



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

CP (IB) / 143 (MB) 2024

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

In the matter of

Anuradha Muthappa Rai

... Operational Creditor/Applicant

Versus

Tungbhadra Sugar Works Ltd.

[CIN: U74110MH1957PLC010943]

... Corporate Debtor/Respondent

Order Pronounced on 07.10.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Joshua D Souza,
Advocate.

For the Corporate Debtor : Mr. Amardev J Uniyal,
Advocate.



ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief Facts:

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") by **Anuradha Muthappa Rai ("hereinafter referred to as Operational Creditor/Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Tungbhadra Sugar Works Ltd. ("hereinafter referred to as Corporate Debtor /Respondent")**.
2. The Applicant is the legal heir and wife of Late Mr. Nettala Rai Muthappa, who had entered into an agreement for services with the Corporate debtor under which the debt in question is stated to have accrued to the service provider deceased on 15.5.2020.
3. The Respondent is a Public Limited Company incorporated under the Companies Act, 1956 incorporated on 24.09.1957. Its Identification Number is U74110MH1957PLC010943. Its registered office is at GC 1, Gundecha Enclave, Ground Floor, Kherani Road, Sakinaka, Andheri(E), Mumbai - 400072. Therefore, this Bench has jurisdiction to entertain and decide the Petition. The Company has an Authorised share capital of Rs. 10,00,00,000/- and paid up capital of Rs. 9,00,00,000/-. The present directors of the company are 1. Palaniappan Manivelan, 2. Manivelan Vijayachamundeshwari, 3. Chinnasamy Ravichandran, 4. Suresh Kumar Rai and 5. Umamaheswari.
4. The Amount claimed to be in default is INR 9,00,00,000/- (Rupees Nine Crores only).



5. The Applicant has not filed Affidavit under Section 9(3)(b) however, it is stated in Part IV of the application the despite the receipt of the said Demand Notice, the Respondent neither responded to the said Demand Notice nor paid the admitted outstanding dues to the Petitioner. It is further stated thereat that *“there is no bona fide dispute with regards to the claim of the Petitioner / Operational Creditor that there is not a valid dispute for the denial of the payment due to the Petitioner / Operational Creditor that there is not a valid dispute for the denial of the payment due to the Petitioner / Operational Creditor”*.
6. A copy of the present application has been served to the Insolvency & Bankruptcy Board of India.

Submissions of the Applicant:

7. Vide Consultancy Agreement dated 25th November 2014 (hereinafter referred to as the "said Consultancy Agreement"), the Corporate Debtor agreed to avail certain specialized services from (i) Late Mr. Nettala Rai Muthappa, ii) Mr. Gopal and (iii) Mr. Ravindranath Betagiri Rai (hereinafter collectively referred to as the "Consultants") for a total compensation of Rs.10 Crores payable to each of the consultants. The Consultancy Agreement provided that the Corporate Debtor was in need of certain specialized services in relation to compliances of pending corporate works, handling of labour issues, identifying assets inter alia the possession of the property of the Corporate Debtor viz., 124.07 Acres of land consisting of plant and machineries, which are mortgaged to SBM and is now the subject matter before the Supreme court for determination of sale (hereinafter referred to as the "said properties");



8. Subsequently, the Hon'ble Madras High Court by its order dated 11th April 2023 (passed in Company Application Nos.626 of 2017, 298 to 300 of 2021 in Company Petition No.170 of 1995), held that the Corporate Debtor is entitled to the possession of the said properties.
9. Accordingly, by virtue of the said Order dated 11th April 2023, the Operational Creditor has complied with their obligations under the Consultancy Agreement and thereby has become entitled to the balance compensation of Rs.9 Crores Only.
10. The Operational Creditor time and again called upon the Corporate Debtor and requested it to make the said outstanding payment. However, in response the Corporate Debtor assured the Operational Creditor that the entire payment will be made soon. Since the Corporate Debtor failed to make the payment, vide its Advocates letter dated 11th October 2023, Operational Creditor recorded the true and correct facts and called upon the Corporate Debtor to pay the Operational Creditor the balance sum of Rs.9 Crores in favour of the Operational Creditor. The Corporate Debtor did not reply to the said letter.
11. Hence, the Operational Creditor has claimed the total outstanding amount of Rs.9,00,00,000/- (Rupees Nine Crores Only) together with interest thereon at the rate of 12% per annum as of 30th September 2023.
12. Thereafter, the Operational Creditor served upon the Corporate Debtor a Demand Notice dated 27th October 2023 under Section 9 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("Demand Notice") for referring the Corporate Debtor for the proposes of



insolvency resolution under the code. The Respondent did not reply to the said Demand Notice as well.

