

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court- II)**

C.P. (IB)/106(KB)2022

In the matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND

In the Matter of:

G-Tech Construction and Fabricators

Represented by Mr. Shyamal Kishor
Praveen Chemist Khurai Road, Bina, Dist- Sagar
Madhya Pradesh 470113

.... Operational Creditor

Versus

Central Coalfields Limited

Company registered under the provisions of the Companies Act, 1956, having its registered office at Darbhanga House, Ranchi, Jharkhand 834029

.... Corporate Debtor

CORAM:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi: Member (Technical)

Date of pronouncing the order: 26/04/2024

Appearances (Physically/ via video conference)

For Operational Creditor:

Ms. Urmila Chakraborty, Adv.

Mr. Y. Roy, Adv.

ORDER

Smt. Bidisha Banerjee, Member (Judicial)

1. Court convened in a hybrid mode.
2. Ld. Counsel for the Operational Creditor was heard.
3. This application has been preferred by the G-Tech Construction and Fabricators, the Operational Creditors to initiate the CIRP against the Central Coalfields Limited, the Corporate Debtor.
4. **Facts in a nutshell: -**
 - 4.1 The Operational Creditor, G-Tech Construction and Fabricators is a registered Partnership Firm and an MSME unit.
 - 4.2 A Work Order for **Site-1** dated 28.12.2017 was awarded to the Operational Creditor by the Corporate Debtor pursuant to an e-tender for *“Repair and maintenance of 208 Nos. MQ in KDH Colony behind KDH PO Office of KDH Project, N.K. Area under Kayakalp Scheme of Central Coalfields Limited.”*
 - 4.3 The Operational Creditor (O.C. in short) completed the job including certain additional and/or extra works to the satisfaction of Corporate Debtor (C.D. in short).
 - 4.4 Completion Certificate in favour of O.C. was issued by the C.D. on 08.06.2018 certifying as under: -

“... the above mentioned job have been physically completed on the actual completion date noted above, to my satisfaction in accordance with the

specifications, provisions and condition of contract.”

- 4.5** According to the O.C., the C.D. has unequivocally admitted and acknowledged that the actual work was completed within the contractual completion date and that total “Work-Done amount” against this job is Rs.3,28,38,486/-. Therefore, this is an undisputed and admitted amount fully agreed by both the parties.
- 4.6** It is alleged that the C.D. despite repeated requests and reminders, failed to make timely payment against the bills raised by the O.C.
- 4.7** Another Work Order for **Site-2** dated 24.01.2018 was awarded to O.C. by C.D. pursuant to an e-tender for “Construction of 07 Nos. Classrooms with one no. teachers room and toilet at DAV Public School NTS, Barkakana under Barka-Sayal Area.”
- 4.8** It was also completed in due time, whereafter C.D. issued one unconditional Completion Certificate certifying as under: -
- “...the above mentioned job have been physically completed on the actual completion date noted above, to my satisfaction in accordance with the specifications, provisions and condition of contract.”*
- 4.9** It is urged that in the said Completion Certificate, C.D. has admitted that the total “Work-Done amount” against this job is Rs.1,02,81,442.71. Therefore, this is an undisputed and admitted amount fully agreed by both the parties.

- 4.10** The date of default complained of is 07.05.2018 with reference to Site-1 at Khalari and as 20.03.2020 with reference to Site-2 at Barkakana.
- 4.11** The amount of alleged default for the total work done is Rs.4,31,19,928/- (Rupees Four crore Thirty One lakh Nineteen thousand Nine hundred Twenty-Eight only) as admitted in the Completion Certificate.
- 5.** The O.C. admits having received Rs.3,21,52,363/- (Rupees Three crore Twenty-One lakh Fifty-Two thousand Three hundred Sixty-Three only) in respect of both the Work Orders.
- 6.** As such, according to the O.C. the principle outstanding amount in default is as under: -
- a) Project 1 is Rs.64,54,397.63
 - b) Project 2 is Rs.65,67,472.59
 - c) Total principal outstanding as on date of filing of CP is Rs.1,30,21,870.22 [more than the threshold limit of Rs.1 crore under Section 4 of IBC (as amended)]
- 7.** The O.C. claims that a Demand Notice under section 8 of the IBC was sent by the O.C. in Form 3 dated 20.12.2021 and was duly served by way of email as well as Speed Post at the registered office as would appear from C.D.'s Master Data on the MCA portal.
- 8.** It is urged that at no point of time the C.D. ever disputed the quality of work undertaken by the O.C.
- 9.** The Company Petition was filed on 04.03.2022 and while the same was under consideration, the C.D. passed a sanction order

on 08.09.2022 and approached the O.C. for completing the last mile formalities for disbursement of the legitimate dues of the O.C.

10. It is claimed that the C.D. thereafter, has paid a sum of Rs.61,80,875.98 thereby leaving a balance amount of Rs.1,90,356.40 payable towards Retention Money for DAV Public School Project.
11. It is urged that the C.D., even after acknowledging the debt, has failed to repay.
12. No affidavit in reply could be located from the records. However, the O.C. has dealt with the reply affidavit served upon it.
13. While dealing with affidavit in reply filed by the C.D., the O.C. has refuted the arguments made by the C.D. in the following manner: -
 - i) On the issue that two Work Orders cannot be clubbed together in a Section 9 IBC petition. the O.C. has referred to the decision of the Principal Bench of NCLT in CPIB No.2135/ND/2019 in the matter of ***M/s. A2 Interiors Products Pvt. Ltd. Vs. M/s. Ahluwalia Contracts India Ltd.*** to contend that it is maintainable.
 - ii) While dealing with C.D.'s claim that the O.C. has invoked the Arbitration clause, the O.C. has submitted that it was only a request for appointment of an Arbitrator which was never acceded to by the C.D. and that there is no arbitration proceedings pending qua the C.D.
 - iii) In regard to the 3rd contention of the C.D., there are pre-existing disputes in respect of the operational debts, the

