBM road on inspection path and providing 5.75 m wide SDBM on service road with CC parapet wall about lining key on Narmada Main Canal, passing through Sevalia – Balasinor area for chainage 144.500 km to 184.926 km (package no. 5).

5. It is submitted that amongst other things, it was also agreed between the Corporate Debtor and the Financial Creditor that since the funds were not available with the Corporate Debtor, the Corporate Debtor approached that Financial Creditor would pay the requisite amounts for the issuance of the bank guarantee and creation of fixed deposit receipt (FDR) in favour of the Employer qua the execution of the works under the said tenders, by paying the requisite amounts to the Corporate Debtor. It was also agreed between the Corporate Debtor and the Financial Creditor that interest would be paid by the Corporate Debtor to the Financial Creditor on such deposits, as the interest is being paid to the Corporate Debtor kept on the deposits held in its name with the bank. The said deposits are shown in its name of Corporate Debtor but the amount

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belongs to the Financial Creditor. Hence, it is shown in the Balance Sheet as liability and the said deposits are required to be returned **by the Corporate Debtor** to the Financial Creditor on completion of the work **under the tenders**. To record the aforesaid arrangement between the Corporate Debtor and the Financial Creditor in relation to the Case Tender, sub-contract dated **17.09.2012** was executed between the Corporate Debtor and the Financial Creditor.

6. Accordingly, it was agreed that Financial Creditor placed deposits to the tune of Rs. 4,06,92,240 (Rupees Four Crores Six Lakhs Ninety-Two Thousand Two Hundred and Forty only) qua all the said tenders with regard to the FDRs and issuance of the Bank Guarantees – 2.5% of the estimated cost of the project as set out in the Tender for the creation of FDRs and the amount payable for the issuance of bank guarantee 20% (being margin) of 5% of the estimated cost of the project as set out in the tenders. The said deposits amounting to Rs. 4,24,51,300/- (Rupees Four Crores Twenty-Four Lakhs Fifty-One Thousand Three Hundred) **were placed in piecemeal during the period 18.01.2012 to 17.08.2012 by the Financial Creditor with the Corporate Debtor.**

7. It is further submitted that with regard to the Case Tender and pursuant to the Contract, the Financial Creditor placed the deposit of Rs. 92,40,600/- (Rupees Ninety-Two Lakhs Forty Thousand Six Hundred Six Hundred) with the Corporate Debtor for the creation of FDR in favour of the Employer and placed deposit of Rs. 36,96,240/- (Rupees Thirty-Six Lakhs Ninety-Six Thousand Two Hundred Forty) towards the issuance of bank guarantee as security for the performance of the works under the contract. The above amounts were shown in the Balance Sheet of the Corporate Debtor as it was agreed between the Corporate Debtor and the **Financial Creditor that Corporate Debtor would pay the same interest on such deposits to the Financial Creditor that it received from the Bank on the deposits made out of its funds in relation to each of the aforesaid tenders excluding TDS on deposits.**
8. It is submitted that the work under the Contract and the Case Tender came to be completed by the Financial Creditor on 31.05.2015 and the **Employer issued work Completion Certificate** in relation to the Case Tender, Since work had been duly completed and executed the **work as per and in accordance with the terms of the**
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Contract, as per Clause 15 of the Contract, the Corporate Debtor was required/obligated to return the said deposits placed by the Financial Creditor with the Corporate Debtor in relation to the said FDR and the said bank guarantee along with interest as agreed upon hereinabove. The Financial Creditor time and again called upon the Corporate Debtor to return the aforesaid deposits back to the Financial Creditor, as per and in accordance with the terms of the aforesaid contract, returned by the Employer. However, till date, the Corporate Debtor has failed and neglected to pay the same to the Financial Creditor.

9. The Financial Creditor issued Demand Notice in writing dated 10.10.2017 demanding repayment of the aforesaid deposits along with interest. **Hence the date of default in the present petition is taken as 10.10.2017.**
10. It is stated that Corporate Debtor did not reply the notice issued by the Financial Creditor to the Corporate Debtor for return of the deposits mentioned hereinabove. Accordingly, the Financial Creditor issued another demand notice through its advocate, dated 16.11.2017 inter alia demanding repayment of the said deposits.
11. It is stated that the Corporate Debtor for the first time, sent reply through its advocate dated 04.12.2017 stating

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the Corporate Debtor had **forfeited the said deposits** on the ground that the **Financial Creditor had not** duly completed the work under the Contract.