Submissions of the Respondent:

13. The Respondent has contested the present application on the following grounds:
 - i. The present petition is time barred since the party to the Consultancy Agreement died on 15.05.2020. The said Agreement was for personal performance and hence the cause of action arose on 15.05.2020. The present petition is filed on 14.11.2023 and refiled on 05.03.2024. Hence, the present petition is filed beyond the limitation period.
 - ii. The Petitioner is not an Operation Creditor and the Respondent is not a Corporate Debtor.
 - iii. No documentary evidence is produced on record by the Applicant that she is a legal heir/widow of Muthappa Rai.
 - iv. Two sons of Muthappa Rai, viz. Mr. Rocky Muthappa and Mr. Ricky Muthappa Rai have not been impleaded in the present petition though being legal heirs of Muthappa Rai and hence being necessary parties. Both of them have not made any claim with respect to the said Consultancy Agreement.
 - v. Muthappa Rai vide his will dated 25.12.2019 has bequeathed all his properties in favour of his two sons. The said will has not been placed on record. Rights under the said Consultancy agreement have not been bequeathed upon the present Applicant.
 - vi. The Applicant has already filed a partition suit bearing no. 3046 of 2020 in the Court of City Civil Judge at Bengaluru (CCH-19) against the 2 sons of Muthappa Rai thereby



- claiming 1/3rd share of his properties and challenging the will dated 25.12.2019. The said suit is still pending.
- vii. The said Consultancy Agreement was entered into under coercion as Muthappa Rai had strong political background and hence not a valid agreement.
 - viii. Muthappa Rai has failed to fulfil his obligations under the said Agreement on account of his demise and the agreement stand determined on the date of his death.
 - ix. As per Clause 3(c) of the said Consultancy Agreement, the Respondent was to pay Rs. 27 Crores comprising Rs.9 Crores to each of the Consultant separately only after peaceful possession being handed over to the Respondent. However, the said condition has not been fulfilled and hence neither Muthappa Rai during the subsistence of the agreement nor the Applicant is liable to any payment under the Consultancy Agreement.
 - x. There exists an Arbitration Clause 7(B) in the said Consultancy Agreement hence the Applicant has no right to file the present petition.
 - xi. The Respondent did not reply to Applicants letter dated 11.10.2023 and demand notice dated 27.10.2023 since the Applicant had no locus.
 - xii. The Respondent is not insolvent.

Submissions of the Applicant vide its rejoinder:

- 14. The Applicant submitted vide its rejoinder that the Applicant is legally wedded wife of Muthappa Rai and the Consultancy Agreement is succeeded by his legal heirs.



15. The will dated 25.12.2019 has no bearing on the matter in the present petition.
16. The Consultancy Agreement was not entered into under coercion as is evident by the fact that the Respondent passed a Board Resolution dated 20.11.2014 to enter in the said agreement.
17. Pursuant to Order dated 11.04.2023 passed by the Hon'ble High Court of Judicature at Madras, vacant and peaceful possession of the land forming part of the said Consultancy Agreement was handed over to the Respondent.

Findings:

18. We have heard the submissions of the learned Counsel for the Applicant and Respondent. Perused the record.
19. The Applicant has already filed a partition suit bearing no. 3046 of 2020 in the Court of City Civil Judge at Bengaluru (CCH-19) against the 2 sons of Muthappa Rai thereby claiming 1/3rd share of his properties and challenging the will dated 25.12.2019.
20. As per Section 5(6), *““dispute” includes a suit or arbitration proceedings relating to—
(a) the existence of the amount of debt;
(b) the quality of goods or service; or
(c) the breach of a representation or warranty;”*
21. The Applicant has failed to bring on record that she is sole successor of the deceased husband. On the contrary, the existence of dispute over the will, wherein she has got no rights whatsoever over the property of the deceased husband, with her two sons, it can not be said that the Petitioner herein has right



to maintain the present petition in sole capacity, even if it is assumed that there may have existed certain obligations requiring payment from corporate debtor to be made to her deceased husband.

22. In *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.*, Hon'ble Supreme Court held that:

“40. 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.”

23. Considering the above facts, it is evident that there is a pre-existing dispute as regards her claim to be sole successor to maintain the present petition to claim any debts due to the deceased husband from the corporate debtor, accordingly, we



can not hold that there exists any undisputed debt necessitating invocation of jurisdiction of this tribunal in terms of section 9 of the Code to deal with the present matter.

24. Further, the liability of the Respondent arises on providing services to the Respondent. Muthappa Rai died on 15.05.2020, on which date the consultancy agreement stood terminated by operation of law. The one of key deliverable under the agreement was provision of peaceful and vacant possession of a property, which happened only in 2023 after the order passed by the Hon'ble Madras High Court on 11.4.2023. The relevant portion from the said Consultancy Agreement is produced as under:

“1 (G) : The Consultants shall ensure that after the court orders are obtained in favor of the Company, the Property is retrieved back from the workers/ employees who are occupying the buildings and structures on the said Property and thereafter assist the Company and the Director to take back the vacant and peaceful possession of the said Property.

3(c) : The Company agrees to pay another Rs.50,00,000/- as part of further payment in the remaining portion on or before 15th of January 2015 and the Company shall pay remaining entire balance amount i.e. Rs.27.00 Crores comprising of Rs. 9.00 Crores to each of the Consultants separately after the vacant and peaceful possession of the said Property which is now in the possession of the official liquidator and guarded by security guards is handed over to the company and after the Hon'ble Supreme Court's Final Order in the said Civil Appeals.”

The above provisions have not been complied with.

25. Accordingly, it cannot be said that the balance consideration had accrued to the deceased on or before his death thus creating a debt due from the Corporate Debtor.



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26. In view of the foregoing, we are of considered view that there does not exists any debt and the Applicant's locus is also not undisputed. Accordingly, this Application is not maintainable in the present facts and circumstances of the case.

Order:

27. Considering the above facts and circumstances, the Petition bearing **CP (IB) 143/MB/2024** filed by **Anuradha Muthappa Rai**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Tungbhadra Sugar Works Ltd.** [CIN: U74110MH1957PLC010943], the Corporate Debtor, is disposed as **dismissed**.
28. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
29. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)
MK

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)