O.C. has vehemently denied the same and referred to the Completion Certificate issued by the C.D. Reference has been drawn to NCLAT decision in ***Krishna Hi-Tech Infrastructure Private Limited Vs. Bengal Shelter Housing Development Limited (Company Appeal (AT) (Insolvency) No.1375 of 2022)*** and ***Rajeev K Aggarwal Vs. Panipat Texo Fab Pvt. Ltd., Company Appeal (AT) (Insolvency) No.715 of 2018*** to contend that in absence of contemporaneous documents, pre-existing disputes cannot be established. Further, reference is drawn to ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited [2017 SCC OnLine SC 1154]*** to show that a dispute raised after receipt of section 8 notice, is a sham dispute.

- iv)** To counter C.D.'s allegations that threshold is not met, it is submitted that, when as on the date of filing i.e. 04.03.2022 the total principal outstanding operational debt of O.C. was more than Rs.1.30 crore, subsequent part payment would not absolve the C.D. of its liability to repay the debt that existed on the date of filing.
- v)** It is urged that Mr. Shyamal Kishor is a valid authorized signatory and holds a valid Power of Attorney dated 08.01.2021 and is as such authorized to initiate proceedings under IBC as per Clause 1 of the Power of Attorney, to refute the C.D.'s contention that this application in absence of valid authorization is rendered a non starter.

- 14.** It is further urged that the petition being complete in all respect and compliant in all manner, should be admitted.

- 15.** At hearing, none appeared on behalf of the Corporate Debtor. Learned Counsel for Operational Creditor was heard.

Opportunity was given to both the sides to file Written Notes of Arguments. While Operational Creditor has filed the same, the Corporate Debtor has not. Therefore, we proceed to decide the matter on the basis of pleadings in the petition and oral arguments at the time of hearing.

16. Discernible facts: -

- 16.1 The failure of the Corporate Debtor (C.D.) to deny that it has acknowledged the debt.
- 16.2 The C.D.'s failure to make payment against any outstanding amount.
- 16.3 The C.D.'s failure to establish that it has not received the Notice under Section 8.
- 16.4 The C.D.'s failure to establish that two or more Work Orders cannot be clubbed together in a petition U/S 9 of IBC.
- 16.5 The C.D.'s failure to establish any pendency of proceedings in regard to the dispute, existing on the date of filing of the present C.P. (or a pre existing dispute).
- 16.6 Further, C.D.'s failure to justify the Retention Money payable to the Operational Creditor.
- 16.7 The C.D.'s failure to reply to the Demand Notice dated 20.12.2021 issued in terms of Section 8 of the IBC, to dispute or controvert to facts or allegations therein, is

palpable.

16.8 The C.D.'s failure to dispute the following Completion Certificates:

- a) The Completion Certificate dated 08.06.2018 towards *"repair and maintenance of 208 nos. MQ. in KDH Colony behind KDH PO Office of KDH Project, N.K Area under Kayakalp Scheme"*.
- b) The Completion Certificate dated 11.11.2020 towards *"Construction of 7 Nos. classrooms with one no. teachers room and toilet at DAV Public School NTS, Barkakana under Barka-Sayal Area"* for M/s Central Coalfields Limited.

In both the Certificates, the C.D. has recorded its satisfaction in accordance with specifications, provisions, and contention of contract.

16.9 The C.D.'s failure to make payments.

- 17.** Be that as it may, it is also evident that although the work in regard to KDH Colony was completed within the contractual completion date i.e. 17.05.2018, the work in regard to DAV Public School was completed way beyond the contractual completion date.
- 18.** It is evident from the Annexure-'G' (Colly.) (at page 323 of the petition) when repeated reminders were sent by the Operational Creditor (O.C.) for payment, the applicant has disclosed by way of Annexure-'I' a letter dated 09.03.2021 from Advocate Vijay Kant Dubey, Jharkhand High Court, Ranchi issued to M/s. G-

Tech Construction & Fabricators, the O.C. through its Counsel Mr. Tapas Kumar Mondal in reply to a legal notice dated 16.01.2021.

In the said letter, sent on behalf of the C.D., the Ld. Advocate has categorically pointed out the following: -

- i)** Delay in completion of “*Repair and maintenance of 208 Nos. MQ in KDH Colony behind PO Office of KDH Project*”.
- ii)** Work Done suffered from several defects and ultimately after much persuasion when the defects were rectified, the Completion Certificate was issued.
- iii)** Against the amount of Rs.3,20,49,951/-, the C.D. has already paid Rs.2,99,57,917.62 against running account bills and the balance payment due is only Rs.28,80,569.09 which is way below the threshold of Rs.1 Crore.
- iv)** Denial of any interest payable in terms of Clause 5 of General Terms and Conditions of Contract.

Thus, disputes much prior to despatch of Notice under section 8 of the IBC, were in fact raised by the C.D., as it appears from the Petition itself.

- 19.** Further, it is evident from the pleadings that the projected outstanding dues against Site-1 is Rs.64,54,397.63 whereas according to the C.D. it is only Rs.28,80,569.09 and adding Rs.28,80,569.09 to the estimated outstanding of

Rs.65,67,472.59 and odds against Site-2 at Barkakana, the outstanding is way less than the threshold limit of Rs.1 crore under Section 4 of IBC (as amended).

- 20.** In the aforesaid backdrop, the claim of the Petitioner fails and therefore, this Petition is **dismissed**.
- 21.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information.
- 22.** Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed this, on the 26th day of April, 2024

Skb