

DIVISION BENCH

ITEM NO. 107

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

**IA No.17/2024, IA No.150/2024 & IA No.345/2024
IN CP (IB) No.101/ALD/2022**

CORAM:

- 1. SHRI PRAVEEN GUPTA,
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,
HON'BLE MEMBER (TECHNICAL)**

Date of Order: 8th July, 2025

Attendance-Cum-Order Sheet of the Hearing.

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| NAME OF THE COMPANY | M/S SUNDER ENGINEERING WORKS V/S ASSOCIATED MACHINERY CORPORATION LIMITED |
| UNDER SECTION | 9 IBC |

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

Ms. Prachi Johri, Adv. : *For Operational Creditor*
Sh. Srijan Mehrotra & Sh. Anuj Kumar, Advs. : *For Corporate Debtor*

ORDER

IA No.345/2024

- 1.** This application has been filed for placing on record certain documents, which are attached from Page no.13 to 98. Ld. Counsel representing the non-applicant/respondent in the present application has filed the response to the present application wherein certain documents have been attached to defend the case on behalf of the non-applicant/respondent as well. Those documents are attached at Page no.13.
- 2.** Ld. Counsel representing the applicant has filed rejoinder to the said counter by attaching certain documents vide Diary no.2492 dated 3rd December, 2024 and these documents are attached from Page no.9 to 24 of the said rejoinder.

3. After arguing for some time on behalf of the applicant and respondent, the Ld. Counsel representing the parties are at idem that these documents being relied upon by the applicant and the non-applicant/respondent, may be considered for the purpose of adjudication as the same according to them, are necessary documents.
4. In view of the statement so made by the Ld. Counsels representing the parties, this application is allowed and the documents as referred to herein above are taken on record.
5. Accordingly, IA No.345/2024 stands disposed off.

IA No.150/2024

1. This application has been filed *inter-alia* seeking prayer as under:
 - A. *permit the Applicant herein for impleading the Authorities of the GST Department (mentioned in paragraph No.6 herein) as the Respondents No.2, 3, 4 and 5 in the aforesaid Petition;*
 - B. *pass such other and further order/ orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in the interest of Justice;*
 - C. *award the cost of the instant application in favour of the Applicant herein.*
2. Ld. Counsel representing the applicant submits that by virtue of this application, the applicant is seeking impleadment of GST Department as the Respondents no. 2,3,4 & 5 in the main petition i.e. CP (IB) No.101/ALD/2022.
3. The present application seeking impleadment of the GST Authorities is based upon the alleged premise that the invoices annexed alongwith the petition are the invoices for which there was no delivery of the goods and the bills are bogus and fake. In support of such averments made in para no.4

of the present application, certain documents have been enclosed more particularly relating to some orders passed in the Complaint Case No.670 of 2021 attached at Page no.13 to 15 alongwith some zimni orders passed by the relevant authorities and the translated copy of which has subsequently been attached in the present application.

4. The present application for seeking impleadment of the GST Department has been contested by the non-applicant/respondent and a reply vide Diary no. 981 dated 6th May, 2024 has been filed. The objection has been raised that whatever the investigations are going on are related to a different entity altogether and is not in any manner connected with the merits of the present case.
5. It is also further averred in the reply that the Operational Creditor has already filed the copy of the GST returns showing GST having already been paid. The averments in the Para no.8 of the response further states that the said criminal complaint is a complaint by the director of the Corporate Debtor itself. The said complaint was made after the issuance of demand notice itself.
6. She further submits that the criminal complaint and the matter being examined by the GST Authorities has no bearing so far as the invoices in the present case, are concerned.
7. She also further relies upon a judgment as mentioned in para 5 of the reply titled as “Damont Developers Pvt. vs. Bank of Baroda” which is reproduced as under:

“ From the aforesaid decision it is clear that the Adjudicating Authority is required to go through the record to find if there is a debt and default and while doing so it was open for the Corporate Debtor to show that there is no debt payable and no default, at the stage of admission of the petition. Except the Corporate Debtor, no other party has right to intervene at the

stage of admission of a petition under Section 7 or 9. However, an aggrieved party may prefer an appeal if the order of admission affects the person.”

