



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
**16-03-2023 AT 10:30 AM**

**CP (IB) No.91/9/HDB/2022**  
u/s. 9 of IBC, 2016

**IN THE MATTER OF:**

M/s. Teemage Builders Pvt Ltd

**...Operational Creditor**

**VS**

Ayyanna IT Park LLP

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)**  
**SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Orders in company petition pronounced, recorded vide separate sheets. In the result, having found that there is a pre-existing dispute, we reject this application however without costs.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH-1**

C.P(IB). NO. 91/9/HYD/2022

Petition u/s 9 of IBC, 2016, r/w Rule 6 of I & B (AAA) Rules 2016

Between:

M/s.Teemage Builders Private Limited,  
Having its office at:  
No.292-295, Pamanaguntla Village,  
Kattangur Mandal, Nalgonda District,  
Telangana – 508001

Petitioner /  
Operational Creditor

**VERSUS**

**Ayyanna IT Park LLP**  
Registered Office at:  
H.NO.8-3-833/9, Plot No.9, Villa. 9,  
PH-1,Kamalapuri Colony,  
Hyderabad, Telangana  
500073

Respondent/  
Corporate Debtor

**Date of order: 16.03.2023**

**Coram:**

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member Judicial

Shri Charan Singh, Hon'ble Member Technical



## Appearance

For Petitioner: Ms. A. Satyasiri, Advocate

For Respondent: Mr. D.V.K. Phanindra, PCS

## PER BENCH ORDER

1. This Petition is filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the application for initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 10,10,51,707/-(Rupees Ten Crores Ten Lakhs Fifty One thousand seven hundred and seven only).
2. The gist apropos to the Petition in brief is: -
  - 2.1 It is averred that M/s. Seenaiah Constructions Private Limited (SCPL) had initially undertaken to “produce” and “erect” pre-cast elements for the Corporate Debtor’s building. However, due to some differences between the parties, the project was abandoned midway by SCPL. As such, the



Corporate Debtor approached the Operational Creditor herein for completing the remaining work and sought the materials and services of the Operational Creditor herein, pursuant to which the parties entered into an Agreement dated 16-07-2019 (herein referred to as “Agreement”).

2.2 The Operational Creditor stated that the Agreement dated 16-07-2019 included both sale of material and service of assembling those materials at the project site at Rs.26,93,48,450/- (Rupees Twenty Six Crores Ninety Three Lakhs Forty Eight Thousand Four Hundred and Fifty only), excluding GST on plinth area rate basis and architectural drawings given in Annexure I and Annexure II of the Agreement. The Agreement clearly provided payment schedules, wherein payment was to be made for each slab and also upon interim RA bills raised by the Operational Creditor.

2.3 That the Operational Creditor started the contract work promptly in July, 2019. On 20-07-2020 and the Corporate Debtor paid a mobilization amount of Rs.1,90,00,00,000/- (Rupees One Crore Ninety Lakhs only) as per the Agreement, against Bank Guarantee of Rs.1,00,00,000/- (Rupees One Crore only) provided by the Operational Creditor. It is submitted that invoices for materials supplied and work done as per the contract were raised by the Operational Creditor and the same are received by the Corporate Debtor. The Operational Creditor raised periodic bills between



31-07-2019 and 25-03-2020, for a total sum of Rs.31,78,92,002/- for which net receivable amount is Rs.29,60,04,195/-. (Rupees Twenty Nine Crores Sixty Lakhs Four Thousand One Hundred and Ninety Five only). The bills/invoices were due and payable from (10) ten days of submission of the bills/invoices. The net receivables are exclusive of an amount of Rs.2,18,87,807/- which was retained by the corporate debtor as security for performance.

- 2.4 It is averred that the major works in the building including complete erection was completed on 05-09-2020, despite a lot of hindrances and difficulties that arose due to Covid-19 pandemic related issues. On the assurance given by the corporate debtor that the pending bills would be paid, the Operational Creditor completed the entire works of the contract including the snag list that was given by the Corporate Debtor on 05-08-2020 by December, 2020. It is further stated that the Corporate Debtor acknowledged the completion of the work by the Operational Creditor.
- 2.5 Out of the total net receivable amount, the Corporate Debtor has only paid an amount of Rs.22,05,48,255/- (Rupees Twenty Two Crores Five Lakhs Forty Eight Thousand Two Hundred and Fifty Five only) and therefore has defaulted on a total amount of Rs.7,54,55,940/- (Rupees Seven Crores Fifty Four Lakhs Fifty Five Thousand and Nine Hundred and Forty Only)



and also an amount of Rs.1,58,94,600/- (Rupees One Crore Fifty Eight Lakhs Ninety Four Thousand and Six Hundred only) as retention money deducted from the invoice amounts. It is averred that since the Corporate Debtor has defaulted on payment of these invoices every time, a total interest of Rs.2,94,27,514/- (Rupees Two Crore Ninety Four Lakhs Twenty Seven Thousand Five Hundred and Fourteen only) is also payable by the Corporate Debtor as interest on defaulted amounts till 31-01-2022. It is further averred that, the Operational Creditor has agreed for a debit of Rs.1,96,35,670/- towards SCPL elements used and other permitted deductions.

