



SL.No.1

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)  
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 28.06.2023 AT 02:30 PM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>CP (IB) No.158/9/HDB/2021</b>
<b>NAME OF THE COMPANY</b>	<b>Mytrah Energy India Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Excelltech Wind India Pvt Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Mytrah Energy India Pvt Ltd</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

This application is allowed, vide separate orders.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-II**

C.P. (IB) No. 158/9/HDB/20210  
Under Section 9 of the IB Code, 2016  
r/w Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016.

**Between:**

M/s Excell Tech Wind India Pvt. Ltd.,  
No. 98, Annapoorna Layout,  
New Siddhapudur,  
Coimbatore – 641044, Tamil Nadu

...Applicant/Operational Creditor

**A N D**

M/s Mytrah Energy (India) Pvt. Ltd.,  
8<sup>th</sup> Floor, Q City, Surevy No. 109,  
Gachibowli, Nanakramguda,  
Serilingampally Mandal, Hyderabad  
Telangana – 500 032

...Respondent/Corporate Debtor

**Date of Order: 28.06.2023****Coram:**

Hon'ble Justice Telaprolu Rajani, Member (Judicial)  
Hon'ble Sri Charan Singh, Member (Technical)

**Counsel present:**

For the Operational Creditor: Shri A. Narayanan  
For the Respondent : Shri D. Avinash

**Heard on:** 14.06.2023**Per : Bench****O R D E R**

1. This application is filed by the Petitioner M/s Excell Tech Wind India Pvt. Ltd., Operational Creditor (OC) against the Respondent M/s Mytrah



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Energy (India) Pvt. Ltd., Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the CD for the default committed by the CD, in discharging the debt due to it.

**2. The facts of the case, briefly, are as follows:**

i) The Corporate Debtor (CD) used to engage OC for supplying materials and for erection at CD's various Wind energy and solar energy projects and their business relationship was smooth. However, in respect of latest three wind/solar energy project sites of CD, CD is acting adverse to the interest of Operational Creditor (OC) and has put the OC in dire straits. The following are the said three projects of CD:

1. Maniyachi Kayathar site (Wind Energy Project)
2. Aspari Site (Wind Energy Project) and
3. Kamareddy site (Solar Energy Project)

ii) CD placed orders with OC by issuing purchase orders (PO)/Work Orders (WO) for supplying of materials and erection/construction thereof. OC performed its contractual obligations, but the CD failed to pay and discharge substantial contractual dues to the OC.

iii) CD issued a letter dated 30/01/2019 to the OC assuring that the CD would settle the full outstanding amount of Kamareddy Site as per PO terms, after reconciliation of account, in the following schedule of payment:

1. 25% by end of February, 2019
2. 35% - by end of April, 2019
3. 40% - by end of June 2019

iv) Regarding Aspari site, CD issued another letter dated 2/02/2019 with identical schedule of payment and confirmed that the debt relating to Maniyachi Site tallied with CD's accounts and assured to clear it along with the dues of other two sites. Pursuant to the letter in respect of Kamareddy site, CD paid belatedly on the following dates:

- a. On 12/03/2019, the first instalment Rs. 35,89,221
- b. On 10/05/2015, 17.5% i.e. half of the second



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instalment		<u>Rs. 25,122,445</u>
	Total	<u>Rs. 61,01,666</u>
		=====

v) OC continued to perform the contracts and kept raising invoices for its claims and was reminding for the dues. CD released payments for some invoices and defaulted the other invoices. The last payment of Rs. 76,00,000/- was released by the CD on 25/10/2019 and after giving effect to all the payments, OC arrived at the net amount due from the CD are as under:

1) Maniyachikayathar site	Rs. 1,41,29,456
2) Aspari Site	Rs. 37,05,465
3) Kamareddy site	<u>Rs. 82,55,209</u>
Total	<u>Rs. 2,60,90,130</u>
	=====

vi) Though the OC complained to the Regional Director, Ministry of Corporate Affairs, South East Region, vide its letter dated 20/01/2020, CD did not release any payment, but, replied to the OC's complaint to RD, vide its letter dated 10/03/2020 that the CD was unable to pay the debt and made allegations in its reply to the RD. OC sent a reply dated 09/10/2020 to the CD.

