S.No.112

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **07-02-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.105/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

Trutech Constructions Pvt Ltd **...Operational Creditor**

Vs

Vensar Constructions Company **...Corporate Debtor**

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders in CP(IB) No.105/9/HDB/2020 pronounced vide separate sheets. In the result, the Company Petition is allowed and the Corporate Debtor is admitted into Corporate Insolvency Resolution Process (CIRP).

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

Srinivas

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - I

CP(IB) No. 105/9/HDB/2020

[U/s. 9 of I&B Code, 2016 r/w Rule 6 of I & B (AAA) Rules, 2016]

In the matter of:

M/s. Trutech Constructions Private Limited
having its Registered Office at
612, Chiranjiv Tower, Building No.43
Nehru Place, New Delhi – 110 019
Through its Director, Shri Vipul Dewan

.... Operational Creditor

Vs.

M/s. Vensar Constructions Company Limited
Having its Registered Office at
1-11-252/A-3, Jabbar Apartments
Begumpet, Hyderabad, Telangana

... Corporate Debtor

Date of Order: 07.02.2022

Coram:

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Petitioner : Mr.D. Narendra Naik, Ms. Mytri Indukuru, Mr. D. Rajashekar, Mr. Vikram C. Puttapaga & Mr. Srinivas Gowd M, Advocates

For the Respondent : Mr. P. Vikram, Adv

PER : BENCH

ORDER

I. This Petition is filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the application, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt of an amount of Rs.81,88,914/- (Rupees Eighty One Lakhs Eighty Eight Thousand Nine Hundred Fourteen only) which includes Principal of Rs.57,58,175/- and interest of Rs.24,30,739/- (interest @ 18% per annum from the date of default i.e. 30.06.2017 to till the date of Demand Notice dated 03.11.2019).

II. The gist of the Operational Creditor's brief is -

i. M/s. Truetech Constructions Private Limited hereinafter referred to as 'Petitioner/Operational Creditor'. M/s. Vensar Constructions Company Limited hereinafter referred to as 'Respondent/Corporate Debtor'. The Corporate Debtor, vide Letter of Award (for short "LOA") dated 01.04.2017 granted the Contract to the Operational Creditor for 2x38 MW Phata Byung

Hydro Electric Project at Uttarakhand for reconstruction of Dam Intakes and Allied structures for a total contract value of Rs.18,92,34,446/-, and the entire scope of work has to be completed on or before 30.06.2018. Accordingly, the Operational Creditor immediately commenced the contract works. In terms of Clause 56.1 of the Contract, Measurement Books were maintained by the Corporate Debtor, which were duly signed by both the parties; In terms of Clause 60.1 of the Contract, the Operational Creditor furnished the monthly statements to the Corporate Debtor.

ii. The Corporate Debtor, vide letter dated 01.08.2017 communicated to the Operational Creditor that due to some unavoidable circumstances, Lanco Infratech Limited had informed to stop all the construction activities on the project site with immediate effect and instructed the same to the Operational Creditor and instructed to measure all the works done till date and submit the final bill to it.

iii. In response to the said letter, the Operational Creditor stopped the work and issued a letter dated 21.09.2017 informing that the balance net amount receivable is Rs.26,39,950/- and 'work in progress/ executed on site but not billed' for the item of reinforcement and structural steel 54.023 MTs pending to be billed is Rs.31,18,225/-, totaling to an amount of Rs.57,58,175/-

is payable by the Corporate Debtor. A copy of the letter alongwith annexures are filed at page nos.51 to 54 of the application.

iv. On 28.11.2017 and 28.12.2017, the Operational Creditor reminded the Corporate Debtor to pay the balance payments and to deposit the TDS which has been deducted by the Corporate Debtor from the RA Bills and the Price Escalation Bill, but which had not been deposited by the Corporate Debtor. Copies of the Correspondence between the parties are filed at page nos.55 to 59 of the application.