12. It is submitted by the Financial Creditor that this is first time that Corporate Debtor has raised the issue of not completing the work under the contract **vide its reply dated 04.12.2017**. It is further submitted by the Financial Creditor that prior to this, never before has the Corporate Debtor raised any such concern to the Financial Creditor nor any notice has been issued by the Employer in terms of clause 4 of the Contract for non-completion of any work. Hence the Financial Creditor is entitled to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor.
13. The Petitioner has suggested the name of Insolvency Professional Shri Nosal Hasmukh Shah to be appointed, if this petition is allowed and the proposed I.R.P. has also given his affirmation/consent in writing, which is annexed with the present I.B. Petition.



14. The Respondent filed its objections and their arguments were heard. The case was heard at great length on various dates i.e. 06.07.2018, 03.08.2018, 14.09.2018, 25.10.2018, 14.12.2018, 25.03.2019, 13.06.2019, 08.08.2019, 06.09.2019, 01.10.2019, 11.10.2019, 13.11.2019, 28.11.2019 and final on 04.12.2019.

15. **Observations:**

A. **Contract Details:**

Relevant Paragraphs of the Contract dated 17.09.2012

Whereas, Kunal Structure (India) Pvt. Ltd. has undertaken below mentioned contract work (hereinafter referred to as the project) from The Executive Engineer, N.P. Main Canal Demand Notice. No. 1, Vadodara. (hereinafter referred to as the Employer):

Name of Work: Constructing 3.50 mt. wide W.B.M. Road on Inspection Path and Providing 5.75 mt. wide S.D.B.M on Service Road with C.C. parapet wall above lining key on Narmada main Canal Ch. 105.344 km to 144.500 km (Package No. 4) hereinafter referred to as the Project.)

WHEREAS for smooth and timely completion of the work Kunal Structure (India) Pvt. Ltd. has decided to

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entrust and avail the services of "MIPL" for supervision and management of the whole Project.

During the progress of the project, if there arises any dispute between the Employer and "MIPL", or if the work has not been completed by "MIPL", or they left the work in between, and if the notice has been given to Kunal Structure (India) Pvt. Ltd. regarding the same, then Kunal Structure (Indi) Pvt. Ltd., shall have to take the charge of the project and shall make the arrangements to complete the work, for which "MIPL" will not cause any problems or will not take any action, interference, obstacles in completing the work, and "MIPL" will be responsible to pay for the same to Kunal Structure (India) Pvt. Ltd.,

From all the bills, applicable TDS (Tax Deducted at Source) will be deducted and will be kept by Kunal Structure (India) Pvt. Ltd.

Kunal Structure (India) Pvt. Ltd., is liable to pay "MIPL" the amount of bill of the Project received from the department as per the agreement after deducting 3.0% administrative Charges, Sub-let TDS, Commercial Tax, Cost of Material Supply and other exp made on behalf of "MIPL".



“MIPL” is not liable to take any loan/advance, without the prior consent of KSIPL except such facilities availed by them on their personal responsibility at their own risk and cost.

KSIPL has agreed to give to MIPL all the benefits, of future price rise or/and of arbitration award; or/and of the amounts received in legal process; concerning to this work in full, however, with the same percentage deduction of 3.0% and at source income tax.

MIPL agrees to pay amount for issuance of B.G. and F.D.R. for the security deposit. On completion of work, B.G. and F.D.R. amount should be returned to MIPL. Interest on F.D.R.s shall be paid to MIPL by KSIPL after making necessary deduction required by applicable taxation or other laws.

This Agreement will be valid till and upto the time of completion of the Project and receipt of the final amount. This agreement, will automatically stand terminated itself as and when or after the receipt of the whole amount of the payment from the Employer and/or the concerned Department/Government.

Hence it is clear that:

15.1 The work is given by the Government to the Kunal Structure (India) Pvt. Ltd., only.

15.2 Kunal Structure (India) Pvt. Ltd., needs to give Deposit / Guarantee etc to Govt. for getting the work order.

15.3 Kunal Structure (India) Pvt. Ltd., did not have the money to deposit. The Corporate Debtor requested the Financial Creditor to give the said amount to the Corporate Debtor so that Corporate Debtor could account for in its books/balance sheet and give the Deposit to the Employer. The entire funds were transferred to the Corporate Debtor through proper banking channel.