vii) OC sent a legal notice dated 27/11/2020 to the CD demanding the principal debt of Rs. 2,60,90,130/- along with interest accrued till 31/10/2020 of Rs. 40,26,998. However, the CD did not pay the amount demanded as above.

viii) CD sent a reply legal notice dated 08/01/2021, where the CD did not dispute the operational debt of Rs. 2,60,90,130/- claimed in the legal notice nor did it give any explanation for their breach of contract alleged in the OC's legal notice. CD referred to their four emails and stated that in the light of those emails, the claim of OC was without any merit. The emails highlighted by the CD are dated 24/12/2018, 18/12/2019, 20/03/2020 and 20/11/2020 and all were addressed to the OC.



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ix) OC issued a statutory demand notice under section 8 of IBC in Form No. 3 on 17/02/2021 to the CD, which was served on the CD on 22/02/2021. However, the CD did not pay any amount, but sent a reply dated 04/03/2021 asserting pre-existing disputes. The allegations contained in CD's reply to statutory notice were dealt by the OC in detail in the application in form No. 5 filed, which are as under:

x) As regards the first allegation that the CD's substantial debt to the OC is time barred, the OC submitted that the account between the parties is a single continuing account; on multiple occasions CD has admitted the debt and has paid on account of the debt, the latest receipt being Rs. 76,00,000/- on 25/10/2019; thereby the period of limitation got extended from that date and therefore, the allegation is unsustainable.

xi) As regards the second allegation that the CD made a complaint to the OC through their email dated 24/12/2018 about a cable defect in Kamareddy site and it was not attended by OC, OC submitted that the same allegation was already made by the CD in their reply to the RD and was answered by the OC in its legal notice dated 27/11/2020 that the alleged email was never received by the OC.

xii) As regards the third allegation that the CD as per their email dated 18/12/2019, had made a complaint that many activities are pending from electrical vendors and that the complaint was not attended to by the OC, OC replied on 19/12/2019 and inter-alia, submitted that whenever OC presses for payment, CD would allege that the pending work is not intimated earlier, in order to evade payment and, therefore, nothing survives in this allegation.



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xiii) As regards the fourth allegation that vide CD's email dated 24/12/2019, the CD had complained that in Maniyachi site, pole coping was done from ground level without excavating soil to the required depth and that the same was not rectified, OC submits that the same allegation was made by the CD in their reply dated 10/03/2020 to the RD and the OC had refuted it vide their reply dated 09/10/2020 and the same point was elaborated in OC's legal notice dated 27/11/2020 and therefore, the said allegation is cleared and nothing survives in the allegation.

xiv) As regards the fifth allegation that as per CD's email dated 20/03/2020, OC had sub-assigned their work to a sub-contractor in their projects, OC explained that whenever the jobs were to be done at a faster mode as per client's request, OC used to take skilled labour from labour supply agencies and that the entire jobs were supervised by OC's supervisors and the CD's site incharge officials and, therefore, the CD is estopped from making the allegation.

xv) As regards the sixth allegation, OC submitted that it is a reiteration of what is contained in CD's email dated 20/11/2020, which was already addressed and therefore this allegation does not survive.

xvi) The OC, therefore, submitted that the contention of the Respondent that there existed pre-existing disputes, is not true.

**3. The respondent/CD filed Counter against the averments made by the Petitioner in its Petition, which are as under:**

i) It is contended that there is existence of dispute between the OC and the CD, hence, this application is liable to be dismissed. It is also submitted that there is no proper authorization letter and the application is barred by limitation.