v. The Corporate Debtor vide e-mail dated 11.12.2017 requested the Operational Creditor to provide its RA-2A and Escalation bills on the Company letter head, which was immediately complied by the Operational Creditor through e-mail on the same date.

vi. The Operational Creditor, claimed that it has sent letters and e-mails from time to time requesting to release the due amount. When the due amount was not paid by the Corporate Debtor after continuous follow up, got issued a Demand Notice dated 04.11.2019 in Form-3, demanding payment of the outstanding debt amount of Rs.81,88,914/- (Rupees Eighty One Lakhs Eighty Eight Thousand Nine Hundred Fourteen only) which

includes Principal amount of Rs.57,58,175/- and interest of Rs.24,30,739/- (interest @ 18% per annum from the due date i.e. 30.06.2017 to till 03.11.2019). However, even on service of demand notice, the Respondent failed to send any reply within the statutory time period of 10 days to indicate either payment of debt or existence of dispute.

vii. Certified Ledger Account of the Operational Creditor for the period from 01.04.2017 to 30.06.2018 maintained by the Corporate Debtor is filed as Annexure-IV at page no.49 of the application, which shows that the 'Closing Balance' payable to the Operational Creditor is Rs.26,39,950.26.

viii. A copy of Certified Bank Statement dated 25.09.2019 issued by Kotak Mahindra Bank in respect of accounts of Operational Creditor is filed as Annexure-VII at page no.66 of the application.

ix. The outstanding amount due to the Operational Creditor has never been disputed by the Corporate Debtor in any manner whatsoever.

x. The Petitioner left with no further option, filed the instant petition.

III. The gist of the Corporate Debtor's brief is –

i. The allegations made in the Petition are false and denied except those which are specifically admitted hereunder.

ii. The Respondent is not liable to pay Rs.81,88,914/- as alleged in the Company Petition.

iii. The Company Petition is not maintainable on the following grounds:

a) That there are several disputes pending with respect to the work assigned by the Respondent to the Petitioner with respect to Letter of Award Ref.No.VCCL/TCPL/ Uttar/Lanco/2017-18/01, dated 01.04.2017.

b) That the Petitioner has suppressed the fact that the Respondent has issued a reply dated 10.01.2020 to the Petitioner's Demand Notice dated 04.11.2019 and as such approached this Tribunal with unclean hands, wherein Respondent has clearly explained the disputes pending between the parties with respect to the project. A copy of the Reply dated 10.01.2020 is filed as Annexure-1 at page nos.10 to 15 of the counter.

c) That the Operational Creditor did not file record of default as mandated under Section 9(3)(d) of IBC, 2016.

d) That the present Company Petition is filed for purposes other than initiation of Corporate Insolvency Resolution Process.

iv. The Respondent has made payments for the work done and other amounts in the Company Petition are never approved by the Respondent because the amounts unpaid have been withheld by the Respondent as there were several quality issues raised by Respondent's clients and apart from that some amounts are withheld towards retention amounts as per clause 60.4 of the conditions of the contract. Therefore, the present petition is filed for unapproved amounts and not certified, is not maintainable and liable to be dismissed.

v. The Petitioner from inception has not shown any interest in completion of work and failed to follow the timelines to complete the work mandated under the said work order. Therefore, there was always delay in completion of work and upon that Petitioners are claiming some amounts which they are not entitled to. A copy of the LOA dated 01.04.2017 alongwith special conditions of contract are collectively filed as Annexure-2 of the counter.

vi. With respect to the payment of steel reinforcement, it is denied that it is liable to pay petitioner any amounts because the same is not certified by the Respondent, not yet billed and not recorded by the Respondent's principal contractor and denied the payments allegedly claimed under Bill RA-2A as the same is neither received nor considered by the Respondent.