15.4 It is also clear in the contract when the interest on deposits will be received [deposit made in favour of the Employer], the Corporate Debtor will give back the interest and principal to the Financial Creditor, except the amount of TDS deducted.

15.5 It is also clear that once the work is completed and the amount of deposit is refunded by the Employer to the Corporate Debtor, the Corporate Debtor would pay back the amount to the Financial Creditor who had given loan to the Corporate Debtor.

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15.6 There is no provision in the contract that the Corporate Debtor will deduct or not pay the amount taken from the Financial Creditor, if some dispute arises between the Financial Creditor and the Corporate Debtor, during the course of job undertaken.

The loan is an independent transaction. Hence the amount needs to be refunded to the lender as per agreement of Financial Creditor.

However, it is reported that Financial Creditor has filed case against the Corporate Debtor and the Corporate Debtor has filed case against the Financial Creditor for the claims and counter claims.

While disposing an application filed under Section 7 of IBC, this Adjudicating Authority is not required to see those documents whether work is done properly or not, disputes are existing or not etc.

However, both the Financial Creditor and the Corporate Debtor can approach different forums for disposal of their claims and counter claims.

Now, the work is complete. Govt. has issued Completion Work Certificate and refunded the

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amount to the Corporate Debtor. Hence Corporate Debtor needs to refund the amount which was given as loan from the Financial Creditor to the Corporate Debtor before work order was executed with the Govt.

B. In the instant case also, this Adjudicating Authority has observed that whereas the Employer is Superintending Engineer, Narmada Project Head Works Circle, Kevadia Colony acting for and on behalf of Sardar Sarovar Narmada Nigam Ltd., has given the Contract to Kunal Structure (India) Pvt. Ltd.

Judgment:

16. Considering the papers and documents filed by the Petitioner and the Respondent, arguments from both sides and the observations made in Points No. 15.1 to 15.6, this Adjudicating Authority is satisfied that,

(a) The Corporate Debtor has availed the loan/credit facility from the Petitioner for payment to the Employer – Sardar Sarovar Narmada nigam Ltd, the amounts towards issuance of bank guarantee and creation of fixed deposit receipt (FDR) in favour of the Employer for the execution of the works under the Case Tender.

(b) Existence of debt above Rs. **One Lac;**

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(c) **Debt is due;**

(d) Default has **occurred on 10.10.2017**

(e) Petition had been filed on 06.06.2018 which is **within the limitation period;**

(f) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor and the application filed by the **Petitioner Under Section 7 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate-Debtor-Company.

Hence, **the present IB Petition is admitted** with the following Directions/observations. **The date of admission of this petition is 03.06.2020.**

17. This Adjudicating Authority hereby appoints, as proposed, **Mr. Nosal Hasmukh Shah**, having Insolvency Professional Registration No. **IBBI/IPA-001/IP-P00337/2017-18/10607**, Email ID: **nesals@gmail.com**, Address: **8, Mehsana Society, New Vadaj Road, Opp. Laxmi Hospital, Bhimjipura, Ahmedabad 380013 Gujarat, India as an Interim-Resolution-Professional.** The Interim-Resolution-Professional is further directed to

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make public announcement of moratorium in respect of Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code.

18. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium with effect from today** for prohibiting all of the following, namely: -

- I. (a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

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(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.

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

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

IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.


19. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform the duties as specified Under Section 18, 20, 21 of I.B Code. Further, the personnel of the Corporate Debtor are advised to extend co-operation to Interim Resolution Professional as required Under Section 19 of IB Code.

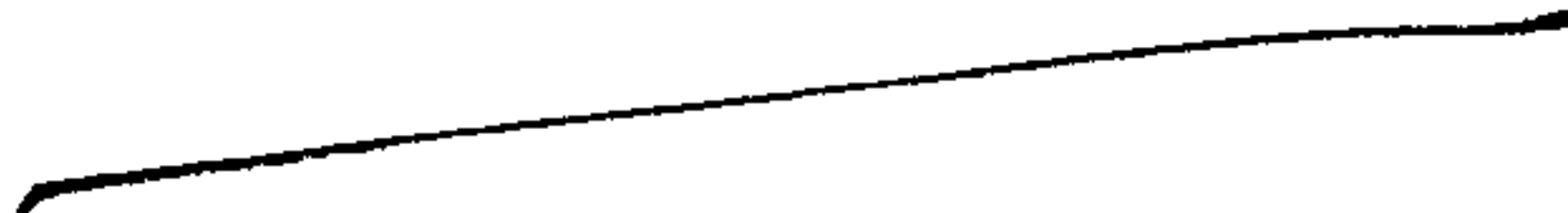
In order to have a Resolution Plan Viable, Feasible and implementation Successful, in the era of Minimum Cost of funds based Lending Rate ("MCLR" in short)/ Repo Linked Interest Rate and Competitive market condition, the Resolution Applicant/ Committee Of

