

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

ORDER SHEET OF THE HEARING ON 11th DECEMBER, 2023, 10:30 A.M.

CP (IB)/12/GB/2023

**Present: 1. Hon'ble Member (Judicial), Shri H.V. Subba Rao
2. Hon'ble Member (Technical), Shri Satya Ranjan Prasad**

Name of the Company	Sugana Ram Jat Proprietor of M/s Kamakhya Infra Power (OC) Vs M/s Shyama Power India Ltd. (CD)
Under Section	U/s 9 of IBC, 2016

For Petitioner (s) : Mr. Prateek Kedawat, Adv

For Respondent (s) :

ORDER

Order Pronounced through VC *vide* separate sheets.

Sd/-
Satya Ranjan Prasad
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)

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CP (IB) No.12/GB/2023

In the matter of:

Insolvency and Bankruptcy Code, 2016. 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, to initiate Corporate Insolvency Resolution Process;

-And-

In the matter of:

Sugana Ram Jat Proprietor of M/s. Kamakhya Infra Power, having his office at V.P Holiya Ka Bas, Teh. Shrimadhapur, Distt. Sikar (Raj.)- 332715;

... Petitioner/Operational Creditor

-Versus-

Shyama Power India Limited, having registered office Silverpine, H. No. 75, Darogajan, Dimapur, Nagaland-797116;

... Respondent/Corporate Debtor

Coram:

Shri H. V. Subba Rao : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For the Petitioners : Mr. Prateek Kedawat, Adv.

For the Respondent : Mr. Harshavardhan, Adv.

Order pronounced on: 11.12.2023

ORDER

1. The present application has been filed by the Operational Creditor- Sugana Ram Jat, Proprietor of M/s. Kamakhya Infra Power under section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy

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(Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process in the matter of Shyama Power India Limited.

2. Brief facts as stated by the Petitioner are as follows:
 - 2.1 The Petitioner/Operational Creditor is the sole Proprietor of Kamakhya Infra Power who is engaged in the business of civil works contracts therein work including benching, excavation and casting of foundations, earthing, tower erection and stringing of construction of tower foundation etc.
 - 2.2 The Respondent/Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Silverpine, H/No. 75, Doragajan, Dimapur, Nagaland-797116. The Authorized share capital of the Corporate Debtor is Rs. 20,00,00,000/- and the paid-up share capital is Rs. 15,07,61,000/-. A copy of the Master Data Sheet of the Corporate Debtor as downloaded from the MCA Portal has been annexed with the Petition.
 - 2.3 The Corporate Debtor through its authorized representative approached the operational creditor for carrying out the execution of civil work including the benching, excavation and casting of foundations, earthing, tower erection and stringing etc.
 - 2.4 The CD placed work orders to the Operational Creditor time to time by way of telephonic communication/work orders issued in hard copy. The CD as per the work order is duly liable to pay the balance 10% payment which it had withheld as security deposit and was duty bound to release after successful charging, testing and commissioning of sub-station.
 - 2.5 The last trench of payment received was for an amount of Rs. 20, 39,007/- on 24.09.2021 and thereafter, no payment has been received by the Operational Creditor from the contract awarder company services/goods was outstanding which was reflecting from the statement of the ledger account of the Operational Creditor which is a complete contravention of the payment terms agreed and accepted by the CD.

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- 2.6 The CD booked, admitted and credited the said amount in their books of accounts maintained and TDS on the booked amount is already deducted being TDS thereon.
- 2.7 The Petitioner is registered under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. Pursuant to Section 16 MSME Act, CD is liable to pay compound interest as per the terms mentioned therein.
- 2.8 The CD *vide* email dated 25.10.2020 had confirmed for 4% increase of rate thereby the Operational Creditor has sent the additional increased differential amount raised bills dated 25.01.2023.
- 2.9 A Demand Notice Form-3 dated 22.02.2023 was issued by the Operational Creditor under the provisions of the IBC, 2016 thereby demanding payment of the said outstanding amount of Rs. 2,71,37,451/- within the period of 10 days from the date of receipt of the notice. Copy of the Demand Notice issued by CD and speed post receipt along with proof of delivery has been annexed with the petition.
- 2.10 The CD in response to the demand notice *vide* letter dated 21.03.2023 issued baseless grounds with regard to pre-existing disputes and suggested the OC to seek recourse to Civil Law instead of IBC, 2016 which apparently shows that the CD itself acknowledging the default made by them.
3. The Respondent has filed its Reply Affidavit, stating that:
- A. There is a genuine pre-existing dispute between the parties:**
- i. The Respondent issued work orders to the Applicant in between 2016 to 2018 for carrying out works for different transmission lines and substation in Manipur under the MSPCL and PGCIL pursuant to the government contract awarded to the Respondent (“Manipur Work Orders”).
 - ii. Thereafter, the Respondent issued work orders to the Applicant between 2018-2019 for carrying out works for different transmission lines and substation in Nagaland under PGCIL pursuant to the government contract awarded to the Respondent (“Nagaland Work Orders”).

