

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

CP (IB) No. 921/(MB)/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

Raj Kumar Panjwani

...Operational Creditor/Applicant

V/s

Larsen and Toubro Limited

[CIN: L99999MH1946PLC004768]

...Corporate Debtor/Respondent

Order Dated: 09.05.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : None Present

For the Respondent(s) : Ms. Samiksha Rajput, Advocate.

Per: Kishore Vemulapalli (Member Judicial)

1. This is an Application being C.P. (IB) No. 921/MB/2022 filed on 29.05.2022 by Raj Kumar Panjwani, Proprietor of Dodeja Electrical Engineers, the Operational Creditor/Applicant, under Section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Larsen and Toubro Limited.

2. The Applicant has claimed that the Corporate Debtor is in default of a sum of Rs. 1,07,92,209/- (Rupees One Crores, Ninety-Two Lacs, Two Hundred & Nine only), including GST @ 18% and interest @ 24% p.a. from January, 2016 till the date of filing of petition and store material and compensation on account of damages. The date of default is not stated in Part IV of the Application, however, it is stated that the corporate debtor made last payment on 5.11.2018 and has not made any payment thereafter.
3. It is the case of the Operational Creditor that-
 - 3.1. The Corporate Debtor issued two work orders bearing E9044WOD7000277 and E9044WOD5000355 for Rs. 18,91,347.58 and Rs. 86,49,243.58 respectively pursuant to Letter of Intent dated 26.10.2015 for the supply, installation and commencing of electrical works for “Experion Windchants” Project at Gurgaon, Haryana.
 - 3.2. Against the above mentioned LOI and Work Orders, the Operational Creditor has supplied the material and labour. The Operational Creditor worked for a period starting from October 2015 to November 2018 with the degree of quality standards as per the specifications and in line with the latest code of practice as per the instructions of site-in-charge. The Corporate Debtor are in dues of Rs.8,55,328/- (Rupees Eight Lac Fifty Five Thousand and Three Hundred Twenty Eight only) (with escalation), along with its retention amount of Rs. 2,39,431/- (Rupees Two Lac Thirty Nine Thousand and Four Hundred Thirty One only) Pre-GST, and an amount of Rs.11,66,232/- (Rupees Eleven Lac Sixty Six Thousand Two Hundred Thirty Two only) (with escalation), along with its retention amount of Rs. 20,929/- (Twenty Thousand and Nine Hundred Twenty Nine only) (Post- GST). The Corporate Debtor is also in dues of Rs.5,00,000/- (Rupees Five Lac only) as GST penalty + GST

interest, as applicable (from the period of November 2018 to April 2022). The Corporate Debtor are further in dues of Rs.2,00,000/- (Rupees Two Lac only) as store material balance amount which Corporate Debtor is liable to pay but it has not paid till date despite repeated requests, visits and reminders on mails and messages.

- 3.3. The Corporate Debtor in spite of acknowledging the liability for payment of above dues it miserably failed to make payment due to the Operational Creditor deliberately with mala fide intent. The conduct and acts are clear enough to portray the mala fide intent as the Corporate Debtor with a purpose to hold the legitimate payment of M/ s. Panjwani Electrical Engineers , and Consultants got opened M/s Dodeja Electrical Engineers and thereafter getting work done it failed to clear its legitimate dues as well. He has gone through hell lot of harassment, agony, trauma due to non-payment and took illicit advantages of his position. Accordingly, he is entitled to compensation of Rs. 20,00,000/- (Twenty Lacs only) also.
- 3.4. The Applicant has submitted copy of work orders and Bill Annexure dated 18.02.2017 for a sum of Rs. 4,93,918.39/-, which forms the basis of issuance of invoice upon the Corporate debtor. The Operational Creditor has not annexed copy of any invoice issued by him evidencing the amount claimed in the petition.
- 3.5. The Applicant served Demand Notice dated 28.04.2022 upon the Corporate Debtor demanding the principal amount of Rs. 49,81,920/- plus 18% GST and interest @ 24% per annum from January, 2016. The Operational Creditor has not annexed any demand notice, if any, served in Form No.3 in terms of Rule 5 (1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 u/s. 8 of the Insolvency and Bankruptcy Code,2016.

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- 3.6. The Applicant has enclosed an e-mail dated 8.1.2019 sent by the representative of the Corporate Debtor informing that only a sum of Rs. 1.72 lacs only remains payable and the same shall be released after conclusion of reconciliation of bills. The work order came to be terminated by the Corporate debtor on account of deficiency in service vide letter dated 02.01.2019.
- 3.7. The Operational Creditor has filed the present Application, but the Demand notice required u/s 8 of the code and service thereof is neither enclosed to the petition, nor any averment in relation thereto is made in the petition. It has also not filed any Affidavit as required under Sec 9(3)(b) of the Code.
4. The Corporate Debtor has filed an Affidavit in Reply dated 27.02.2023 contesting the Application further on ground of pre requisite of filing a Section 9 petition under the Code is not complied with as no Demand notice u/s. 8 of the code has been issued; proceedings are not recovery proceedings and it is a case of pre existence of dispute; and the petition does not meet the threshold limit u/s. 4 of the Code.
5. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
- 5.1. At the outset, this Bench feels that the present petition is not maintainable, as evidence of service of a statutory demand notice u/s 8 of the Code is not placed on record; and the amount claimed in the legal notice is less than the threshold limit of Rs. 1,00,00,000/- (One Crore only) provided in section 4 of the Code, as applicable at the time of filing of present application.
- 5.2. Further, the above email communications from Corporate Debtor, annexed to the petition, clearly indicate the existence of pre-

existing dispute between the parties as regards the existence of debt on account of which the Corporate Debtor terminated the LOI/Work Orders executed between the parties for non-performance as per the terms of the LOI. In an application under Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority has limited scope of enquiry in so far as existence of prior dispute in relation to debt claimed as due and in default is concerned.

In the case of “*Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353*” the Hon’ble Apex Court held that-

“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.

In view of the above, we find that the present application under Section 9 of the Code for initiation of CIRP in the case of the Corporate Debtor deserves to be dismissed.

ORDER

This Application being C.P. (IB) No. 921/MB//2022 filed under Section 9 of I&B Code, 2016, filed by Panjawani Electrical Engineers and Consultants, Operational Creditor/ Applicant against Larsen and

Toubro Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.

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)
//LRA- Akshata//

Sd/-

Kishore Vemulapalli
Member (Judicial)