

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 02.03.2020

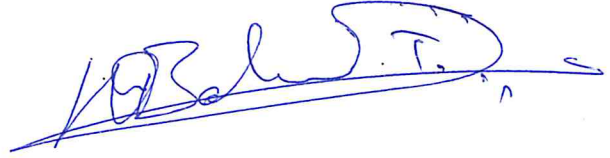
PRIORITY CAUSE LIST – 1

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 302/BB/2019	For admission	Sec 9 of I&B code 2016	M/s Manojna Enterprises	K Dushyantha Kumar, Hari Babu Thota, PCS	M/s R J Rishikaran Projects Pvt Ltd	Ashok B Patil, Advocate

ADVOCATE FOR PETITIONER/s:

HARI BABU THOTA, PCS
9740237291



ADVOCATE FOR RESPONDENT/s:

ASHOK B PATIL
9900114250



ORDER

Heard Mr. Hari Babu Thota, learned PCS for the Petitioner and Mr. Ashok.B.Patil, learned Counsel for the Respondent.

C.P (IB) No. 302/BB/2019 is dismissed by separate order.



MEMBER (T)



MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.302/BB/2019
U/s. 9 of the IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Between:

M/s. Manojna Enterprises

#178, 8th A Cross,
14th Main CSWA Layout,
RPC Layout Vijayanagar,
Bengaluru – 560 040.

- Petitioner/Operational Creditor

And

M/s. R.J. Rishikaran Projects Private Limited

Pent House, R.J. Manor Apartments,
#11/A, 80 Feet Road,
3rd Block, Koramangala,
Bangalore – 560 034

- Respondent/Corporate Debtor

Date of Order: 02nd March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. Hari Babu Thota
For the Respondent : Mr. Ashok.B.Patil

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.302/BB/2019 is filed by M/s. Manojna Enterprises (Petitioner/Operational Creditor) U/s. 9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia seeking to initiate

Corporate Insolvency Resolution Process (CIRP) in respect of M/s. R.J. Rishikarana Projects Private Limited (Respondent/Corporate Debtor), on the ground that it has committed default for an amount of Rs.49,24,887.48/- (Rupees Forty Nine Lakhs Twenty Four Thousand Eight Hundred Eight-Seven and Forty Eight only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Manipal Media Network Limited (herein after referred to as Petitioner/Applicant/Operational Creditor) is a Sole Proprietorship Firm represented by its Proprietor, Mr. P Prasad, is a contractor engaged in the business of supply of materials and application of Water Proofing works along with cinder filling concrete works having permanent address at #178, 8th A Cross, 14th Main CSWA Layout, RPC Layout Vijayanagar, Bengaluru-560040.

(2) M/s. R.J. Rishikaran Projects Private Limited (herein after referred to as Respondent/Corporate Debtor) was incorporated on 07.03.2013, having registered office at Pent House, R.J. Manor Apartments, #11/A, 80 Feet Road, 3rd Block, Koramangala, Bangalore-560034, bearing CIN: U45209KA2013PTC068127. Its Authorised Share Capital is Rs.1,00,00,000/- divided into 100,000 Equity Shares of Rs.100/- each and Paid-up Capital is Rs.30,00,000/- divided into 30,000 Equity Shares of Rs.100/- each.

(3) The Petitioner/ Applicant was awarded the following works by the Corporate Debtor for Rs.1,02,47,640/-:

a. Water Proofing works for the project 'R.J.Brooke Square' of R.J. Rishikaran Projects Private Limited



situated at Kundalahalli, Bangalore for a sum of Rs.80,00,335/-.

- b. Cinder and Concrete Works in Sunken area for the project 'R.J.Brooke Square' of R.J. Rishikaran Projects Private Limited situated at Kundalahalli, Bangalore for a sum of Rs.22,47,305/-

Accordingly, the Applicant had commenced the work upon receipt of email instruction by the Corporate Debtor dated 13th September, 2016.

- (4) Subsequently, upon several follows ups made by the Operational Creditor, the Corporate Debtor had provided:

a. The work order dated 10th September 2016 was sent by the Corporate Debtor vide email dated 29th September 2016 for Water Proofing works.

b. The work order dated 30th November 2016 was sent by the Corporate Debtor vide email dated 26th December 2016 for Cinder and Concrete Works.