vii. As per Clause 60.5 of the conditions of the Contract, the petitioner was supposed to submit a Bank Guarantee for Rs.25 lakhs, but they did not submit the same. As per clause 21.1 of the contract, the petitioner has to submit the insurance copies for the workers, men and machinery but the Petitioner failed to submit the same and failed to complete the work and caused loss to the Respondent. Therefore, the Respondent reserves its right to claim Liquidation Damages and other amounts from Petitioner.

viii. The Petitioner alleges that the Respondent has acknowledged the debt amount in ledger at page 49 of the Company Petition, which is forged and fabricated document only filed for the purpose of this case.

ix. This petition has been filed merely as an arm-twisting tactics by the Petitioner to extract money from the Respondent. In the presence of dispute between the parties, the present petition is liable to be dismissed in limine.

IV. The gist of the Rejoinder in brief –

i. It is denied that the Respondent is not liable to pay Rs.81,88,914/- to the Operational Creditor.

ii. It is denied that there are several disputes pending with respect to the work assigned by the Respondent to the Petitioner with respect to the LOA dated 01.04.2017. It is stated that the Respondent has not even placed a single document to show the existence of any dispute between the parties and pleaded imaginary non-existent disputes simply for the sake of raising bogus objections to the present proceedings.

iii. It is denied that that the Petitioner has suppressed the fact that the Respondent has issued reply dated 10.01.2020 to the demand notice dated 04.11.2019 and approached the Hon'ble Tribunal with unclean hands. It is averred that the Respondent received the demand notice on 07.11.2019, but did not respond to the same within the specified period of ten days and as an afterthought and to show a paper trial, the Respondent replied to the said notice on 10.01.2020. It is also averred that the Petitioner filed the petition during December, 2019.

iv. It is denied that the respondent has made payments for the work done and other amounts in the company petition are never approved by the Respondent, because the amounts paid have been withheld by the Respondent as there were several quality issues raised by the Respondent's clients. It is also denied that some amounts were to be withheld towards retention amounts as per Clause 60.4 of the conditions of Contract. It is averred that payment of Rs.2,82,62,939/- with

TDS of Rs.5,65,259/- is reflected in the tax statements of the Respondent, which correspondingly are shown in Form-26 AS. A copy of the same is filed as Annexure-R1 at page nos. 18 to 22 of the rejoinder. The amount of Rs.2,82,62,939/- as appearing in Form 26 AS confirms the certified bill amount. It is therefore totally false on part of the Respondent to allege that certain amounts have been withheld by the Respondent for any valid reasons.

v. It is denied that there was always delay in completion of work and upon that Petitioners are claiming some amounts which they are not entitled to. It is averred that the Corporate Debtor itself vide letter dated 01.08.2017 communicated to the Operational Creditor that due to some unavoidable circumstances Lanco Infratech Limited had informed it to stop all the construction activities on the project site with immediate effect and instructed the Operational Creditor to stop all the work at the project site and measure all the work done till date and submit the final bill to it. A copy of the letter dated 01.08.2017 issued by the Corporate Debtor is filed at page 24 of the rejoinder.

vi. It is stated that M/s.Currie & Brown, Consultants for the project for the Respondents, vide their letter dated 03.07.2017 clearly stated that they have received the contractor monthly

RA Bill No.2 on 30.06.2017, which has verified and certified the quantity by them and requested to further process RA bill for payment. A copy of the letter dated 03.07.2017 is filed as Annexure-R4 at page no.29 of the rejoinder.

vii. It is denied that as per Clause 60.5 of the conditions of contract, the Petitioner was supposed to submit bank guarantee for Rs.25.00 lakhs but they did not submit the same. It is denied that the Petitioner failed to submit the insurances copies for the workers, men and machinery. It is stated that the Petitioner vide email dated 19.07.2016 submitted the Workmen Compensation Policy valid from 07.07.2016 to 06.07.2017, A copy of the same is filed as Annexure R6 of the Rejoinder.

