



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP(IBC)/47/KOB/2022

*(Under Section 9 of IBC, 2016 read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016)*

***In the matter of Hippocampus Infotech Pvt Ltd Vs. Kerala State Electronics
Development Corporation Ltd.***

MEMO OF PARTIES:

HIPPOCAMPUS INFOTECH PRIVATE LIMITED,
#2, 4th floor, HB Complex,
100 Feet Ring Road,
BTM 1st Stage Bangalore – 560 068, Karnataka;

... Applicant/Operational Creditor

-Versus-

KERALA STATE ELECTRONICS DEVELOPMENT CORPORATE
LIMITED, Keltron House, Vellayambalam, Trivandrum – 695 033, Kerala.
Represented by its Managing Director.

... Respondent/ Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant Mr. Paturi Janardana Rao, Advocate

For Respondent Mr. Vijay Narayan, Sr. Adv. along
with Mr. Pranoy Harilal, Adv.

**Order reserved on: 13.04.2023
Order pronounced on: 05.07.2023**

ORDER

1. This application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Hippocampus Infotech Private Limited,(hereinafter 'OC') for initiation of



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Corporate Insolvency Resolution Process against **Kerala State Electronics Development Corporation Limited**, the Corporate Debtor, (hereinafter 'CD') for alleged default in repayment of Operational Debt of ₹13,07,83,327/- (Rupees Thirteen Crore Seven Lakh Eighty Three Thousand Three Twenty Seven only), due and payable by the Corporate Debtor to the Operational Creditors.

Brief facts of the petitioner are as follows:-

2. It is stated by the petitioner that CD had entered into service level agreement (SLA) dated 07.08.2017 with OC and awarded work order No.206 dated 07.08.2017 towards supply of manpower for a total value of Rs. 35 crores plus taxes for Asansol Municipal Corporation (AMC) Enterprise Municipal Systems (EMS) Project at Asansol, West Bengal for a duration of 66 months. The work order was executed by the OC through its Branch Manager of CD office at Kolkata. It is stated that the Project commenced only in October 2018 due to delay attributable to CD. The SLA and work order No. 206 dated 07.08.2017 is produced as annexure G and H and the power of attorney authorising the branch manager of CD is produced as annexure F. It is stated that from date of commencement of work, OC supplied manpower as required by CD at AMC project in Asansol, WB. OC raised invoices from 23.10.2018 till 31.03.2020 for a sum of Rs. 13,07,83,327/-.
3. It is stated that as no amount was received from CD, the OC issued demand notice dated 05.08.2021 under section 8 of IBC giving 10 days for payment or notice of existing dispute. It is stated that the notice was sent to the registered office of CD, its directors, and the branch address which was acknowledged as received. The CD had replied to the notice disputing the facts of the work order and stating that the said authorised officer who executed the service level agreement (SLA), by name, Mr. Arpan Chakraborty was terminated from service of CD and the agreement entered by him is without any authority. It is hence stated that there exists no debt and no default in absence of any work carried out. The petitioner has attached the bank statement of OC from period 01.08.2017 to 05.08.2021 evidencing non-payment of debt.



4. It is stated that there is valid power of attorney executed by the Managing Director of CD authorising Mr. Arpan Chakraborty, Branch head as officer to execute agreements and contracts on and behalf of CD which is annexed as annexure F with petition which has not been revoked. That the work order which was executed was valid and had 2 witnesses, Mr. Surendra Singh, Senior Finance Manager of CD and Mr. Pritam Mukherjee, who has also submitted a notarised affidavit stating that he has witnessed the agreement being signed between Mr. Arpan Chakraborty and Mr. Vijay Krishna Reddy representing their firms and also the co witness. He has further stated that the agreement was signed in presence of Mr P J Reddy, Advocate, who has also filed an affidavit and has himself filed this petition. A forensic report on signature of Mr. Surendra Singh, Senior Finance Manager of CD is also submitted stating that the signature of witness is valid. The petitioner relies on Work order memo from AMC dated 03.08.2017 wherein CD is requested to start the execution of AMC EMS Project. Petitioner has produced payment reminder letter dated 26.11.2019 to AMC, Kolkata pertaining to tax invoices No. 78 and 79 for work done during period May to July, 2019. It is stated that the CD through Mr. Arpan Chakraborty had also contacted with another company by name Oroprise Solutions Pvt Ltd, as consortium member on 02.08.2017 for similar work in AMC. A Letter of Intent dated 17.01.2020 was also made to this company for EMS work in AMC. It is stated that CD is a company which is a separate legal entity and all decisions and contracts signed by its officers are liability of CD and hence claiming unawareness of contract is failure of top management and cannot be a proper ground. It is also stated that the CD had not in case of any unawareness of such work being ongoing made any public notice to such effect. The petitioner has produced documents of AMC regarding EMC work being contracted to CD and the progress of the same. It is stated that door to door survey required for the EMC work for collecting Property tax information system was carried out by petitioner. It is further stated that the CD had failed to collect the dues of AMC Project from Kolkata Asansol Municipal Corporation and that since 50% of work has been completed and the OC



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deserves to be repaid on quantum meruit principle as the CD has unjustly enriched itself at cost of Applicant.