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ii) It is also contended that the alleged debt fails to meet the threshold limit under the IBC, 2016. It is, further, contended that every purchase order/work order issued by the OC, constitutes a separate contract having its own payment terms and independent dispute resolution clauses.

iii) It is contended that the CD has raised several disputes with the OC with respect to the quality of work carried out by the OC. A bare perusal of the emails dated 20/03/2020, 24/12/2019, 07/12/2018 and letter dated 20/11/2020 categorically show that the CD has brought to the notice of the OC about its deficient services. It is also stated that the OC had filed complaint against the CD before the ROC alleging mismanagement on the part of the CD with respect to its financial operations and that the CD has defrauded several other contractors, which were denied by the CD as baseless allegations levelled by the OC.

iv) CD submitted that the deadlock in negotiations between Govt. of AP & AP State Distribution Companies (DSCOMS) over tariff rates for the energy supplied to the respective DISCOMS had directly impacted its scale of operations and despite the severe hardship caused by the Covid-19 Pandemic, CD had honoured several payment obligations towards vendors, who had successfully completed the works as per the terms and conditions under the respective purchase orders/work orders. OC has also issued a legal notice dated 27/11/2020, under which, it made several baseless allegations in order to coerce and arm-twist the CD for acknowledging the existence of the alleged debt. CD in its reply dated 08/01/2021 denied all the allegations and categorically raised several concerns such as the failure of the 33 Kv Cable jointing at the Kamareddy Site and sub-contracting of the 33 Kv line work by the OC without prior intimation. Hence, it is therefore contended that there are several pre-existing disputes between the OC and CD.



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v) In view of the above submissions, the CD seeks this Tribunal to dismiss the application filed by the OC.

**4. The OC has filed the rejoinder, in which, it has stated as under:**

i) It is stated that in Clause 6 of Part – II of Form 5 that substantial powers of management are granted under the Companies Act, 2013 to the Managing Director of a company registered under the Companies Act, 1956 and that in exercise of the said powers the Managing Director of the OC is competent to file the application. However, by way of abundant caution, the OC filed the resolution passed at the meeting of the Board of Directors of OC authorizing the MD to take steps to initiate CIRP against the CD Company.

ii) With regard to the limitation, it is stated that the CD acknowledged the debt as on 30/09/2019 by way of email dated 11/10/2019 that the operational debt of Rs. 288 lakhs as on 30/09/2019 was confirmed in the said email and mentioned that it is clearly tallying with the cumulative outstanding of the operational debt as on 30/09/2019. After earlier date of default, the CD has kept paying the dues on account of the debt to the applicant. As per section 18 of the Limitation Act, 1963, fresh period of limitation will be computed from the date of acknowledgment of liability. Therefore, the application is well within the period of limitation.

iii) As regards the clubbing of three purchase order relating to three different projects and regarding the reliance placed by the CD on the judgment of the NCLAT in the case of International Road dynamics South Asia Pvt. Ltd. Vs. D.A. toll Road Pvt Ltd., it is stated that there is no bar against uniting different causes of action against the same CD in a single application. The said judgement relied upon by the CD has been overruled by the Hon'ble Supreme Court and the matter was remanded back for hearing afresh and



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the said fact of overruling of the decision is quoted in the following two judgments of the NCLT:

- i) CP No. IB 2135/ND/2019 in the case of A2 Interiors Products P. Ld. Vs. Ahluwalia Contracts India Ltd., on the file of NCLT, New Delhi Bench.
- ii) CP No. IB 159/MB/2019 in the case of Meridian Metals Vs. Gactel Turnkey Project Ltd., on the file of NCLT, Mumbai Bench.

iv) As regards the pre-existing dispute, it is submitted that regarding the emails dated 20/03/2020 and 24/12/2019, which were earlier referred to by the CD in their reply to the applicant's demand notice, the OC thoroughly dealt with those emails and showed that no dispute was made out in those emails. Regarding the email dated 07/12/2018, it is for the first time this email was raked by the CD, which was not received by the OC and it was purely an internal correspondence within the CD company. The alleged letter dated 20/11/2020, is an email of the same date and, therefore, nothing survives in the allegations made in the email.

v) On the above facts, the applicant once again seeks the Tribunal to order as prayed for in the application.

5. Written submissions are filed by both the counsel, wherein they have reiterated the contents of their respective pleadings and the same would be referred at the relevant parts of the judgment.