viii. It is denied that the Petitioner had failed in completing the work and caused loss to the respondent and the Respondent has any right to claim liquidated damages and other amounts from the Petitioner. The reliance of the Respondent on Clause 60.5 of the COC is totally misplaced and erroneous. The said condition clearly reads that the contractor may, after obtaining the prior written consent from the client, substitute the retention money with a bank guarantee of Rs.25 lakhs. The Respondent was very prematurely terminated the contract on 01.08.2017 and asked the petitioner to stop the work. The Respondent has not even disclosed in what manner or to what

extent it has suffered any alleged loss. The Respondent has not filed a single document evidencing even prima facie that there was any dissatisfaction with the work of the petitioner. On the contrary, the Respondent not only released the payment done under RA-1 bills but the RA-2 bills were certified by its own consultant M/s. Currie & Brown for release of payments to the petitioner.

ix. It is denied that the document filed by the Petitioner at page 49 is forged and fabricated which is filed only for the purposes of this case. On the contrary, the petitioner filed a copy of the email dated 31.01.2018 as Annexure-R8 sent by the Respondent's Principal LANCO confirming the amount of Rs.26,39,950.26 payable by the Respondent to the Petitioner. Therefore, the contention of the Respondent that the said document is forged and fabricated is totally nullified.

x. It is denied that the petitioner with malafide intention initiated CIRP having the knowledge that the Respondent has the capability of making payments. It is stated that the Respondent has not even specified the nature of the alleged dispute it relies upon for the purposes of neither its reply nor the forum or stage at which such disputes are being addressed by it and the Respondent has neither filed any civil suit nor any arbitration claim against the Petitioner till date.

xi. It is stated that the Respondent has not filed any documents in support of its various contentions that there are disputes between the parties. The present case is one which squarely fits into the framework of the I&B Code, 2016 and initiate CIRP against the Corporate Debtor without delay.

V. The Corporate Debtor filed a Memo dated 22.12.2021 in the Registry stating that it is making payment of Rs.26,39,950/- to the Petitioner by way of a Cheque No.012848, dated 21.12.2021 and no other amounts are payable as per the terms of LOA and special conditions of the contract.

VI. Be that as it may, this being an application under Section 9 of I&B Code, the Adjudicating Authority while examining an application under Section 9 of the Act will have to determine –

Whether there is an 'Operational Debt' and 'Default'. If so, was there any pre-existing dispute between the parties?

VII. To find an answer to the above issue framed by us, heard, perused the documents and written submissions filed by both the parties.

VIII. Whether there is an 'Operational Debt' and 'Default'. If so, was there any pre-existing dispute between the parties?

1) It is an admitted fact that the Operational Creditor was engaged by the Corporate Debtor for undertaking contractual work in regard to setting up of 2x38 MW Phata Byung Hydro Electric Project at Uttarakhand for reconstruction of Dam Intakes and Allied structures for a total contract value of Rs.18,92,34,446/-. The entire scope of work has to be completed on or before 30.06.2018. As per the Contract, the Operational Creditor mobilized its manpower and equipment to site and commenced the contract works. Measurement Books were maintained by the Corporate Debtor in terms of Clause 56.1 of the Contract and were signed by the representatives of both the parties. The Applicant has further submitted that there is no dispute on record regarding measurement of work done and recorded by the representatives of both the parties. The Operational Creditor also furnished to the Corporate Debtor monthly statements in terms of Clause 60.1 of the contract and no dispute whatsoever was raised by the Corporate Debtor in the monthly statements submitted by the Operational Creditor.