Brief Contents of the reply are as follows: -

5. On respondent side, it is stated that the Enterprise Municipal Systems (EMS) work awarded by Asansol Municipal Corporation (AMC), Kolkata for an order value of Rs. 1,49,67,66,360/- was awarded to CD. However, the CD had instructed the then Branch Manager, Mr. Arpan Chakraborty not to proceed with the Project due to issues and project had not started until June, 2019. The respondent has produced communication with Mr. Arpan Chakraborty and minutes of monthly performance review. The respondent states that Mr. Arpan Chakraborty, without approval of the CD entered into contracts with one M/s Eden Consultancy Services Pvt Ltd which had come to knowledge of CD only on 23.09.2019, among other third parties. Consequently, disciplinary proceedings were initiated against him. During the enquiry it was known that Mr. Arpan Chakraborty acted in collusion with some companies and he was terminated on 21.07.2020. A public notice was issued on 03.10.2020 regarding the termination which is produced. Apart from this, criminal complaints have been lodged with DGP of Kerala and Kolkata which is pending. It is further stated that the work order dated 07.08.2017 is not entered by CD and it had come to knowledge of CD only on receipt of a labour complaint notice dated 03.09.2020. It is stated that the contract was not privy to CD and Mr. Arpan Chakraborty entered into same without knowledge of CD. It is stated that the power of attorney issued in his name does not authorise him to enter into the said contract with the OC. And the contract is void ab initio. The respondent state that applicant does not come under definition of OC under IBC as OC has not supplied any good to CD and there is no debt and no default. A pre-existing dispute is claimed as complaint before DGP in name of Mr. Arpan Chakraborty dated 29.12.2021 and the labour complaint raised by the applicant labourers dated 03.09.2020. It is further stated that the witness to the contract, Mr. Surendra Singh, Senior Finance Manager, did not sign the contract and has submitted an affidavit dated 18.11.2022 to the effect that it is forged. Hence, the contract is deemed to be fraudulent and only a conspiracy between some



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interested parties against CD. It is further stated that the CD is unaware of the extend of work done in AMC, Kolkata. The respondent categorically denies the contract awarded to applicant for Rs. 35 crore and the labour charges paid by the applicant to its employees for work carried in AMC. It is further stated that the invoices which the OC produced is not received by the CD at its registered office. Only 2 invoices are seen as received under stamp of the respondent but it was received by Mr. Arpan Chakraborty and is illegal. The respondent denied the claim and the default in toto in view of lack of privity of contract. It has denied the claim in the reply to demand notice dated 18.08.2021. The respondent state that the whole attempt is only to unjustly enrich the applicant at cost of CD which is a reputed profit-making public-sector undertaking (PSU) under the Government of Kerala.

The point for consideration is:

1. Is there pre-existing dispute between the parties?
6. The Operational creditor/petitioner claims a default amount of Rs.13,07,83,327/- towards the salaries of the employees deputed by the operational creditor to Asansol Municipal Corporation, in pursuance to Service Level Agreement and work order No.206 both dated 07.08.2017 entered with Kolkata Branch Manager of respondent Arban Chakraborty.
7. The case of the petitioner is the respondent/corporate debtor Kerala State Electronics Development Corporate India as lead member of the consortium succeeded in getting work order from Asansol Municipal Corporation for implementation of Enterprises Municipal system for a sum of Rs.149,67,66,360/- for a period of five years. The corporate debtor engaged the operational creditor as its sub-contractor for man power augmentation to AMC 106 ward office and provide supervisory staffs for consideration of Rs.35,00,00,000/- Accordingly the operational creditor/Petitioner supplied workers to the AMC for period from October 2018 to October 2020 and raised 20 invoices for a total sum of Rs.13,07,83,237/-
8. On the respondent side/ corporate debtor admitted that they were succeeded in getting work order from Asansol Municipal Corporation for



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implementation of Enterprises Municipal system for a sum of Rs.149,67,66,360/- for a period of five years, but due to some billing issues with another municipal corporation, the project was not implemented. Further the alleged work order and service level agreements were executed by then Branch Manager of Kolkata in favour of the respondent without the approval and consent of the Head office of the corporate debtor. The power of attorney relies by the petitioner not authorised the Branch Manager to enter into an agreement with the respondent or any individuals.

9. The petitioner sent statutory notice dated 05.08.2021 under section 8 of IBC 2016 prior to filing of this petition, for which the respondent sent reply dated 18.08.2021 raising the validity of the service law Agreement entered with the then Branch Manager of Kolkata and also question the validity of work order issued by the then Branch Manager Arban Chakraborty. According to the respondent all the invoices relies by the petitioner are not brought to the notice of the respondent, they were said to be acknowledged by the erstwhile Branch Manager. The said Branch Manager Arban Chakraborty admitted in his correspondence that he entered into an unauthorised agreement due to political pressures.
10. In this case the significant aspect is even prior to the statutory notice dated 05.08.2021, the respondent denied its liability, and denies the relationship with the petitioner as principal contractor and sub-contractor. The fact is the group of employees of the petitioner raised the dispute against the petitioner for non-disbursement of their salaries before the Asst. Labour Commissioner at Asansol. In response to the dispute the petitioner submitted its reply dated 22.07.2020 (**Annexure B12**) in which the petitioner after referring the same facts as averred in this petition sought the help/intervention of the Asst. Labour Commissioner at Asansol to get the salary dues of the workmen from the respondent KELTRON. The Asst. Labour Commissioner forwarded the reply of the petitioner to the respondent and requested to attend the meeting on 08.09.2020 in response to the notice the respondent's



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representative attended the meeting and, on the respondent, side filed their written objection dated 12.03.2021. The objection is filed as annexure B 12 in which the claims of the employees are denied and specifically refuted the relationship of employer and employee between the respondent and claimants before the Joint commissioner of labour. Thus, the respondent already refuted the contention of the petitioner that the respondent is liable to make payment to the petitioner as a principal contractor. There it is stated that no valid contract ever been executed between the respondent KELTRON and the petitioner HIPPOCAMPUS.

11. On the petitioner side filed several documents showing as if the workers were deputed to Asansol Municipality, but not filed a single document from the Asansol Municipality showing that the employees deputed by the petitioner were attended the work at Municipality. It is not the case of the petitioner that the respondent received the payments from the Asansol Municipality or claimed the amount from the Asansol Municipality towards the salaries and other charges for the employees deputed to Asansol Municipality by the petitioner on the basis of sub-contract work order dated 07.08.2017 entered with the respondent. In the absence of any correspondence or document to establish that the employees deputed by the petitioner attended the work at Asansol Municipality, the contention of the respondent that the petitioner and erstwhile Branch manager of Kolkata Arban Chakraborty, colluded and raised false claims in fraudulent manner cannot be brushed aside simply.
12. The dismissed previous Branch Manager Arban Chakraborty acted in violation of the instruction of the respondents/Head office, and entered into an agreement with the petitioner. It is also surprising without getting single payment from the principal contractor the sub-contractor supplied/deputed the employees to the Municipality for the period of 20 months and that too without brought to the notice of head office/petitioner.
13. The dispute was already raised by the respondent and in its written submission dated 12.03.2021 denies its liability to pay any amount



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towards the salary dues of the employees of the petitioner even prior to the statutory notice dated 05.08.2021.

14. Further, the authority of the Branch Manager to enter into an agreement with the petitioner in pursuance of the power of attorney, and the validity of such an agreement and its binding nature upon the petitioner, when it was entered in violation of specific instruction of petitioner/head office, are to be decided. The fraud alleged against the Branch Manager all to be looked into. All these questions can be decided only in civil suit, in a similar situation another entity Eden Consultancy Services Pvt Ltd filed a Civil suit C.S.No.179 of 2021 before the High Court of Calcutta against the respondent and Arban Chakraborty, the suit is pending for an adjudication.

15. In the situation as held by Ape court in Mobilox Innovations 2018 (1) SCC 353, the defence/dispute raised by the respondent is plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed. In fine it is answered to the point framed that pre-existing dispute is prevails between the parties.

In the result the petition is **DISMISSED**.

16. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

17. Let the certified copy of the order be issued upon compliance with requisite formalities.

19. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.07.05 16:42:56 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.07.05 13:15:20 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this the 5th day of July, 2023.

Rohit/Kaushal_P.S.