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- iii. The Applicant deliberately chosen not to place on record the Nagaland Work Orders dated 09.01.2019 [WQ18109-002] and 09.01.2019 [WQ18109-001] to suppress the fact that the Applicant unilaterally abandoned the site and failed to complete works under the aforesaid work orders, compelling the Respondents to undertake the same at its own expense and cost.
- iv. Immediately after the commencement of works by the Applicant under the Work Orders, the Respondent made on-account payments for the benefit of the Applicant to complete the projects. The Applicant repeatedly breached its obligations under the Manipur and Nagaland Orders.
- v. The Respondent was constrained to issue several communications to the Applicant to address disputed issues including but not limited to the following:
 - a. Disputes over failure to provide Joint Measurement Certificates (JMC) along with the bills as required under the Manipur and Nagaland Work Orders. Under the work orders, admittedly there was an obligation to provide JMCs containing the volume the works executed from MSPCL in Manipur and PGCIL in Nagaland. The Applicant failed to procure JMCs to demonstrate that they are entitled to payment. The Applicant has till date failed to procure several JMCs and has also not filed copies along with its application before this Tribunal.
 - b. In April 2019, the Applicant and its workforce left the transmission line work allotted to it in Nagaland mid-way, as a result of which the Respondent was forced to execute works at its own expense and cost. Subsequently, in November 2021, the Applicant and its workforce once again left the sub-station project sites in Nagaland without completing the work, any without any prior intimation either to the Respondent or to PGCIL. The Applicant never arrived on site and never commenced any work at all under the Nagaland

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- Work Order dated 09.01.2019 [WQ18109-001] for 220 kv S/C New Kohima-Makokchung.
- c. On 27.03.2019, the Respondent was constrained to terminate the Work Order dated 20.09.2018 [No. WQ18920-02] for civil works for 132/33 KV Sec Complex Kohima (Nagaland) *vide* letter dated 27.03.2019 on account of unsatisfactory progress of works.
 - d. Disputes over retention of 10% security deposit by the Respondent under the contractually agreed upon payment terms of the Work Orders.
 - e. The Applicant has attempted to mislead this Tribunal by placing reliance on email dated 25.10.2020 sent by the Respondent to the Applicant to support its contention that the respondent had confirmed a 4% increase in the rate under the Nagaland Work Orders with retrospective effect for all invoices submitted from the time of commencement of works.
 - f. All the disputes pre date the Demand Notice dated 22.02.2023 issued by the Applicant.
 - g. The Respondent was entitled to impose liquidated damages on account of numerous delays and unsatisfactory progress in the completion of works, as stipulated under the Work orders, and there has been no illegal retention or withholding of the Applicant's dues, as alleged in the instant application.
 - h. The Respondent issued a detailed reply to the Demand Notice on 21.03.2023, specifically highlighting that there exists a genuine dispute between the parties.
 - i. In June, 2023, the parties held several discussions in an attempt to settle the pre-existing disputes amicably. However, the parties were unable to arrive at any settlement.
- vi. The Applicant has itself admitted to pre-existing disputes between the parties by stating that *“several verbal communication and meetings were held between Operational Creditor and concerned personnel(s) of Corporate Debtor*

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with regard to settlement of present matter however, no fruitful result has come forth and all such talks have failed". In the email dated 25.10.2020 sent by the Respondent to the Applicant, it is evident that there exist disputes over the unsatisfactory quality of work by the Applicant and disputes over the increase in rate of works.