- 2.6. Despite issuing reminders by Operational Creditor, the Corporate Debtor has failed to service the outstanding amount due to the Petitioner. Hence, the Operational Creditor sent a demand notice under Section 8 of the IBC, 2016 for payment of the total debt amount of Rs.10,10,51,707/- (Rupees Ten Crores Ten lakhs Fifty One Thousand Seven Hundred and Seven only) on 14-02-2022 and the same was received by the Corporate Debtor on 22-02-2022. However, the Corporate Debtor filed reply on 05-03-2022, that too after more than 10 days of receipt of the demand notice under Section 8 of the IBC, 2016, raised the following issues for the first time: -



- (a) That the Operational Creditor failed to complete the full scope of works.
- (b) That the Corporate Debtor faced losses which did not exist.
- (c) There is a pre-existing dispute raised by the Corporate Debtor on the invoice amounts of Rs.31,78,92,002/-.

2.7 With regard to the above dispute raised by the Corporate Debtor in its reply to Demand Notice, the Operational Creditor stated that the snag list showing only minor items worth not more than Rs.25,00,000/- (Rupees Twenty Five Lakhs only) was given by the Corporate Debtor in August, 2020 and the same was completed by December 2020; therefore, the averment that project was abandoned by the Operational Creditor midway is a *moonshine defense* raised for the first time after issuance of the demand notice, as such the same not to be considered as a reply under the Code.

2.8 It is submitted that the debt amounts fell due on different dates after 10<sup>th</sup> day from the day of receipt of Operational Creditor's invoices and specifically on 25-03-2020 when the final invoice was raised by the Operational Creditor.



- 2.9. The calculation of the total outstanding debt of the Corporate Debtor in respect of the invoices raised by the Operational Creditor and the interest accrued on the outstanding invoices are detailed in computation sheet filed by the Operational Creditor, which is marked as Annexure-6 to the Application. Thus submitting, the Corporate Debtor is due and liable to pay an amount of Rs.10,10,51,707/- (Rupees Ten Crore Ten Lakhs Fifty One Thousand Seven Hundred and Seven only) to the Operational Creditor.
3. The Corporate Debtor filed **counter**, denying the averments made in the Petition and contended as under: -
- 3.1 That the Petition is liable to be rejected at the very threshold as there is a “*Pre-Existing Dispute*” between the parties, and the Petitioner has suppressed the material facts relating thereto.
- 3.2 It is contended that as per the Agreement Dt: 16.07.2019, the detailed scope of work assigned to the Operational Creditor are as per Section/Clause-1 of the Agreement. As per the same, the Scope of the work of the Operational Creditor starts from Cellar 1 to 9<sup>th</sup> Floor, including lift machine rooms, staircase head rooms concreting, transportation, unloading at site and erecting the precast elements to the respective floors and aligning, grouting, terrace water proofing wherever



required and make screed concrete over the precast elements complete. The Corporate Debtor has relied on the following clauses of the said Agreement: -

- (a) The Schedule for Completion is detailed at Section/Clause-6 of the Agreement, and the said work was to be completed within 198 days from 15.07.2019. The Agreement provides that “After the completion of the work, the Operational Creditor shall notify in writing to the Corporate Debtor or his representative about completion of the work. Within 3 days from the date of notification, the Corporate Debtor shall send his representative to remain present at the time of carrying out necessary handover by the Operational Creditor”.
- (b) As per Annexure-1 to the Agreement, a total area of 5,09,647.02 Sft, is to be constructed by the Operational Creditor, for a total contract amount of Rs.26,93,48,450/- (Rupees Twenty-Six Crores Ninety-Three Lakhs Forty-Eight Thousand Four Hundred Fifty only), excluding GST, without any escalation in the rates.
- (c) The Corporate Debtor shall arrange for an interest free mobilization advance of Rs.1,90,00,000/- (Rupees One Crore Ninety Lakhs only)



against Bank Guarantee of Rs.1,00,00,000/- (Rupees One Crore only) from any reputed Bank.

- (d) Bills for the work done (RA Bills) to be raised on a fortnightly basis without any limitation of bill value with supporting documents to the Project Manager/Corporate Debtor's representative and the amount shall be paid within 07 (Seven) days from the date of certification by the Project Manager/Corporate Debtor's representative or 10 (Ten) days from the date of submission of bill.
- (e) Further in the agreement, the parties did not agree for any interest being payable by the Corporate Debtor for the delayed payment of the Bills, nor there was any mutual understanding or agreement between the parties about any specific rate of interest on delayed bill payments.
- (f) The Agreement provides for retention of 5 % of the Contract amount from the RA Bills, as retention amount. 50 % to be released along with the final bill and the balance after the defect liability period, which shall be 12 months from the date of handing over of the works, after completion of the work by the Operational Creditor.
- (g) The Agreement provides for levy of liquidated damages by the Corporate Debtor, in case of delayed performance of work by the



Operational Creditor, and also provides for payment of bonus by the Corporate Debtor in case of completion of work before the schedule time by the Operational Creditor.

(h) The Agreement also contains Force Majeure clause, to protect the parties, in case of delays beyond reasonable control of parties.

3.3 It is stated that in terms of the Agreement, the Operational Creditor started the work, and the Corporate Debtor had arranged for mobilization advance of Rs.1,90,00,000/- (Rupees One Crore Ninety Lakhs only) to the Operational Creditor.