- (5) It is further stated once the work is executed, it was the duty of the Site Engineer of the Operational Creditor to verify the executed work and sign the measurement sheet specifically maintained for such work. Subsequent to verification by the Site Engineer, it is the duty of the Project Manager of the Corporate Debtor to verify the same and approve the work by signing the measurement sheet. Upon obtaining the approval from Project Manager of the Corporate Debtor, the Operational Creditor shall raise the proforma invoice for the same. Once the Corporate Debtor reconciles its accounts and makes the payment, then the Operational Creditor was raising the final tax invoice. The



Operational Creditor had completed the work/supplied the materials as per work orders and all the work executed by the Operational Creditor has been verified and approved by the Site Manager of the Operational Creditor and Project Manager of Corporate Debtor. After verification, the Corporate Debtor has issued work Completion Letter confirming the work done for a value of the work executed for Rs.78,75,565/- excluding GST on 10th December 2018. Subsequently, the Operational Creditor has raised final consolidated pro-forma invoice on 3rd January 2019 and provided to the Corporate Debtor for making the payment.

(6) On submission of consolidated pro-forma invoice, as stated above, the Corporate Debtor has issued the following post-dated cheques on 15th March 2019 in favour of Operational Creditor towards part payment amounting to Rs.42,66,600/-:

- a. Cheque No. 003281 dated 21.03.2019 for Rs.5,66,600/-
- b. Cheque No. 003282 dated 30.04.2019 for Rs.15,00,000/-
- c. Cheque No. 003283 dated 30.05.2019 for Rs.22,00,000/-

The first Cheque No.003281 dated 21.03.2019 for Rs.5,66,600/-, was honoured. However, when cheque No. 003282 dated 30.04.2019 for Rs.15,00,000/- was presented for clearance, it was rejected by the Bank stating "payment stopped by drawer". Subsequently, the Corporate Debtor made part payment of Rs.2,00,000/- on 16th May 2019 against Rs.22,00,000/-. Further, with respect to Cheque No. 003283 dated 30.05.2019 for

Rs.22,00,000/- the Operational Creditor once again received the request from Corporate Debtor for not to present the cheque for clearance. However, the Operational Creditor has not received any payment from the Corporate Debtor towards this dishonoured cheque.

- (7) It is stated that the Operational Creditor had also filed a complaint under Section 200 of the Code of Criminal Procedure before the XXI Additional Chief Metropolitan Magistrate at Bangalore on 26th July 2019 for cheques bouncing vide Complain No 17072/2019. The first hearing was held on 26th July 2019 and the Respondent Company and its Directors have filed W.P No.46234-46238/2019 before the Hon'ble High Court of Karnataka for exclusion of Respondent No.4 and Respondent No.5 i.e. Mrs. Rishika Rathnakar Shetty and Mrs. Kavitha Rathnakar Shetty respectively. The Hon'ble High Court stayed the further proceedings against the Respondent No.4 and Respondent No.5 vide its order dated 4th September 2019. The Next dated of hearing before Chief Metropolitan Magistrate is scheduled on 30th March 2020.
- (8) Subsequently, the Operational Creditor sent demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 25th June 2019 (Demand Notice dated 25.06.2019) which was received by the Corporate Debtor on 26th June 2019. However, the Operational Creditor has not received any response for the same.
- (9) It is stated that the Operational Creditor made reference to Micro and Small Enterprises Facilitation Council (MSEFC) under Section 18 of the MSME Act, 2006 with respect to work order nos.011 and 012 issued by the Corporate



Debtor as detailed in Form 5 in the present application, on 18th June 2019 vide application no. KR03D0041473/M/00001. The MSEFC has issued notice on 18th June 2019 to the Corporate Debtor for making payment to Operational Creditor within 15 days of receipt of the said notice. Further, the Operational Creditor received an email on 6th July 2019 from MSEFC for submission of certain documents in connection to the reference made to MSEFC. The Operational Creditor submitted all the documents to MSEFC on 21st June 2019, 22nd July 2019 and 24th July 2019. Further, the Corporate Debtor submitted before the MSEFC that the Operational Creditor has filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble Tribunal and prayed the MSEFC to dismiss the application on the ground of simultaneous cases were filed by the Applicant against the Corporate Debtor. Further, the Corporate Debtor had not denied the existence of debt to be payable to the Operational Creditor before MSEFC. MSEFC has scheduled hearings on various dates and at the hearing held on 30th January 2020 reserved the matter for orders.

