



SL. No.5

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

Hearing Through: VC and Physical (Hybrid) Mode

CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)

CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 10.01.2024 AT 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/214/2021
NAME OF THE COMPANY	Navayuga Infra Projects Pvt Ltd
NAME OF THE PETITIONER(S)	MKS Constro - Venture Pvt Ltd
NAME OF THE RESPONDENT(S)	Navayuga Infra Projects Pvt Ltd
UNDER SECTION	9 of IBC

ORDER

Orders Pronounced, recorded vide separate sheets. In the result, this petition is allowed

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Basha



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

CP (IB) No.214/9/HDB/2021

[Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

MKS Constro-Venture Private Limited
B-61, Floor 6, Plot No. 210, B Wing,
Mittal Tower, Free Press Journal Marg,
Nariman Point, Mumbai 400021

...Operational Creditor

Versus

Navayuga Infra Projects Private Limited,
H.No.8-2-293/82/A/379 & 379/A,
1st Floor Plot No. 379, Road No.10,
Jubilee Hills, Hyderabad TC 500033

...Corporate Debtor

Date: 10.01.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner	:	Mr. Yahya Batatawala, Advocate
For the Respondent	:	Mr. Vimal Varma Vasireddy, Advocate

Per: Sanjay Puri, Member (Technical)

ORDER

1. This application is filed under Section 9 of IBC by M/s. MKS Constro-Ventures Private Limited ("**Operational Creditor**") against the M/s. Navayuga Infra Projects Private Limited ("**Corporate Debtor**") alleging non-payment of the Debt of Rs 10,95,19,188.
2. It is stated by the Operational Creditor that work carried out by it under the Work Order No.1286/ NIPPL/MKS/2016-17/01 dated 30.03.2017,



and bills were raised on the Corporate Debtor in the manner of a Running Account (**RA**). However, since the date of the issue of last RA Bills on 12.08.2019, the Corporate Debtor has failed to make payment of Rs 10,95,19,188. This amount represents Principal amount of 18 RA Bills which were due and payable by the Corporate Debtor to Operational Creditor.

3. It is further stated by the Operational Creditor that as per the Work Order of 30.03.2017, the Corporate Debtor was stipulated to have deducted the retention amount at the time of RA Bills which was to be refunded after completion of the work. It is claimed that while the Operational Creditor timely completed the work as per the work order, the retention amount of Rs 3,00,21,251 has not been returned even after the completion of Defects Liability period.
4. It is thus claimed by the Operational Creditor that an amount of Rs 13,95,40,439 (i.e. Rs10,95,19,188 + Rs 3,00,21,251) is due to it from the Corporate Debtor since 12.08.2019, i.e., the date of issue of last RA Bills.
5. In this regard, the Operational Creditor had sent notice under Section 8 of IBC to Corporate Debtor on 11.06.2021 which was duly received by the Corporate Debtor on 14.06.2019. This notice was replied to by the Corporate Debtor on 25.06.2021 where according to the Operational Creditor “false and frivolous disputes which is motivated and afterthought” have been raised.
6. In their counter, the Respondents have claimed that upon a review of the documents “it was found that Operational Creditor has numerous dues which are payable to the Corporate Debtor”.
7. It is further claimed that the invoices dated 31.07.2019 and 12.08.2019 being invoices nos. MKSCV/19-20/08 & MKSCV/19-20/10 amounting to Rs 1,93,14,184 & Rs 4,34,84,282 were not confirmed by the Engineer-in-Charge and hence were not payable as liability has not accrued. On



- the retention amount, it is claimed by the Corporate Debtor that the Operational Creditor did not execute the work order in full which lead the Corporate Debtor to face “immense difficulties and loss”.
8. It is claimed that since the work was not completed by the Operational Creditor, the retention amount has been forfeited to the extent of Rs 3,00,21,251.
 9. Yet another claim of the Corporate Debtor is that as per the terms of the work order, they were entitled to deduct up to 10% of the total Contract Price as liquidated damages, in case the Operational Creditor failed to complete and deliver the work in time. Since, the Operational Creditor did not execute the contract in full and did not finish the work, the Operational Creditor was liable to pay 10% of the contract value amounting to Rs 3,85,51,889 to the Corporate Debtor.
 10. It is also asserted that the claims of Operational Creditor with regard to the payments due do not match with the payments payable as per the books of the Corporate Debtor “with respect to numerous invoices”. The Corporate Debtor has also mentioned about having supplied “HSD oil and other materials” to the Operational Creditor for the amount of Rs 12,36,298 which has not been adjusted in the outstanding amount claim by the Operational Creditor.
 11. The Petitioner/Operational Creditor filed a rejoinder refuting the claims made by the Corporate Debtor in their counter and reiterated their contentions made in the petition.

The Decision

12. The petition was listed many times and finally heard on 03.01.2024. On that date, both parties were asked to present their arguments. Ld counsel for the Petitioner, despite being given opportunity to address the arguments, did not do so. Ld. Counsel for the Respondent, who



presented the case of the Corporate Debtor, was heard at length and all the records presented before us have been gone through.

13. From the records presented before us it is seen that the Operational Creditor was engaged to carry out Right Bank Guide Bund works at Sundilla Barrage, Kaleshwaram Project- by the Corporate Debtor with the issue of Work Order No. 1286/NIPPL/MKS/2016-17/01 dated 30.03.2017.
14. The timeframe specified for completion of the work was of 12 months. The payments were scheduled to be made by the Corporate Debtor to the Operational Creditor on a monthly basis. These payments were contingent upon the billings based on the measurement book, which was also to be submitted monthly by the Operational Creditor. It is seen that the billing and the payments continued from 15.01.2018 to 12.08.2019, and as on that date, the amount outstanding was Rs 10,95,19,188. Account of the Retention money maintained in the books of the Operational Creditor also shows entries from 15.01.2018 to 12.08.2019 resulting in a balance of Rs 3,00,21,251. None of these entries have been refuted by the Corporate Debtor.
15. The Contention of the Corporate Debtor that after receiving the demand notice from the Operational Creditor on 15.06.2021 they found that there were numerous dues which were payable by the Operational Creditor to Corporate Debtor is without any supporting evidence. Even the amount of such “numerous dues have not been specified” in their counter.
16. Regarding the invoices totaling Rs 1,93,14,184 dated 31.07.2019 and Rs 4,34,84,282 dated 12.08.2019, the sole defense provided is that they were not confirmed by the Engineer-in-Charge. However, this defense is considered weak, given that no disputes pertaining to these two invoices were raised by the Corporate Debtor against the Operational Creditor



during the period from 12.08.2019 to 11.06.2021—the date on which the demand notice under section 8 was served.

17. Regarding the matter of retention money, which was intended to be refunded to the Operational Creditor upon completion of the work, the Corporate Debtor has asserted that the Operational Creditor abandoned the work, and the work order was not fully executed. However, this claim lacks substantiating documentation. It is noteworthy that this contention has only been raised by the Corporate Debtor subsequent to the issuance of the demand notice by the Operational Creditor on 11.06.2021.
18. Same is the position regarding the amounts payables not matching in the books of the Corporate Debtor with the amounts claimed by the Operational Creditor, and supply of HSD oil and other materials to the Operational Creditor no shred of evidence has been adduced to support this claims, which seems to have been imagined after the demand notice under section 8 reached the Corporate Debtor.
19. Same is the position concerning the claim of discrepancies between the amounts payable as per the books of the Corporate Debtor and the amounts claimed by the Operational Creditor, and regarding the supply of High-Speed Diesel (HSD) oil and other materials to the Operational Creditor. No substantiating evidence has been presented to support these claims. It appears that these claims have been imagined after the receipt of the demand notice under section 8 by the Corporate Debtor, as no evidence has been provided to validate these claims.
20. The disputes and contentions raised by the Corporate Debtor, concerning the amount of Rs 13,95,40,439 payable to the Operational Creditor, are empty blusters by advancing “*patently feeble legal argument or assertion of facts unsupported by evidence*” as mentioned by the Apex



Court in **Mobilix**¹ case. It is incumbent upon Adjudication Authority “to separate the grain from the chaff and to reject a spurious defence which is mere bluster”. Since none of the facts asserted by the Corporate Debtor has been found to be supported by evidence, we reject the contention raised based such facts.

21. The Petitioner/Operational Creditor has been able to establish the debt that had remained undisputed till the Demand Notice under section 8 of IBC was issued and served on the Corporate Debtor. Since the debt has not been paid even after the Demand Notice was served upon the Corporate Debtor, this petition is allowed.
22. The Petition under Section 9 of IBC, 2016 is hereby admitted against M/s Navayuga Infra Projects Private Limited, the Corporate Debtor, by declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:
 - (a) 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;

¹ Mobilix Innovations Private Ltd vs Kirusa Software Private Ltd– Supreme Court in CIVIL APPEAL NO. 9405 OF 2017 order dated 21.09.2017



- (b) 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.
- (c) 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.
- (d) 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.
- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) The Operational Creditor prayed this Adjudicating Authority to appoint the IRP. This Bench hereby appoints **Shri Kambhammettu Sri Vamsi having IBBI Registration No: IBBI/IPA-001/IP-P00664/2017-2018/11141, with e-mail id: casrivamsi@gmail.com, Mobile No.9866122632** as to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation For Assignment is valid upto 12.12.2024. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as



amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

- (g) The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.
- (h) The Registry is also directed to communicate the IRP and Operational Creditor and send copy of this order.
- (i) The petitioner is directed to pay a sum of Rs 2,00,000 (Rupees two lakhs only) to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- (j) This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- (k) Accordingly, petition is admitted.
- (l) The Operational Creditor is directed to communicate this order to the IRP appointed in this case.

Sd/-

(SANJAY PURI)
MEMBER (TECHNICAL)

Sd/-

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

Apoorva