

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH- COURT V**

**C.P. (I.B) No. 2324 of 2019**

Under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

In the matter of **M/s. Monolith Industries Limited** incorporated under the Companies Act, 1956, having its registered office at 1-B, Black Burn Lane, 4<sup>th</sup> Floor Suite Nos: 60 & 61, Kolkata- 700012, West Bengal.  
CIN: L99999GJ1978PLC003101.

**...Petitioner/ Operational Creditor**

**V/s.**

**M/s. Larsen and Toubro Limited**, incorporated under the Companies Act, 1956, having its registered office at Larsen & Toubro Limited, L&T House, Ballard Estate, Mumbai- 400001, Maharashtra.  
CIN: L99999MH1946PLC004768.

**...Respondent/Corporate Debtor**

**Order Reserved on: 19.09.2022**

**Order Pronounced on: 12.10.2022**

**Coram:** Hon'ble Shri H.V. Subba Rao, Member (Judicial)  
Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**For the Petitioner:** Mr. Akshay Bachhawa, PCA

**For the Respondent:** Mr. Rashid Boatwalla, Advocate

*Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)*

### **ORDER**

1. This Company Petition is filed by M/s. Monolith Industries Limited (hereinafter called as "**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s. Larsen and Toubro Limited, (hereinafter called as "**Corporate Debtor**") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called as "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Operational Debt of Rs. 19,54,556.60/-.
2. The Operational Creditor is a company engaged in the business of construction works and the Corporate Debtor is a company engaged in the business of engineering, construction, manufacturing and financial services conglomerate, with global operations.

### **3. Submissions of Operational Creditor:**

- i. The Operational Creditor states that, the Corporate Debtor issued a Letter of Intent, dated 05.05.2017, to depute persons, tools and tackle and commenced work of construction of "Elevated Service

Reservoir” (in brevity “ESR”) at work site at Pune, ESR and GSR Project at Pune.

ii. Further, a Work Order- no. EF516WOD7000042, dated 07.07.2017 for a period from 29.05.2017 to 31.08.2018, for a total value of Rs. 2,00,25,000 by the Corporate Debtor to the Operational Creditor for the following:

- a. One Number of Elevated Service Reservoir of 4.5 ML (4500000 Litres) Capacity with 18 Mtr Staging at Hadapsar Bus Depot @ Rs. 1.95/Ltr, amounting to Rs. 87,75,000/-;
- b. One Number of Elevated Service Reservoir of 2.5 ML (2500000 Litres) Capacity with 19Mtr Staging at Ghorpadi Siciliaa ESR-1 @ Rs.2.25/Ltr, amounting to Rs. 56,25,000/-; and
- c. One Number of Elevated Service Reservoir of 2.5 ML (2500000 Litres) Capacity with 19 Mtr Staging at Ghorpadi Siciliaa ESR-2 @ Rs.2.25/Ltr, amounting to Rs. 56,25,000/-;

iii. The Operational Creditor further states that the Clause No. 10 of the said Work Order contemplates as follows:

*“The rates mentioned in the work order shall be firm and shall not be subjected to any kind of escalation or variation till the competition of entire scope of work covered by this work order.”*

- iv. The Operational Creditor further mentioned Clause No. 2 of the said work order, which states that the, above stated rates for execution of said contract was exclusive of Ready Mixed Concrete and Steel which were required to be provided by the Corporate Debtor. The Corporate Debtor was also required to provide the Pipes Puddle Pipes and Valves for flow of water, to and from the said reservoir. Rest of goods, plant and machineries, tools and tackles, consumables, etc., and services within the scope of said work order, were required to be supplied by us, the Operational Creditor herein.
- v. Thereafter, the Operational Creditor states that, the Corporate Debtor issued the subsequent Work Order, dated 11.10.2017, bearing Request no. EF516WOR7000038 for the same cumulative value of Rs.2,00,25,000/-
- vi. The Operational Creditor states that, during the ongoing construction work, the Corporate Debtor issued a Second Letter of Intent, dated 11.10.2017, for Construction Work of Break Pressure Tank at Ram Tekdi Site for 10.00.000 Litres at rate of Rs. 4.13 Ltr., rate being observed in the mail instructions received from the Corporate Debtor, while raising R/A Invoices for construction works at the mentioned site.
- vii. The Operational Creditor states that, they had executed construction works and raised R/A invoices from time to time as per the instructions of Corporate Debtor. However, with respect of the Invoice No. 5 dated 06.06.2018 of Rs. 19,69,385.60/-, an amount of Rs. 9,99,710.60 remained unpaid after the 2% TDS deduction amounting to Rs. 35,168/- and 5% Retention Money amounting to Rs.16,110/-. Similarly, in respect of invoice no. 3/2018-19 dated

