

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH-I**

**C.P. No. 3688/IBC/MB/2019**

(Under Section 9 of the Insolvency and Bankruptcy Code,  
2016 read with Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Supreme Transport Organisation Private Limited**

Having registered office at: 5B 34, Akshay Mittal  
Industrial Estate, M.V. Road Andheri (East) Mumbai MH  
400059 IN

*.....Operational Creditor*

**Vs**

**Maharashtra Airport Development Company Limited**

Registered office at: 8<sup>th</sup> Floor, World Trade Centre – I,  
Cuffe Parade, Mumbai-400005

*.....Corporate Debtor*

**Order Reserved On :19.04.2023**

**Order Pronounced On :17.05.2023**

***Coram:***

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao,

Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh,

***Appearances (through video-conferencing):***

For the Petitioner : Dr. S. K. Jain, Senior PCA

For the Respondent : Mr. Manoj Kumar Mishra, Advocate

**ORDER**

***Per: H. V. Subba Rao, Member (Judicial)***

1. The above Company Petition is filed by Supreme Transport Organisation Pvt. Ltd. hereinafter called as Operational Creditor

seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against Maharashtra Airport Development Company Limited called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 7,00,000/- (Rs. 5,00,000/- against the Earnest Money Deposit (EMD) for Design & Services for up-gradation of Infrastructure at Belora Airport, Amravati and Rs. 2,00,000/- against the Earnest Money Deposit (EMD) for Consultancy Services for planning, designing and development of Greenfield Airport at Chandrapur totalling to Rs. 7,00,000/-).

2. Brief facts behind filing of the above Company Petition are as follows:
  - i. Supreme Transport Organisation Private Limited (hereinafter referred to as "Operational Creditor") having its office at 5B 34, Akshay Mittal Industrial Estate, M.V. Road Andheri (East) Mumbai MH 400059 IN is carrying on business of aviation and transportation services.
  - ii. Maharashtra Airport Development Company Limited (hereinafter referred to as "Corporate Debtor") having its registered office at 8th Floor, World Trade Centre - I, Cuffee Parade Mumbai: 400005 had invited tender for Design & Project Management Consultancy Services for up-gradation of Infrastructure at Belora Airport, Amravati and for Consultancy Services for planning, designing and development of Greenfield Airport at Chandrapur.

- iii. The Operational Creditor submitted its tender alongwith Rs. 5,00,000/- against the Earnest Money Deposit (EMD) for Design & Project Management Consultancy Services for up-gradation of Infrastructure at Belora Airport, Amravati on 21/07/2018.
- iv. The Operational Creditor also submitted its tender of Rs.2,00,000/- against the Earnest Money Deposit (EMD) for Consultancy Services for planning, designing and development of Greenfield Airport at Chandrapur.
- v. Tender submitted for both abovementioned was rejected on 29/08/2018 and 30/08/2018 respectively. However, till date Corporate Debtor has failed to refund the EMD of Rs.7,00,000/- to the Operational Creditor.
- vi. The Operational Creditor has made several attempts to reach the Corporate Debtor and requested for the payment of their Operational Debt, however, the Corporate Debtor did not respond to it and has wilfully evaded debt of the Operational Creditor despite having continuous, timely and efficient services provided by the Operational Creditor.
- vii. As per statutory requirement as envisaged under the provisions of Insolvency and Bankruptcy Code, 2016, a Demand Notice/ Invoice Demanding Payment in Form 3 has been sent on 09/07/2019 to Corporate Debtor for the repayment of the outstanding Operational Debt at its Registered Office, by way of Speed Post. The Letter was delivered upon the Corporate Debtor on 12/07/2019.
- viii. Corporate Debtor has not filed any reply to the Demand Notice/ Invoice Demanding Payment issued by the Operational Creditor.
- ix. Hence, the Operational Creditor has proceeded with the Section 9 Application as laid down under the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

3. The Respondent/Corporate Debtor namely, Maharashtra Airport Development Company Limited filed reply and opposing the admission of the above Company Petition mainly on the ground of the maintainability.
4. The important Paras of the reply namely Para No. 13 & 14 are extracted hereunder for ready reference:

13. The Petitioner had paid Earnest Money Deposit (EMD) of Rs. 2,00,000.00/- (Rs. Two Lacs only) for Consultancy Services for Planning, Designing and Development of Greenfield Airport at Chandrapur in the form of Demand Draft dated 21-07-2018 (Ref. No. 059212157768), the same can be verified from the entry in the Bank Statement of the Respondent dated 21-07- 2018. Also, the Petitioner had paid Earnest Money Deposit (EMD) of Rs. 5,00,000.00/- (Rs. Five Lacs only) for services of designing and project management for up gradation of infrastructure at Belora Airport, Amravati in the form of Demand Draft dated 21-07-2018 (Ref. No. 059212157769), the same can be verified from the entry in the Bank Statement of the Respondent dated 21-07-2018.

14. Due to the false information related to the key personnel Shri. Krishan Mohan Nehra submitted in the CV for both the tender by the Petitioner, the complete amount of Rs. 7,00,000.00/- (i.e. Rs. 2,00,000.00/- for Greenfield Airport at Chandrapur and Rs. 5,00,000.00/- for Belora Airport, Amravati) have been forfeited as the Petitioner is disqualified from the bidding. The proof for the disqualification clause has already been given at various places in Annexure-1 and Annexure-2. The important clauses are given as below:

- (a) Para 3.10(a), Page 11 of Amravati Project (Annexure-1): The proposal shall be kept valid for a period of one hundred and twenty (120) days from the stipulated last date for receipt of proposals as mentioned hereafter. The overall offer including key personnel proposed for the assignment and your quoted prices shall remain unchanged during the period of validity. *In case the bidder withdraw modify or change his offer during validity period, the Earnest Money Deposit paid by him shall be forfeited forthwith, without assigning any reason thereof.*
- (b) Para 3.10(b), Page 11 of Amravati Project (Annexure-1): The E.M.D. paid by the unsuccessful bidders shall be refunded to them without interest, after the award of work is finalized by MADC or after the date of expiry of validity of offer, unless the validity of offer is extended by mutual consents.
- (c) Para 3.11, Page 11-12 of Amravati Project (Annexure-1): evaluation of offers to take place on following grounds:
- i. Letter of Transmittal
  - ii. Checklist of the submission
  - iii. Experience of similar work in the given format
  - iv. Appreciation of the project
  - v. Concept design
  - vi. Strategy for implementation
  - vii. Work Programme
  - viii. Organization Chart
  - ix. Comments
  - x. Specific Proposal to save time and cost
  - xi. **Bio-data of key personnel.**

- (d) Note 2 of Format of Curriculum Vitae (CV) of proposed technical staff of Amravati Project (Annexure-1): The above information should be factually correct, providing false information or incorrect information will be considered very seriously and providing false information may be disqualified.
- (e) Para 11(a), Page 8 of Chandrapur Project (Annexure-2): The proposal shall be kept valid for a period of one hundred and twenty (120) days from the stipulated last date for receipt of proposals as mentioned hereafter. The overall offer including key personnel proposed for the assignment and your quoted prices shall remain unchanged during the period of validity. *In case the bidder withdraw modify or change his offer during validity period, the Earnest Money Deposit paid by him shall be forfeited forthwith, without assigning any reason thereof.*
- (f) Para 11(b), Page 8 of Chandrapur Project (Annexure-2): The E.M.D. paid by the unsuccessful bidders shall be refunded to them without interest, after the award of work is finalized by MADC or after the date of expiry of validity of offer, unless the validity of offer is extended by mutual consents.

**Findings:**

5. In the light of the above pleadings, the important issue that falls for consideration in the above Company Petition is:
- I. Whether the Earnest Money Deposited by the Operational Creditor for Consultancy Services would amount to an “Operational Debt” within the meaning of the Code?

II. Whether there are pre-existing disputes between the parties?

6. Heard Dr. S. K. Jain, the learned Senior PCA appearing for the Operational Creditor and Mr. Manoj Mishra, counsel appearing for the Respondent Company. After hearing the submissions on both sides and upon perusing the material available on record, this Bench observes that it is the admitted case of both sides that the amount claimed in the above Company Petition is paid to the Respondent towards EMD amount for securing a tender for Consultancy Services from the Corporate Debtor.
7. This Bench further observes that the above amount was forfeited by the Corporate Debtor Company due to certain alleged false and misleading information and alleged fabricated documents submitted by the Operational Creditor.
8. Therefore, it is important to read the definition of Operational Debt to find out whether the amount claimed by the Operational Creditor falls within the definition of "Operational Debt". Section 5 (21) of the Code defines "Operational Debt" that reads as follows:

*5(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the (payment) of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

9. It is very clear from the plain reading of the above definition that the EMD deposited by an Operational Creditor is not included anywhere in the above definition and therefore the above amount claimed by the

Petitioner being the EMD does not fall within the definition of “operational debt”. Mr. Jain tried to convince this Tribunal that it is an advance paid by the Operational Creditor for securing the services by Corporate Debtor and therefore would amount to an “operational debt”. However, this Tribunal is unable to accept the above submission in the absence of any authoritative pronouncement.

10. The next issue is with regard to the pre-existing dispute. As stated above, the EMD amount was forfeited by the Corporate Debtor due to the alleged misinformation and alleged fabricated documents submitted by the Operational Creditor which is purely a contractual dispute that follows outside the realm of Section 9 of the Code and this Tribunal has no power to decide the above issue. Accordingly, both the above issues were answered against the Operational Creditor.
11. For the aforesaid reasons, this Tribunal did not find any merit in the above Company Petition and is liable to be dismissed on both the grounds.
12. Accordingly, the above Company Petition is dismissed.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

17.05.2023  
Shubham

Sd/-

**H. V. SUBBA RAO**  
**MEMBER (JUDICIAL)**