- (10) It is stated that the Corporate Debtor had not raised any objections regarding the quality of work until the Operational Creditor had filed proceedings before MSEFC under MSME Act, 2006. Only upon notice was sent by MSEFC to the Corporate Debtor, the Corporate Debtor made allegations on the quality of work performed by the Operational Creditor. Further, the Corporate Debtor had



also defaulted in filing of annual return form the financial year 2017-18 and 2018-19.

3. The instant Company Petition is opposed by the Respondent/Corporate Debtor by way of filing Statement of Objections dated 16.12.2019, by inter alia contending as follows:

(1) The Respondent is a Construction Company engaged in the business of construction of residential apartment buildings, and it is actively involved in the said business. The Petitioner is engaged in the business of undertaking water proofing works and cinder and concrete works in residential apartment's project building. The Respondent engaged the services of the Petitioner for water proofing works in one of its residential project, 'R.J Brooke Square', Kundalahalli, Bengaluru, as per the offer acceptance letter dated 10-09-2016. The value of the work entrusted as per the said document is Rs.80,00,335/-. Similarly, the Applicant was entrusted with the cinder and concrete work as per the offer acceptance letter dated 30.11.2016. The value of the said work is in a sum of Rs.22,47,305/-. The Applicant has deliberately not produced the entire contract document which disclose the terms and condition, about which reference will be made hereinafter.

(2) It is stated that the Applicant was required to use the product for water proofing of the brand of 'Penetron India'. Further, as per the contract, the Applicant was required to furnish a joint warranty bond of the Applicant and that of Penetron India with regard to the work carried out for a period of ten years. The said contract is dated 10.09.2016. The Applicant has failed to furnish the said warranty bond committing default in this regard. Thus, he is a defaulter in



this regard. The Respondent has paid for the work done. In course of time, leakages and cracks were noticed on the walls of the buildings, RJ Brooke Square, which is clear from the photographs collectively produced. And it is the obligation of the Applicant to carry out the work without any cracks or leakages and furnish warranty bond for a period of ten years. It may be appreciated that, the Respondent cannot deliver possession of the apartment or the building to its customers with the cracks and leakages and leakages marks on the walls. The shoddy work of the Applicant has caused great amount of monetary loss and delay in completing the project. The Respondent was forced to postpone the date of delivery of the flats to the customers. Consequently, the Respondent is also facing the ire of its customers. The Respondent submits that, in respect of the work carries out by the Applicant, after due inspection, since, the work appeared to be in order, the Respondent issued three cheques as admitted by the Applicant in the legal notice dated 28.06.2019. However, the Respondent was constrained to pay the amount of Rs.5,66,600/- on the promise of the applicant that, they would attend to the repair and rectification work to prevent further leakages and cracks. The said amount was paid in lieu of the cheque bearing no. 003281 dated 21.03.2019, but the Applicant failed to carry out the same. Therefore, the Respondent issue stopped payment instruction to its Banker on 29.04.2019 in respect of cheque no. 003282 dated 30.04.2019 for Rs.15 Lakhs and cheque no. 003283 dated 30.05.2019 for Rs.22 Lakhs. Further, the Applicant time and again pestered the Petitioner to pay some



additional amount to attend to the repair and rectification work. The Respondent paid the additional amount of Rs.21 Lakhs by RTGS on 16.05.2019 to the applicant.

- (3) It is submitted that in the letter dated 19.06.2019, the Respondent has clearly communicated to the Applicant regarding the work deficiency in the prestigious project RJ Brooke Square at Brooke Field, Kundalahalli, Bengaluru-560037. In the said letter, the Respondent has clearly indicated the financial loss and the likely impact of market reputation suffered by the Respondent due to the shoddy work carried out by the Applicant. The contents of the said letter are self-explanatory. Notwithstanding the above, the applicant presented the two cheques in question for realization as stated by him in his notice dated 28/06/2019. Since, the Respondent had justifiably given instructions to the Bank to stop payment, the two cheques were returned with the said endorsement **'payment stopped by the drawer'**. The Respondent caused a Reply through its Advocate dated 12/07/2019. Notwithstanding with breach of contract committed by the applicant, it has filed PCR No.9333/2019 (C.C No.17072/2019) in the Court of the XXI Additional CMM, at Bengaluru. The Managing Director of the Respondent Company has appeared in the said case. Further, the Respondent Company, and its four Directors have filed W.P No.46234-38/2019 before the Hon'ble High Court of Karnataka, at Bengaluru, challenging the initiation of the said criminal proceedings. The Hon'ble High Court by an order dated 01/10/2019 was pleased to grant stay of the further proceedings in the criminal case, as against the two lady Directors in the Respondent