6. Based on the pleadings and arguments, the following points would emerge for our consideration:

**1. Whether multiple purchase orders can be clubbed in a single Application.**

**2. Whether this application is filed within the limitation.**



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**3. Whether there is pre-existing dispute between the parties.**

**4. Whether CIRP can be ordered against the CD.**

**5. To what result.**

**7. Point No. 1**

**Whether multiple purchase orders can be clubbed in a single Application.**

**7.1** The CD, in the counter, raises an objection with regard to clubbing of various purchase orders for the purpose of filing a single application. However, the same is not reiterated in the written submissions. However, in order to avoid any further ambiguity on the said aspect, we take up the said aspect for discussion. The contention of the CD is based on the order of the NCLAT in the case of International Road Dynamics South Asia Pvt. Ltd. Vs. D.A. Toll Road Pvt. Ltd., wherein it was held that clubbing of purchase orders in one application is not valid. The ld. Counsel for the OC draws our attention to two judgements passed by the NCLT, New Delhi Bench in CP No. IB 2135/ND/2019 in the matter of A2 Interiors Products P. Ld. Vs. Ahluwalia Contracts India Ltd., on the file of NCLT, New Delhi Bench and in CP No. IB 159/MB/2019 in the case of Meridian Metals Vs. Gactel Turnkey Project Ltd., on the file of NCLT, Mumbai Bench wherein the NCLAT decision and the Hon'ble Supreme Court's judgement, which remanded the matter to NCLAT, was referred to. At para 13 clause (f) of the first judgement, NCLT observed that the Hon'ble Supreme Court has remanded the matter to NCLAT and the NCLAT further remanded to NCLT by its order dated 11/12/2018 and clarified its previous order barring a single petition for claims arising under different contracts under section 9 of the I&B Code observing that "*we agree to the submissions of the petitioner that claims arising out of a multiple agreement can be filed in a single petition under section 9 of the I&B Code and it cannot be rejected on this ground*". It was also observed that the applicant therein relied



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on the case of NCLT, Mumbai in the case of Meridian Medals Vs. Gactel Turnkey Projects, wherein it was held that a single petition can be filed for the claims arising out of separate work orders. Hence, in view of the above, it can be safely concluded that multiple purchase orders can be clubbed in a single application and the same is maintainable.

## **8. Point No. 2**

### **Whether this application is filed within the limitation.**

**8.1** The Respondent has taken a plea in the Counter and also in the written submissions with regard to the petition not being filed within limitation. The only ground on which the aspect of limitation is challenged is that the application is filed beyond three years from the date of default as recorded by the OC in the petition. He relies on the contents of the petition where it is mentioned that the alleged date of default is on 03/12/2017. This application is filed on 30/06/2021, hence, the same is beyond limitation.

**8.2** A perusal of the application, does not show that the date of default is mentioned as 03/12/2017 and even in Form No. 5 under Part II, we do not find any mention being made with regard to the date of default. It is in Part IV that the date of default is mentioned as 03/12/2017. But it can be seen that below the said part of Form No. 5, it is also mentioned that the last date of payment by the CD to the account of OC is on 25/10/2021. The OC filed rejoinder explaining that the application is not barred by limitation as the payments made before the expiry of the time from the date of default would amount to acknowledgment and would give rise to a fresh limitation period from the date of acknowledgment. In the written submissions filed by the CD, except cryptically mentioning that the application is barred by limitation as it was filed beyond three years from the date of alleged default mentioned in Form No. 5, it does not meet the contentions made in the rejoinder. The Id. Counsel for the OC, in the written submissions, reiterated the facts mentioned in the rejoinder by stating as follows:



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*“All the transactions between the OC and the CD, irrespective of the projects, were maintained in a single running account, vide paragraph 4 of the Schedule to the Application in Form 5, which is not disputed by the CD. The OC has furnished the extract of its ledger account with CD in three paces, vide Annexure A-4, Annexure A-8 and Annexure A-23. From the above it is clear that right from 01/06/2016 CD had made payments into the account continuously without any gap of maximum of about 3 months. As per section 19 of the Limitation Act, 1963, where payment on account of debt is made before the expiration of the prescribed period by the person liable to pay the debt, a fresh period of limitation shall be computed from the time when the payment was made. Therefore, as per section 19, fresh period of limitation start from each payment and thus no portion of the operational debt is time-barred.*

*On various occasions CD has specifically acknowledged the liability of the operational debt to OC.*

8.3 Based on those submissions, as per section 18 of the Limitation Act, 1963, where before the expiration of the prescribed period for a suit or application in respect of any property or right, the acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Therefore, as per section 18, fresh period of limitation starts from each acknowledgment and thus no portion of the operational debt is time barred.

8.4 As regards the retention money dues pertaining to the years 2016 and 2017, they fell due after the 14 months period in the years 2017 & 2018, therefore, the acknowledgments made in the year 2019 will give fresh lease of limitation to these retention money dues as well.

8.5 There is absolutely no counter argument made to the above submissions. There are emails acknowledging debt. Whether there was any dispute later on, after the said emails or not is not stated. The fact remains that by acknowledging the debt, the respondent has given fresh cause of action thereby extending the limitation. Hence, this point is answered, accordingly, in favour of the OC.



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**9. Point No. 3****Whether there is pre-existing dispute between the parties.**

9.1 The Id. Counsel for the Respondent relies on 6 emails in support of his contention that there was a pre-existing dispute raised by the CD prior to the demand notice. The first email is dated 24/12/2018. The Id. Counsel for the OC submits that the said email was never received by the OC. He also contends that CD has not refuted OC's above reply in its legal notice, which is factually found to be correct on verification of the demand notice and the reply notice.

9.2 Apart from that, it can be seen that on 5<sup>th</sup> December, 2018 an email was sent by the CD to the OC, which mentioned as follows:

*"We are very sorry for the delay in payment. We know you have supported us at all in times and situations, but we failed completely to make your payments on time.*

*Last time we have promised that we will try to open L.C. against the same bills. But we have limits issue with IDFC Bank and only IDFC Bank opens the service L.C.'s*

*Kindly bear with us for some more time and we will clear all your dues immediately as soon as we receive the funds."*

After having given this email, the contention of the CD that they have pre-existing dispute, somehow, does not appeal to us in terms of truth. Moreover, the contention of the OC that they did not receive the said email was not refuted by the CD and no evidence is placed before us that the said email was delivered to the OC.

9.3 The second email is dated 24/12/2019 alleging that in Maniyachi project pole coping was not done properly. The contention of the Id. Counsel for the OC is that the OC has sent its reply promptly to the said email on 27/12/2019, denying the alleged defect and offering to correct if details are given. A perusal of the reply dated 27/12/2019 would show that it was well explained by the OC that pole coping was done as per standard and the

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purpose of coping is for protecting the pole from getting rusted when water flows and not for strength. The strength is given by the concrete done below the ground level. If any cracks are found, the CD was called upon to let them know the pole number and feeder number, so that the same shall be got done. It is also said that they have done thousands of poles all over India for almost all OEMs and Developers and so far no customers have come up with any such complaints. Further, it is reiterated that they are not aware of any poles bend and as explained, coping is not for any strength and it is meant for prevention of rusting. CD was called upon to give the pole number and feeder number, to do the needful. Regarding RCC pole cracking, the CD was called upon to let the OC know the pole number and feeder number, so that they shall do the needful. The contention of the Id. Counsel is that thereafter there was no reply from the CD and the same was not refuted by the Id. Counsel for the CD and no further reply was placed in this regard. Hence, the dispute raised with regard to pole coping does not sustain after the reply emails sent by the OC on 27/12/2019.