30.06.2018, of Rs. 9,02,160.00/-, an amount of Rs. 69,051/- remained unpaid after the 2% TDS deduction amounting to Rs. 16,110/- and 5% Retention Money amounting to Rs.40,275/-.

- viii. The Operational Creditor further states that, the invoices were issued at lower rates as those specified in the Work Order, for which the Operational Creditor raised an amount of Rs. 8,85,795/- towards the balances due against the R/A invoices on the account of difference in rates of the invoices issued up to 30.06.2018.
- ix. Therefore, the Operational creditor served a Legal Notice through its Counsel Anil Kumar Dugar on Corporate Debtor vide the Demand Notice dated 29.03.2019, for a cumulative amount of Rs. 19,54,556.60/-.

#### **4. Submission of the Corporate Debtor:**

The Corporate Debtor filed a detail reply, dated 10.04.2019, in response to the Demand notice, dated 29.03.2019, opposing the admission of the above Company Petition, more particularly on the ground of Pre-existing Dispute between the parties. The contention of the Corporate Debtor is as follows

- i. The Corporate Debtor had engaged with the Operational Creditor as a subcontractor under Pune ESR GSR Project for Construction of Elevated Service Reservoir, a Work Order dated 07.07.2017 for a period from 29.05.2017 to 31.08.2018 (together referred as "Subcontract". Pursuant to the enactment of the Central Goods and

Services tax Act, 2017 on 12.04.2017, Work Order – 1 was amended on 09.10.2018.

- ii. The Corporate Debtor had made timely payments towards the works performed by Operational Creditor, as per the terms of the Subcontract, and duly certified. However, the Operational Creditor failed to perform the obligations under Subcontract as per the terms thereunder, despite several repeated notifications, via e-mails, by the Corporate Debtor.
- iii. The Corporate Debtor states the Operational Creditor, in any event, with respect to Annexure 1 annexed to the Demand Notice, cannot prove the existence of any amount which is due and payable. The working of the Table no 1 of Annexure -I is supported by Annexure-II and III i.e. the invoice No.5 and Invoice No. 3/2018-19 as per the Work Order-1.
- iv. The Corporate Debtor states that it is pertinent to point out that against the invoiced amount of Rs.19,69,386 in Annexure II, Rs. 851887 has been debited on account of material and services provided by the Corporate Debtor which were in the scope of accepted S/C as per the terms & condition. Also, an amount of Rs. 1,17,475/- has been debited towards the discharged PF and an amount of Rs. 30,349/- for the period 30.03.2018 to 17.05.2018. Therefore, the net amount payable, after factoring the above-mentioned recoveries, along with IT-TDS is Rs. 35,168/- and WO retention amount of Rs. 87,919/- is only which is already paid by the Corporate Debtor and the same is stated by the Operational Creditor in the 'Amount Received' against invoice no.5 in Annexure 1.

- v. With respect to the invoice 3 the Corporate Debtor states that the actual deductions were Rs. 1,25,436/-. However, the Operational Creditor has considered only TDS of Rs. 16,110/- and PF of Rs. 54,875 components while calculating the deductions whereas the Retention (5 % of Rs. 40,275) and ESI (Rs. 14,177) were also deducted as per the accepted terms and conditions. The Corporate Debtor had to deposit ESI to the concerned authorities.
- vi. The Table no. II of Annexure -1 i.e. statement of Account unpaid difference in rates as per invoices & as paper work order, cannot be taken as a proof of existence of any unpaid amount either. It is necessary to point out at this juncture that Post GST, the work order rates were amended to basic rates by removing the Pre-GST, Tax components and applicable GST @ 12 % were paid of all basic rates. Accordingly, a Revised WO No. EF516WOOD7000042 dated 09.10.2018 incorporating the same had been forwarded to Operational Creditor vide e-mail dated 12.10.2017. In furtherance to the Revised WO, the Operational Creditor had raised 5 RA bills which in actions show the acceptance of the revised WO. There, it can be concluded that, the amount claimed in the Demand Notice by the Operational Creditor are denied as they are already paid by the Corporate Debtor.
- vii. The Corporate Debtor further states that, due to the defective work during the execution, performed by the Operational Debtor, the Corporate Debtor has incurred additional cost. Apart from the subsequent delays in other works, at these 3 sites, for 4-6 months, on account of the irresponsible act of abandoning the site without any valid reasons works by the Operational Creditor, the Corporate Debtor has incurred the additional cost of Rs. 44,89,170/-

- viii. As per the terms and conditions, the material handed over to the Operational Creditor and the operational Creditor had the obligation to take care of the materials handed over for the execution of project but the materials were misappropriated by M/s. Monolith for which complaint was also filed to the police station. The cost of materials works up to Rs. 200554/-. The Operational Creditor showed a poor workmanship in all the work allotted to them and that the corporate Debtor wrote several reminders regarding slow progress of works vide e-mails time to time. Despite of continuous communications, the Operational Creditor did not increase the work speed nor corrected their poor performance.
- ix. With respect to the abovementioned issues the Corporate Debtor on several occasions, addressed emails calling upon Operational Creditor, for a meeting in order to find an amicable solution for the ongoing issues. However, till date, Operational Creditor has not responded to the communications, with respect to the meetings and seeing no options, the Corporate Debtor gave a final warning via an e-mail dated 04.12.2018, post which the Work Order of the Operational Creditor was terminated, as per the terms and conditions vide letter dated 12.12.2018 and also intimated the Operational Creditor to approach the Cluster office in line with dispute resolution Clause 21, of the Work Order, for any grievances and also co-operate for material reconciliation. However, the Operational Creditor had not adhered to the laid down options in the T&C available for dispute resolution and has not cooperated with the material reconciliation.

- x. Therefore, under the above-mentioned circumstances, the claim amount raised in the Demand notice were denied to be untenable, and that there is a clear cut prior dispute in existence.
5. In the view of the above contentions raised by the Corporate Debtor, the issue that arise for consideration is:
- i. Whether there are pre-existing disputes between the parties?
6. The Corporate Debtor has annexed certain e-mails to the reply of this Company Petition which will clinch the issue of pre-existing disputes. The contents of the emails are reproduced hereinunder for the sake of clarity and appreciation:
- i. **Email dated 10.05.2018 addressed by the Corporate Debtor to the Operational Debtor with regards to slow progress.**

*Dear akshay ji,*

*This mail is inform you about the slow progress of work at hadapsar depot ESR.*

*As earlier discussion you have a given a plan for month of may 2018 in which you promised to complete the column casting on 5/05/2018 but uptil now only 43 column first lift is completed which is showing slow progress of work. And also there is no progress in staircase work after casting of stair column on 30/04/2018.*

*This kind of delay is badly affecting the future schedule of the work. Take the correct action towards progress of work and arrange sufficient manpower at site so as to recover this delay in work.*

*Also we are continuously following up to complete all pending finishing work of structure at site but your approach towards this work is poor. Please clear all pending finishing work as earliest.*

**ii. Email dated 09.10.2018 addressed by Corporate Debtor to Operational Creditor with regards to the slow work progress**

