

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.10.2021 AT 13:00 HRS

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 27/9/HDB/2018
NAME OF THE COMPANY	Madhucon Projects Ltd
NAME OF THE PETITIONER(S)	Kataline Constructions & Technologies Private Limited
NAME OF THE RESPONDENT(S)	Madhucon Projects Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature


Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed in **CP (IB) No. 27/9/HDB/2018** vide separate orders.


Member (Technical)


Member (Judicial)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 27/9/HDB/2018
Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

M/s. Kataline Constructions & Technologies Pvt Ltd
R/o. 23, Nelco Housing Society, Jaitala Road,
Subhash Road, Nagpur-440022
Through its Authorized Signatory,
Sri. Vaibhav Divekar,
S/o. Sri. Vijay Divekar,
CEO, R/o. Nagpur, Maharashtra.

... Operational Creditor

AND

M/s. Madhucon Projects Ltd,
R/o. Madhu Complex, 1-7, 70,
Jublipura, Khammam-507003
Telangana.
Corporate Office at Plot No. 1129/A,
Road no. 36, Jubilee Hills,
Hyderabad-500033.

... Corporate Debtor

Date of Order: 07.10.2021

Coram:

Shri Madan Bhalchandra Gosavi, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Shri. Surya Satish, Advocate
For Respondent: Shri. A M Rao, Advocate

Heard on: 01.07.2021, 11.08.2021 & 29.09.2021





PER: BENCH

1. The present petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process for an amount of Rs. 45,35,211/- with interest @ 24% per annum.
2. The Operational Creditor is incorporated with Identification No. U45201MH2001PTC132991 who is engaged in the business of construction on Turnkey, BOT and annuity basis especially in constructing the national highways, expressways, pump houses and also having expertise in infrastructural work. The Corporate Debtor is incorporated with Identification No. L74210TG1990PLCO11114 who is engaged in business of undertaking of all types of Civil, Electrical and Mechanical works.

3. AVERMENTS IN PETITION

- 3.1 It is averred that the National Highway Authority of India Ltd. (hereinafter referred to as "NHAI") had allotted the work of widening and strengthening of existing National highway from 2 lane to 4 lane of NH-45B of Madurai Tuticorin Road Project in the State of Tamil Nadu on BOT basis to the Corporate Debtor and the Corporate Debtor entrusted the said work to the Operational Creditor on the piece rate basis as per the scope of the contract.
- 3.2 It is averred that the Agreements to this effect were executed and signed between the parties on 23.04.2010 and the work entrusted to the Operational Creditor as per the said agreement commences from 22.04.2010 and to be concluded on 31.05.2010.
- 3.3 The Corporate Debtor further allotted the work of widening and strengthening of existing National highway NH-28 from 2 lane to 4 lane in Bihar (WB). The agreement to this effect was signed between the parties on 05.10.2010 and execution of work has to be commenced from 10.10.2010 and to be concluded on 09.01.2011.




- 3.4 The Operational Creditor had executed and completed the works within the specifications and had submitted bills together with the measurements against the completion of both the works totalling to Rs. 1,03,37,256/- (Rupees One Crore Three Lakhs Thirty Seven Thousand Two Hundred & Fifty Six Only) and for Rs. 18,79,942/- (Rupees Eighteen Lakhs Seventy Nine Thousand Nine Hundred and Forty Two Only) including Central Sales Tax of 2% against the 'C' Form amounting to Rs. 2,02,691/- & Rs. 36,862/- respectively and in event of non-issuance of the 'C' Forms, the said Corporate Debtor was liable to pay a sum of Rs. 33,84,224/- apart from the interest and penalty.
- 3.5 It is averred that the Operational Creditor had received a sum of Rs. 66,70,774/- as against the total bill for Rs. 1,03,37,256/- and Rs. 7,92,520/- as against the total bill for Rs. 18,79,942/-. The Corporate Debtor was legally liable to pay an amount of Rs. 36,73,997/- and Rs. 10,87,422/- respectively towards outstanding bills.
- 3.6 It is averred that the without paying the amount, the Corporate Debtor had deducted the TDS on the outstanding amounts and furnished Form 16A to the Operational Creditor. The Operational Creditor has filed Special Civil suits against the Corporate Debtor before the Hon'ble Civil Judge, Senior Division, Nagpur which were returned to the Plaintiff for its presentation to proper court on the ground of Jurisdiction.
- 3.7 As there was no response from the Corporate Debtor regarding the legitimate debt the Operational Creditor issued a statutory notice dated 05.05.2015 under Section 434 of the Companies Act, 1956 for winding-up of the Corporate Debtor in the event of non-payment of the admitted debt along with interest @18% per annum within a period of 21 days from the date of receipt of the notice and the said notice was returned by the Corporate Debtor on 11.05.2017.
- 3.8 It is averred that the Operational Creditor had filed Company Petition No. 6 of 2016 before the Hon'ble High Court under Sections 433, 434 & 439 of the Companies Act, 1956 seeking winding up of

