

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-04-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.101/9/HDB/2019
U/s 9 of IBC, 2016

IN THE MATTER OF:

M/s Equiruscapital Pvt Ltd

...Operational Creditor

Vs

Madhucon Infra Limited

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)

SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Orders in CP(IB) No.101/9/HDB/2019 are pronounced as recorded vide separate sheets. In the result, the application is allowed. CIRP is ordered against the Corporate Debtor as per the terms metnioned in the order.


MEMBER (T)

Karim


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) NO. 101/9/HDB/2019

APPLICATION UNDER SECTION 9 OF IBC, 2016, R/W RULE 6 OF I & B (AAA) RULES, 2016

Between

M/s Equirus Capital Private Limited

Maratho Futures, C Wing, 12th Floor

N.M. Joshi Marg, Lower Parel

Mumbai – 400013

...Operational Creditor

Versus

M/s Madhucon Infra Limited

Madhucon House, Plot No. 1129/A

Road No. 36, HITECH City Road

Jubilee Hills, Hyderabad – 500033

...Corporate Debtor

Date of order: 11.04.2022

Coram:

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance

For Applicant: Mr. Keshav Bhoopal, Advocate

For Respondent: Mr V.Roopesh Kumar Reddy, Advocate



PER BENCH

O R D E R

1. This Petition is filed by M/s Equirus Capital Private Limited under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as "Code"), read with Rule 6 of Insolvency and Bankruptcy admission of the petition, seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Corporate Debtor defaulted in the payment of alleged debt of Rs 3,16,84,006/- (Rupees Three crores sixteen lakhs eighty four thousand and six only)
2. The averments in brief are: -
 - 2.1 M/s Equirus Capital Private Limited, (herein after referred to as Operational Creditor) has acted as an adviser for sale of equity stake in M/s Madhucon Agra Jaipur Expressway Ltd (MAJEL) to Madhucon Infra Limited.
 - 2.2 Madhucon Infra Limited (herein after referred to as Corporate Debtor) had agreed to pay 1.5% of equity value as fees to the Operational Creditor as per the Engagement Letter dated 24.09.2014 and closed the transaction with Cube Highways Infrastructure Pte Ltd, Singapore for value of Rs. 230 crores.
 - 2.3 The debt is due from the date of invoices i.e. 30.03.2016, 09.04.2016, 09.04.2016, and three invoices all dated 11.04.2016.



- 2.4 The Corporate Debtor approached the Operational Creditor for a one time settlement of Rs. 1,50,00,000/- plus taxes totalling to Rs. 1,71,75,000/- towards fee payable to Equirus Capital Private Limited and/plus out of pocket expenses totalling Rs. 4,91,156/- (including taxes) and accordingly at the request of Corporate Debtor the Operational Creditor raised two invoices both dated 09.04.2016 amounting to Rs. 1,27,09,500/- and Rs. 44,65,500/- respectively including taxes towards fee payable and the Corporate Debtor also raised three invoices (including taxes) all dated 11.04.2016 for a sum of Rs. 3,33,162/-, Rs. 1,05,031/- and Rs. 52,963/- towards pocket expenses/reimbursement of expenses payable to the Corporate Debtor as per the settlement agreement.
- 2.5 It is stated the Corporate Debtor made part payment of Rs.1,27,09,500/- and defaulted in making the balance payments. It is averred, since the Corporate Debtor failed to honour the settlement, the Operational Creditor is entitled to the total outstanding amount of Rs. 3,16,84,006/- (which includes principal amount of Rs. 2,67,93,000/-, interest from 17.04.2016 to 24.12.2018 at 6% which amounts to Rs.43,99,850/- and Rs. 4,91,156/- towards pocket expenses/ reimbursement of expenses).
- 2.6 When the Corporate Debtor failed to clear the dues of the Operational Creditor, a demand notice dated 08.06.2018 in form-3 was issued to the Corporate Debtor demanding payment of operational debt of Rs. 5,39,42,748/-. Reply to the demand notice was issued by the Corporate Debtor on 22.06.2018.




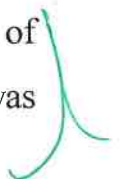


- 2.7 However, subsequently, the Operational Creditor issued a Fresh Form 3 notice dated 26.12.2018 withdrawing the previous demand notice dated 08.06.2018 citing typographical errors and arithmetical mistakes in the said notice. Thus submitting, prayed the Tribunal to allow the petition.
3. Counter is filed by the Corporate Debtor, inter-alia contending that the Petitioner has no locus standi to file this petition under Section 9 of IBC as that there is no operational debt due to the Petitioner and has wrongly approached this Tribunal on the basis of an expired Letter of Agreement dated 26.09.2014, which has lost its validity for its entirety.
4. It is further contended that the invoices relied by the Petitioner has no sanctity as the Corporate Debtor has paid an amount of Rs. 1.15 crores with applicable tax as full and final one time settlement through cheque no. 896549 dated 15.04.2016 drawn in favour of the Petitioner. Hence, there is no operational debt payable to the Operational Creditor.
5. It is denied that there is any contractual relationship between the Respondent and the Petitioner. It is further contended that the Petitioner in reply to the demand notice dated 22.06.2018 had brought to the notice of the Petitioner about existence of a dispute. It is further contended that, post settlement and receipt of full and final settlement amount, there do not exist any privity of contract between the parties.



6. Rejoinder is filed by the Operational Creditor, rebutting to the counter filed by the Corporate Debtor, inter-alia, contending that the Corporate Debtor has not filed any document except for its reply to the demand notice dated 22.06.2018 about the deficiency in their services. The Operational Creditor vehemently oppose the plea of the Corporate Debtor the agreement between the parties has expired and lost validity.
7. It is the contention of the Petitioner that it acted within the timelines of the Appointment Letter dated 26.09.2014. There is a clause in the letter, which provides for extension of time period, which has to be read in consonance with Clause L of the Appointment letter, which states that the agreement will be valid for an initial period of three months with a further extension of three months on signing of term sheet. The emails and payment made by the Corporate Debtor clearly indicates that the terms of the Appointment letter was clearly extended.
8. It is contended that pursuant to entering into a settlement with the operational creditor for a one time settlement of fees for Rs. 1,50,00,000/- plus out of pocket expenses of Rs. 4,91,156/-, the Operational creditor raised two invoices both dated 09.04.2016 for a sum of Rs. 1,71,75,000/- and further three invoices all dated 11.04.2016 totalling to Rs. 4,91,156/-. However, when the Corporate Debtor failed to make payment of the complete reduced settlement amount of Rs. 1,71,75,000/- including taxes plus out of pocket expenses of Rs.4,91,156/-, the Operational creditor was





constrained to initiate action under the Code. It is stated that the Corporate Debtor has only made a part payment and further acknowledged and agreed to pay balance amount of Rs 1.5 crores plus applicable taxes through mail dated 26.04.2016.

9. The invoices attached to the Demand Notice dated 08.06.2018 referred to by the Corporate Debtor was withdrawn and fresh demand notice dated 26.12.2018 was again issued to the Corporate Debtor attaching invoices dated 26.12.2015, 13.01.2016 and 04.02.2016. It is submitted by the Operational Creditor, with the mutual consent of the parties, the amount due and payable by the Corporate Debtor was fixed as Rs. 1.50 crores plus out of pocket expenses of Rs. 4,91,156/- as against the original claim of Rs. 3,95,02,500/- plus out of pocket expenses and not Rs.1.1 crore as contended by the Corporate Debtor. Further it is stated that as the Corporate Debtor failed to honour the terms for full and final settlement and only paid Rs. 1.1 cores, defaulting in the balance payment of Rs. 39,00,000/- plus applicable taxes, it is entitled to the claim full invoice amount of Rs. 3,16,84,006/- . It is further stated that the Operational Creditor has provided valuable advisory services to the Corporate Debtor which squarely falls under the definition of an operational creditor under Section 9 of IBC and there is a valid and operational debt in favour of the Petitioner.
10. In the light of the contest as aforesaid, the points that emerge for consideration of this Tribunal are:-



- (i) Whether there is an operational debt in favour of the operational creditor payable by the Corporate Debtor? If so, is there any default in payment of the same by the Corporate Debtor?
- (ii) Was there any pre-existing dispute as to the services rendered by the Corporate Debtor?

11. We have heard Shri Keshav Bhoopal Ld. Counsel for the Operational Creditor and Shri V. Roopesh Kumar Reddy Ld. Counsel for the Corporate Debtor, perused the records and case laws.

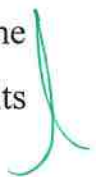
Point(i) Whether there is an operational debt in favour of the operational creditor payable by the Corporate Debtor? If so, is there any default in payment of the same by the Corporate Debtor?

12. The Ld. Counsel for Operational Creditor placing reliance on the invoices dated 09.04.2016 and 11.04.2016 besides the email correspondences dated 22.12.2014, 14.07.2015, 16.07.2015 and 26.04.2016, between the representatives of the Operational Creditor and Corporate Debtor submitted that, a sum of Rs. 3,16,84,006/- together with future interest @ 24% is due and payable by the Corporate Debtor in respect of the services rendered by the Operational Creditor to the Corporate Debtor, after adjusting part payment made. According to the Ld. Counsel for Operational Creditor, as the Corporate Debtor failed in discharging the outstanding balance amount, despite receipt of demand notice, hence, the present application has been filed for initiation of CIRP against the Corporate Debtor.



13. Ld. Counsel further submitted that the plea of the Corporate Debtor that it has been agreed between the parties that only a sum of Rs. 1.50 crores has to be paid by the Corporate Debtor towards full and final settlement of the entire claim and that the corporate Debtor has paid the same, as such, no amount is due towards the operational debt, hence, application is not maintainable, is unsustainable and untenable. Ld. Counsel would submit that, there was no settlement much less a full and final settlement and what was paid was towards part payment of the outstanding amount. Ld. Counsel would further contend that in the emails supra, the Operational Creditor had firmly asserted non-payment of the outstanding dues, as such, the plea of discharge of operational debt fully and finally is untenable and unsustainable under law.
14. Per contra, the Ld. Counsel for the Corporate Debtor in the written submissions has stated that, while admitting availing of services from the Operational Creditor, contended that the Application is not maintainable in as much as, there is no operational debt due and payable by the Corporate Debtor, as Respondent/Corporate Debtor had paid a sum of Rs. 1,15,99,500/-, through cheque bearing 896549 dated 15.04.2016 which includes the agreed full and final sum of Rs 1.11 crores plus applicable service tax after deducting TDS.
15. Further, it is contended that there is a pre-existing dispute, in as much as the Letter Agreement dated 26.04.2014 between the Operational Creditor and Corporate Debtor, which had lost its

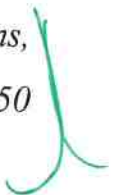




validity in its entirety due to the inability of the Operational Creditor in finding new investors and failure to improve quality services, despite repeated requests. According to the Ld. Counsel, the Corporate Debtor has raised a dispute prior to receipt of Demand Notice regarding the services rendered, besides pleaded that as the very Letter Agreement dated 26.04.2014 had lost its validity, the present application for CIRP is unsustainable and untenable under law. Thus, contending, Ld. Counsel prayed for dismissal of the Application.

16. In the light of contest aforesaid, we have carefully gone through the record placed before us.
17. At the outset, it may be stated that the Corporate Debtor having admitted entering into a letter of agreement dated 26.04.2014, where under the Operational Creditor had agreed to render certain services in favour of the Corporate Debtor, firstly contended that there is no operational debt due and payable by the Corporate Debtor and nextly that there is a pre-existing dispute, as regards the services rendered.
18. Needless to say that a party which is pleading discharge of a debt, shall establish the same. The Operational Creditor relied on the invoices dated 09.04.2016 and 11.04.2016 besides email correspondence dated 22.12.2014, 14.07.2015, 16.07.2015 and 26.04.2016. As can be seen from the email dated 26.04.2016 the Operational Creditor while asserting that "*during our discussions, Madhucon management had agreed to pay total fees of Rs. 150*





lacs towards Majel transaction. As per management request, we have submitted following two invoices:

Invoice for Rs. 111 lacs and Invoice for Rs. 39 lacs”, further stated in the same email that “We have also raised OPE invoices for Rs. 3,33,162+1,05,031+52963 =Rs. 4,91,156/-. We request you to release OPE invoice payment immediately”.

This email content is not denied by the Corporate Debtor. It is clear from the above email that the operational debt includes payment towards “Majel transaction” and also towards “OPE invoice payment”.

19. In the subsequent correspondence dated 26.04.2016, the Operational Creditor had claimed the same amounts as due and payable under OPE invoices which correspondence also was not denied by the Corporate Debtor.
20. In this backdrop, when the plea of the Corporate Debtor that a sum of Rs. 1,15,99,500/- paid was towards full and final settlement of the entire operational debt payable by the Corporate Debtor to the Operational Creditor is examined, the said plea is liable to be rejected, in as much as firstly, no settlement is referred to in the correspondence supra, nextly the Operational Creditor has never stated that the payment of Rs. 1.15 crores was accepted towards full and final settlement of the entire operational debt. In fact, it is the firm stand of the operational debtor that there was no settlement at all, as regards payment of the outstanding dues. So much so, the default in repayment of the operational debt being

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writ large, the present application under Section 9 of IBC by the Operational Creditor got to be admitted.

Point No.2: Was there any pre-existing dispute as to the services rendered by the Corporate Debtor?

21. Now coming to the next plea of the Corporate Debtor that a pre-existing dispute has been raised by the Corporate Debtor, as such, the application for CIRP is not maintainable, it may be stated that, in the event, the Corporate Debtor is able to establish existence of a pre-existing dispute as to the services rendered by the Operational Creditor and if the said dispute is not spurious, hypothetical and illusory, this Tribunal will not order initiation of CIRP against the Corporate Debtor.
22. In this backdrop, when the material placed by the Corporate Debtor including the reply to the demand notice is examined, firstly it can be said that no material worth establishing the existence of the dispute as to the services rendered by the Operational Creditor before receipt of the demand notice, has been placed by the Corporate Debtor. In fact, the contention of the Corporate Debtor being that, it had discharged the entire debt for a sum of Rs. 1.15 crores contradicts the plea of existence of dispute as to the services rendered by the Corporate Debtor. Thus, Corporate Debtor, in one breath says that it had discharged the entire amount under a settlement and with the same breath the Corporate Debtor says that there is a pre-existing dispute as to the quality of services.



23. Needless to say that when no material has been placed by the Corporate Debtor as to the existence of the dispute prior to receipt of Demand Notice, the defence is nothing but moonshine, hence we reject the said plea of the Corporate Debtor, following the ruling of Hon'ble Supreme Court of India in *Mobilox Innovations Private Limited (supra)*, Hon'ble Supreme Court of India, wherein it has held that;

"It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or". If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise."

"It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal

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

In the same ruling, it has been also that,

“Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”

“If any one of the aforesaid conditions is lacking, the application would have to be rejected.” (Emphasis is ours).

Therefore, the point is answered accordingly.

24. In the light of our discussion on the above points, we firmly hold that this is a fit case to order CIRP, against the CD herein. 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 following directions:




ORDER

- (1) 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;
- (2) 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.
- (3) 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.
- (4) That the order of moratorium shall have effect from 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.



- (5) This Bench hereby appoints Mr. Ritesh Mittal, having IBBI Registration No. IBBI/IPA-001/IP-P00888/2017-18/11485 as Interim Resolution Professional, who has given his consent in Form-2.
- (6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
- (7) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.


Veera Brahma Rao Arekapudi
Member (Technical)


Dr. N. Venkata Ramakrishna Badarinath
Member (Judicial)