

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.147/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

M/s. Laxmi Trading Corporation.

...Operational Creditor

v/s.

HINDUSTAN CONSTRUCTION
COMPANY LIMITED.

[CIN: L45200MH1926PLC001228]

...Corporate Debtor

Order Delivered on: 25.08.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

Ms. Sneha a/w Mr. Ashish Mehta,
Ld. Counsel

For the Corporate Debtor:

Ms. Savani Gupta a/w Mr. Lalit
Munsi and Ms. Rohini Hirwane, Ld.
Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s. Laxmi Trading Corporation (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Hindustan Construction Company Ltd., the Corporate Debtor.

1.1. The Company Petition is filed on 25/02/2021 claiming an amount of Rs. 3,73,32,239.20/- (calculated at the rate of 24% per annum up to 29.02.2020) in default. The date of default is not specified in Part IV of the petition. However, the Operational Creditor has provided invoices wise due date, claimed as part of debt, aggregating to Rs.3,71,55,764.80 has stated that a sum of Rs.2,17,47,092.13 is outstanding out of this.

2. The Corporate Debtor has bought Hardware goods from the Operational Creditor by raising various Purchase Orders. The Operational Creditor supplied goods to the Corporate Debtor for six distinct projects, viz. Kashang Hydro Electric Project, Peerpanjal Tunnel VA Rail Project, T-48, 1-49A, Pipalkoti and Uri. As per the agreed terms in the Invoices raised, it was agreed between both the parties that all the payments should be made within 30 days from the date of the Invoices.

2.1. The Corporate Debtor has also made part payments against the invoices raised by the Operational Creditor. While the Operational Creditor had raised invoices in an aggregate sum of Rs. 3,71,55,764,8/-, the Corporate Debtor had made part-payments to the tune of Rs. 2,17,47,092,13/- over time.

- 2.2. The Operational Creditor addressed an Email dated 14 July, 2017 to the Corporate Debtor requesting payment for each of the above projects. Even though the Corporate Debtor claimed to have deposited an amount of Rs.4,00,000/- (Rupees Four Lacs only) in the account of the Operational Creditor, but they never received the amount, which was conveyed to the Corporate Debtor on 14.07.2017. The Operational Creditor on 07.01.2019 and 26.03.2019 sent payment reminders to the Corporate Debtor explaining the dire situation that the Operational Creditor is in, but the said Email remained unanswered.
- 2.3. On 30.10.2019, the last partial payment made towards the abovementioned invoices, which was made by the Corporate Debtor on running account basis, amounts to Rs.3,00,000/- (Rupees Three Lakhs Only).
- 2.4. The Operational Creditor served a Demand Notice dated 17.03.2020 on the Corporate Debtor thereby demanding repayment of the debt amount inclusive of interest i.e. Rs.3,73,32,239.30/- (Rupees Three Crores Seventy-Three Lacs Thirty-Two Thousand Two Hundred and Thirty Rupees and Thirty Paise Only) inclusive of the interest calculated @24% p.a. up to 29.02.2020. The Corporate Debtor failed to reply to the said Demand Notice.
3. The Corporate Debtor vide its Affidavit in reply dated 12.11.2021 states that the Operational Creditor has clubbed different cause of action in one single Petition. It is not just different invoice but different project and different contracts/Purchase Orders. Therefore, this Petition is not maintainable; Petition is barred by law of limitation and/or not maintainable; the Operational Creditor has failed to file an Affidavit in terms of Section 9(3)(b) of the Code setting out whether there was any pre-existing dispute; the Operational Creditor

has not filed a certificate from a financial institution maintaining its accounts confirming that there is no payment of an unpaid operational debt by the corporate debtor in terms of Section 9(3)(c) of the Code. On this ground alone, the present Petition is required to be dismissed at the threshold.

Findings

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.
5. On perusal of invoice by details listed for purpose of computation it is found that default dates varies from the year 2012 to 2014 in many of the cases. The Corporate Debtor has also submitted that out of 234 invoices annexed to the petition 224 invoices are of the period are ex facie time barred. In the case of M/s. Next Education India Pvt. Ltd. Vs. M/s. K12 Techno Services Pvt. Ltd. (2023) ibclaw.in 39 SC, it was held that “*the NCLT did not take into consideration the subsequent invoices at least preceding three years from the date of filing of Section 9 application, which ought to have been considered. Under the circumstances, the NCLT ought to have considered the invoices at least for the period preceding three years from the date of the application under Section 9, rather than considering the starting point of limitation as 12.03.2011*”. The ratio of this decision is that the date of default is to determine with reference to each invoice and invoices which are beyond the period of 3 years of the date of filing are to be excluded, unless the period of limitation is extended u/s 18 of the Limitation Act by way of acknowledgement. The Operational Creditor has maintained project wise ledger account of the Corporate Debtor in its books of accounts and each of the payment received from the Corporate Debtor has been appropriated towards a specific project account. On perusal of the Ledger, this bench finds that the payment of Rs. 3,00,000/- is stated to have been received on 09.02.2018 and 30.10.2019 was credited to ‘*Vishnugad Pipalkoti HEP Ledger account*’, which shows an

outstanding of Rs. 998244 as on 18.02.2020 only, no payment has been received in relation to the said projects where the invoices were raised during the 2012 to 2015, and which makes up major part of debt claim to be in default in the present petition. On perusal of the emails dated 14.07.2017, 07.01.2019 and 26.03.2019 annexed to the petition, this bench finds that there is no acknowledgement of debt in relation to any other project other than PipalKoti Project by the Corporate Debtor. Accordingly, the date of default in relation to amount outstanding under 5 projects i.e. Kashang Hydro Electric Project amounting to Rs. 20,01,071.91, T-48 amounting to Rs. 1,05,53,987.00, Peerpanjal Tunnel VA Rail Project amounting to Rs. 2,94,647.20, T-49A amounting to Rs. 7,34,249.96, and Uri project amounting to Rs. 8,26,472.70 occurred somewhere in 2016 or before that. There is no acknowledgement of debt in relation to outstanding amounts under these projects. Accordingly, if these amounts are excluded that debt claimed in default falls below the threshold limit of Rs. 1 Crore as provided in section 4 of the Code. The contention of the applicant that there is a running account and receipt of payment of Rs. 3,00,000/- further extends the limitation period is not tenable, as the applicant is maintaining separate ledger for each of the projects in its books of accounts and the payments received from the Corporate Debtor are being appropriated towards a specific project only.

6. In view of the above, we find that the present case is fit for dismissal.

ORDER

7. The petition bearing CP (IB) No.147/MB-IV/2021 filed by M/s. Laxmi Trading Corporation (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Hindustan Construction Company Ltd., the Corporate Debtor is **dismissed**.

8. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
25.08.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)