Creditors (COC) may explore, while finalizing the Resolution Plan for the Corporate-Debtor, the possibility of loading maximum interest at the Applicant Bank's Base Rate (BR) or BR+1% from the date of default to the date of implementation of MCLR and further from the date of implementation of MCLR till the date of approval of the Resolution Plan interest at the rate of Applicant Bank's One Year MCLR or One Year MCLR + 1% without any penal /overdue interest.

20. The Registry is hereby directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor Company, the I.R.P and also to the Registrar of Companies immediately through speed post / registered post.

21. Thus the present I.B petition filed Under Section 7 of IBC stands admitted.


(Prasanta Kumar Mohanty)
Adjudicating Authority
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority
Member (Judicial)

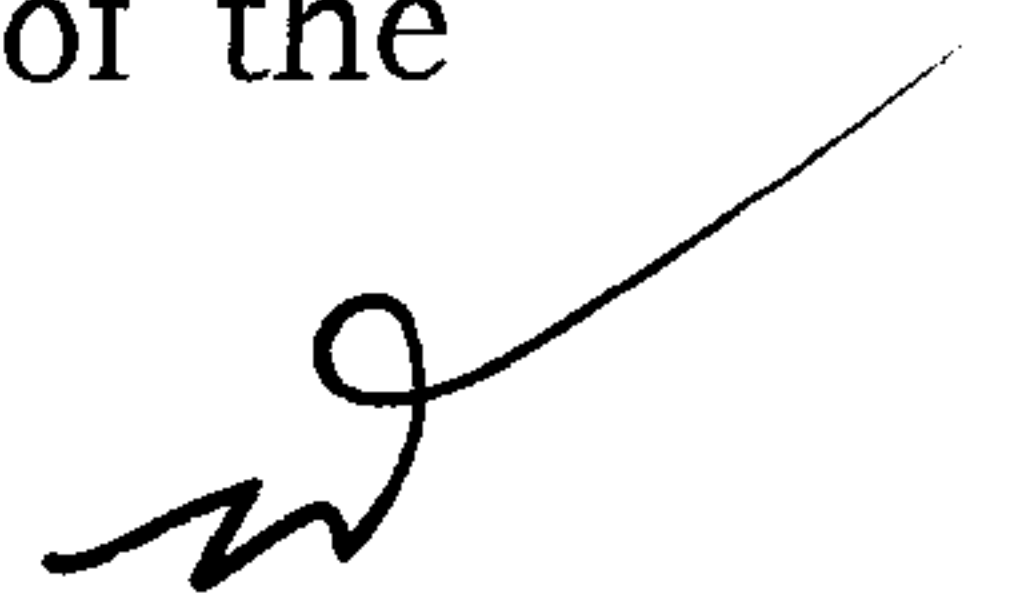
— Contd — (19)

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In the matter of: CP(IB) No.273/7/NCLT/AHM/2018**[Per Se: Mr. Harihar Prakash Chaturvedi, Member (Judicial)]**

1. I have been benefited to read the order of Hon'ble Member (Technical) in respect of the above mentioned matter. I would, however, like to defer from the operative portion of the judgment and on the issue of maintainability of the present petition under Section 7 of the I.B. Code as Financial Creditor as well as on limitation.

