

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 4
(IB)-417(PB)/2023

IN THE MATTER OF:

Capric Contracts Private Limited Petitioner/Applicant
vs.	
GNEX Realtech Private Limited Respondent

Order U/s. 9 of Insolvency & Bankruptcy Code (IBC), 2016

Order delivered on 11.10.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For the Petitioner	: Appearance not marked
For the Respondent	: Sr. Adv. Viraj Datar, Adv. Arpit Singh Arora, Adv. Saurav Joon

ORDER

1. This Section 9 Petition has been filed by the Petitioner i.e. Capric Contracts Private Limited. The cause for filing this petition is a contract which is entered between the Petitioner/Operational Creditor and the Respondent/Corporate Debtor i.e. GNEX Realtech Private Limited which contract was entered into in the year 2018.
2. The OC was awarded 03 Letter of Intents (LOIs) for carrying Public Health Engineering, Road and allied work Project in Haryana. The LOI was given by the Respondent/Corporate Debtor in 03 tranches, the details of which are herein below:
 - i. "Asha Bahadurgarh" Phase-I bearing no. LOI/GRPL/CA/18-19/01 dated 25.07.2018 for an amount of Rs.6,87,33,665.40/-.

- ii. “Asha Bahadurgarh” Phase-II bearing no. LOI/GRPL/CA/18-19/02 dated 25.07.2018 for an amount of Rs.3,57,76,494.05/-
 - iii. “Asha Bahadurgarh” Phase-III bearing no. LOI/GRPL/CA/18-19/03 dated 25.07.2018 for an amount of Rs.6,42,30,398.55/-
- 3.** The Work Order was amended from time to time due to exigencies of the contract and the nature of contract to be executed. There was also amendment to the Work Order and revision in the cost. The details of which are not very significant for the adjudication of the proceedings.
- 4.** Consequent to the execution of the work, the Operational Creditor raised various invoices from time to time on the Corporate Debtor and in view of the running account, payments were made by the Corporate Debtor on various dates till the work came to a close. It is a case of the Operational Creditor that the work order has been executed in full, whereas the case of the Corporate Debtor is that the Work Order has not been completed and much remains to be done; and therefore, there is an issue of withholding of certain amounts due to non-completion of the project in accordance with the Work Order and the LOI.
- 5.** BE THAT AS IT MAY, the Operational Creditor now claims on the basis of invoices, the Ledger Account of the Operational Creditor which reflects a sum of Rs.1,77,09,067/- (Rupees One Crore Seventy-Seven Lakhs Nine Thousand Sixty-Seven Only) as due and payable by the Corporate Debtor.
- 6.** According to the Corporate Debtor, in December 2019, the Corporate Debtor confirmed and acknowledged this amount. On 07.07.2020, the Corporate Debtor shares an e-mail consisting of Ledger Accounts and bills summary for the abovementioned outstanding amount. It is a case of the Operational Creditor that they have sent several e-mails and reminders from December 2019 to July 2022 requesting the Corporate Debtor to discharge its liability. (Page 247 to 254 of the Paperbook).
- 7.** It is also not disputed that the parties were in touch with each other and even as per the statement of the Operational Creditor, on 18.02.2023 (at Page-264), the Corporate Debtor sent an e-mail to the Operational Creditor

consisting of draft settlement deed, which according to the Operational Creditor is a lesser amount. This Settlement Deed was also updated on 02.03.2023. (Page-269)

- 8.** In furtherance to the discussion between the parties, the Operational Creditor sent an e-mail dated 03.03.2023 (Page 275-279), which is signed only by the Operational Creditor and has not been counter signed by the Corporate Debtor. This e-mail with a proposed settlement is of crucial importance. The relevant paragraphs of the settlement signed by the Operational Creditor are at Paragraph 7 and 8 of the draft Settlement Deed dated 03.03.2023 which read as under:

7. *That after considering the payments stated in para no. 6, a sum of Rs. 1,73,13,191.29/- (Rupees one crores seventy-three lakhs eighty-seven thousand seven hundred and nine only) stands due in the books of first party, to be paid to second party. However, the sum of Rs.5,87,709/- (Rupees five lakhs, eighty-seven thousand seven hundred and nine only) is being deducted out of stated Rs.1,73,13,191.29/- against the electricity and cess charges and so after the said deduction, a sum of Rs.1,67,25,481.29/- (Rupees one crores sixty-seven lakhs twenty-five thousand four hundred and eighty-one and twenty-nine paisa only) stands due to be payable by the first party to second party.*

8. *That since the second party did not complete the whole of work scope granted vide the 3 LOIs, first part suffered monetary loss due to this halt in development work and so vide the present settlement deed, both the parties hereby mutually agree to full and final settlement of accounts towards all the 3 LOIs and any other LOI/Work Order. If any signed/executed by the parties herein for a sum of Rs.40,00,000/- (Rupees Forty Lakhs Only)*

- 9.** Thereafter, on 27.03.2023, the Operational Creditor sent an e-mail to Corporate Debtor stating that as per the draft proposal dated 03.03.2023

if payment is not made by the Corporate Debtor within next 5 days, the proposal should be treated as cancelled. Further, the Section 8 Notice was issued on 23.05.2023 (Page 289). To this, a reply has been sent by the Corporate Debtor on 01.06.2023. (Page 298 to 301).

10. The reply of the Corporate Debtor is in the following manner:

- 1) The Section 8 Notice contains 10 invoices and does not match the claim of Rs.1,77,09,067/-, which is the alleged default in the present case.
- 2) In view of various payments being made from time to time in compliance with the LOI and Work Order issued, substantial payments have been made by the Corporate Debtor to the Operational Creditor on which GST has to be paid by the Operational Creditor and on such payments, the credit will go to the benefit of the Corporate Debtor. The Operational Creditor having failed to make this payment, the Corporate Debtor is unable to take credit of the GST paid. This was flagged in the reply to the Section 8 Notice.
- 3) Besides that, the Corporate Debtor also raises an issue that the work was not completed in the manner in which it was reflected in the Work Order. Corporate Debtor relies upon an e-mail dated 14.10.2019 (Page 253 of the main Paperbook).

11. The Operational Creditor further responded to the reply given by CD vide e-mail dated 15.10.2019 (Page 252). Consequent to this exchange of e-mails, there is also a correspondence between the parties for payment of the balance amount.

12. Another issue pointed out by the Ld. Counsel for the Corporate Debtor is that he is willing to pay the sum of Rs.40,00,000/- (Rupees Forty Lakhs Only) which is proposed by the Operational Creditor in the draft settlement proposal; but the only difficulty which they face is that the GST liability has not been discharged by the Operational Creditor which will accrue to the benefit of the Corporate Debtor. This has been flagged again in the reply to the Section 8 Notice.

13. In this background, Ld. Counsel for the Corporate Debtor pleaded that there is a pre-existing dispute even as on 2019 and the parties were interacting with each other both orally and through e-mail. He also pleads that the Section 8 Notice has been duly replied raising an issue that subject to compliance of the statutory liability of GST, he is willing to pay Rs.40,00,000/- which is proposed, on which parties are not ad idem. Therefore, the issue stands unresolved and disputed.
14. On the issue that a sum of Rs.1,77,09,067/- is shown in the books of accounts, his plea is that it is based on the claim made by the Operational Creditor by not accepted. It is however reflected in the books of accounts because of the invoices raised. The final liability is yet to be arrived and that there are issues in dispute. It is a reflection of pending invoice and is not an admission of liability. Since the parties, admittedly, are in talk with each other for settling the issue on certain terms, which is evident from the e-mail dated 03.03.2023, the liability in the books of accounts is based merely a claim by the Operational Creditor through his invoices, and it is not an admission of debt. The full work has not been completed; hence, the dispute. On this premise, the petition is opposed.

ANALYSIS & FINDINGS

15. We have considered the arguments and submissions.
16. From the above facts, it is evident that the case of the Petitioner/ Operational Creditor is that in execution of Work Order of 2018 and after settling various amounts, a sum of Rs.1,77,09,067/- alone remains unpaid as per bills. Reliance is made on the ledger account statement and on the various e-mails.
17. The factum that this amount is in the ledger account is not disputed by the Corporate Debtor. Their own version on this amount is that it is an issue in dispute that is not resolved.
18. BE THAT AS IT MAY, the Ld. Counsel for the Operational Creditor pleaded that a full and final settlement proposal dated 03.03.2023 (Page 275-279)

was only an offer for a particular period of time which was not accepted; and therefore, nothing turns on the offer of Rs.40,00,000/- as the final amount in debt. It was not acted upon and therefore it cannot be relied. In any event, prior to this Proposed Settlement, there is an admitted debt of Rs.1,77,09,067/- which remains unpaid; and therefore, there is a case for admission of liability and unpaid debt.

