



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 3053/MB-IV/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

**Panjwani Electrical Engineers and
Consultants**

...Operational Creditor/Applicant

V/s

Larsen and Toubro Limited

[CIN: L99999MH1946PLC004768]

...Corporate Debtor/Respondent

Order Dated: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Puneet Singh, Advocate.
For the Respondent(s) : Mr. Rashid Boatwalla a/w Ms.
Lipsa Unadkat and Ms. Samiksha
Rajput i/b Manila Kher Ambalal &
Co., Advocates.

Per: Kishore Vemulapalli (Member Judicial)

1. This is an Application being C.P. (IB) No. 3053/MB/C-IV/2019 filed on 24.07.2019 by Tanuja Panjwani, Partner of Panjawani Electrical Engineers and Consultants, the Operational Creditor/Applicant, under



section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Larsen and Toubro Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Applicant has submitted that the Corporate Debtor issued a Letter of Intent bearing No. L&T/B&F/RB&F/NDCL/MTLS/LOI-03 dated 05.05.2014 and work order bearing number E9044WOD4000317 dated 28.11.2014 and E9044WOD7000267 dated 14.10.2017 for supply, installation, testing, commissioning of electrical works for “Experion Windchants” Project at Gurgaon, Haryana for a total value of Rs. 2,01,86,914.15 and Rs. 1,05,92,563.45 respectively.

- 2.1. Against the abovementioned LOI and Work order, it supplied the material and labour and also worked for a period starting from September 2014 to October 2018 as per specifications and instructions of site in-charge. Under Work Order 1, the Corporate Debtor has paid a sum of Rs.1,47,90,807.14/- out of Rs.1,57,93,955.06/- leaving a balance of Rs. 10,03,147.92/- which is still pending since 21.02.2016. Under Work Order 2, the Corporate Debtor has paid a sum of Rs.41,39,128.44/- out of Rs. 1,15,48,026.71/- leaving a balance of Rs. 74,08,898.27/- which is still pending since 20.08.2017. Thus, a sum of Rs.8412046.19/- is claimed as due alongwith interest @24% p.a. for a period from 01.01.2016 to 30.04.2019, total aggregating to Rs. 1,49,39,386.04/-

- 2.2. The Applicant has submitted copy of work orders and invoices raised upon the Operational Creditor. The copy of invoices were approved by the Corporate Debtor.

- 2.3. The Applicant served a legal notice dated 28.02.2019 to which Corporate Debtor replied vide letter dated 30.03.2019 stating that it



was liable to make payments upon completion of each stage and the Applicant was required not just to bring the materials, but to carry installing/testing and commissioning as per terms of contract; it paid various running account bills from time to time; Applicant failed to perform the work and delayed the work enormously; it also failed to mobilize sufficient manpower and the work progress was enormously slow; The Applicant had left the work and miserably failed to perform the work under terms of the contract; suitable recoveries are being quantified as per the terms of the contract; and it is entitled to raise and recover an amount of Rs. 35,65,787/- and such further sum which it may suffer due to non-compliance of statutory requirements such as deposit of PF & ESI.

2.4. The Applicant issued a Demand Notice dated 20.05.2019 in Form No.3 in terms of Rule 5 (1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 u/s. 8 of the Insolvency and Bankruptcy Code, 2016 upon the Corporate Debtor vide Speed post/ Registered Post A/D demanding a sum of Rs. 1,49,39,386.04/-.

2.5. The Corporate Debtor responded to the Demand Notice vide its reply dated 05.06.2019 stating that the Applicant didn't participate in the said inspection and verification of measurement of works done and did not provide for complete reconciliation of supply and installation inspite its requests vide email dated 04.12.2017, 30.04.2018, 31.10.2018 and 02.11.2018; even more than 2 years after the agreed completion date i.e. 15.12.2015, the Corporate Debtor sent several mails in 2017 and 2018 notifying the Applicant of the pending works; and the claims raised by the Operational Creditor are without any basis which were empathetically denied in mail dated 15.12.2018. The



Corporate Debtor also provided the bill-wise payment details in relation to 2 bills dated 24.06.2017 and 04.01.2018.