2. As per the material available on record, in my view, the status of the petitioner can be of an **Operational Creditor** because amount claimed has been arised out from a sub-contract dated 17.09.2012 entered between the Petitioner, **M/s. Mass Infrastructure Pvt. Ltd. with the Corporate Debtor**. The petitioner was assigned sub-contract to complete the construction work of the main contract awarded to the **Corporate Debtor, M/s. Kunal Structure (India) Private Limited** who was principle contractor of the State Government of Gujarat through the Executive Engineer, N.P. Main Canal Division No.1, Vadodara (**the employer**). Therefore, all transactions arise out and made between the petitioner as being sub-contractor and the Corporate Debtor (being main contractor) are to be treated as part and parcel of the



sub-contract agreement dated 17.09.2012 entered between the Petitioner and the Corporate Debtor. As per the Clause 15 of the above referred agreement, the Petitioner has agreed to pay amount for issuance of B.G. and F.D.R. towards security deposit. Such amount was returnable on completion of work contract and that is too after deduction of certain tax and fulfillment of other terms and condition of the contract/ agreement. Hence, in my humble opinion, it cannot be treated separately and independently as Financial Debts from the subcontract and main agreement. Because the amount said to be given as Bank Guarantee and FDR through the Corporate Debtor to the employer of main contract i.e. EENP Main Canal Division was given towards security for completion of satisfactory work by the petitioner under the sub-contract agreement. Hence, it is neither independent nor separate transaction from the operational debts and operational dues and for work done by the petitioner. Thus, such amount can be claimed only under Section 9 of the I.B. Code. Hence, it is not maintainable under Section 7 of the I.B. Code before this Adjudicating Authority.

3. In addition to the above, as per the record, the sub-contract agreement was entered and executed between



the parties on 12.09.2012 while the work completion certificate / RA final bill was issued by the office of the Executive Engineer on **31.05.2015**. Hence, the cause of action would arise/ date of default would commence from 30.04.2015 and not from the date of issuance of so called demand notice in the year 2017. Because, it is settled legal position that there is no mandatory requirement for issuance of statutory demand notice for a petition to be filed under Section 7 in the I.B. Code. While the present I.B. petition is filed on 06.06.2018. Hence, it is time barred under Article 137 of the Limitation Act and in the light of landmark decision of Hon'ble Supreme Court and as per the decision of *the Hon'ble NCLAT in the matter of C. Shivakumar Reddy Vs. Vs. Dena Bank decided on 18.12.2019, Hon'ble Supreme Court in "Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. In Civil Appeal No.4952 of 2019, Vashdeo R. Bhojwani Vs. Abhyudaya Co-operative Bank Ltd. & Ors. Civil Appeal No. 11020 of 2018, Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. and Ors. decided on 18.09.2019 and Sagar Sharma Vs. Phoenix ARC (P.) Ltd. wherein, their Lordships have pleased to reiterate its stand as ruled earlier in its decision in B.K. Educational Services (P.) Ltd. Vs. Parag Gupta that for*



filing I.B.C. application, Article 137 of the Limitation Act would attract.

4. That apart, even assuming so, the present petition is to be treated as has been properly filed under Section 9 of the I.B. Code, there seems a pre-existing dispute about the quality and performance of the work done and there is dispute regarding payments made to the petitioner as well as received from the employer, State Government of Gujarat. It appears that there is also pending dispute before the Civil Court, Vadodara being commercial civil suit No.33 of 2018, which is a counter claim suit filed by the Corporate Debtor against the present Petitioner. Therefore, we find that the petitioner purportedly has file the present petition under Section 7 of the I.B. Code so as to avoid the riders of the pre-existing dispute in Section 9 petition since there exists pre-existing dispute and such petition cannot be maintainable under Section 9 of the I.B. Code as per the decision of Hon'ble Supreme Court in the matter of **Mobilox Innovations Private Limited Vs. Kirusha Software Private Limited**, as well as in the matter of **K. Kishan Vs. M/s. Vijay Nirman Company Ltd.** wherein, their Lordships have held that the I.B. Code is not meant for debts recovery proceedings but meant for bringing a resolution for a




debt stressed company and the remedy provided in these proceedings are **“Remedy in Rem not in Personem”**.

For the sake of convenience, the relevant portion of the judgment in K. Kishan Vs. Vijay Nirman Company is reproduced herein below:

*“13) Following this judgment, **it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.** The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the Arbitral Award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the Award. Such a case would clearly come within para 38 of Mobilox Innovations (supra), being a case of a pre-existing ongoing dispute between the parties. **The Code cannot be used in terrorem to extract this sum of money of Rs. two lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.**”*

5. There by placing reliance on the aforesaid decision, the present I.B. Petition fails since there being pre-existing

dispute and it is also hit by limitation. Hence, it is rejected accordingly. No order as to costs.


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial).