

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

**C.P. (IB) 4158/MB/2019**

Under section 9 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Laxmidhar Mohanty**

Having address at Village-Deuli, P.O- Jaraka,  
P.S.- Dharmansala, District-Jajpur, Odisha

**..... Petitioner/ Operational Creditor**

**Versus**

**Gammon India Limited**

Having its registered office at: - Floor 3<sup>rd</sup>,  
Plot No- 3/8, Hamilton House JN Heredia  
Rd, Ballard Estate, Mumbai- 400038

**..... Respondent/Corporate Debtor**

**Order Delivered on :- 07.12.2023**

***Coram:***

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

***Appearances:***

For the Operational Creditor : Adv. Abhishek Bhaduri

For the Corporate Debtor : Adv. Pradeep Jain a/w Kashmira K.

**ORDER**

***Per: - Coram.***

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Laxmidhar Mohanty** (hereinafter called as "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Gammon India Limited** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 3,86,32,286/- (Rupees Three Crore Eighty-Six Lakh Thirty-Two Thousand Two Hundred Eighty-Six Only) as on 31.08.2019.

**The submissions of the Operational Creditor are as follows:**

2. The Operational Creditor is engaged in the business of excavation and construction services/supply of sand and aggregate, and the Corporate Debtor is engaged in the business of construction and infrastructure domain. The corporate debtor is also engaged in the business of energy in which it operates in the hydro, nuclear and thermal power sectors.

3. The Corporate Debtor had issued work orders on the Operational Creditors vide Project No. 8616 JSL Civil Works of HSM and SMS at Duburi, Odisha and Job Code No. 8812 VISA Intake well project, Jajpur, Odisha.
4. Thereafter, in terms of the service provided to the Corporate Debtor, the Operational Creditor had raised invoices/bills on the Corporate Debtor. The Corporate Debtor despite receipt of the service in terms of the work order had defaulted and neglected in payment as per the invoices/bills.
5. The Operational Creditor had visited personally and also sent several letters and reminders to the Corporate Debtor for making payments of the outstanding dues i.e. Rs. 1,88,45,036/-.
6. However, despite acknowledging the dues, the Corporate Debtor has defaulted in making payments of the outstanding amount.
7. Thereafter, the Operational Creditor had issued demand notice under Form-3 of the Insolvency and Bankruptcy Code, 2016 dated 31.08.2019 in which the Operational Creditor has claimed Rs. 3,86,32,286/- inclusive of interest @ 12% up to 31.08.2019.
8. However, despite receiving the demand notice on 03.09.2019 the Corporate debtor has neither made the payment nor has made any reply to the demand notice. Hence the Petition.

**Reply filed on behalf of the Corporate Debtor:-**

9. The Corporate Debtor had denied all the contentions /averments set out in the Petition filed by the Operational Creditor. Nothing contained in the Petition should be deemed to be admitted for want of specific traverse unless specifically admitted herein.
10. The Corporate Debtor submits that the Operational Creditor has not mentioned the date of default in the demand notice and in Form-5. Further the Operational Creditor has not mentioned the date on which the alleged debt fell due in the demand notice and in Form-5. The Operational Creditor has only alleged that as on 31.08.2019 sum of Rs.3,86,32,286/- is due and payable. This clearly shows that the Operational Creditor has not provided the information as required under the provisions of the Code despite the same being mandatory.
11. The Corporate Debtor further submits that the demand notice and the Form-5 do not mention any document evidencing contract between the Operational Creditor and the Corporate Debtor.
12. The Corporate Debtor contends that the demand notice issued by the Operational Creditor is dated 31.08.2019 and the Petition has been filed in the month of October 2019. Thus, the present Petition filed by the Operational Creditor under Section 9 of the Code is, inter alia, barred by the law of limitation. Even as per the alleged statements showing the amounts due as signed by the Project Manager of the Corporate Creditor are dated 25.05.2013 as annexed in the Petition. The Operational Creditor is not relying on any other documents so far as the amounts are concerned. Therefore, it is apparent the present petition has been filed after expiry of the limitation

period. In light of the same, Corporate Debtor submits that the alleged debt is hopelessly time-barred.

**Analysis and Findings:-**

13. We have heard the Counsel for the parties and gone through the record.
14. During the course of arguments, Counsel for the Operational Creditor has argued that the Corporate Debtor has not paid outstanding dues of Rs. 1,88,45,036/- plus interest in respect of certain work orders executed by the Operational Creditor. The Counsel for the Operational Creditor has further argued that the outstanding dues have not been cleared despite notices issued including demand notice dated 31.08.2019 (Annexure D). The Counsel for the Operational Creditor has further contended that the debt was acknowledged by the Corporate Debtor on 25.05.2013 vide acknowledgment (Annexure B) which is also duly signed by an authorized representative of the Corporate Debtor. The Counsel for the Operational Creditor has further referred to the summary of account (Exhibit B) annexed with the additional affidavit which shows a part payment of Rs. 10,00,000/- (Rupees Ten Lakhs Only) were paid by the Corporate Debtor on 20.01.2016 and another sum of Rs. 9,99,942.75/- (Rupees Nine Lakhs Ninety-Nine Thousand Nine Hundred Forty-Two and Paise Seventy-Five Only) was paid on 11.04.2016. According to the Counsel for the Applicant, taking these part payments into account, which are also acknowledgments, the Petition under Section 9 should be treated to have been filed within the period of limitation. The Counsel for the Operational Creditor has further contended that since as per Section 238 (a) the provisions of Limitation Act, 1963 are applicable to the proceedings under the Code, any further delay in filing the Petition can be condoned under Section 5 of the Limitation Act, 1963.

15. On the other hand, the Counsel for the Respondent has argued that the Petition is palpably barred by time. According to the Counsel for the Corporate debtor, the Petitioner has not placed on record any invoices in respect of which the outstanding dues have been claimed nor any other document pertaining to the work order executed by the Corporate Debtor. Therefore, merely on the basis of acknowledgment dated 25.05.2013 or some subsequent entries in the statement of account, the Petition cannot be said to have been filed within the period of limitation. The Counsel for the Corporate Debtor has further argued that no date of default has been mentioned in the Petition and further that even if the last payment made on 11.04.2016 is taken into account, the Petition is beyond the period of limitation as it should have been filed on or before 10.04.2016 whereas the Petition was filed on 16.11.2019. Therefore, the Petition is liable to be dismissed being barred by time as the Petitioner has not filed any application seeking condonation of delay under Section 5 of the Limitation Act, 1963.
16. We have weighed the contention raised by the Learned Counsel for the parties and gone through the record.
17. In this case, the Petitioner has claimed of non-payment of outstanding dues of Rs. 1,88,45,036/- by the Corporate Debtor on account of certain work orders executed by the Operational Creditor in respect of Project No. 8616 JSL Civil Works of HSM and SMS at Duburi, Odisha and Job Code No. 8812 VISA Intake Well Project, Jajpur Odisha. No invoices have been placed on record. Therefore, it is not clear as to when the work was executed by the Operational Creditor nor any invoices have been placed on record to prove as to exactly when the payments became due. No explanation has been given

by the Operational Creditor for non-production of the invoices or the other documents pertaining to the work orders for which, in our considered view, an adverse inference has to be drawn against the Operational Creditor.

18. To prove that the Petition is well within the period of limitation, the Petitioner has relied upon an acknowledgment dated 25.05.2013 (Annexure B) whereby the Corporate Debtor through its Account Officer is stated to have acknowledged a liability of Rs. 1,17,91,835/- as on 25.05.2013. However, in our considered view, in the absence of the invoices or any other document which could prove as to exactly when the payment fell due under the contract or the invoices, the acknowledgment dated 25.05.2013 by itself would not be sufficient to arrive at any definite conclusion so far as the point of limitation is concerned. It is well settled that an acknowledgment as per the provisions of Section 18 of the Limitation Act, 1963 has to be made before the expiry of the limitation period. In the absence of the invoices or any other supporting documents to prove the date of default, it cannot be ascertained whether the acknowledgment dated 25.05.2013 was made within a period of three years from the due date or the date of default.
19. Even if the acknowledgment dated 25.05.2013 is taken into consideration for the sake of arguments, even then the Petition is not within the period of limitation. After 25.05.2013, the Corporate Debtor is stated to have made a part payment of Rs. 10,00,000/- (Rupees Ten Lakhs Only) on 20.01.2016 and another sum of Rs. 9,99,942.75/- (Rupees Nine Lakhs Ninety-Nine Thousand Nine Hundred Forty-Two and Paise Seventy-Five Only) was paid on 11.04.2016. Accordingly, the last acknowledgement of debt by way of part payment was made by the Corporate Debtor on 11.04.2016 whereas the

present Petition was filed on 16.11.2019 i.e. after a period of three years from 11.04.2016. Therefore, the Petition is clearly barred by time.

20. The Counsel for the Petitioner has argued that the delay in filing of the Petition can be condoned in terms of Section 5 of the Limitation Act, 1963. In this regard, the Counsel for the Petitioner has relied upon Sabarmati Gas Limited Vs. Shah Alloys Limited, MANU/SC/0008/2023 whereby it was held that it is incumbent on the Adjudicating Authority for condonation of delay once the proceeding concerned is found to have been filed beyond the period of limitation.
21. We have gone through the cited case relied upon by the Counsel for the Operational Creditor. However, in our considered view, the law laid down in the cited case cannot be applied to the facts and circumstances of the present case considering the fact that the Petitioner has not filed any application under Section 5 of the Limitation Act, 1963 seeking condonation of delay nor any circumstances has been brought on record to prove the existence of sufficient cause which is a pre-condition and a sine qua non for entertaining/allowing an application for condonation of delay.
22. As a result of the foregoing discussion, we hold that the Petition under Section 9 of the Code is barred by time and is accordingly **dismissed** with no order as to cost. File be consigned to records.

Sd/-  
ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)

Sd/-  
KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)