Company. The said interim order is extended till 06/12/2019. The interim order is further extended on 09/12/2019, till next date of hearing.

- (4) The Applicant has approached Micro and Small Enterprises Facilitation Council (MSEFC), under the provision of the MSME Act, 2006. Accordingly, it has filed its objections before the MSEFC on 09/09/2019. Therefore, it is contended filing of instant Application by invoking section 9 of the IRC Code is nothing but an abuse of the process of law and courts, which needs to be sternly dealt with. There is a serious breach of contract by the Applicant causing great amount of embarrassment and prejudice to the respondent.
 - (5) It is successfully running Company having considerable net worth, being able to discharge its lawful debts and obligations and the Applicant having committed breach of contract cannot be allowed to arm twist the Respondent to pay the alleged debt, which is not legally enforceable. The petitioner has deliberately suppressed the terms of the contract and the breach of contract committed by it. Therefore, they have sought to dismiss the Company petition under reply.
4. Heard Shri Hari Babu Thota, PCS for Petitioner, and Shri Ashok.B.Patil, learned Counsel for the Respondent. We have carefully perused the pleadings of both the Parties, the extant provisions of the Code and Rules made thereunder and the Law on the issue.
 5. Mr.Hari Babu Thota, PCS for the Petitioner, while reiterating various averments made in the Company Petition and also in synopsis, as briefly stated supra, has further submitted that the



debt and default in question is not in dispute. Before filing this Application, they have approached the Criminal Court by filing complaint under Section 200 of the CCP before the XXI Additional Chief Metropolitan Magistrate at Bangalore on 26th July, 2019 for cheque bounce. Aggrieved by initiation of Criminal case, the Respondent filed the W.P No. 46234-46238/2019 before the Hon'ble High Court of Karnataka and obtained interim stay by order dated 04.09.2019. Hence the case was kept pending. However the instant Company Petition is still maintainable as the Respondent admittedly still not paid the outstanding in question. He, therefore, urged the Adjudicating Authority to admit the case as prayed for.

6. Mr. Ashok.B.Patil, learned Counsel for the Respondent, on the other hand, while pointing out the various averments made in the statement of objections, as briefly stated supra, has further submitted that the claim in question is seriously in dispute. For failure to rectify defective service in question, the Respondent was constrained to stop payment of cheques in question, which was the subject matter of the proceedings before the Criminal Court and High Court. He further submitted that in pursuant to the complaint made to Micro and Small Enterprises Facilitation Council (MSEFC), Bangalore vide Application No. KR03D0041473/M/00001 filed by Mr.Pargi Prasad, they have also pointed defective service and raised dispute. And the instant Petition is filed with an intention to recover alleged outstanding amounts under the provisions of Code and they are resorting to multiple litigation for same cause of action. He has further stated that the Company is a Solvent Company having turnover of Rs.14.46 Crores as on 31.03.2019.



7. The facts as narrated above do not establish that the debt and default in question are not in dispute, as contended by the Applicant/petitioner. The Petitioner, though places work orders in question, has not enclosed all other terms and conditions as mentioned in the work order so as to examine whether the Petitioner is entitled to claim the amount in question or not. On the other hand, the Respondent, has addressed the letter dated 19th June, 2019 to the Petitioner, which reads as under:

"We have been monitoring the water proofing work progress closely and we had regular meetings in our Site Office of Project "R.J. Brooke Square" at Brooke field, Kundalahalli, Bangalore and as well as R.J. Rishikarna Projects Pvt. Lt. Head Office, M.G. Road, Bangalore with you on the same. Many telephonic reminders and Instructions on Quality issues brought to your kind notice during the meetings and also had been followed up for the rectification of the defected work.