Corporate Debtor. While the said Petition was pending for admission, this Tribunal got established and the Hon'ble high Court were pleased to dismiss the petition as withdrawn with a liberty to file before this Tribunal.

- 3.9 The Corporate debtor addressed letter to the Operational Creditor for conciliation proceedings and decided to hold at the office of the Corporate Debtor within 15 days from the date of receipt of the said letter. The Operational Creditor replied to the letter that they accepted the conciliation proceedings and requested them to fix the date. On 16.02.2017 both the parties participated the meeting and furnished all the documentary evidence in proof of the debt raised and claimed by the Operational Creditor.
- 3.10 The Corporate Debtor alleged that after reconciliation of their records, they found out a lot of difference between the account statements and finally shown an outstanding amount of Rs. 10,83,141/- in respect of both the works. It is averred that the deductions made by the Corporate Debtor is without any basis or evidence. The dispute raised by the Corporate Debtor is made without any evidence or justification.
- 3.11 It is averred that as per the statement of account of Operational Creditor after deducting all the payments made by the Corporate Debtor as sum of Rs. 34,47,789/- was outstanding in respect of Madurai Tuticorin express highway works and sum of Rs. 10,87,422/- was outstanding towards Barchakiya Work and accordingly the Operational Creditor issued a demand notice under the prescribed provision to the Corporate debtor. The notice was received by the Corporate Debtor on 25.07.2017 and failed to respond.

4. AVERMENTS IN COUNTER DATED 21.02.2018

- 4.1 It is averred that the amount claimed by the Operational Creditor is an amount which is not admitted by the Corporate Debtor and the Operational Creditor is seeking to raise a time barred claim under the guise of an undisputed debt when it is aware that the corporate Debtor had fulfilled their obligations under the payment schedule.
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- 4.2 It is averred that there are pending disputes between the parties and there is also conciliation process under progress and without concluding the conciliation process the Operational Creditor filed the petition before this Tribunal.
- 4.3 It is averred that the statement of Operational Creditor about the completing and execution of work with the specification is false and incorrect. The allegation that the Corporate Debtor is liable to pay a sum of Rs. 33,84,224/- is false and it is averred that the Corporate Debtor had paid the bills which were approved by the site engineers at the project site and the balance is only Rs. 10,83,141/-.
- 4.4 It is averred that the Corporate Debtor had cleared all the approved outstanding bills raised by the Operational Creditor and there are no dues with regard to the approved bills. There are disputes between the parties regarding the measurements of the work done by the Operational Creditor and there is exchange of correspondence and without conclusion of the same, the Operational Creditor states that the Corporate Debtor admits the liability.
- 4.5 It is averred that the Corporate Debtor had never raised a dispute either on billing or to the total amount due and it is falsely stated that the Corporate Debtor neglected to pay the same even after several requests. There is no crystallized debt as alleged by the Operational Creditor and the Corporate Debtor never admitted the liability. And it is a fact that the Operational Creditor filed suit before the Hon'ble High Court and after contest the said suits were returned for its presentation before proper court. If there was any admitted debt, then the Operational Creditor would have represented the said suits and ought to have continued the proceedings.
- 4.6 It is averred that the allegations made by the Operational Creditor that there was no response from the Corporate Debtor to clear the Legitimate Debt of Rs. 47,61,419/- and Operational Creditor issued a statutory notice under Section 434 of the Companies Act, 1956 and the said notice was returned by the Corporate Debtor are all false.

N/A

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- 4.7 The Corporate Debtor did not receive any notice and the corporate Debtor called upon the Operational Creditor for re-conciliation of the accounts and they were ready to clear all apprehensions and it is averred that the allegations regarding furnishing of the documentary evidence in proof of debt raised and claimed by the Operational Creditor is false. The Corporate Debtor intimated the Operational Creditor vide letter dated 03.03.2017 and clarified the amount due as per their records is only Rs. 10,83,141/- in respect of both the works and intimated that they are ready to provide all details regarding the measurements.
- 4.8 It is averred that the amount claimed by the Operational Creditor is clearly barred by Limitation and it is submitted that the Corporate Debtor herewith paying the admitted amount of Rs. 10,83,000/- by way of Demand Draft bearing No. 005782 for Rs. 4,00,000/-, No. 005784 for Rs. 4,00,000/- and No. 005783 for Rs. 2,83,000/- drawn on Canara Bank, Jubilee Hills Branch, Hyderabad in favour of Operational Creditor.

5. WRITTEN SUBMISSIONS BY CORPORATE DEBTOR DATED 04.10.2021

- 5.1 The Corporate Debtor submits that the works which was allotted to Operational Creditor were completed within the stipulated time i.e., 31.05.2010 and 09.01.2011 therefore, as per Article 18 of the Limitation Act, 1963, the limitation prescribed is three years which expires on 30.05.2013 and 08.01.2014 respectively for the two agreements. The Operational Creditor never initiated any proceedings within the limited period and they filed Civil Suits before the Civil Judge after the expiry of the limitation period.
- 5.2 The Operational creditor pleaded that Form 16A confirms the outstanding amounts payable by the Corporate Debtor but it clearly shows that even the last Form 16A was for the transaction for the period from 01.01.2011 to 31.03.2011 and the period of three years from the said date is 30.03.2014.



- 5.3 The Operational Creditor initiated the present proceedings against Corporate Debtor without clearing the disputed between the parties and the alleged claims were not crystallized into debt.
- 5.4 The parties initiated a conciliation process and the same was not materialized and Operational Creditor without attempting to complete the process straightaway filed the instant petition.

6. **FINDINGS**

- 6.1 The Petition is filed by M/s. Kataline Constructions & Technologies Pvt Ltd, Operational Creditor against M/s. Madhucon Projects Ltd, Corporate Debtor; for the work allotted by the Corporate Debtor to Operational Creditor of widening and strengthening of existing National highway. There were two works allotted to the Operational Creditor in which they entered into an Agreement on 23.04.2010 and 05.10.2010.
- 6.2 It is noted that Operational Creditor had received a sum of Rs. 66,70,774/- as against the total bill for Rs. 1,03,37,256/- and Rs. 7,92,520/- as against the total bill for Rs. 18,79,942/-. The Corporate Debtor was legally liable to pay an amount of Rs. 36,73,997/- and Rs. 10,87,422/- respectively towards outstanding bills. Then after Operational creditor filed Civil Suits and withdrawn the same and filed before this Tribunal and also filed for winding up the Corporate Debtor before Hon'ble High Court and both the parties initiated conciliation process but failed.
- 6.3 The Corporate Debtor submits that the completing and execution of work with the specification was not completed by the Operational Creditor and the Corporate Debtor had paid the bills which were approved by the site engineers at the project site and the balance is only Rs. 10,83,141/-.
- 6.4 The Corporate Debtor submits that the amount claimed by the Operational Creditor is clearly barred by Limitation and the Bench noted that the Corporate Debtor herewith paying the admitted amount of Rs. 10,83,000/- by way of Demand Draft to the Operational creditor.

- 6.5 It is noted by the Bench that there are disputes regarding the claim of the Operational Creditor and those disputes were pending much prior to the issuance of the demand notice.
- 6.6 In this regard the Bench would like to refer to Hon'ble Supreme Court of India Judgment of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*:
 "...34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:
- i. Whether there is an "operational debt" as defined exceeding Rs. 1 Lakh?
 - ii. Whether the documentary evidence furnished with the application shown that the aforesaid debt is due and payable and has not yet been paid? And
 - iii. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
 - iv. If any one of the aforesaid conditions is lacking, the application would have to be rejected ..."
- 6.7 It is settled law that Application under Section 9 of the Code by the Operational Creditor is not maintainable in the event there is pre-existing dispute between the parties in relation to a debt and in the event of Operational Creditor has received a notice of dispute before the issuing the demand notice.
- 6.8 In view of the pre-existing dispute between the parties in relation to the amounts claimed by the Operational Creditor and the chain of events associated with it, the Bench is of the view that this Petition under Section 9 of the Code is not maintainable and deserves to be dismissed.

6.9 Accordingly, the CP (IB) No. 27/9/HDB/2018 is "dismissed"


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)


MADAN BHALCHANDRA GOSAVI
MEMBER (JUDICIAL)