3.4 It is contended that the Operational Creditor had not adhered to the timelines of the Agreement and the above works were executed with delay, and the before the completion of the entire work as per the scope of the Agreement between the parties, the work-site was abandoned by the Operational Creditor. The details of work description and construction schedule is tabulated hereunder: -

<b>Sl. No.</b>	<b>Work Description</b>	<b>Construction Schedule</b>
1	Cellar 1 Roof Slab	15.08.2019
2	Stilt Floor Roof slab	14.09.2019
3	First Floor Roof slab	29.09.2019
4	Second Floor Roof slab	14.10.2019



5	Third Floor Roof slab	29.10.2019
6	Fourth Floor Roof slab	13.11.2019
7	Fifth Floor Roof slab	28.11.2019
8	Sixth Floor Roof slab	13.12.2019
9	Seventh Floor Roof slab	28.12.2019
10	Eighth Floor Roof slab	11.01.2020
11	Ninth Floor Roof slab	25.01.2020
12	Connecting Bridge, Stair and LMR Roof Slab	30.01.2020

3.5 According to the Corporate Debtor, the Operational Creditor in the petition claimed that the work was completed on 05.09.2020, with snag list of works also completed before December 2020. But the final invoice was raised on 25.03.2020 i.e. well before the completion of the entire scope of the work under the Agreement and in addition the Operational Creditor is also claiming interest.

<b>Sl. No.</b>	<b>Bill No</b>	<b>Bill date</b>	<b>Amount (in Rs.)</b>
1	NGA 320	31.07.2019	1,90,00,001
2	NGA 447	01.09.2019	50,00,000
3	NGA 661	31.10.2019	2,10,51,656
4	NGA 668	08.11.2019	1,87,35,818
5	NGA 729	29.11.2019	1,12,87,354
6	NGA 730	05.12.2019	2,12,93,714



7	NGA 733	24.12.2019	2,52,18,005
8	NGA 734	31.12.2019	2,82,73,387
9	NGA 741	15.02.2020	5,62,49,208
10	NGA 747	07.03.2020	3,97,12,686
11	NGA 751	25.03.2020	7,20,70,123

3.6 The Corporate Debtor has detailed the correspondences between the parties for continuance and completion of the work as per the Agreement Scope, copies of which are annexed as Annexure-1.

<b>Sl. No.</b>	<b>Date and mode of Correspondence</b>	<b>Brief subject matter of the Correspondence</b>
1.	22.10.2020 Mail	Communication by Ayyanna for completion of water proofing works at Driveway areas.
2.	24.11.2020	Communication by Ayyanna to Teemage, informing that Ayyanna is getting the Water proofing work done by engaging other vendors, on the failure of Teemage to do the works as per the Agreement.
3.	08.12.2020 Mail	Communication by Ayyanna to Teemage regarding the work order placed for Tower Crane for RCC Foundation removal.
4.	09.12.2020 Mail	Reply by Teemage to Ayyanna that the above would not be acceptable to them.
5.	22.12.2020 Mail/letter	From Teemage to Ayyanna on various issues and asking for payment, instead of completing the pending works.



It is stated that despite requests by the Corporate Debtor for completion of the work, the Operational Creditor was defiant and never obliged. Since huge capital of the Corporate Debtor was invested in the said project, the Corporate Debtor, undertook completion of the project on its own as they were left with no alternative and unless the same is completed, the Corporate Debtor cannot realize its investment.

3.7 The Corporate Debtor also denied the contention of the Operational Creditor that it had completed the work by December, 2020, including the works under the snag list. The joint verification of the pending works done by the team consisting of the representatives of Operational Creditor and Corporate Debtor on 04.12.2020, substantiates that the Operational Creditor had not completed the assigned work. A certified copy of the Joint verification report Dt: 04.12.2020, signed on 23.12.2020, is annexed and marked as Annexure-2.

3.8 The Corporate Debtor further relied on the email dated 27.12.2020 received from the Technical-Head of the Operational Creditor to buttress its case that there is a difference of opinion/dispute between the parties on the completion of the work as per the Agreement. A copy of the mail is annexed and marked as Annexure-3.



- 3.9 The further contention of the Corporate Debtor that, the operational creditor failed to notify the Corporate Debtor of the Completion of the work as per Clause/Section 6 (b) of the Agreement, had it completed the entire works in accordance with the provisions of the Agreement between the parties.
- 3.10 The Corporate Debtor further relied on the letter dated 03.07.2021 addressed to the Corporate Debtor and its reply dated 14.07.2021 to show that there is existence of dispute between the parties.
- 3.11 It is stated that the Operational Creditor had lodged a complaint against the Corporate Debtor with M/s. Telangana State Real Estate Regulatory Authority [RERA], Hyderabad, vide its letter Dt: 17.07.2021, and the M/s. Telangana State Real Estate Regulatory Authority [RERA], Hyderabad, vide its letter Dt: 02.09.2021, sought certain clarifications from the Corporate Debtor, which was provided by the Corporate Debtor vide letter dated 01.10.2021, Copies of the letter received from RERA and the reply of the Corporate Debtor, are attached as Annexure-6 and Annexure- 7, respectively.
- 3.12 According to the Corporate Debtor, there exists a dispute between the parties on the extent of completion of the work in accordance with the



term of the Agreement, which has been suppressed by the Operational Creditor in the Petition.

3.13 The Corporate Debtor further contends that there is a glare variation in the retention money amounts as claimed by the Operational Creditor at Point No.1.3 i.e., Rs.2,18,87,807/- of the Application and as claimed herein i.e., Rs.1,58,94,600/-. The deductions made by the Corporate Debtor from the Operational Creditor on account of Security Deposit, amounts to Rs.1,22,91,091/- (Rupees One Crore Twenty Two Lakhs Ninety One Thousand Ninety one only). A statement of the Security Deposit, is annexed and marked as Annexure – 8. In response to the adjustment for the material of the previous contractor, the Corporate Debtor stated that under the agreement, the Operational Creditor agreed to use the materials of the previous contractor and as such they are bound to give the adjustment.

3.14 As regards the claim for interest the Corporate Debtor states that the Agreement between the parties do not provide for payment of any interest, in respect of the delayed payments by the Corporate Debtor, nor there was any specific understanding between the parties on a particular rate of interest. As a regular practice, the Operational Creditor has mentioned the rate of interest @ 21 % for the delayed payments, which was never



agreed by the Corporate Debtor herein. Further for the delayed payments in respect of the Bill No.6 to Bill No.9, for which complete payments have been received by the Operational Creditor, there has been no claim for interest, after payment of the invoice amounts, and the claim for the interest for such payments and pending bills, has now come, as an afterthought on the part of the Operational Creditor while filing the present application before the Adjudicating Authority.

3.15 In so far as the delayed response to the Demand Notice by the Corporate Debtor, the Corporate Debtor rely on the judgements *passed by Hon'ble NCLAT in many cases, wherein it was observed that "the statutory scheme under Section 8 and 9 does not indicate that in an event Reply to Notice is not filed within 10 days by Corporate Debtor or no Reply to Notice under Section 8(1) have been given, the Corporate Debtor is precluded from raising the question of dispute"*.

3.16. The Corporate Debtor further relied on the correspondence dated: 03.07.2021, wherein the Operational Creditor itself had accepted that they had stopped the work. It is further stated that the Corporate Debtor has placed on record relevant correspondence to substantial the pre-existing dispute among the parties, in relation to the extent of completion of work



under the scope of the Agreement between the parties. Thus submitting, prayed the Tribunal to dismiss the Petition.

4. In the light of the contest as above, the points that emerge for our consideration are;

1. Whether an Operational Debt of a sum over rupees one crore *is due and payable* by the Corporate Debtor exists in favour of the Operational Creditor? If so, whether the Corporate Debtor *defaulted* in repayment of the same?
2. Whether there is a *pre-existing* dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

5. We have heard Shri M.S. Prasad, Ld. Senior Counsel assisted by Ms. Ms. A. Satyasiri, Advocate and the Shri D.V.K. Phanindra, Ld. PCS for perused the record and Case Law.

#### **POINT NO.2**

Whether there is a *pre-existing* dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

6. At the outset, it may be stated that the present Application being one under Section 9 of the Insolvency & Bankruptcy Code, 2016, it is *imperative* for the Operational Creditor to show that an Operational Debt of a sum over



Rs.1,00,00,000/- is *due and payable* by the Corporate Debtor and that the Corporate Debtor has *defaulted* in repayment of the same. However, if the Corporate Debtor is able to establish that there is a *pre-existing dispute* between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute exists, the Tribunal shall reject the application.

7. This legal position can be traced from the ruling of the Hon'ble Supreme Court of India, in re., *Mobilox Innovations Private Limited vs. Kirusa*, has held that;

*"It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that 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”*

8. Hon’ble Supreme Court of India, *in re, Mobilox, supra*, also, held that;  
“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? (See Section 4 of the Act)?
  - (ii) Whether the documentary evidence furnished with the application shows 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?”
- “If any one of the aforesaid conditions is lacking, the application would have to be rejected.” (Emphasis is ours).
9. Since the Corporate Debtor herein, contends that there is a *pre-existing dispute* between the parties and the Operational Creditor has denied the said plea, we wish to first discuss the issue relating to pre-existing dispute, on the basis of the above legal frame coupled with a factual matrix of the subject dispute.
10. Admittedly, the parties herein have entered into an Agreement Dt: 16.07.2019, and the *salient* clauses of the said Agreement are as below: -



- The Scope of the work starts from Cellar 1 to 9th Floor, including lift machine rooms, staircase head rooms concreting, transportation, unloading at site and erecting the precast elements to the respective floors and aligning, grouting, terrace water proofing wherever required and make screed concrete over the precast elements complete.
- The Schedule for Completion of work as per Clause-6 of the Agreement is 198 days from 15.07.2019.
- After the completion of the work, the Operational Creditor shall notify in writing to the Corporate Debtor or his representative about completion of the work.
- Within 3 days from the date of notification, the Corporate Debtor shall send his representative to remain present at the time of carrying out necessary handover by the Operational Creditor.
- -A total area of 5,09,647.02 Sft, is to be constructed by the Operational Creditor, for a total contract amount of Rs.26,93,48,450/- (Rupees Twenty-Six Crores Ninety-Three Lakhs Forty-Eight Thousand Four Hundred Fifty only), excluding GST, without any escalation in the rates.
- -The Corporate Debtor shall arrange for an interest free mobilization advance of Rs.1,90,00,000/- (Rupees One Crore Ninety Lakhs only) against Bank Guarantee of Rs.1,00,00,000/- (Rupees One Crore only) from any reputed Bank.
- 
- Bills for the work done (RA Bills) to be raised on a fortnightly basis without any limitation of bill value with supporting documents to the Project Manager/Corporate Debtor's representative and the amount shall be paid within 07 (Seven) days from the date of



certification by the Project Manager/Corporate Debtor's representative or 10 (Ten) days from the date of submission of bill.

- -Retention of 5 % of the Contract amount from the RA Bills, as retention amount. 50 % to be released along with the final bill and the balance after the defect liability period, which shall be 12 months from the date of handing over of the works, after completion of the work by the Operational Creditor.
- Levy of liquidated damages by the Corporate Debtor, in case of delayed performance of work by the Operational Creditor, and also provides for payment of bonus by the Corporate Debtor in case of completion of work before the schedule time by the Operational Creditor.

11. According to the Ld. Senior Counsel for the applicant/operational creditor, major works under the above contract were completed by 05.09.2020 and the snag list of works were also completed by December 2020. Ld. Senior Counsel further stated that despite raising the *final invoice* in respect of the subject work on 25.03.2020, the Corporate Debtor failed to pay the balance amount of Rs. 7,54,55,940/-, hence the applicant got issued the demand notice dated 14.02.2022 in terms of Section 8(2) of IBC, 2016, and for the first time in the reply notice the corporate debtor falsely claimed that there is a pre-existing dispute regarding the work done, as such the defense is liable to be rejected and the application be allowed.



12. Ld. PCS, for the Corporate Debtor relying *inter alia*, on the correspondence and the joint inspection report refuted the aforesaid contentions. According to the Ld. PCS, the corporate debtor a clear dispute as to the nature as well as the quantum of work done *besides* the claim of completion of entire work by end of December 2020 has been in existence even prior to the receipt of the demand notice from the operational creditor, as such in the presence of a *pre-existing* dispute between the parties herein, the application is not maintainable.
13. Needless to say, that in terms of clause 6 of the Agreement, the operational creditor shall complete the work 198 days from 15.07.2019 and upon completion of the work, and shall notify in writing to the Corporate Debtor or his representative about completion of the work. Upon being so notified, the Corporate Debtor within 3 days from the date of notification, shall send his representative to remain present at the time of carrying out necessary handover by the Operational Creditor. Though the operational creditor has claimed that it had completed the entire work by the end of December 2020 it failed to plead compliance of clause 6 of the Agreement. In this regard it is pertinent to refer to the following, post 05.09.2020 emails exchanged between the parties.

Email dated 27.12.2020 from the Operational Creditor



=====  
===== Forwarded message =====

From: <sss@teemageprecast.in>  
To: <info@ayyannainfra.com>, "prathap" <prathap@ayyannainfra.com>, <pvenkateshwarlu@ayyannainfra.com>, <sreekumar@ayyannainfra.com>, <sridharcmd@ayyannainfra.com>  
Cc: "Nandhagopal /MD" <kn@teemageprecast.in>, "Pranesh Babu /Proj.Dir." <apb@teemageprecast.in>, "Ravichandran /Mktg.Head" <rch@teemageprecast.in>, "Manoj Kumar /CFO" <vmk@teemageprecast.in>  
Date: Sun, 27 Dec 2020 11:58:34 +0530  
Subject: Re: Ayyanna - Outstanding confirmation and Water Proofing Reg  
=====  
===== Forwarded message =====

Dear Sir,

Good Morning.

As you aware that we have taken the project which was left in-complete (from base 2 level onwards) by the other contractor and that have posed us with greater difficulty in correcting the erection error done by the other contractor and in erecting the further floors.

Considering the complexity of the project and the need of the client, we have completed 95% project, leaving 50-60 elements (that were in the tower crane location) with in the span of 6-7 months , ending on March,2020.

Subsequently, due to the unexpected lockdown owing to covid, the tower crane dismantling and the balance erection got finished by July,2020, without being waiting for the payment against our approved bill submission.

Subsequently, as a part of handover process, we had been given with snaglist, listed by Ayyanna Project Manager, Mr.Pratap Reddy and it was subsequently attested by Site Engineer In-Charge Mr.Venkatesh, after having done the joint site visit. As per the snaglist finalised, the listed snaglist items amounts to 1.5-2 lakhs only.

Also, as per agreed snaglist, we had completed most of its listed item and based on the progress on the snaglist work, we had been given with signed copy of revised snaglist (Attached Here with)with reduced items, after having done the joint site visit by M/s Teemage and Mr. Venkatesh,dated August 2020.

As the identified snaglist item value is less than 0.1% of the project, we have submitted the RA bill till 9. But, evenafter our repeated intimation about the need of payment owing to the cash flow crisis arised out of Covid,the payment is been not made even on part basis.

And as of now, we are yet to be paid with,more than 20% of the contract





===== Forwarded message =====

value. There has been retention in each of our earlier bills(RA1 to RA8) which itself is around 5%, which is much higher than that of the snaglist item value.

But since the actual balance payment which amounts to about 20% to 22% of the contract value, is still not been paid, we unable to do any further work due to the pending dues to our contractors at Hyderabad which have given us with immense problem which inturn affected our other project progress at Hyderabad.

Hence, We need your payment assistance for the smooth handover and the project completion and success for our mutual growth in the construction sector.

Also, We have been informed that the waterproofing of the terrace is been given to other contractor and we have no say on that but we caution you that the adopted waterproofing should cater the Elongation, Tensile strength, Crack bridging ability,water tightness at its elongated state as required by a typical precast structure which the present readily waterproofing methods which originally more suitable for conventional structural system, will not cater our situation and hence we always adopts a customized solution incorporating suitable products from multiple brands.

With this, We like to inform you that waterproofing being high involved technically,it is advisable to do it by us so that We are completely responsible for the further water leakages,if any.Else, we like to relieve us from the warranty realated to all waterproof related items.

we need to do needful in the mentioned subject matter.

Thanks & Regards,

S.Sathiyaseelan.


Head-Technical.

And as of now, we are yet to be paid with,more than 20% of the contract





Letter dated 03.07.2021 from the Operational Creditor

  
03-07-2021

**Teemage Builders (P) Ltd**

To  
Mr. Sreedhar  
Ayyanna Infra IT Park

Respected Sir

Greetings from Teemage!!

We, Teemage Builders Private Limited, have signed the agreement with Ayyanna IT park LLP and executed the construction of IT park at Kondapur, Hyderabad. We have started the project on 11<sup>th</sup> July 2019 and completed major work on 05<sup>th</sup> September 2020 (Covid Lockdown from 21<sup>st</sup> March 2020 till 06<sup>th</sup> May 2020 - 46days) with lot of hindrances. Ramp area and total erection was completed on 21<sup>st</sup> September 2020.

At the time of signing the contract, we cautiously discussed about the payment terms as this project was left stranded by another vendor. We have all equipment and capability in our company under one roof to facilitate which is not technically viable for any other contractor to continue. For all our efforts and all our trust we had on Ayyanna, we are betrayed as balance payments are not released yet.

Ayyanna promised us that there is no issue in fund circulation as Ayyanna receives rent from other assets. We agreed for the project as trusted Ayyanna though we had taken a policy to avoid contractors with "Builders".

We stopped the work, after completion of erection, only due to huge delay in payment. We restarted with the snag work and concrete work after Ayyanna team convinced us that funds shall be released. On continuance of delay we stopped the work again on 24<sup>th</sup> October 2020. We approached to complete the small pending works but Ayyanna started these works without our knowledge.

We gave our 100% effort to complete the project only through circulating funds from other projects of Teemage. However even after than several months of completion, Ayyanna is still delaying the payment with various excuses. We have understood the mistake of accepting the project with Ayyanna IT Park LLP. We have spoiled our company name signing the agreement with Ayyanna and created a black mark on Teemage Builders among Hyderabad Construction material suppliers.

We pleaded many times that we are bleeding without funds and many suppliers has issued legal notices and we lost many contracts since we could not keep up with our payment terms based on your

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Corporate Office: 6/35, College Road, 1<sup>st</sup> Cross St., Tirupur - 641 602, Tel: +91 421-2240488, 2700488, Mobile: +91 9003655155  
Factory: 3/156, Olapalayam, Kangeyam - 638 701, Tirupur Dist, TN. Tel: +91 4257-256188, Mobile: +91 9994070088.  
TIN No.: 33182325519, CST No.: 1034711/06.05.2011, CIN No.: U45202TZ2007PTC014038.  
Email: sales@teemageprecast.in Web: www.teemageprecast.in



## Teemage Builders (P) Ltd



commitment. Many employees and contract labours have lost their jobs and suffer in this pandemic situation.

We stand live only because of support from group companies which are now in turmoil due to Covid situation. We have paid interest in corers to banks for additional loans taken for this project.

We have paid the price for placing trust on Ayyanna and giving our 100% efforts to support them. Kindly take the earliest action to release the outstanding amount which is enjoyed by Ayyanna till date which costs interest and livelihood of our numerous employees and suppliers.

For Teemage Builders Private Limited,

Managing Director



Reply Letter dated 14.07.2021 from the Corporate Debtor.

To

Dated 14<sup>th</sup> July 2021

Shri. Nandagopal K  
Managing Director,  
Teemage Builder (P) Ltd  
6/35, College Road, 1<sup>st</sup> Cross St, Tirupur- 641 602

Dear Sir,

Greetings!!

Received your letter and noted its contents: please let us not assume that we at Ayyanna is happy with the way the things evolved towards the fag end of the project where we came together to accomplish the task that should have been concluded as a win-win for both our companies.

The contents of the letter talk about the completion of the scope of works as on 21 Sep 2020 the date by which the Teemage team demobilized fully though the deployment was staggered and very skeletal from many day prior to it as well.

At the hind side, from the statement that total erection was completed on 21 September 2020, what we could firmly believe is that Teemage site team, by over look or intentionally informed your good selves that the total erection work is completed without understanding the full scope of works that are covered or envisaged under the contract/ work order issued to Teemage on the project. And our site team also did not anticipated that there is lot of disconnect between them and Teemage team on the understanding on the scope of works.

On the departure of Teemage team, on scrutiny of the works executed with respect to the scope of works, the glaring disconnects could be identified and the same was communicated to the Teemage team as well: however, their approach was to project those left or unfinished works as insignificant!

Now, our site team is struggling to complete the unfinished scope of works and or do the left over works and unless we complete the whole works, it may not be right even to assess the commercial part of it and thus the final payment that is due to Teemage. But, we are sure to complete the project as our huge inventory and thus fund is stuck in the project, in the next 3 to 4 months.

We are not sitting on judgment here whether Teemage spoiled the name of the company by associating with us, but we firmly belief that this project has opened up the business prospects of Teemage in this part of our country.

Contd...2...



AYYANNA IT PARK LLP.  
BUILDERS & DEVELOPERS

∴ 2 ∴

Further, it is not out of context in case we state that we in spite of the downturn in the economic fortunes of real estate business on account COVID-19 pandemic, we have been forthright in clearing close to over 95% of eligible payment to Teemage, though with some delays: Teemage had been our priority vendor to be paid from our side.

As we conclude, we are striving our level best to unlock our huge investment blocked in the works by completing the works and are confident to accomplish the same in next 3 to 4 months except for any force majeure event so that we will reconcile the accounts with Teemage and clear the due payment to Teemage as well.

Hope, your good offices will appreciate our position in its true spirit and bear with us till we get back to you to resolve and close this subject amicably please.

Thanking you,

Sreedhar P

Ayyanna IT Park LLP

14. That apart, the joint verification of the pending works done post 5.09.2020 by the team consisting of the representatives of Operational Creditor and Corporate Debtor on 04.12.2020, substantiates that the Operational Creditor had not completed the assigned work and in every floor some



works remain undone. The Joint verification report Dt: 04.12.2020, signed on 23.12.2020, is as below;

Pending works listed by Both TEEMAGE attended by Dinesh, Engineer & P.Anil, Marketing Mgr from AYYANA Venkateswarulu, Project Mgr

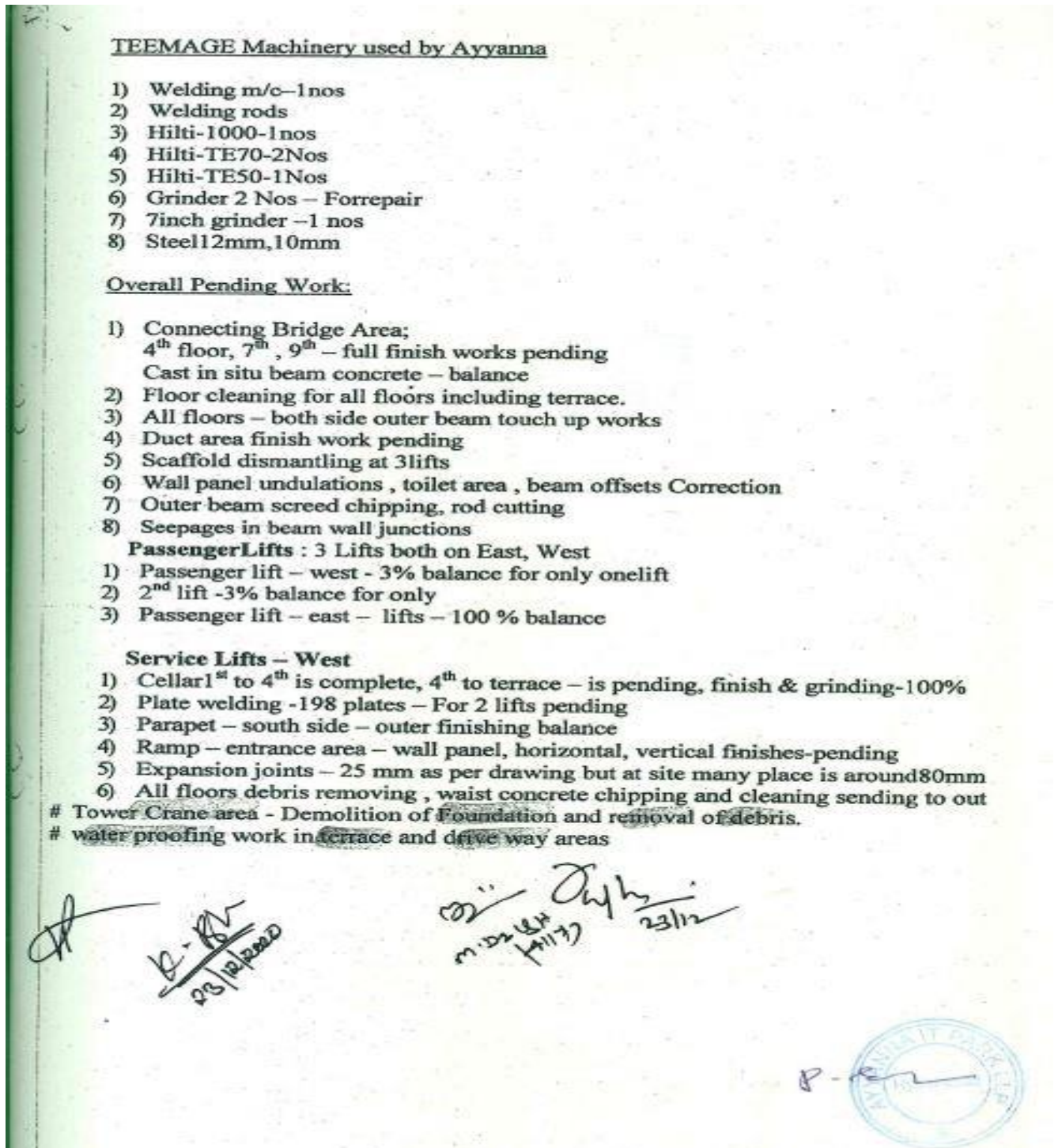
1. Cellar1 : Finishes of beams, crane foundation, leakages (at Drive way around 10% area) Drive way area slab seepage
2. STILT : South Side finishes ,water seepage, east Block . passenger stair case ,wall panel & beam joints, 10 % Area. Beam casting extra Corbel for bearing, column undulations ,plumb out For Connecting Bridge
3. 1<sup>st</sup>Floor : Outer beam area finishing  
Duct Finishing  
Fire Duct Area Balance and floor area 10% balance
4. 2<sup>nd</sup> Floor . Duct Area pending  
Both area – East & West, 3% finishing & grinding
5. 3<sup>rd</sup> Floor : Duct area at both east & west  
East side service lift side balance finish works  
and floor area 3% finish & grinding
6. 4<sup>th</sup> floor : Connecting bridge area  
Finishing & grinding  
Duct area finishes around and floor area 10% area
7. 5<sup>th</sup> Floor : South side finishes at lift area  
Outer beam finish-cast  
Duct area , and floor area 15% finish & grinding
8. 6<sup>th</sup> floor : Duct area finishing  
Both east & west around and floor area 5%
9. 7<sup>th</sup> floor : Duct Area finishing  
Both east, west floor area 10%
10. 8<sup>th</sup> floor : Water seepage at junction areas, duct area floor finishing balance 3%
11. 9<sup>th</sup> floor : Beam grinding, wall panel undulation lift area , plumb out 10 % , beam offsets, 15 % Grinding balance, 5% finishing balance in floor area
12. Terrace : Head rooms, outer area and inside finish & chipping, east & west  
Lift top slabs, caps not filled  
Terrace cleaning  
Lift m/c room de-shuttering  
Lift wall plastering  
Parapet wall inner finishing 70% vertical, grinding, chipping – 100% balance
13. Lifts at EAST
  - a) Passenger lift – full pending
  - b) Service lift West – 4<sup>th</sup> to terrace balance
  - c) Lift wall panel undulation plastering

In all floor both blocks

P. Anil  
23/12/2020

Dinesh  
21/12

P. Anil  
23/12



15. Thus, a bare perusal of the above correspondence besides the joint inspection report, clearly shows existence of dispute between the parties,



as regards the quantum as well as the quality of the work done, payments made and the time lines, much prior to the receipt of the demand notice by the corporate debtor. Moreover, having raised the final invoice on 05.09.2020, it is *preposterous* for the operational creditor to contend that the entire work has been completed by December 2020. In the light of the ambiguity on the part of the operational creditor as to the date of completion of the entire work, the plea of the corporate debtor that the failure on the part of the operational creditor in adhering to the time schedule resulted in heavy losses to the corporate debtor assumes significance. The Operational Creditor had lodged a complaint against the Respondent with M/s. Telangana State Real Estate Regulatory Authority [RERA], Hyderabad, vide its letter Dt: 17.07.2021, and the M/s. Telangana State Real Estate Regulatory Authority [RERA], Hyderabad, vide its letter Dt: 02.09.2021, sought certain clarifications from the Corporate Debtor, which was stated to have been provided by the Corporate Debtor vide letter dated 01.10.2021.

Therefore, in view of our discussions as above, we are of the firm view that a dispute as regards work done by the Petitioner exists between the parties herein, even before receipt of the demand notice by the corporate debtor.



16. Having found that a pre-existing dispute exists between the parties herein, we have applied *Mobilox*, *supra*, in order to find whether the dispute in this case can be construed as a pre-existing dispute in terms of section 8 (2) of under IB Code, and found that it is a plausible contention which requires further investigation and that the same is not a patently feeble legal argument or an assertion of fact unsupported by evidence, in view of the correspondence and the documents we referred to, *supra*. We are satisfied that the above dispute truly exists in fact and it is not spurious, hypothetical or illusory. However, we hereby make it clear that at this stage we have not examined the merits of the dispute except to the extent indicated above.
17. In the light of our finding that there is a pre-existing dispute between the parties herein, it is not permissible under law to admit the Corporate Debtor into CIRP.

The Point 2 is answered accordingly.

**POINT NO.1**

Whether an Operational Debt of a sum over rupees one crore *is due and payable* by the Corporate Debtor exists in favour of the Operational creditor? If so, whether the Corporate Debtor *defaulted* in repayment of the same?



18. Hon'ble Supreme Court of India, in re Mobilox, *supra*, held that, "The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(j) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act).

(ii) Whether the documentary evidence furnished with the application shows 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?"

"If any one of the aforesaid conditions is lacking, the application would have to be rejected."

19. In our discussion on Point 2 above, we have held that there is a pre-existing dispute between the parties herein, which finding itself is sufficient to reject this application. Hence no discussion on this point is required.

The point is answered accordingly.

16. In the light of our finding on Point 2 above, we hereby reject this Company Petition, however, without costs.

Sd/-

(Charan Singh)  
Member (Technical)

Sd/-

(Dr. Venkata Ramakrishna Badarinath Nandula)  
Member (Judicial)