B. The Application is incomplete and suffers from Statutory Infirmities under Section 9(5)(II)(A) of the IBC, 2016:

- a. In the Ledger which has been annexed along with the instant application, there is no bifurcation of the amounts that are allegedly outstanding/retained by the respondent between the works undertaken in Manipur, and those which were undertaken in Nagaland.
- b. Despite the mandatory requirement under Rule 6 read with Form No. V of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Applicant has failed to "attach the workings for computation of amount and dates of default in tabular form". Instead, the Applicant has only provided a lump sum figure instead of detailed workings separately under the Work Orders, both in the Demand Notice and in the instant application, knowing fully well that no amount are due to him from the Respondent.
- c. The Applicant has not annexed a copy of the "record of default with the Information Utility", as mandated under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- d. The financial information of alleged default submitted by the Applicant to the Information Utility was disputed by the Respondent on 18.07.2023 at 16:47:13 hours inter alia on account of pre-existing disputes between the parties. A copy of the same has been annexed as Annexure R-8 of the Reply.

C. The Interest claim of the Applicant is untenable:

- a. The Applicant has also made a baseless claim of interest @18% per annum on the total outstanding amount, and thereby included it in the amount of operational debt. The sole ground upon which the Applicant

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has asserted this claim is that it is entitled to interest @ 18% per annum as and MSME Enterprise.

- b. The contention of the Applicant is misconceived for two reasons. First, it is settled law that the amount of interest is only treated as 'debt' if it expressly stipulated for in the contract between the parties. In the present case, it is admitted that none of the Work Orders provide for such a claim in favour of the Applicant. Secondly, it is admitted that the Applicant has not invoked the jurisdiction of the MSME facilitation Council under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006.

D. The Alleged claim of the Applicant is barred by Limitation and is devoid of any merit:

- a. The Applicant has deliberately failed to bifurcate its claims in relation to the Manipur Work Orders and Nagaland Work Orders since it would demonstrate that the alleged claims of the Applicant are *ex-facie* time barred.
 - b. The present application does not reveal any default of an operational debt by the respondent and is liable to be rejected on account of pre-existing disputes between the parties.
4. The Petitioner *vide* its rejoinder, while addressing the issues raised by the Respondent, submits the following:
- 4.1 The Corporate Debtor has cunningly sent a letter dated 10.03.2023 stating that they will respond to the demand notice within the statutorily stipulated period notwithstanding the settled position of law that the reply/dispute shall be raised within 10 days from receipt of demand notice. The CD, had failed to provide the existence of any dispute with regard to unpaid operational debt within 10 days from receipt of Demand Notice i.e. 07.03.2023 and the Corporate Debtor had sent the detailed Reply to the demand notice on 21.03.2023 after the expiry of said 10 days period which is mentioned in its reply to demand notice.

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- 4.2 The CD had not issued Work Order dated 09.01.2019 [WQ18109-001] for 220 Kv S/C New Kohima-Mokokchung to the Petitioner and no such kind of work order was ever accepted by the Operational Creditor.
- 4.3 Bare perusal of the payment terms of work orders makes it clear that JMC shall be signed by MSPCL i.e. Manipur State Power Company Limited or PGCIL i.e. Power Grid Corporation of India Limited as the case may be and Corporate Debtor's Project Manager and hence it is apparent that this is not the duty of the Petitioner to provide JMCs. The petitioner had time and again provide bills and requested the CD to process the same and all the bills which were raised by the Petitioner were acknowledged and approved by the CD and against such bills CD had duly deducted the Tax i.e. TDS till the FY 2021-22 which is evident from the 26AS of Petition which is itself an admission of debt by the CD.
- 4.4 On 22.03.2019 Petitioner requested the CD to revise the rate of work going on in Nagaland due to significant rise in the rates of sand and stone in Nagaland. Thereafter the CD abruptly terminated Work Order No. WQ18920-002 dated 20.09.2018 for 132/33kV Sec Complex Kohima (New) vide email dated 27.03.2019 at 16.06 which is suppressed by the CD in its reply. General Manager (Tender), Mr. A.K Chamoli sent email dated 27.03.2019 at 19.12 where in it was informed to Petitioner that if they are not able to work on existing rates they may withdraw their team and T&P from site with immediate effect however, on a contrary the CD had already terminated the work order vide email of 27.03.2019 at 16:06.
- 4.5 The staff of CD without considering the genuine requests of the Petitioner for increase in rates abruptly terminated the Work Order No. WQ18920-002 dated 20.09.2018 for 132/33kV Sec Complex Kohima (New) without making the payment for the work completed. There is no dispute with regard to the work carried out by the Petitioner as the CD accepted to pay the additional amount to the Petitioner and requested to resume the work in the meeting held on 05.04.2019 between the Petitioner and Mr. Binod Kumar Thakur, Managing Director and Shareholder of CD which makes it apparent that CD was also

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- satisfied with the work carried out by the Petitioner. On their request the petitioner immediately resumed the work.
- 4.6 There is no dispute with regard to retention of 10% security deposit, unsatisfactory progress in completion, excess bills of quantity and imposition of liquidated damages and such allegations are made without documentary evidences. On 20.10.2020 Project-In-Charge of CD sent email which contains cost of working details wherein they have admitted that till RA-18 Petitioner had incurred loss of around Rs. 26 Lakh and they assured to compensate the same in the meeting.
- 4.7 No preliminary reply was received rather CD *vide* letter dated 10.03.2023 stated that they will respond to the same within the statutory stipulated period. However, CD did not reply to Demand Notice within statutorily stipulated period of 10 days.
- 4.8 Without prejudice to the total amount of default mentioned in the Petition of Rs. 2,71,37,451/-, the CD had accepted liability of Rs. 80.56 Lakh *vide* email dated 17.06.2023 which enunciates the fact that there is default on part of the CD and the CD had intentionally withheld the due amount.
- 4.9 The CD had knowingly provided alleged outstanding of Rs. 80.65 Lakh so as to the present petition could not achieve the minimum threshold limit. However, the total amount of default is Rs. 2,71,37,451/- comprising principal outstanding amount of Rs. 1,65,70,008/- and interest thereon of Rs. 1,05,67,443/-. The CD in project wise details in order to reduce the claim of Petitioner so as to threshold limit could not achieve, has allegedly stated that petitioner had not deposited GST amounting to Rs. 15,81,488/- towards the bill raised by Petitioner in respect of Nagaland Project whereas the petitioner has duly deposited the GST and filed its GST Return which is evident from the website of GST. The CD had failed to produce any evidence with regard to payment of such alleged unpaid GST amount on behalf of the Petitioner and also failed to produce the payment challan i.e. GSTR-PMT-06 if any made by the CD on behalf of Petitioner.

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- 4.10 In the email dated 25.10.2020 the Project-In-Charge of CD, Mr. Manoj Sarkar had assured to increase rate by 4% as beyond that comes under the power of DGM and since DGM was on leave hence increase of 4% was assured by Project-In-Charge.
5. The Petitioner in accordance with orders of this Tribunal dated 07.11.2023, filed written notes stating that:
- 5.1 Acknowledgement of default/Liability ascertained vide email dated 17.06.2023 by Respondent after issuance of demand notice dated 22.02.2023:** Without prejudice to the total amount of default mentioned in the Petition of Rs. 2,71,37,451/-, the CD had shared billing and payment details in respect of work carried out by the Petitioner vide email dated 17.06.2023 which enunciates the fact that there is default on part of the CD. The Respondent had knowingly, allegedly and deliberately did not include/consider several dues amounts in such sheet so as to threshold limit could not achieve. This proves that the principal amount of more than 1 Crore according to the first proviso of Section 4 of IBC, 2016.
- 5.2 No pre-existing dispute whereas the debt has been duly acknowledged by the Respondent in various communications:**
- a. Respondent stated regarding failure to provide joint measurement certificates along with bills. However, it is denied because bare perusal of payment terms of work orders itself clarifies that Joint Measurement Certificate shall be signed by MSPCL or PGCIL as the case may be and Respondent's Project Manager. It is not on part of Operational Creditor. Respondent deducted tax (TDS) on all the invoices which are reflected in 26AS of the Petition which itself proves that all the invoices were in complete knowledge and accepted by Respondent. Nothing there is in litigations. Neither any of the debt note as well as any other debit voucher has been raised by the Respondent in respect of any damage, quality, late delivery damage etc. which alleged to have been suffered prior to the issue of demand notice.
- b. Respondent accepted to pay the additional difference amount to the Petitioner on 05.04.2019.

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- c. *Vide* email dated 20.10.2020 Project-In-Charge of respondent admitted that till RA-18 Petitioner had incurred losses of around Rs. 26 lakh and assured to compensate the same in meeting.
6. The Respondent in accordance with our order dated 07.11.2023, filed written notes stating that:

6.1 There is a 'Pre-Existing Dispute' between the parties:

- a. It is settled that Section 9(5)(ii)(d) of the IBC, 2016 bars an application if there exists a genuine pre-existing dispute that is not spurious, hypothetical or illusory.
- b. The Applicant suppressed the Nagaland Work Order dated 09.01.2019 [WQ18109-002] and 09.01.2019 [WQ18109-001] to hide the fact that it unilaterally abandoned the site and failed to complete the projects. Nagaland works, left incomplete by the Applicant, are currently ongoing in Nagaland at the expense of the CD and the total cost of the project will only be determined upon completion. The Applicant has also admitted to disputes by stating in its rejoinder that the said Work Orders were never issued.
- c. Under the terms of the Work Orders, there was an obligation on the Applicant to provide JMCs containing the volume of the works executed from MSPCL and PGCIL. However, admittedly the Applicant has not furnished the JMCs.
- d. The CD has also produced copies of relevant inter-office memos that reflect withholding of amounts on accounts of the aforementioned disputes.
- e. In June 2023, the parties held several discussions to settle the pre-existing disputes amicably. The offer of Rs. 80 off lakh made by the CD vide email dated 18.06.2023 was a settlement offer made without prejudice to its rights and contentions, and not an admission of any liability.
- f. Payment of TDS does not amount to any admission of debt. Corporate Debtor follows AS-1 Accounting Standard i.e. Mercantile System of Accounting, as per ICAI norms and Section 133, Companies Act. As per AS-1, CD is required to make a debit entry in its books of accounts of any bill received from its vendors, and therefore, is obligated under Section

194(C) of the Income Tax Act to deduct the TDS and deposit the same. As such this doesn't amount to an admission of any liability. The CD admittedly made on-account payments which were stopped after disputes arose between the parties.

- g. During oral submissions, the Applicant contended that the JMCs were already in the CD's possession, and that the Applicant had no role in obtaining the same. However, letter dated 22.05.2019 issued by the Applicant itself is an admission of the facts that the Applicant was responsible for obtaining the JMCs.

6.2 Statutory Infirmities:

- a. Application has not detailed workings for computation of default, and the calculation sheet does not contain any bifurcation of amounts.
- b. Applicant has deliberately suppressed the record of default with the Information Utility (produced by the Corporate Debtor) and dishonestly stated that it is "*NOT AVAILABLE*".

6.3 The Interest claim of the Applicant is Untenable:

- a. The interest of Rs. 1,05,67,443/- claimed by the Applicant is not based in Contract and is being claimed under MSME Act. Therefore, as held by the Hon'ble NCLT, Mumbai bench, the claim for interest has to be made before the MSME Facilitation Council under Section 18 of the MSME Act, 2016.
- b. In any event, the Applicant was registered as an MSME on 18.03.2019 whereas the work orders were issued from 01.02.2016. Therefore, as held by the Apex Court and this Hon'ble Tribunal, the Applicant is not entitled to interest under the MSME Act.
- c. MSME Act does not apply in case of a 'work contract', which involves both supply of goods and involvement of labour.

7. Heard the Ld. Counsel appearing for the parties. Material on record perused. It is noted that the Corporate Debtor, a Public Limited Company through its authorized representative approached the Operational Creditor for carrying out the execution of civil work including the benching, excavation and casting of foundation etc.