*Subject: Slow work progress*

*Dear Akshay ji,*

*We are again reminding you for slow work progress at Hadapsar ESR Ghorpadi, ESR 2. Ghorpadi For Hadapsar ESR last casting of 3rd Lift wall was done on 22/09/2018 since that in last 17 days no major work found on site. Currently only 3 workers are working on site. Please take necessary action from your site asap to recover the work schedule at site, Also for Ghorpadi ESR 3 backfilling was completed on 15/09/2018 but still plinth beam wok is not completed. Same is for ghorpadi esr 2,backfilling work was completed on 15/09/2018 but still today we don't find major work for tie beam, bottom shuttering is also not completed which is badly hampering the work progress.And we find no one is working for est 2 from last 4-5days. It is also giving bad impression for assurance given by you for fast progress at site. Please arrange sufficient labour for site and recover the delay in work.*

**iii. Email dated 04.01.2018 addressed by Corporate Debtor to Operational Creditor with regards to progress for the sites.**

*Dear Akshay ji*

*With regards to your mail allow me clear some points to you marked in red.*

*Hadapsar Site: Coordination from your end as regards to timely supply of sufficient staging materials upto 3rd tie beam level and safety belts is required for us to systematically complete rebar, formwork and beam casting. We have already submitted indent for the same and repeatedly communicated its urgency of requirement. Safety belts are not available at store as of date. Target is noted and is highly ambitious; yet we will strive our best to achieve the same.*

*Hadapsar Site:- For the progress of the site till 3rd tie beam the safety belt is not an issue as the you have available 15 belts at site and more belts will be available by 2 to 3 days more ever when the belts were available at store and timely indent was issued but due to lack of availability of responsible person from your side to visit to balewadi store even after several intimation from site also no action was taken unfortunately the safety belts were not left balance and no safety belts were allotted to Monolith however trust that when ever safety belts will be available at store Monolith will arrange immediately a representative to collect the same. Regarding the target it is not highly ambitious it has to be achieved as we are lacking behind and also I trust that your self and your team is capable to do it.*

*Ramtekdi Site: As of date, we are awaiting approval for casting of 2nd lift of tank wall, clearance of issues related to previous work done, BBS of curved wall and programme of backfilling. Labour heads 16 Nos is idle and is ready to take up monthly target.*

*Ramtekdi Site:- The second wall is not completely ready for casting as the supporting is still balance to do, regarding the BBS it is ready and already informed to your incharge at site. 16 nos of labour are not enough to take up the target and also not idel at the moment*

*Ghorpadi Site: Rate finalisation is pending. Excavation is yet to be completed.*

*3. Ghorpadi Site :- Excavation is completed 95% and you can immediately deploy your labour for preparation of the PCC.*

*iv.* **The Corporate Debtor by e-mail dated 02.11.2018 addressed a letter to Terminate to Operational Creditor**

*Dear Mr. Akshay,*

*This is very disheartening to say that you have not been able to boost the work progress since a long period of time for all allotted structures. Even after various commitments, you are not able to mobilize sufficient labours on your sites leading to the progress of work on a poor scale. No work progress has been observed at Hadapsar site after 3<sup>rd</sup> lift of wall casting on 22/09/2018 that should have reached to the level of top slab in present condition and complete de-shuttering is also not done till date for the same ESR even after several instructions.*

*In the similar manner, for Ghorpadi ESR 02, last casting was done on 14-09-18. Since then no work progress has been observed at the concerned site due to insufficient manpower and for Ghorpadi ESR 03, Plinth beam casting was done on 22-10-18 succeeding the casting of staircase column on 07-08-18. The plinth beam work was completed in the period of more than 1 month. Also, it is observed that*

*work is continuously hampering/stopped at these sites due to your internal labour payment issue.*

*The above said status itself explains about your seriousness towards work and your commitments regarding the ESR completion. You are instructed to clear all issues by 04/11/2018 and mobilize the requires resources at all the sites. If he above issues are not sorted out within the given time frame, your work order shall be terminated on immediate basis.*