8. Ld. Counsel representing the applicant made the submissions in the rejoinder and states that a rejoinder has also been filed vide Diary no. 1590 dated 9th August, 2024. He submits that apart from the some documents which are already part of the application i.e. IA No.345/2024, some documents starting from Page no.54 have also been attached with the present IA showing that this complaint is prior to the demand notice.
9. Ld. Counsel representing the applicant has also referred to the judgment cited by Intervention Application No.7 of 2021 in CP No.2 of 2021 decided on 28th June, 2022 passed by the NCLT, Kolkata Bench.
10. In this matter, the Intervenor namely, Rishima SA investments LLC (Mauritius) filed an application to implead itself in the main company petition, CP No. IB No. 2/KB/2021, filed under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016, to enforce Arbitral Awards dated April 30, 2019, and July 12, 2020, issued by the Arbitral Tribunal in Singapore in ICC Case No. 21674/CYK/PTA/ASB/HTG against the Corporate Debtor. On the other hand , in the present case, the applicant has filed an application to implead the authorities of the GST Department. Thus, the order cited by the Applicant cannot be considered as it pertains to different factual circumstances.
11. Ld. Counsel representing the applicant has also relied upon a judgement in Company Appeal (AT) No.166 of 2022 passed by the Hon’ble NCLAT, wherein it has been observed that the IBC is not intended to be a substitute to a recovery forum and also laid down that whenever there is existence of a real dispute, the IBC provisions cannot be invoked. The Code cannot be used whenever there is existence of real dispute and also whenever the intention

is to use the Code as a means for chasing of payment or building pressure for releasing the payments.

- 12.** We have heard both the parties, we find that the dispute *inter-se* between the Operational Creditor and the Corporate Debtor is pertaining to Section 9 of the Code where some invoices have been raised which are disputed by the Corporate Debtor and for that purpose, the pleadings have already been exchanged and by virtue of another application i.e. IA No.345/2024, which was moved by the applicant, certain documents have already been permitted to be placed on record along with the documents filed by the non-applicant/respondent in that IA No.345/2024 as well as the documents placed on record by the applicant in rejoinder to the application i.e. IA No.345/2024. The GST Authorities is an independent authority who has to carry out the investigations in accordance with law and would therefore not be a relevant and a necessary party according to us in the proceedings initiated by the Operational Creditor under Section 9 or on the plea made by the Corporate Debtor by way of the present application i.e. IA No.150/2024.
- 13.** Ld. Counsel representing the applicant as well as the non-applicant/respondent however, also state that the document attached with the present application may be taken on record which are in addition to the documents already allowed by way of the order passed by us today in the IA No.345/2024 for the purpose of consideration of these documents and to be relied upon by the respective parties at the time when the main matter is being argued by them.
- 14.** In view of the aforesaid observations, we find no merit in so far as prayer (a) of the present application for seeking impleadment of the GST Authorities is concerned. The documents which are relied upon and are stated to be part and parcel of the proceedings before the GST Authorities, have already been allowed to be taken on record, and therefore the concerned authority could not be a necessary and a relevant party in the present proceedings between

the two companies, namely the Operational Creditor and the Corporate Debtor. We therefore, pass the following order:

- (i) Allow the documents as aforesaid in the present application i.e. IA No.150/2024, to be taken on record.
- (ii) The documents filed by the non-applicant/respondent in reply is also allowed to be taken on record.
- (iii) Allow the documents filed by the applicant in the rejoinder also.

All the above set of documents would be permitted to be referred to by the respective parties during the course of the argument in the main matter filed under Section 9 in support of their respective submissions.

15. The prayer in the present application so far as seeking impleadment of the GST Authorities is concerned, therefore rejected.
16. Accordingly, IA No.150/2024 stands disposed off in the above terms.
17. Let the matter be adjourned for further hearing on 12th August, 2025.

-Sd-

(Ashish Verma)
Member (Technical)
8th July, 2025

Bipul Kumar Tiwari
(Stenographer)

-Sd-

(Praveen Gupta)
Member (Judicial)