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8. The Counsel for the Operational Creditor informed this Bench that the Corporate Debtor has defaulted an amount of Rs. 2,71,37,451 (Rupees Two Crore Seventy One Lakh Thirty Seven Thousand Four Hundred Fifty One only) out of which Rs. 1,05,67,443 (Rupees One Crore Five Lakh Sixty Seven Thousand Four Hundred Forty Three only) is the interest calculated at the rate of 18% per annum not on the basis of any contract between the parties but because of the fact that the Operational Creditor is a MSME and holds a valid MSME certificate. In this regard, the counsel for the Corporate Debtor submits that the Applicant was registered as an MSME on 18.03.2019 whereas the work orders were issued from 01.02.2016 and hence the Applicant is not entitled to the interest of Rs. 1,05,67,443/- claimed under MSME Act.
9. Again, the counsel for the Operational Creditor appraised this bench that as the Corporate Debtor deferred in payment of the bills, last date of receipt of payment being 24.09.2021, a Demand notice dated 22.02.2023 was served upon the CD for repayment of the said bills. In this regard the counsel for the Respondent/CD invited the attention of this Bench to the payment terms at page 119 of the Petition wherein it is clearly mentioned that the bills are subjected to be paid if the same are attached with the Joint Measurement Certificate (JMC). And since the bills are not attached with the JMCs the respondent withheld the payment. This Bench asked the counsel for the OC in open court, whether they have attached the JMC along with the bills as per the terms of the payment clause, the counsel submitted that the bills were not accompanied with the required JMCs.
10. Both the sides invited the attention of this Bench to the trail of communications between the parties. And on perusal of the same it is clear that on various occasions both the parties have disputed on the percentage of escalation.
11. It is alleged by the Petitioner that the CD had accepted liability of Rs. 80.56 Lakh vide email dated 17.06.2023, however, an amount of Rs. 2,71,37,451 (Rupees Two Crore Seventy One Lakh Thirty Seven Thousand Four Hundred Fifty One only) is due and

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defaulted. In this regard the Respondent submits that the offer of Rs. 80 Lakh made by the CD vide email dated 18.06.2023 was a settlement offer made without prejudice to its rights and contentions, and not an admission of any liability.

12. The Petitioner further referred to FORM 26AS filed by the Corporate Debtor and contended that filing of the said FORM 26AS in relation to the TDS Amount deducted on the unpaid bills is an admission of claim/liability by the Corporate Debtor. The CD in the written submission clarified that the payment of TDS does not amount to any admission of debt. Corporate Debtor follows AS-1 Accounting Standard i.e. Mercantile System of Accounting, as per ICAI norms and Section 133, Companies Act. As per AS-1, CD is required to make a debit entry in its books of accounts of any bill received from its vendors, and therefore, is obligated under Section 194(C) of the Income Tax Act to deduct the TDS and deposit the same. As such this doesn't amount to an admission of any liability.
13. We observe that the payment terms at page 119 of the Petition, clearly mentions that the bills are subjected to be paid if the same are attached with the Joint Measurement Certificate (JMC). However, as confirmed by the Petitioner themselves no JMCs were attached with the Bills. We further note that Petitioner has itself admitted to pre-existing disputes between the parties by stating that *"several verbal communication and meetings were held between Operational Creditor and concerned personnel(s) of Corporate Debtor with regard to settlement of present matter however, no fruitful result has come forth and all such talks have failed"*. In the email dated 25.10.2020 sent by the Respondent to the Applicant, it is evident that there exist disputes over the unsatisfactory quality of work by the Applicant and disputes over the increase in rate of works, etc. It is settled that Section 9(5)(ii)(d) of the IBC, 2016 bars an application if there exists a genuine pre-existing dispute between the parties.
14. In view of the forgoing this Adjudicating Authority is of the considered view that the facts of the case *prima facie* suggest that there has been pre-existing disputes between the parties prior to issuance of Section 8 Notice by the Petitioner. Therefore, in terms of Section 9(5)(ii)(d) of the IBC, 2016, we are not inclined to allow this petition.

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15. In result this CP (IB) No. 12/GB/2022 filed under Section 9 of IBC shall stand DISMISSED.
16. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
17. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
18. File be consigned to records.

Sd/-

**Satya Ranjan Prasad
Member (Technical)**

Sd/-

**H.V. Subba Rao
Member (Judicial)**

Signed this on 11th December, 2023