

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT III, MUMBAI BENCH**

C.P. (I.B) No. 367 of 2022

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

In the matter of **Manoj Stone Infra Private Limited** incorporated under the Companies Act, 2013, having its registered address at 104, Jai Shankar C.H.S., Opp. Axis Bank , L.B.S. Marg, Naupada, Thane (W) - 400 602

...Petitioner/ Operational Creditor

V/s.

Railsys Engineers Private Limited, incorporated under the Companies Act, 1956, having its registered address at; 503, Trishla Apartment, B-Wing, Dada Saheb Phalke Road, Near Ranjeet Studio, Sant Dadge Maharaj Lane, Dadar, Mumbai - 400 014

...Respondent/Corporate Debtor

Order Reserved on: 08.02.2023

Order Pronounced on: 24.03.2023

Coram: Shri H.V. Subba Rao, Hon'ble Member (Judicial)

Smt. Madhu Sinha, Hon'ble Member (Technical)

For the Petitioner: Mr. Nirman Sharman, Advocate.

For the Respondent: Mr. Akshay Petkar, Advocate.

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by Manoj Stone Infra Private Limited (hereinafter called as “**Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Railsys Engineers Private Limited, (hereinafter called as “**Corporate Debtor**”) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called as “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Operational Debt of Rs. 1,94,41,234/- (Rupees One Crore Ninety-Four Lakhs Forty-One Thousand Two Hundred Thirty-Four Only).

2. **SUBMISSIONS ON BEHALF OF PETITIONER:**

i. The Petitioner states that the Corporate Debtor approached the Petitioner for supply of signaling cables and kyosan made electronic interlocking item(s) and in accordance to its requirement issued a Purchase order dated 02.03.2021. Subsequently, in the month of March, 2021, the Petitioner supplied goods to the Corporate Debtor. These goods were directly consigned from the supplier/ vendor to the site of the Corporate Debtor which were duly received at the site of the Corporate Debtor on 29.03.2021.

ii. Pursuant to the delivery of the goods, the Petitioner raised 2 (Two) invoices of Rs.1,98,40,634/- and Rs.58,85,600/- respectively amounting to total of Rs 2,57,26,234/-. Further on 06.04.2021, the Petitioners requested the Corporate Debtor for payment of the outstanding amount of the invoices. These invoices were sent again for the second time to the Corporate Debtor which were duly received and acknowledged by the Corporate Debtor.

iii. As no amounts were received by the Corporate Debtor, the Petitioner on 17.06.2021, again requested for the outstanding amount for the goods supplied by sending the invoices for the third time. The Petitioner states that all these invoices were duly received and acknowledged by the Corporate Debtor. Thereafter, the Corporate Debtor made a payment of Rs.62,85,000/- out of the total outstanding amount of Rs. 2,57,26,234/- against the 2 (Two) invoices issued by the Petitioner. Therefore, the Corporate Debtor has failed to make the remaining payment of Rs.1,94,41,234/- and the said amount is outstanding till date.

iv. The Petitioner states that the Corporate Debtor has acknowledged and confirmed the outstanding operational debt of Rs .2,00,76,234/- vide ledger confirmation as on 31.08.2021. Thereafter, in the month of November and

December, 2021, the Corporate Debtor again made a payment of Rs. 6,35,000/- to the Petitioner.

v. The Petitioner states that as he could see no amount forthcoming and with no other recourse available, the Petitioner was constrained to issue a Demand Notice dated 08.02.2022, under section 8 of Insolvency and Bankruptcy Code, 2016 and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016) to the Corporate Debtor. However, despite due receipt of the same; no response was received for the Corporate Debtor.

vi. The Petitioner has relied upon the following documents to substantiate its claim.

a. Purchase order dated 02.03.2021 issued by the Corporate Debtor.

b. Invoices issued by the supplier/vendor of the Petitioner evidencing the goods were directly consigned to Corporate Debtor along with the delivery challans.

c. Invoices issued by the Petitioner along with acknowledgement of receipt by the Corporate Debtor.

d. Ledger Account of the Petitioners in the books of Corporate Debtor for the period from 01.04.2022 to 31.08.2021 evidencing an amount of Rs. 2,00,76,234/- payable to the Petitioner.