2) On 01.08.2017, the Corporate Debtor has informed the Operational Creditor that due to some unavoidable circumstances, Lanco Infratech Limited, who was the principal

in the main contract informed them to stop all the construction activities on the project site with immediate effect and instructed the Operational Creditor to stop all work at the site and demobilize all equipment and manpower. The Corporate Debtor has further instructed the Operational Creditor to measure all the work done till date and submit the final bill to it. In response to that the Operational Creditor on 21.09.2017 replied to the above communication that the balance amount receivable net of all payments was Rs.26,39,950/- as per its books of accounts and records. It was also brought to the attention of the Corporate Debtor that 'work in progress/ executed on site but not billed' for the item of reinforcement and structural steel 54.023 MTs pending to be billed is Rs.31,18,225/-. This quantity of steel was acknowledged by the Corporate Debtor to Lanco Infratech Limited. Therefore, the total outstanding amount recoverable from the Corporate Debtor is Rs.57,58,175/-. The reconciliation statement also was sent by Operational Creditor to the Corporate Debtor with a request to release the balance amount. The Operational Creditor further submitted that, vide emails dated 16.08.2017 and 21.09.2017 the Operational Creditor furnished to the Corporate Debtor the copies of Letter of Confirmation of Balance Payments alongwith the account statement of works done and payments received and requested the Corporate Debtor to confirm the balance amount payable and to release the same at the earliest.

3) The Operational Creditor further submitted that on 28.11.2017 and 28.12.2017, the Corporate Debtor was reminded regarding the balance amount and to deposit the TDS which has been deducted by the Corporate Debtor from the RA Bills and the Price Escalation Bill, but which was not deposited by the Corporate Debtor.

4) The Operational Creditor also submitted that vide e-mail dated 11.12.2017, the Corporate Debtor required the Operational Creditor to provide its RA-2A and Escalation bills on the Company letter head. The same was immediately complied by the Operational Creditor vide email dated 11.12.2017 itself.

5) Despite reminder email dated 30.12.2017, the Operational Creditor prayed to release the outstanding payments to the Corporate Debtor which was admitted by the Corporate Debtor in Statement of Account of 01.04.2017 to 30.01.2018 showing an unpaid amount of Rs.26,39,250.26 to which the Operational Creditor is legally entitled to. The Operational Creditor has also submitted the summary of payments and certified bills in their application showing the amounts due from the Corporate Debtor. The Operational Creditor has also claimed Reinforcement Steel (work in progress not billed by executed at site) to the tune of Rs.31,18,225/- and the total due from the Corporate Debtor was Rs.57,58,175/- towards work done by the Operational Creditor

under the contract executed by the Corporate Debtor. The above outstanding amount has been acknowledged by the Corporate Debtor in Statement of Account dated 01.04.2017 to 31.01.2018 showing an unpaid amount of Rs. 57,58,175/- to the Operational Creditor.

6) The Operational Creditor has further submitted that despite several reminders as furnished vide Annexure-V of the application; the Corporate Debtor has not made any payment of the said sum.

7) Thereafter, the Operational Creditor served a Demand Notice dated 04.11.2019 in Form-3 (Annexure-VI) upon the Corporate Debtor which was received by the Corporate Debtor on 07.11.2019. However, the Corporate Debtor has showed no interest to furnish any reply to the Demand Notice issued under the Insolvency & Bankruptcy Code, 2016, for short 'Code' nor they have raised any dispute about the same. The Operational Creditor further submitted that in the light of the above submissions, it is clear that there is no prior dispute as regards to the outstanding payment and the Corporate Debtor failed to make the payment as demanded by the Operational Creditor. Therefore, this application filed by the Operational Creditor for recovery of an amount of Rs.81,88,914/- (Rupees Eighty One Lakhs Eighty Eight Thousand Nine Hundred Fourteen only)

comprising of Principal amount of Rs.57,58,175/- alongwith the interest of Rs.24,30,739/- for the period from 30.06.2017 to till 03.11.2019 under IBC, bearing CP(IB) No.105/9/HDB/2020 against the Corporate Debtor may be admitted for the reason of default by the Corporate Debtor.

8) The Corporate Debtor on the other hand submitted that they have duly made payments for the work done so far and the other amounts shown as payable never approved by the Respondent because the amounts unpaid have been withheld by the Respondent as there were several quality issues raised by Respondent's clients. Apart from that some amounts are also withheld towards retention amounts as per clause 60.4 of the conditions of the contract. Therefore, the Corporate Debtor has submitted that the application filed by the Operational Creditor was for the amounts unapproved and not certified by the Corporate Debtor. Therefore, this application is not maintainable.

9) Further, the Corporate Debtor has also submitted that the Operational Creditor has suppressed regarding reply dated 10.01.2020 wherein Respondent had clearly explained the disputes pending between them with respect to the project. In the said reply the Corporate Debtor has clearly dealt with why the amounts are not due and payable to the Operational Creditor.

A copy of the Reply dated 10.01.2020 is filed as Annexure-1 alongwith the counter. The Corporate Debtor has also claimed that the petitioner from inception has not shown any interest in completion of work and failed to follow the timelines stipulated as per the work order. Therefore, there was always delay in completion of work and the Petitioners are claiming some amounts which they are not entitled to. In support of this contention, the Corporate Debtor has also filed a copy of the LOA dated 01.04.2017 alongwith special conditions of contract as Annexure-2.

10) The Corporate Debtor has further submitted that as per Clause 60.5 of the conditions of the contract, the petitioner was supposed to submit Bank Guarantee for Rs.25 lakhs, but they did not submit the same. As per clause 21.1 of the contract, the petitioner has to submit insurance copies for the workers, men and machinery etc. but the Petitioner failed to submit the same. Likewise, the Operational Creditor has failed in completing the work and caused loss to the Corporate Debtor.

11) The Corporate Debtor has further submitted that acknowledgement of debt amount in ledger at page 49 of the Company Petition is a forged and fabricated document, which was filed by the Operational Creditor solely for the purpose of this case.

12) The Corporate Debtor has further submitted that clause 67.3 of the contract agreement mandates that parties shall resolve the dispute only by Arbitration. However, despite the clause the Operational Creditor approached the Adjudicating Authority instead of going for arbitration to resolve the disputes. The Corporate Debtor further submitted that the Operational Creditor has filed this application as an arm-twisting mechanism to extract money from the Respondent despite being aware of the fact that there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor and prayed for dismissal of this application in limine.

13) The Corporate Debtor further submitted that any action under the Code shall hamper the operations and business of the Corporate Debtor effecting large number of employees and customers and cause irreparable damage to the Corporate Debtor. It is also alleged that this application was filed with a malafide intention to extract money and the same is against the objective of the Code. Therefore, the present Company Application is liable to be dismissed in the interest of justice.

14) In reply to the above averments made by the Corporate Debtor, the Operational Creditor denied all the averments made by the Corporate Debtor and reiterated that the Corporate Debtor is

liable to pay Rs.81,88,914/- to the Operational Creditor which was duly acknowledged by them.

15) The Operational Creditor denied that there are several disputes pending with respect to the work assigned by the Respondent to the Petitioner with respect to the LOA dated 01.04.2017. The Corporate Debtor has not even placed a single document to show the existence of any dispute between the parties, nor has it given any details of any alleged dispute pending adjudication in any forum or tribunal or court of law. The Operational Creditor has further claimed that the Corporate Debtor has unearthed imaginary non-existent disputes simply for the sake of raising bogus objections to the present proceedings. Clearly, no such disputes exist or have never existed between the parties.