9.4 The next email is dated 18/12/2019 wherein it is stated that many activities are pending from electrical vendors and, therefore, the same can be attended to complete. A detailed reply was sought for in this connection. In reply, an email was sent by the OC on 19/12/2019 stating that by trailing mail dated 11/12/2019, the OC has forwarded point wise O/S which is pending from 6 months to more than two and half years (over the retention period of two years). It is also stated that the OC has asked to settle the payments, while, the CD is bringing up pending works, which so far has not been intimated from any of their sites. It is also stated that if there is any reasonable pending point at Maniyachi site, the same shall be attended as soon as possible. Therefore, the same shall not be linked for non-payment of O/S. It is also mentioned that retention payment of Asperi is pending for more than two and half years and the CD has promised many a time to clear the payment which was not adhered to so far. It is further stated that regarding



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DCOH Maniyachi through M/s Kshema power Rs. 47 lakhs is pending for more than 6 months for which the CD had pressured the OC to complete as per their schedule and accordingly, the same was on time to commission the line and the CD promised to clear the entire payment on completion of the line, however, CD has not kept the promise. It is also stated that despite the project being done to the satisfaction of the CD, they are blaming for not meeting PO/WO condition which is a surprise for the OC, whereas the CD has not met any of their promises and they are committed on clearing the said O/S. For the said email, there is no reply from the CD. Hence, the irregularities pointed out in the email dated 18/12/2019 stand condoned by the silence of the CD on the email dated 19/12/2019 sent by the OC.

9.5 The next email is dated 20/03/2020 wherein it is stated that as per the recent information received from the project sites, it has been internally reported to the CD that the OC had sub-assigned the role of 33Kv line works to a sub-contractor and the same is not within the agreed terms of the contract. It is also intimated that in the said scenario, the company management had framed a policy of conducting technical audits at those projects site in order to assess the possible losses/damages caused. Until final confirmation from the team of auditors/technical engineers about the report and the quantum of damages suffered by them, they shall be constrained to proceed further in reconciliation and release of further payments.

9.6 In answer to the said email, the OC sent an email dated 03/05/2020 to the CD wherein it is expressed that the OC had pointed the lacuna in the complaints of the CD that they have now found another excuse not to pay their outstanding. It is stated that they have been associated for more than 5 years and executed many of their projects in the same way. It is further stated that the CD wanted their technical team to audit even after the project was handed over, to avoid making payment of retention money. With regard to sub-contracting, it was explained that whenever jobs are to be done at a faster



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mode, as per client's request, they take labourers from labour supply agencies and entire jobs are supervised by the site in-charge officials of the CD. It is also stated that after completing the work as per the CD's target date and fullest satisfaction, they are accusing by referring some clause which is not applicable to them. For the said reply, there was no further reply sent by the CD and no further query was raised.

9.7 The other email is dated 20/11/2020, which is regarding the works mentioned for 33Kv line works and DP yard erection works carried out in Maniyachi project and that the allegation is that the OC failed to submit right of way documents, numbering of feeder poles and in tree cutting etc. in Maniyachi site and the OC failed to rectify the cable fault in Kamareddy Site. The contention of the Id. Counsel for the OC is that the email dated 20/11/2020 cannot be the reason for the default committed by OC way back and it shows the propensity of CD to cite any spurious reason to escape the liability. It is further stated that by the time the said email as received by OC, OC had issued legal notice and hence, no separate reply was sent to the said email. It is stated in the application that Maniyachi site was completed by OC way back on 30/09/2019 and the CD has given very good rating to OC for their work in that site. Now this complaint by way of the said email was an afterthought. The Id. Counsel for the OC draws the attention of the Bench to Annexure A – 16 enclosed to the application, i.e. "customer feed back form" on Maniyathci site dated 09/12/2018 wherein all the works pertaining to Maniyachi site were certified to be either excellent or very good or good. Adherence to their commitment was marked as "very good", quality of their activities and services was marked as "good", response of the top management to their queries, response to their suggestions, performance of service in the field and quality and reports were marked as "very good". In fact, the said form was sent by the OC to the CD to be tick marked against the appropriate columns with regard to completion of the project. Hence, it is clear from the above that the Maniyachi project was completed by 09/12/2018 and the



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subsequent email sent by the CD pointing out deficiencies has to be considered only sent to avoid payments that are due towards the said project. The Id. Counsel for the OC submitted that the said email was referred for the first time in the counter and the same was not received by the OC. The Id. Counsel for the CD does not place any record to show that the said email was sent to OC. On perusal of the said email dated 07/12/2018, we find that it would support the contention of the Id. Counsel for the OC that it is part of the internal correspondence of the CD company and it does not show that a copy was marked to the OC. Hence, no value can be attached to the said email.