- 19.** The contention of the Ld. Counsel for the Corporate Debtor on the other hand is that the ledger account is a reflection of the bills submitted by the Petitioner/ Operational Creditor for the uncompleted work done in continuation to the Work Order of August 2018 as amended. The document which is relied upon by the Petitioner to contend that there is an endorsement of acknowledgment (Pages 245-246, Annexure-I Colly.) is countered by the Respondent to state that it was received by the Engineer in-charge for verification of the claim of the Petitioner, which is a consolidation of the bills submitted for the purpose of claim by the Petitioner. It is not an admission of debt *per se*. The balance liability is in dispute due to incomplete work.
- 20.** In any event, Ld. Counsel for the Corporate Debtor vehemently pleads that the work was not completed in accordance with the Work Order. That is why the Petitioner and Respondent were on discussions. The final amount had to be determined only after the issue gets resolved. It is also pleaded by the Ld. Counsel for the Corporate Debtor that the amount of approximately Rs.40,00,000/- will be paid subject to the condition that the GST liability should be discharged by the Operational Creditor so that the benefit will accrue to the Respondent/Corporate Debtor. This is one of the bone of contention between the parties. It is also stated across the bar that even as on today, the Respondent/Corporate Debtor is ready and willing to pay Rs.40,00,000/- without demur subject to the proof of GST payment and that is the crux of the issue in this case.
- 21.** The Ld. Counsel for the Corporate Debtor vehemently denies the stand taken by the Ld. Counsel for the Petitioner/Operational Creditor that in

addition to Rs.40,00,000/- referred to in the Proposed Settlement dated 03.03.2023, it did not factor in any talk of giving a property in lieu of the balance amount. This statement in the rejoinder is refuted by the Ld. Counsel for the Respondent/Corporate Debtor. We also find that this statement in the rejoinder that over and above Rs.40,00,000/-, the settlement would also include a property to offset the total claim of Rs.1,77,09,067/- is not corroborated by any document signed by the Corporate Debtor. Therefore, we are not able to accept the stand taken by the Petitioner/Operational Creditor in the rejoinder with regard to a plot of land in lieu of the amount in excess of Rs.40,00,000/- should be taken into consideration for the purpose of this adjudication as total debt. The petitioner is taking different stands.

- 22.** On the GST issue, today is the 2nd day of hearing Mr. Gaurav Mitra, Ld. Counsel for the Petitioner/Operational Creditor appeared and stated that an e-mail has been sent prior to the settlement that the Petitioner is ready and willing to pay the GST amount. This gives credence to the stand taken by the Respondent/Corporate Debtor that the issue between the parties was the GST amount and the Respondent/Corporate Debtor is ready and willing to pay the amount of Rs.40,00,000/-. In effect, the issue raised by the Ld. Counsel for the Respondent/Corporate Debtor that there is an issue in dispute as stated in reply to the Section 8 Notice stands confirmed.
- 23.** In any event, the most crucial factor which we consider in this case is the very settlement proposal dated 03.03.2023 which has been sent by the Petitioner/Operational Creditor as a measure of settlement, which admittedly has not been accepted by the Respondent/Corporate Debtor. However, if the amount specified in the settlement is Rs.40,00,000/- instead of Rs.1,77,09,067/-, that is not a matter of concern. But what is a matter for concern to us is a voluntary statement made by the Petitioner/Operational Creditor to the effect that he has not completed the work and therefore is willing for settlement which is far below the amount claimed by the Petitioner/Operational Creditor (para 8 of the settlement

proposal dated 03.03.2023). This voluntary statement will go against the Petitioner/Operational Creditor because the dispute as raised in the reply by the Respondent/Corporate Debtor is justified by the very stand taken by the Petitioner/Operational Creditor in the draft settlement proposal. We are not concerned about the amount mentioned therein because it was not accepted by either of the parties. Whereas, an admission of fact by the Petitioner/Operational Creditor voluntarily cannot be erased; and therefore, we find no justification to hold that there has been a debt. The issue is still in the stage of dispute between the parties. We find no merit in this case to admit the Petition.

24. In view of the above, **CP (IB)-417(PB)/2023** stands **DISMISSED**.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Shubham Pandya – 11.10.2023