- e. Demand Notice u/s section 8 dated 08.02.2022 a/w Postal Receipt Acknowledgement Card and Tracking Report.
- f. Statement of Bank.
- vii. The Petitioner has supplied all the goods as per the specifications provided by the Corporate Debtor and the Corporate Debtor has not raised any complaints either in oral or written towards the delivery and/or goods supplied to them. Further, the Petitioner has made several representations to the Corporate Debtor requesting them to release the outstanding amount of the invoices, however no such payment have been received till date. Hence, this Petition.

3. SUBMISSIONS OF THE CORPORATE DEBTOR:

The Corporate Debtor filed a detail reply, dated 09.05.2022, opposing the admission of the present Company Petition, more particularly on the ground of Pre-existing Dispute between the parties and also stated that the nature of debt is not of an “Operational Debt”. The contention of the Corporate Debtor is as follows:

- i. The Corporate Debtor states that there is a gross suppression of facts/documents by the Petitioner. Further, the Corporate Debtor states that various letters and e-mails which were exchanged

between the parties which are totally suppressed. The Corporate Debtor states that the suppression of the facts was done as these e-mails would reveal the real transaction carried out between the parties which illustrates the nature is of a profit/loss sharing and not of an operational debt.

ii. Furthermore, the Corporate Debtor states that on 21.05.2021, the Director of the Corporate Debtor Company i.e., Mr. Sanjay Singh passed away due to Covid-19. On the account of the death of the said person, the Petitioner is now discarding the entire transaction and attempting to plead default for 2 invoices. However, on behalf of the Corporate Debtor, the wife of the Deceased (who was in ICU due to Covid-19 is now handling the management of the Corporate Debtor) at her instance she has been able to produce relevant facts and documents which has established the mischief and suppression by the Petitioner.

iii. The Corporate Debtor states that the legal effect of the real transaction will be required to be adjudicated before an appropriate forum. Further, the Corporate Debtor states that the real transaction is not a simplicitor 'stand-alone transaction of supply of goods' but is profit sharing venture as is admitted by the Petitioner vide an email dated 12.12.2021. Further, the Corporate Debtor states that the Petition is purportedly based on only 2 invoices and purchase order. It is apparent from the Affidavit in Reply and the trial of the e-mails exchanged between the parties

that both these amounts raised by the Petitioner through the invoices flow and form a part of a larger transaction as the supply itself is part of a profit-sharing joint venture which is admitted by the Petitioner.

iv. The Corporate Debtor states that even if the transaction is taken as an Operational Debt, the Corporate Debtor made timely payments towards the works performed by Petitioner as per terms of the Subcontract which is duly certified. The Corporate Debtor further states that the Petitioner failed to perform the obligations under Subcontract as per the terms thereunder, despite several repeated notifications, via e-mails, by the Corporate Debtor.

v. Furthermore, the Corporate Debtor states that there is a pre-existing dispute which is duly recorded between written emails exchanged between the parties. These disputes are with regards to the quality of the goods as is clearly pleaded before the issuance of the Demand Notice. In addition to this, the computation of debt placed on record by the Petitioner is incorrect and in case, if the correct computation is taken into consideration then the Petition will become ineligible under section 4 of the Code.

vi. The Corporate Debtor states that it is evident from the e-mails exchanged between the director of the Petitioner i.e., Mr. Rajesh Singh to Mrs. Jyoti Singh i.e., a Director of the Corporate Debtor that there is no debt to pay liability by the Corporate Debtor and

also the Petitioner was required to meet the quality standards as prescribed.

vii. The Corporate Debtor states that the Petitioner has affirmed in the e-mails exchanged that profits from the transaction would be shared equally was mutually agreed between the Petitioner and the Corporate Debtor and this accounting can only be done at the time of closing of transactions. In that case, the question of the existence of a debt does not arise as the Petitioner considers the relation between the parties to be that of a partnership. In this regard, the Corporate Debtor relies upon an extract from the official website of Ministry of Corporate Affairs which shows that the parties have undertaken several ventures together.

viii. Paragraph 5 (b) of the e-mail shows that the Petitioner believed that for transactions such as the one at hand, money would be transferred from the Corporate Debtor to the Petitioner after its receipt. In other words, the Corporate Debtor the contractor was not required to pay the Petitioner the sub-contractor until the former got paid by the authority which commissioned the Respondent i.e. from RITES Ltd. (a Govt. of India Enterprise). This indicates that the Petitioner could not consider himself as entitled to any money unless the payment first received by the Corporate Debtor.

ix. Further, the Corporate Debtor states that Paragraph 9 (a) of the email will indicate that the Petitioner had admitted to the reversal

of a sum of Rs. 58 lakhs which the Petitioner's group company i.e. Suprimus Superstructures Pvt. Ltd. had received from the Corporate Debtor. This indicates that the Petitioner has not accounted for this sum of Rs. 58 Lakhs in its table of "Computation of Debt" which is annexed to the Petition.

- x. The Corporate Debtor states that an invoice of Rs. 44,36,592/- was not accepted by RITES Ltd. as the material supplied by the Petitioner was of very poor quality and was only a part of the supply of the complete EI system (including vital and non-vital part) that had to be done. As per Rites the Petitioner had supplied only the non-vital part of the EI system and the vital part was not supplied. Therefore, RITES refused to release the payment for this supply as they have no provision for part payment under the LOI given by them to the Corporate Debtor. This fact was known to the Petitioner. As noted earlier in the Affidavit in Reply and the email of 12.12.2021, the responsibility to purchase the material as per standards set by RITES Ltd and therefore, the rejection of the supply due to poor quality of material by the Petitioner is his own fault. A reference may be made to the letter dated 17.02.2022 addressed by RITES Ltd. to the Corporate Debtor highlighting the fact of non-supply; a copy of the said letter is duly annexed to the Affidavit-in -Reply.
- x*i. The Corporate Debtor states that the he had paid a further sum of Rs. 75.85 lakhs to the Petitioner from 21st March 2021 to 2nd

December 2021 against the Invoices being Exhibit A and have also paid a sum of Rs. 1,35,000/- to the Petitioner towards accounts and which was to be adjusted against the invoices. Both these facts were concealed by the Petitioner in the "Computation of Debt" presented in its Application. Further, the computation as presented by the Petitioner is incorrect, as it has not accounted, nor fully disclosed, the money received from the Corporate Debtor.

- xii.* The Corporate Debtor states that there has been no reply to the said email of Mrs. Jyoti Singh. The Corporate Debtor submits that as regards the Invoice dated 27.03.2021 of Rs. 58,85,600/- (which was for an Electronic Interlocking Systems i.e. El Systems manufactured by Kyosan) on which the Petitioner has relied, the amounts thereof has not yet been received by the Petitioner as part of the goods sought under this invoice were never supplied by the Petitioner, and the parts that were supplied, were of such poor quality that the payment for the same has not been released by RITES till date. For better appreciation of this, the Corporate Debtor refers to and relies upon a letter dated 17.02.2022 issued by RITES Ltd which states that vital parts of the El Systems has not been supplied to them at Sarla Site by the Applicant. The Corporate Debtor reiterates that the procurement and the quality of the goods supplied was always the responsibility of the Petitioner. In view of that, the invoice of Rs. 58, 85,600/- is not

payable. In any case, the Corporate Debtor puts the Petitioner to strict proof as to the delivery of the goods thereof.

xiii. In view of these facts, it is clear that the Petitioner has taken two contradictory stand: one where it claims to be sharing the profits and losses, whereas on the other hand it terms the transaction as one of operational debt. By calling it a profit-sharing arrangement, the Applicant must be estopped from being a Petitioner. The Corporate Debtor states that the Applicant knows that it has supplied poor quality material (worth Rs. 44, 36,592/-) and is therefore disentitled from seeking payment for it under the provisions of Sale of Goods Act, 1930. Alternatively, even in the Petitioners own understanding, no money is to be paid to it by the Corporate Debtor unless RITES Ltd. pays for the material, as RITES Ltd. has withheld the money over quality issues as well incomplete supply of vital part, the Applicant cannot claim any right to payment for this material.

xiv. Further the Corporate Debtor states that the Petitioner has not accounted for monies paid by the Corporate Debtor. The Corporate Debtor submits that in view of the submissions above, the issues raised by the Petitioner are triable and cannot be contested under section 9 of the Code. In view thereof, the present Application is not maintainable and deserves to be dismissed.

xv. The Corporate Debtor also submits that the Petitioner had served the statutory Demand Notice dated 08.02.2022, the same could

not be traced nor could it be replied to on account of the offices of the Corporate Debtor being shut due to a spike of coronavirus and semi lockdown conditions imposed by the State Government at that time. However, the Notice and the present Application, both reveal that the Applicant has concealed material facts and documents.

FINDINGS

4. Heard Mr. Akshay Petkar Counsel appearing for the Operational Creditor and Mr. Nirman Sharman appearing for the Corporate Debtor and perused the pleadings and evidences of both the parties. After analyzing the pleadings and written submissions relied upon by the respective parties, the following issues are framed :
- i. *Whether the debt claimed by the Petitioner falls under the purview of an Operational Debt?*
 - ii. *Whether there exists of pre-existing disputes between the parties?*
5. As stated above, the first and foremost contention of the Corporate Debtor is that both the parties entered into partnership for sharing profits and losses of their businesses and the alleged debt arises out of the partnership transaction and not merely towards the supply of material as alleged by the Operational Creditor. In order to demonstrate the above argument, the Counsel appearing for the Corporate Debtor has drawn the attention of the Bench to the e-mail dated 12.12.2021 sent by the Operational Creditor to the Corporate Debtor which is extracted below for ready reference:

Adv Saeed Khan

From: Rajesh Singh <rajeshrajput.sspl@gmail.com>
Sent: Sunday, December 12, 2021 5:30 PM
To: Jyoti Singh
Subject: Re:
Attachments: SSPL Kharpada 24-08-2021.pdf

Greetings Smt. Jyoti Singh ji,

At the outset let me take an opportunity to state that the purpose of this communication is to bring correct picture in order to have lasting business relations/associations. I take an opportunity to present a few things so that proper inferences can be drawn between the stake-holders and certain mutually beneficial decisions be taken. Here is the gist of sequence of events as they unfolded.

1. Considering good relations shared between myself, Shri. Sanjay Singh ji and you, we decided to explore the possibilities of mutual growth through joint participation and skill leverage. During such exploratory talks, Shri. Sanjay Singh ji shared that he had plans to foray into Railway Point system & other electronical items mostly consumed by Railways and was looking for investor who could provide land required for it's manufacturing & setting up RDSO approved facility. I had my land bank at Village Tondali, Dist. Khalapur. The idea & business viability was worthy enough and it soon became mutual interest & thus the joint pursuit. We had agreed to make equal investments and share profits / losses on equal sharing basis. However, things didn't materialize as per the agreed interests as the land offered was not suitable according to your experts.
2. In order to expand and explore the growth opportunities, we had also decided to participate jointly as a consortium in select large Railway projects and leverage credentials of respective parent and affiliate companies. We participated jointly in a few Tenders together through respective parent companies as consortium. The transactions were transparently shared and you were privy to such developments.
3. Growth being mutual interest, presented us with free sharing & discussions on varied initiatives/decisions taken by respective parent & affiliate companies. During one such discussion, I happened to share my decision for the capacity expansion in Stone Metal Quarrying, Crushing and its supplies in the context of an emerging business situation that was evolving. It was a moment when Shri. Sanjay Singh Sir and you got interested and said that you would also love to be part of such a project as it made commercial sense for you. Thus, we agreed to share profits / losses on an equal sharing basis by making equal capital and working capital investments in

the business of Stone Metal Quarrying, Crushing & its supplies. For such purposes, I entered into lease agreement for Plot No. 208/A/4, 206/B/1/4, Village Kharoshi, Taluka Pen, District Raigad, Maharashtra with Shri. Bhalchandra Pundalik Bhagar on 04-12-2018. I entered into the said lease agreement paying the deposit amount, legal fees and stamp duty charges.

4. We had arrived at indicative costing in excess of Rs. 3.5 Crores for installation and commissioning of plant (excluding working capital requirements). Out of which, it was expected for you to equally contribute (i.e. Rs. 1.75 Crores plus) towards initial capital investments. However, due to prevailing circumstances, you were able to only contribute Rs. 58 Lacs. I acknowledge receipt of Rs. 58,00,000/- (Rupees Fifty Eight Lacs Only) from Alpha One Infra Pvt. Ltd. (hereinafter referred as AOIPL for convenience) in the account of SSPL (Suprimus Structures Pvt. Ltd.). Such monies received were to be utilized for Crusher Plant transportation, installation & commissioning and towards MSEIDCL 3-Phase connection. You & Shri. Sanjay Singh Sir was privy to the information of such fund deployments. No monies were received later as per verbatim agreement towards capital contribution from AOIPL or any of its affiliates. SSPL made all subsequent payments and incurred business expenditure. Details of which are enclosed herewith and marked as Annexure – A (We have details until August 2021 and other details shall be shared shortly). Ideally as per understanding reached between us, equal capital and/or working capital investments were expected and profits / losses were to be shared equally.

Covid-19 Lockdown resulted in losses for SSPL. It is pertinent to note that, based on such business interests, you had specifically offered us the Camper (Tata Camper MH 46 AQ 6631] for Diesel Transportation & allied acts on 13-03-2021 when Shri. Sanjay Singh Sir was alive. You were also a straight party to such offerings. Thus, such arrangements consolidated the positions of verbatim agreement reached between us.

5. It was well aware, stated and discussed with Shri. Sanjay Singh ji and you, that MSCC (Manoj Stone Crushing Company) had taken few steps in its own interests of continuity and had closed Cash Credit (CC) facilities for its transition from Proprietary business to Pvt. Limited Company (CC/OD Facilities. It was closed w.e.f. 30-09-2020). You and Shri. Sanjay Singh ji was well aware that CC & BG facilities of MSCC with Abhyudaya Bank Ltd were closed after full repayment. You were also well aware that MSCC Interalia now known as Manoj Stone Infra Pvt.

closed after full repayment. You were also well aware that MSCC Interalia now known as Manoj Stone Infra Pvt. Ltd. (hereinafter referred as MSIPL for convenience) after takeover would not be utilizing CC/OD facilities for its business purposes. Shri. Sanjay Singh ji & you were of the view that since we enjoyed strengthened relations with Bankers, we should avail Credit, Bank Guarantee & Letter of Credit (BG & LC) facilities as it benefited Cost of Funds. It was stated by you that you as under :

- a. It was agreed as under :
 - i. That, REPL / AOIPL will give back-to-back subcontract for execution and use the Funds of OD/CC facilities availed by us. We had agreed that adequate turnover transactions in books of MSIPL will be done through Sub-Contracting from REPL / AOIPL to maintain such Credit Facilities availed as per verbatim agreements.
 - ii. That execution would be done by REPL / AOIPL.
 - iii. That, Purchases would be made by MSIPL.
 - iv. The cost of expenses / purchases towards OD/ CC , BG/LC would be borne by REPL and/or AOIPL. Such expenses / purchases would be deducted before arriving at profitability calculations.
 - v. Subsequently, profits would be shared equally.
- b. That, as soon as REPL / AOIPL receive monies, you will transfer it to MSIPL accounts immediately on its receipt.
- c. As per understanding, you asked me to invest in RITES Ltd. – Sarla Project. I did the needful as mutually agreed. It was agreed between us that the payments would be received by REPL / AOIPL within 30 days. You were expected to instantly transfer the receipts as per billings (which were made as per your directives).
- d. Based on this understanding, following acts and deeds were performed by us
 - i. Rs. 1,76,11,877/- (Rupees One Crores Seventy Six Lacs, Eleven Thousand Eight Hundred and Seventy Seven only) was paid to Suyog Electricals Limited on 17-03-2021.
 - ii. Rs. 44,36,592/- (Rupees Forty Four Lacs Thirty Six Thousand Five Hundred and Ninety Two) was paid to TVM SIGNALLING AND TRANSPORTATION SYSTEMS PVT. LTD. on 25-03-2021.
 - iii. We also issued Letter of Credit through Yes Bank Ltd. to TVM SIGNALLING AND

TRANSPORTATION SYSTEMS PVT. LTD. For Rs. 85,26,338/- (Rupees Eighty Five Lacs Twenty Six Thousand Three Hundred and Thirty Eight only) on 31-03-2021

iv. We also applied for Letter of Credit to be issued to J. P. Enterprises for Rs. 28,52,550/- (Rupees Twenty Eight Lacs Fifty Two Thousand Five Hundred and Fifty Only). Such request was placed on request from Alpha One Infra Pvt. Ltd. Such was cordial relations between the parties for business purposes. This couldn't be processed due to non-availability of material (as informed from AOIPL) and Lockdown imposed due to Covid-19. You thus asked us to wait until further directives.



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v. Based upon such understanding reached as mentioned above, following bills were generated ³

1. Rs. 1,98,40,634/- (Rupees One Crore Ninety Eight Lakhs Forty Thousand Six Hundred and Thirty Four Only) [Bill No : MSIPL/006/20-21 dated 21-03-2021]
2. Rs. 58,85,660/- (Rupees Fifty Eight Lakhs Eighty Five Thousand Six Hundred and Sixty Only) (Bill No. MSIPL/007/20-21 dated 27-03-2021).

6. We are under severe pressure from our bankers as Railsys Engineers Pvt. Ltd (REPL) and/or Alpha One Infra (India) Pvt. Ltd is now our Debtor beyond 180 days in banking terms. Our bankers have desired written commitment from REPL. and/or AOIPL towards repayment schedule and its strict adherence. I am sensitizing you towards that aspect and the intent of writing such an email.

7. Untimely death of Shri. Sanjay Kumar Singh ji due to Covid-19 & your hospitalization in ICU led to delayed processing of agreed understanding. Unfortunate demise of Shri. Sanjay Kumar Singh ji was a huge loss for the plans aspired by IMSPL as he was key to all the strategies devised. The investments made by the parties became cliff-hanger and the situation continues to remain so till date. After such death, you are running REPL / AOIPL quite nicely, however, I / MSIPL are stuck because of your non-conformance. **I am sure that you are well sensitized that, we have mortgaged our residential premises, offices & other properties to procure the OD facilities as desired by you and based on your commitments. We had kept in mind very cordial and healthy**

facilities as desired by you and based on your commitments. We had kept in mind very cordial and healthy relationships in mind while availing such facilities.

8. However, it ensured that REPL became "Beyond 180 days" Debtor in books of MSIPL. This resulted in creation of banking pressure on MSIPL. We've shared with our bankers that we had met you and discussed these things on meeting held on 24th & 25th November, 2021. Our Bankers are insisting on a written repayment schedule from REPL. On receipt of such a written commitment from REPL, MSIPL is expected to make a written commitment to bankers for closure of OD, LC & BG facilities.

9. Taking in to account such developments and prevailing financial situation we've agreed to settle accounts. It has become important for us to settle the financial accounts and books in a time-bound manner. We had a meeting in connection with the same on 24th & 25th November, 2021 for such purposes. We had arrived at certain tangible understandings and they are as under :

- a. Share us in writing repayment schedule of Rs. 2,00,00,000/- (Rupees Two Crores Only) with 15-02-2022 as cutoff date. You are at liberty to keep Rs. 58,00,000/- (Rupees Fifty Eight Lacs Only) out of it as last transaction transfer. SSPL will reverse Rs. 58,00,000/- (Rupees Fifty Eight Lacs only) on the last transaction day as counter transfer. It will facilitate closure of accounts. Our bankers are insisting such repayment schedules as REPL / AOIPL have moved beyond the 180 days category and are insisting on such formal communication. Such communication would allow us for closure of OD, LC & BG facilities availed by us on mutual agreements. Furthermore, as per agreed terms "interest" paid by MSIPL to Yes Bank Limited till such final date of closure would be paid by REPL and/or any of its affiliates. It was agreed between us that you will pay towards interest charged by Bank. That, such facilities were availed by us as per your insistence for mutual growth purposes, considering prevailing business situations.

My bank is desirous of written response and thus seek your kind co-operation and necessary actions as intended.

We require you to urgently address this Banking related issue as we are under extreme stress due to the same. We thus urge you to do the needful .

Thanking you in advance for your considerate response.

Regards

Rajesh Singh



TRUE COPY
H & M LEGAL ASSOCIATES

6. The plain reading of the entire e-mail makes it very clear that there is partnership business dealing between the parties in which the supply of material by Operational Creditor is also one of the transactions and compliances. Therefore, this Bench is of the considered opinion that the above claim raised by the Operational Creditor is not a mere claim arising out of supply of material.
7. In this regard recently NCLAT in **Jain Irrigation Systems Ltd. Versus Pragyawan Technologies Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 311 of 2023**, held that

“Section 9 Proceedings are not the proceedings where the dispute raised by the parties arising out of contract between the parties can be gone into and adjudicated. The scheme of Insolvency Proceedings contemplate that the proceeding shall go on only when there is an admitted debt and default, forum is not for deciding and adjudicating the contractual dispute between the parties.”

Since, the claim is arising out of a mutual business understanding of partnership business, the debt claimed by Operational Creditor does not fall within the definition of “Operational Debt” and accordingly the first issue is answered against the Operational Creditor.

8. The second issue is with regard to the existence of pre-existing disputes. The Corporate Debtor in order to buttress his argument regarding the pre-existing disputes has relied on the e-mail correspondence exchanged between the parties as well as the Letter dated 17.02.2022 addressed by RITES (Govt. Of India undertaking) to the Corporate Debtor for whose work the Operational Creditor was engaged as Sub-Contractor by the Corporate Debtor. The relevant paragraphs of the e-mail dated 24.12.2021 sent by the Corporate Debtor to the Operational Creditor are extracted below for ready reference:

“ V. Based upon such understanding reached as mentioned above, following bills were generated

1. Rs. 1,98,40,634/- (Rupees One Crore Ninety Eight Lakhs Forty Thousand Six Hundred and Thirty Four Only) [Bill No: MSIPL/006/20-21 dated 21-03-2021)

2. Rs. 58.85,660/- (Rupees Fifty Eight Lakhs Eighty Five Thousand Six Hundred and Sixty Only) (Bill No. MSIPL/007/20-21 dated 27-03-2021).

Yes. Your This Invoice Itself is Marked Red by Our Auditor that (17611877 + 4436592 = 22048469/-) - The Actual Invoice amount is Raised as (19840834 + 5885660 = 25726294/-) is the Diff. of INR 36,77,825/- (There is No Funny Understanding as Mentioned Above that We Give You The Business and Turnover also and Share Profits Too with You - No Company Does This).

Secondly. To Your Info and Records: Rs. 44,36,592/- Invoice has Not Been Accepted Even from Our Side by Railways and The Material Supplied to Them is as Good as Scrap and Was Needed Not Now.

Another Interesting Thing You Forgot to Mention That REPL has Paid You 75.85 Lac.

Till date Plus Many of Your EMIs to Help you out.

6. We are under severe pressure from our bankers as Railways Engineers Pvt. Ltd (REPL) and/or Alpha One Infra (India) Pvt. Ltd is now our Debtor beyond 180 days in banking terms. Our bankers have desired written commitment from REPL and/or AOIPL towards repayment schedule and its strict adherence. I am sensitizing you towards aspect and the intent of writing such an email. In-spite of The Case that Everybody has to Run its Own Company by its Own Capabilities -Still as a Good MSME -We asked you many times Earlier to get Your Banker Meet Us for your Holding Only- Which You Never Complied”



राइट्स लिमिटेड

(भारत सरकार का प्रतिष्ठान)

क्षेत्रीय परियोजना कार्यालय : युनिट नं. 1122-1132, 11 तल, डिएलएफ साईबर सिटी, इनफोसिटी रोड, चंदका इंडस्ट्रीयाल ईस्टेट, पटिआ, भुवनेश्वर - 751024, दूरभास : 0674-2652100

RITES LIMITED

(A Govt. of India Enterprise)

Regional Project Office : Unit No 1122-1132, 11th Floor, DLF Cyber City, Infocity Road, Chandaka Industrial Estate, Patia, Bhubaneswar - 751024
Phone No 0674-2652100, Email ID bbsrpo@rites.com

No. - RITES/RPO/BBSR/S&T/SARLA/2022/244

Date - 17.02.2022

To

M/s Railsys Engineers Private Limited,
320, 11th floor, Skylark Building, Plot No. 63,
Sector-11, CBD Belapur,
Navi Mumbai - 400614.

Sub. - Slow Progress of S&T Work at Sarla Station of Sambalpur Division.

Ref: (i) Your e-mail dtd. 16.02.2022

(ii) This office letter even No. dated 21.01.2022, 24.12.2021, 02.11.2021, 07.10.2021, 18.08.2021, 23.07.2021, 19.04.2021 & 16.11.2020.

Dear Sir,

Vide above referred correspondence letter this office have continuously following for progress of S&T work at Sarla station for;

- Delay in submission of BG - You had failed to submit the PBG within 15 days from issue of LOA. After repeated reminder & notice the bank guarantee submitted after 5 months.
- Mobilization of adequate manpower - Till date only one S&T engineer without having any technical knowledge & experience in signaling interlocking work is deputed at site. Your project manager only comes to site during processing of bill.
- Supply of materials - Despite of repeated instruction you have failed to supply the cables route marker, location box in time. Due to which the shifting of underground signaling cable work has got delayed which also badly affect the progress of other civil work and whole project. As on date you have supplied less than 40% of the BOQ quantities despite clearance from this office.
- Supply of EI system - As per contract provision you have to supply the complete EI system (including vital & non-vital part). There is no part payment provision and no breakup is available in contract. You have only supplied the non-vital part of the EI system. Further it is verified from OEM that, EI system for SARLA had already been inspected by RDSO and same could not be dispatched due to non-payment of same to OEM at your end. The approval of break up payment from competent authority of RITES can only be processed after receiving the complete EI system at site. You have been repeatedly advised to supply the complete EI system including RDSO inspected material (vital part & interface relays) to which you have already failed.

Further this office came to notice that:

- i. You have purchased materials like u/g cables and other materials (for which payment have already been made from RITES as per contract provision) through the MSME firm and defaulted in paying back the dues to the firm.
- ii. Also you have failed to pay the dues to the manufacturer of Track circuit devices which are already inspected by RDSO in Dec.-2021. This office had issued call letters for this devices and repeatedly asked to supply the same at site.
- iii. You are processing the RA bill for piecemeal amount (less than 35 lakhs) despite repeated instruction to supply and execute as per available front.
- iv. Despite repeated reminder and notices you have neither taken any corrective action to expedite the construction of civil work nor supply balance materials like vital EI materials, telecom and mechanical items.

The subject S&T work is a part for the development of freight train maintenance and routine overhauling facility for freight wagons at SARLA of E. Co. Railway. Timely Completion of S&T work involves shifting of cables, construction of S&T service building, goomties and supply of materials which are highly essential for other associated civil work for track linking .

If immediate corrective action to expedite the work as mentioned above is not taken at your end stringent action will be taken as per contract provision.


(A. Senapati, IRSSE)
JGM (S&T)

Copy to: - GM (Work Shop), 2nd Floor, Central Wing, ROC-1, RITES Bhawan, Plot No.-1, Sector-29, Gurgaon-122001 for information and necessary action please.

9. Therefore, as per the above-mentioned correspondence between the parties and the Letter issued by RITES Ltd. placed on record by the Corporate Debtor, it can be inferred & concluded that there is a pre-existing dispute between the Corporate Debtor and Operational Creditor with regard to the quality of material supplied by the Operational Creditor.
10. It is further seen that the Demand Notice in the present case was issued under Section 8(1) of the Code on 08.02.2022, the Corporate Debtor have placed their earlier correspondences dated 24.12.2021 raising issues with respect to the quality of goods supplied by the Petitioner which is prior to issuing Demand Notice. It is thus seen that the dispute was brought to the notice of the Petitioner prior to the issuance of the demand notice dated 08.02.2022 issued under Section 8(1) of the Code. The Hon'ble Supreme Court in *Mobilox*

Innovations Private Limited Versus Kirusa Software Private Limited, clearly held that what the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application. Similarly, the Hon’ble Supreme Court recently in **M/s. S. S. Engineers V/s Hindustan Petroleum Corporation Ltd. In Civil Appeal No. 4583/2022** held that if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed - It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non- payment of disputed dues claimed by an Operational Creditor.

11. Applying the above law laid down by the Hon’ble Supreme Court in the above two referred judgments to the present case on hand, this Bench is of the considered view that there are “Pre-existing disputes” between the parties and accordingly the second issue is also answered against the Operational Creditor. For the aforesaid reasons this Bench hereby holds that there is no merit in the above Company Petition and the same deserves to be “**dismissed**” on both the grounds.
12. Accordingly, the above Company Petition is dismissed.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)
//Renuka//LRA//

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)