9.8 Against the above factual matrix, the Id. Counsel for the CD relies on certain judgements with regard to pre-existing dispute to submit that what all 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 a fact unsupported by evidence. He further contends that grain has to be separated from the chaff to reject a spurious defence which is a mere blister. However, in doing so, the court does not need to be satisfied that the defence is likely to succeed and at this stage the court need not examine the merits of the disputes except to the extent indicated above. He relies on the judgment of the Hon'ble Supreme Court in the case of Rajratan Babual Agarwal Vs. Solartex India Pvt. Ltd, 2022 SCC Online Sc 1395. While citing the judgment in Mobilax Innovations Private Limited Vs. Kirusa Software Pvt. Ltd., [2018] 1SCC 353, the Hon'ble Apex Court observed that the court need not be satisfied that the defence is likely to succeed. "The standard, in other words, with reference to which a case of pre-existing disputes under the IBC must be employed cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit". It was further observed that we must not be oblivious to the limited nature of examination of the case of the corporate debtor projecting a pre-existing dispute and



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overlooking the boundaries of the jurisdiction can cause a serious miscarriage of justice besides frustrating the object of the Code.

9.9 The said decision was upheld by the NCLAT in *Godrje & Boyce Mfg. Vs. Satee Envir Engineering (India) Pvt Ltd.*, MANU/NL/0291/2022, *First Walk-in Technologies V. Coffee Day, Company Appeal (Ins.)(AT)381/2022*, *Gajendra Parihar, Director V. Devi Industrial Engineers, 2020 SCC Online NCLAT 274* and *Umesh Saraf V. Tech India Engineers, 2020 SCC Online NCLAT 677*.

9.10 The facts of the case on hand, would show that there is no plausible contention which carries any weight to say that there is a pre-existing dispute. As already observed, after having certified that the work is done to the satisfaction of the CD, raising a dispute at a later point of time does not project the plausibility of the contention. There are emails dated 30/01/2019 and 12/02/2019 wherein it is clearly acknowledged that the payments would be released after reconciliation of the account and it does not specify that it would be released only after the defects pointed out in the above emails are rectified. It can also be observed that the OC has promptly replied to each of the emails sent by the CD and called upon the CD to point out and specify the defects, for which, there was absolute silence from the CD.

9.11 Hence, we find no merit in the contention of pre-existing dispute raised by the ld. Counsel for the CD. The point is answered, accordingly, in favour of the OC.

## **10. Point No. 4**

### **Whether CIRP can be ordered against the CD.**

10.1 In view of our conclusions drawn under Point Nos. 1 to 3, we opine that the CD has committed default of Debt that is due to the OC and, hence, CIRP can be initiated against the CD as prayed for in the application by the OC.



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**POINT NO:5****To what result.**

In the result this application is allowed.

**ORDER**

11. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

12. 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 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints **Mr. Madhusudan Reddy, having AFA Certificate No. AA2/12982/02/080124/202575, e-mail: [pmreddy2000@gmail.com](mailto:pmreddy2000@gmail.com) as Interim Resolution Professional.** As per the IBBI website, his AFA is valid up to 8<sup>th</sup> January, 2024. He is directed to file Authorization for Assignment within three days from the date of this order.

13. The IRP is directed to take charge of the Respondent/Corporate Debtor's Management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.



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14. We direct the Operational Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.

15. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in Section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

- i. 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 or law, tribunal arbitration panel or other authority;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
- iii. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v. 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.



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vi. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements. or other arrangement as may be notified by the Central Government in consultation with any operational sector regulator or any other authority.

vii. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

viii. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

ix. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.



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- x. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- xi. Accordingly, this CP (IB) No.158 /9/HYD/2021 is admitted.

**Sd/-**  
**Charan Singh**  
Member, Technical

**Sd/-**  
**Justice Telaprolu Rajani**  
Member, Judicial

*kv*