16) The Operational Creditor also denied that the Corporate Debtor has issued a reply dated 10.01.2020 to the demand notice issued on 04.11.2019 by the Operational Creditor. The Operational Creditor has submitted that the Demand Notice dated 04.11.2019 was received by the Corporate Debtor on 07.11.2019 itself. The Corporate Debtor deliberately did not respond to the same within the specified period of ten days from the date of receipt thereof. Therefore, this Company Petition was filed by the Operational Creditor. The Operational Creditor further claimed that the Corporate Debtor belatedly, as an afterthought and to show a

paper trial, replied to the said notice on 10.01.2020. The Operational Creditor also submitted that there was no occasion for the Petitioner to disclose or file such reply as no company application was filed during prior to the receipt of reply notice. As such, the claim of the Corporate Debtor that the Operational Creditor suppressed the reply received by them was not factually incorrect as there was no such reply even in existence at the relevant point of time of filing the application.

17) The Operational Creditor has further denied the averments made by the Corporate Debtor that payments have already been made by the work executed by the Operational Creditor and the amounts claimed by the Operational Creditor now in the Company Petition were never approved by the Corporate Debtor. Further, the amounts which were withheld were not in respect of the quality issues raised by the Corporate Debtor. The Operational Creditor further submitted that it is also pertinent to point out that payment of Rs.2,82,62,939/- with TDS of Rs.5,65,259/- is reflected in the tax statements of the Respondent, which correspondingly are shown in Form-26 AS, photocopy of which is annexed and marked as Annexure-R1. It is pertinent to point out that in Annexure-IV to the Company Petition the Corporate Debtor has acknowledged the certified bills of the Operational Creditor. Further, the figure of Rs.2,82,62,939/- as appearing in Form 26 AS confirms the

certified bill amount, as appearing in the Summary of Payments & Certified Bills forming part of Annexure-V to the Company Petition. It is therefore totally false on part of the Respondent to allege that certain amounts have been withheld by the Respondent for any valid reasons.

18) The Operational Creditor further submitted that as the respondent did not have any tenable reply to their Demand Notice. The reply dated 10.01.2020 was given as an afterthought to show some alleged dispute pre-existing between the parties for the purposes of the present proceedings. Therefore, it is also submitted that the purported reply dated 10.01.2020 received from the Corporate Debtor does not disclose a single dispute pending between the parties as contemplated by the Code. The Operational Creditor further submitted that not a single notice has been sent by the Corporate Debtor to the Petitioner qua the alleged dispute being sought to be propagated by it now as an afterthought. Further, the Operational Creditor claimed that no details whatsoever has been filed to show case that the alleged disputes are existing prior to filing of this application. No documentary evidence to show that they have raised a dispute other than vaguely submitting that there exist disputes between the parties.

19) The Operational Creditor further submitted that the Material Reconciliation Statement for the reinforcement steel has been signed and verified by the site in-charge, the Billing Section, M/s.Currie & Brown, the Project Consultants and the Project Head of the Respondents. Therefore, it does not lie in the mouth of the Corporate Debtor contending that the same was never certified or billed or not recorded by the Corporate Debtor or its principal contractor. In support of the contention, email dated 01.07.2017 written by Mr. K. Sasikumar to Mr. Y. Subbah Rao enclosing BOQ of balance Dam Works, on 01.07.2017 written by Mr. Y. Subba Rao to the Corporate Debtor and on 28.08.2017 from the Corporate Debtor itself attaching the BOQ and other documents, which are annexed and marked as Annexure-R3 (Colly.). The Operational Creditor further submitted that the above communications disclose that both the Corporate Debtor and its principal, Lanco Infratech Limited had measured, recorded and certified the RA-2A Bill and BOQ. Further, infact, M/s. Currie & Brown, Consultants for the project for the Corporate Debtor vide their letter dated 03.07.2017 have clearly stated that they have received contractor monthly RA Bill No.2 on 30.06.2017 and have certified and verified the quantity after submission of required documents on 03.07.2017 and enclosed the abstract of quantities with the said letter, requesting to further process the R.A.Bill for payment. Photocopy of the letter dated 03.07.2017 written by M/s.Currie & Brown, Consultants of the

Corporate Debtor is annexed and marked as Annexure-R4 by the Operational Creditor. The Operational Creditor further submitted that there are several emails exchanged between the principal as well as contractor, the Corporate Debtor required RA-2A and Escalation Bills on Petitioner's letter head in bill format which was shared with the Operational Creditor by Lanco Group vide email dated 11.12.2017 which were annexed and marked as Annexure R5 (Colly.).

20) The Operational Creditor also denied that as per Clause 60.5 of the conditions of the contract, the Operational Creditor was supposed to submit bank guarantee for Rs.25.00 lakhs but they did not submit the same. It is also denied that the Operational Creditor failed to submit the insurance copies for the workers, men and machinery. In fact the Operational Creditor, vide email dated 19.07.2016 submitted the Workmen Compensation Policy valid from 07.07.2016 to 06.07.2017, photocopy of which email is annexed and marked as Annexure R6 and the Operational Creditor further submitted that all insurance copies of plant and machinery vide email dated 14.06.2016 to the Corporate Debtor's principal, photocopy of which mail is annexed and marked as Annexure-R7 by the Operational Creditor.

21) The Operational Creditor also denied that the Petitioner had failed in completing the work and caused loss to the respondent. On the contrary, the Operational Creditor has submitted that the Corporate Debtor has no right to claim liquidated damages at this point of time and other amounts from the Petitioner as per the contractual terms.

22) The Operational Creditor also submitted that the claim of the Corporate Debtor that the documents produced by the applicant are forged and fabricated are totally denied. The Operational Creditor filed a copy of the email dated 31.01.2018 as Annexure-R8 sent by the Respondent's Principal LANCO confirming the amount of Rs.26,39,950.26 payable by the Respondent to the Petitioner. The Operational Creditor has claimed that the Corporate Debtor has desperately tried to canvas the same as an afterthought in order to escape its liability towards the Petitioner and which it is legally bound to pay to the Operational Creditor.

IX. When the submissions are being made before the Adjudicating Authority, the representative of the Corporate Debtor has come out with a cheque purported to be signed by the Corporate Debtor to an amount of Rs.26,39,950/- towards the dues as per their records. However, the same was not even delivered to the representative of the Operational Creditor, which clearly shows that there is a debt due from the Corporate Debtor to the Operational Creditor and there is a default as they have come out

with a cheque towards the repayment after filing this application which amply proves that the fact that there exists an operational debt between the parties and also there is a default made by the Corporate Debtor in repaying the dues to the Operational Creditor.

X. We have heard the submissions made by the Counsel for Petitioner and Counsel for Respondent and thoroughly perused the records and came to a conclusion which amply proves that the Corporate Debtor is liable to pay the amount as claimed by the Operational Creditor. We have no hesitation in coming to a conclusion that the Corporate Debtor failed to make the payment as per the statement signed by their own company and also failed to prove that there is a pre-existing dispute between the parties. The record which was submitted by the Operational Creditor amply proves that there is an operational debt, which was defaulted by the Corporate Debtor and there is no pre-existing dispute. As such, in the light of the above findings, we have no hesitation in admitting this application filed by the Operational Creditor and put the Corporate Debtor Company into Corporate Insolvency Resolution Process (CIRP). Relying on the documents filed by both the parties, petition deserves to be admitted. Accordingly, this petition is admitted.

XI. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a

panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from January 1, 2022 to June 30, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Bolisetti Jaya Babu, having Registration No. IBBI/IPA-003/IP-N000168/2018-2019/11989, e-mail: jayababu.sbi@gmail.com as Interim Resolution Professional. As per the IBBI website, his AFA is valid upto 28.11.2022. The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

XII. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions: -

i. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002

(54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

ii. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

iii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iv. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

v. That the order of moratorium shall have effect from the date of this Order till the completion of the Corporate Insolvency

Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

vi. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.

vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

viii. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

SD/-

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-

Dr.N.V.RAMA KRISHNA BADARINATH
MEMBER (JUDICIAL)

Syamala