We were waiting, while you have been assuring us that extra efforts will be put in to rectify the default work and as well as speeding up the delayed work Schedule to complete the Water Proofing works in time as per agreed terms and conditions mentioned in the Work Order awarded to you on dated 26.12.2016. We observe and understand that the rectification work is not completed as per your verbal assurance, which is hampering the entire progress of the Project work and the Progress of other agencies involved such as landscaping, irrigation Installation of Children Playing Equipment's, which resulted as recurring delay every month in our part in executing the work and unanswerable to the clients.

The above concerns were discussed in detail at review meetings wherein your Proprietor Mr.P.Prasad was present with



the Project site-in-charge. Despite all assurances from your side to rectify the Work Deficiency and improve the Progress, we note that you have completely failed to take such steps which are necessary to expedite the completion of the works. This failure has been continuously highlighted and notified vide various meetings held frequently at site and Head Office by the Management Team.

In spite you have pressurized us for checking the bill even without completing the rectification of water proofing work deficiency we have obliged to help you in checking the bill as well as releasing fund towards the work.

The inordinate delay on your part in completion of water proofing rectification work is adversely affecting our milestone achievement and commitment given by us to our clients.

Needless to mention that our laxity in taking corrective steps is not only affecting us financially but is also likely to impact our market reputation.

Considering the present notice (i.e; MSEFC-CASE-No.=KR03D0041473/M/00001) which you have issue to us and situation at the site, we are convinced that your will not going to complete the water proofing rectification work within the stipulated time as per the agreement.

In view of the above, without prejudice to our rights under the agreement, we are exercising the powers conferred on us by the aforesaid agreement, for and on behalf of R.J. RishiKaran Projects Pvt. Ltd hold the pending amount until you rectify defected water proofing work. Failing which in the next 15 days we will forfeit the entire balance amount due and get it corrected from another agency. Also warranty certificated haven't been



issued by you as well and we have to make further claims of damages made by you for the same”.

8. The Petitioner got issued notice dated 28.06.2019 to the Respondent in the context of dishonor of cheques issued by the Respondent. In response to this notice also, the Respondent has issued a Reply dated 12.07.2019, through their Counsel, by *inter alia* pointing out the defective services and the reasons for stopping the payment, the failure to rectify the defective services etc. Subsequently, they have filed Criminal Complaint before Chief Metropolitan Magistrate at Bangalore, and the case is stated to be pending there and appeal against is also stated to be pending. The Petitioner issued yet another Demand Notice dated 25.06.2019, under Rule 5 of I&B, 2016, to the Respondent by *inter alia* demanding to pay the outstanding amount within a period of ten days on failure to pay the outstanding amount the instant Company Petition filed by seeking to initiate CIRP in respect of the Corporate Debtor and thus filed the instant Petition. The Petitioner has also filed complaint before the Micro and Small Enterprises Facilitation Council (MSEFC) on 23.07.2019 for recovery of principal amount together with the interest amounting to Rs.49,94,603/-. The case is stated to be reserved on 30.01.2020.
9. The above facts and circumstances shows that the amount claimed by the Petitioner is in substantial dispute, which is deemed to be pre-existing one. The Petitioner also invoked multiple remedies for same cause of action, which is not tenable basing on Principle of natural justice and doctrine of double jeopardy.



10. It is also not in dispute that the Respondent has paid part amount for the work done, and the remaining claimed amount could not be paid due to the reasons explained supra. Admittedly, the Respondent is solvent Company having 40 employees and the Respondent has not paid the alleged amount due to the defective service rendered by the Petitioner.
11. It is a settled position of law that provision of the code cannot be invoked when there is pre-existing dispute and it also cannot be invoked for the recovery of the alleged outstanding amount. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*, has inter alia, held that IBC, 2016 is not intended to be substitute to a recovery forum.
12. For the aforesaid reasons and circumstances and the law on the issue, we are of the considered opinion that the Petitioner has failed to make out any case so as to initiate CIRP as prayed for. Therefore, the instant Company Petition is not a fit case to admit to initiate CIRP, and thus it is only liable to be dismissed.
13. In the result, C.P. (IB)No.302/BB/2019 is hereby dismissed, without prejudice to the rights of Petitioner to prosecute the Pending cases before Criminal Court and MSEFC. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL