



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.1
C.P.(IB)/79(AHM)2022

Order under Section 9 IBC

IN THE MATTER OF:

Mantra Corporation Through Its Proprietor
V/s
Sadbhav Infrastructure Project Ltd

.....Applicant

.....Respondent

Order delivered on: 19/05/2023

Coram:

Mr. Ashok Kumar Bhardwaj , Hon'ble Member(J)
Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**ASHOK KUMAR BHARDWAJ
MEMBER (JUDICIAL)**



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

CP(IB)/79/AHM/2022

*(An application under section 9 of the Insolvency and Bankruptcy Code,
2016)*

In the matter of:

Mantra Corporation, through its Proprietor,
having its office at:
C-214, Swagat Rainforest-3,
Nr. Sargasan Cross Road,
“KHA” Road, Mahatma Mandir Road,
Gandhinagar,
Gujarat- 382421

.....Applicant/Operational Creditor

Versus

Sadbhav Infrastructure Project Limited
CIN: L45202GJ2007PLC049808
A Public Limited Company,
having its registered address at:
Sadbhav House,
Opp. Law Garden Police Chowki,
Ellisbridge,
Ahmedabad,
Gujarat- 380006

.....Respondent/Corporate Debtor

Order Reserved on: 26.04.2023
Order Pronounced on: 19.05.2023

Coram: Ashok Kumar Bharadwaj, Member (J)
Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. Adv. Mr. Chaitanya J Patel

For Respondent: Ld. Sr. Adv. Mr. Navin Pahwa, a.w. Ld. Adv. Mr. Ravi
Pahwa,



ORDER

1. The captioned petition was preferred under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by Mr. Dhruval P Patel, Proprietor of Mantra Corporation (Operational Creditor) on 19.02.2022 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Sadbhav Infrastructure Project Limited (Corporate Debtor). The default amount as mentioned by the Petitioner herein the Petition is Rs 1,35,68,193/- (Invoice amount of Rs 95,66,243/- and Interest of Rs 40,01,949/-).

2. The corporate debtor is a public limited company incorporated under the provisions of the Companies Act, 1956, having CIN: L45202GJ2007PLC049808, its registered address is at Sadbhav House, Opp. Law Garden Police Chowki, Ellisbridge, Ahmedabad, Gujarat- 380006.

3. The averments made by the Operational Creditor/Petitioner in the Petition and the submissions espoused by the learned counsel for the appeared for it can be summarized thus:

(i) The operational creditor is engaged in the business of providing all necessary services for under-construction activities

(ii) The corporate debtor through the work order bearing no. SI/FY19-20/00033 dated 07.10.2019, AR/FY19-20/0060 dated 20.11.2019 and AR/FY19-20/00078 dated 08.12.2019 allotted work to the operational creditor in which scope of work was scarification, tack coat, DBM, laying BC, providing JCB, providing tractor with and without diesel, providing roller, etc. The work was completed on 22.12.2019.



(iii) The corporate debtor showed difficulty in making the payment and made only part payment, later on, the corporate debtor requested some time to make further payment. The corporate debtor has also made some payments from its sister concern company, Ahmedabad Ring Road Infrastructure Limited.

(iv) The operational creditor on request of the corporate debtor given some time to clear all the outstanding dues. However, despite repeated requests by the operational creditor, the corporate debtor failed to clear the balance due and showed its incapability to clear the outstanding dues.

(v) The corporate debtor has also asked the operational creditor to repair the roads damaged due to heavy rain. Despite of the work beyond the scope, the operational creditor has completed the repairs and sent a letter enclosing the proof of completion.

(vi) Even after various reminders through email and letter dated 03.1.2020, 11.11.2020, 29.12.2020, 20.03.2021 and 26.07.2021 for clearing outstanding amounts and various oral reminders on phone calls, the corporate debtor failed to make payment. For ready reference email dated 26.07.2021 is reproduced here:

“Respected Sir,

This mail is to bring to your notice about the pending payment. We have been assigned the work and the same has been completed approximately 1 year ago. The bill for this work is yet to be booked even after a huge time span has been lapsed. The last payment towards us regarding the same work was done in March 2021. After which you had insured us for further payment but we haven't received any payment or communication thereon. It is our



humble and respectful submission that please book the bill as soon as possible and make the pending payment without any further delay within a week.”

(vii) The operational creditor issued a demand notice on 24.01.2022, the same was delivered to the office of the corporate debtor on 27.01.2022. The corporate debtor neither replied to the said demand notice nor repaid the outstanding dues.

4. In this context, defense placed by the corporate debtor in its affidavit in reply and submission made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

(i) The operational creditor cannot include interest as per section 5(21) of the Code. In the term ‘operational debt’ as defined u/s 5(21) of the Code does not mention the word ‘interest’. Interest amount cannot be clubbed with the principal amount of debt to arrive at the minimum threshold limit of Rs 1 Crore.

(ii) The present petition is not maintainable on the ground that a composite petition raising claims in respect of different work orders/agreements is not maintainable. Hon’ble NCLAT in Company Appeal (AT) (Ins) 72 of 2017 in case of International Road Dynamics South Asia Pvt Ltd vs. Reliance Infrastructure Ltd vide order dated 01.08.2017 has held that different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, the cause of action is being separate.

(iii) There are pre-existing disputes between the parties. The corporate debtor has raised disputes with respect to the non-



satisfactory performance of the work order by the operational creditor. These disputes are prior to the issuance of the demand notice.

(iv) The corporate debtor has entrusted the project of widening of two-lane Sardar Patel Ring Road to Four-Lane Road around Ahmedabad City on BOT basis. However, the operational creditor did not execute the work to the satisfaction of the corporate debtor. As per obligations of the contractor, for any deviation from the specification or any rejection/rectification of executed work, the corporate debtor shall not pay any amount for rejected work, and re-work, if any, shall be carried out by the contractor at no cost to the work order.

(v) The corporate debtor vide email dated 11.11.2020, 01.12.2020, and 11.12.2020 made a request to the operational creditor to rectify the defects on the said project. However, the operational creditor did not rectify the defects up to the satisfaction of the corporate debtor. The corporate debtor was compelled to take up the work with other contractor in the interest of the project. Further, a letter dated 04.05.2021 was addressed to the operational creditor reiterating the dispute with regard to non-satisfactory performance of work regarding the project.

(vi) Again vide letter dated 27.09.2021, a reminder was sent to the operational creditor for carrying out the repair work which has not been done despite several reminders. For ready reference relevant portion of the letter is reproduced here:

*“Sub: Regarding rectification of defective work at risk & cost of contractor for Sardar Patel Ring Road Project, Ahmedabad. –**Final Reminder.**”*



- Ref: 1. ARRIL FY-21-22/004
2. ARRIL FY-21-22/280
3. ARRIL FY21-22/013 dated 31.07.2021
4. By email date- 05.09.2019, 13.06.2019, 11.12.2020, 01.12.2020, 11.11.2020, 13.08.2020, 18.08.2021

Dear Sir,

With reference to subject matter and work order cited above wherein Ahmedabad Ring Road Infrastructure Limited (ARRIL) has awarded the work for carrying out overlay works under Periodic maintenance on Project to M/s Mantra Corporation for the prestigious Widening of Sardar Patel Ring Road Project in anticipation that the contractor shall fulfil the work order obligation and perform the work with utmost sincerity.

Further, it was observed and conveyed to you earlier for the damages caused on project during previos monsoons and was required to be rectified being under DLP (Defect Liability Period). But in-spite of regular correspondence as referred above and intimations to you, the repairs was not carried out on time. However, some steches were rectified on project by temporary measures, but that too was damaged to poor quality opted by your firm. With the onset of this monsoon, more damages occurred on various locations on project and needs to be taken up on priority.”

(vii) The operational creditor has failed to rectify the poor quality of work despite repeated requests. Thus, there are pre-existing disputes between the parties even much before the issuance of demand notice.



5. The submissions made in the rebuttal affidavit of the operational creditor are summarized hereunder:

(i) In the present case the operational debt will include the interest as present operational creditor is a MSME and as per chapter V, section 16 of the MSME Development Act, 2006 which states:

“Where any buyer fails to make payment of the amount to the supplier, as required u/s 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law of the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.”

And section 5(21) of the Code states:

*“Operational debt means a claim in respect of the provisions of goods or services including employment or **a debt in respect of the payment of dues arising under any law for the time being in force** and payable to the Central Government, State Government or any local authority.”*

Thus, the amount of default in the present petition is the dues arising under the law time being in force and thus it will be part of the operational debt.

(ii) The corporate debtor has relied on the judgement of Hon’ble NCLAT, to which it is submitted that the quote of NCLAT as relied is an ‘*obiter dictum*’ and is not a binding precedent.

(iii) The operational creditor has timely completed the work without any complaints. All the complaints with regards to the



damaged roads were timely repaired and completed during the course of the defect liability period. The corporate debtor has also issued a work completion certificate dated 02.06.2022 in favour of the operational creditor to the Karyapalak Engineer Shri, Patnagar Yojna Bhawan, Gandhinagar in which they have clearly mentioned that the work has been completed satisfactorily.

(iv) There are no pre-existing disputes between the parties, the debt is due and payable.

6. We have heard the learned counsels appearing from both sides and have perused the relevant documents available on record. It is noted that there was a business relationship between the operational creditor and the corporate debtor. As per the work orders, dated 07.01.2019, 20.11.2019, and 08.12.2019 work was allotted by the corporate debtor and its venture M/s Ahmedabad Ring Road Infrastructure Limited to the operational creditor to construct a ring road around the city of Ahmedabad. Various invoices were raised from 18.10.2019 to 01.07.2021. Part payments were made by the corporate debtor. The default amount stated by the operational creditor is Rs 1,35,68,193/- (Principle amount Rs 95,66,243/- and interest amount of Rs 40,01,949/-) for which a demand notice under section 8 of the Code was issued on 24.01.2022 by the operational creditor and served through speed post to the corporate debtor on 27.01.2022. However, the corporate debtor failed to reply to the said notice.

The defense taken by the corporate debtor in its affidavit in reply includes that the present petition is non-maintainable on the grounds that the interest amount cannot be included in the principal amount claimed by the operational creditor; and that raising claims in respect of different work orders/agreements is not maintainable. The



corporate debtor has also claimed that there is a pre-existing dispute between the operational creditor and the corporate debtor regarding the quality of services provided by the operational creditor.

Without going into the merit of other defenses taken by the corporate debtor, and after perusing the email conversation and letter sent between the parties, it is noted that the corporate debtor has requested the operational creditor to repair the damaged road with the required quality standard vide letter dated 27.09.2021 and disputed the repair work done by the operational creditor. However, there is no denial from the corporate debtor as regards the completion of the work done as per the work orders issued to the operational creditor, the issue raised by the corporate debtor is regarding the quality of the work done by the operational creditor prior to issuance of the demand notice. In view of this observation, it is clear that there was a pre-existing dispute regarding the quality of the construction of road between the operational creditor and the corporate debtor prior to the issuance of demand notice under section 8 of the Code. The disputes projected before us require thorough inquiry before a proper forum. This Adjudicating Authority cannot undertake that exercise in its limited jurisdiction in hearing of application under section 9 IBC. This is a case of pre-existing dispute on the outstanding dues claimed by the operational creditor; and as such section 9 application cannot be admitted.

7. As a result, the application, i.e., CP(IB)/79/AHM/2022 is rejected and disposed of with no cost. The Registry is directed to serve a copy of this order to the applicant and the corporate debtor.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

ASHOK KUMAR BHARADWAJ
MEMBER (JUDICIAL)