**v. Email dated 12.12.2018 addressed by Corporate Debtor to Operational Creditor for Termination**

*Kind Attn: Mr. AKSHAY BACHHAWT,*

*Ref:*

*Mail dated: Thu 30-08-2018 10:49 Reg. Material Reconciliation;*

*Mail dated: Mon 29-10-2018 12:43 Reg. slow work progress*

*Mail dated: Tue 09-10-2018 13:10 Reg. Slow work progress*

*Mail dated: Thu 30-08-2018 10:49 Reg. Slow work progress at*

*Madapsar Mail dated: Thu 10-05-2018 19:52 Reg. Slow progress*

*at Hadapsar Mail dated: Mon 03-07-2017 11:24 Reg. Construction of foundation for Labour hutment*

*Mail dated: Thu 15-11-2018 16:39 Reg. RE: Reply to your mail dated 26th October 2018 at 09:23 p.m. and 2nd November 2018 at 02.48 p.m.*

*Mail dated: Wed 05-12-2018 15:49 Reg. RE: Final Notice for termination Mail dated: Tue 04-12-2018 16:37 Reg. Final Notice for termination*

*With reference to above cited subject we would like to remind you regarding the slow progress at the above. mentioned sites which*

*are allocated to you under the Work Order nos. EF516WOD7000042.*

*Even though 'we have communicated number of 'times regarding the slow progress at the work site, you haven't taken any corrective action. Physical progress at site is consistently below the accepted program and there were no workmen at site for the past 2 months. Also, from the earlier communications happened with you, we came to know that you are not intending to do the balance scope of work. This is turn forced us to terminate the Work Order with you (work order number E516WOD7000042) with immediate effect as per the point no "25- Termination of Contract" in the terms and conditions attached along with your Work Order. Also, you are instructed to vacate the campus within 24 hours after the receipt of this mail and we shall be deploying our team to execute the balance work after the stipulated time frame. You may please discuss the same in our Pune cluster office at below mentioned address if you still have any further apprehensions. Needless to mention the Company (Larsen & Toubro ltd. Construction) does not stand responsible for nay loss or damages that have been or may be caused to your firm.*

7. It is very clear from the above referred e-mails that there is a dispute even before the issuance of the **Demand notice dated 29.03.2019**. The Corporate Debtor had Terminated the Work Order between the parties, via letter dated 12.12.2018, which is also prior to the said Demand Notice. Thus, upon perusing the above e-mails, this Bench notes that both parties are in loggerheads much prior to issuing the Demand Notice.

8. In this context, it is appropriate to mention here that as per the law laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Versus Kirusa Software Private Limited***, the Supreme Court clearly held that what 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.
  
9. Similarly, the Hon'ble Supreme Court recently in ***M/s. S. S. Engineers V/s Hindustan Petroleum Corporation Ltd. In Civil Appeal No. 4583/2022*** held that if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed - It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non- payment of disputed dues claimed by an Operational Creditor. Applying the above law laid down by the Hon'ble Supreme Court in the above two referred judgments to the present case on hand this bench is of the considered view that the present company petition deserves to be dismissed on the ground of "Pre-existing disputes" and the "Pendency of suit". Since it is not incumbent upon this Bench to make any comments regarding the chance of success of the Corporate Debtor in the pending Civil Suit, this Bench refrain from giving findings on the above issue as well as the observations of the earlier Bench.

10. Therefore, applying the above analogy laid down by the Hon'ble Supreme Court to the resent case on hand, this Bench has no option except to hold that there are "**Pre-existing disputes**" between the parties and there is no merit in the above Company Petition and the above Company Petition deserves to be "**dismissed**".
  
11. Accordingly, the above Company Petition is dismissed on the grounds of "**Pre-existing disputes**" between both the parties.

**SD/-**

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

**SD/-**

**H. V. SUBBA RAO**  
**MEMBER (JUDICIAL)**