- 2.6. After receipt of this reply, the Operational Creditor has filed the present Application and has also filed an Affidavit of no default dated 07.08.2019 as required under Sec 9(3)(b) of the Code.
3. The Corporate Debtor has filed an Affidavit in Reply dated 03.07.2021 contesting the Application primarily on ground of non-existence of debt and pre-existence of dispute. It has also raised the issue of limitation submitting that the Operational Creditor has stipulated 21.02.2016 as the date on which debt fell due and has filed application beyond 3 years i.e. 15.07.2019.
- 3.1. It has also filed written submission dated 06.04.2022 further placing email communication dated 18.05.2015 informing the Applicant of non-improvement of quality of works carried out on site leading to client of the Corporate Debtor dissatisfied; email communication dated 23.09.2015 informing the Applicant that the amount for slow work would be debited from running bills and if no action was taken thereafter, it would engage third party vendors at the risk and cost of the Applicant and further apprised the Applicant vide email dated 03.10.2015 and 11.02.2016; email dated 23.11.2018 informing the Applicant that the Corporate Debtor had to employ third party vendor for completing the work solely at the cost of the Applicant; and email communication dated 27.12.2018 calling upon applicant to conclude the final work done quantities and submit the reconciliation of all materials. It is also submitted that despite various reminders, the Applicant did not participate in reconciliation exercise which is clearly reflected in the correspondence referred to by the Applicant in its Affidavit in Rejoinder between December 2017- December 2018. Since



the Applicant continued to supply poor quality of material, inadequate manpower, and slow progress of work resulting in the Applicant failing to meet the project milestones, the Corporate Debtor vide its letter dated 02.01.2019 terminated the LOI/Work Orders executed between the parties due to failure of the Applicant in adhering to its obligations as per the terms of the LOI.

3.2. The Corporate Debtor has filed Additional Written Submission dated 08.02.2023 and had further pleaded that as per clause 6 & 10 of LOI, the Corporate Debtor withheld 5% of each RA bill as retention money which aggregates to Rs. 9,80,595/- and Applicant was required to submit a Performance Bank Guarantee of Rs. 5 lakhs, in default of which, the Corporate Debtor retained 2% additionally. Further, the Corporate Debtor has to recover a sum of Rs. 71,05,026/-. Accordingly, a net amount of Rs. 60,59,479/- is recoverable from the Applicant.

3.3. The Corporate Debtor has also filed a decision in CP(IB) 2324/2019 delivered by court 5 of NCLT, Mumbai where the Corporate Debtor was also Respondent and drew our attention to Para 7-10 thereof supporting that there existed a prior dispute and in view of this, present application is not maintainable.

4. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.

4.1. The above email communications clearly indicate the existence of pre-existing dispute between the parties as regards the existence of debt on account of the Corporate Debtor having terminated the LOI/Work Orders executed between the parties for non-performance as per the terms of the LOI. In an application under Insolvency and Bankruptcy



Code, 2016, the Adjudicating Authority has limited scope of enquiry in so far as existence of prior dispute in relation to debt claimed as due and in default is concerned.

In the case of “*Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353*” the Hon’ble Apex Court held that “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 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 view of the above, we find that on account of existence of prior dispute between the parties, the present application under Section 9 of the Code for initiation of CIRP against the Corporate Debtor deserves to be dismissed.

ORDER

This Application being C.P. (IB) No. 3053/NCLT/MB/C-IV/2019 filed under Section 9 of I&B Code, 2016, filed by Panjawani Electrical Engineers and Consultants, Operational Creditor/ Applicant against Larsen and Toubro Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner



before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Prabhat Kumar
Member (Technical)
/LRA Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)