



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

CP (IB) / 33 (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

Kataline Infra-Products Private Limited

[CIN:U24222MH2008PTC183728]

... Operational Creditor/Applicant

Versus

Roadway Solutions India Infra Limited

[CIN:U45201PN2017PLC169565]

... Corporate Debtor/Respondent

Order Pronounced On 20.08.2024

Coram:

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

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

Appearances:

For the Operational Creditor : Mr. Soyaib Kareer,
Advocate



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – 1

CP(IB) NO. 33 OF 2024

For the Corporate Debtor : Mr. Sushant Kareer,
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 **Kataline Infra-Products Private Limited ("hereinafter referred to as Operational Creditor/OC/Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Roadway Solutions India Infra Limited ("hereinafter referred to as Corporate Debtor /CD/Respondent")**.
2. The Applicant registered under the Companies Act, 1956, bearing CIN U24222MH2008PTC183728 was incorporated on 19.06.2008 has its address for correspondence at Plot no.23, Nelco Housing society, Jaitala Road, Nagpur, Maharashtra-440022. The Authorised Share Capital of the Applicant is Rs. 3,50,00,000/- and the paid-up share capital is Rs.94,50,000/-. The Operational Creditor is engaged in the business of manufacturing of road marking materials and execution of road marking contracts. The present Application has been filed through Applicants Authorized Representative namely Mr. Amit Arvind Thatte.
3. The Respondent duly incorporated and registered under the Companies Act, 1956, was incorporated on 23.03.2017. Its CIN is U45201PN2017PLC169565. Its registered office is at SN-29 HN-20 Kondhwa KD. NR. Kubex Soc. NR. Shera School, Pune,



Maharashtra - 411048. Therefore, this Bench has jurisdiction to entertain and decide the Petition. The Corporate Debtor is in the business of road and highway construction and maintenance sector. The Authorised Share Capital of the Respondent is Rs. 5,30,00,00,000/- and the paid-up share capital is Rs. 5,29,21,00,000/-.

4. The Amount claimed to be in default is INR 1,13,03,981.91/- (Rupees One Crore Thirteen Lakhs Three Thousand Nine Hundred and Eighty One and Ninety One Paise only) alongwith 12% p.a. interest of the principal amount. As stated in Part IV of the Petition, the date of default is 22.07.2022.
5. The Applicant has filed Affidavit under Section 9(3)(b) and a copy of the present application has been served to the Insolvency & Bankruptcy Board of India.

Submissions of the Applicant:

6. It is submitted by the Applicant that in the year 2021, the Corporate Debtor sought to engage contractors for executing works pertaining to thermoplastic resin road markings and affixation of reflector beads, and accordingly, the Operational Creditor herein submitted its quotation bearing No. KIPL/L&T/2806/2021/002 dated 28.06.2021. Consequently, the Corporate Debtor issued a Work Order dated 15.07.2021 (hereinafter referred to as “said Work Order”).
7. That as per the terms of the Work Order dated 15.07.2021, the Operational Creditor was responsible for supply and application of thermoplastic resin road marking material with reflectorizing glass beads and other related works in the Nagpur-Mumbai Super Communication Expressway. The said works were being



executed for Maharashtra State Road Development Corporation Ltd. Further, the Corporate Debtor was itself a sub-contractor to the main EPC contractor namely Reliance Infra Ltd and the Operational Creditor was a sub-contractor to the Corporate Debtor.

8. That as per the terms and conditions of the said Work Order, the OC was to begin works only after conducting joint measurement with the CD, raise invoices by the 7th day of each month, with 5% of the total amounts of the Running Account Bills (RA Bills) deductible towards retention money. As per Clause 10 of the said Work Order dated 15.07.2021, the retention money would be released in case, the OC was to submit a Performance Bank Guarantee of an equivalent amount.
9. The OC duly completed the works assigned under the said Work Order, and raised RA Bills from time to time. Since the very inception of the arrangement, the CD used to make the payments in an irregular manner after deducting tax and retention amounts. As on date, the OC has executed works for the CD cumulatively amounting to Rs. 3,20,75,395.91/- (Rupees Three Crores Twenty Lakhs Seventy-Five Thousand Three Hundred and Ninety-Five and Ninety One Paise only) and a sum of Rs. 1,13,03,981.91/- (Rupees One Crore Thirteen Lakhs Three Thousand Nine Hundred and Eighty One and Ninety One Paise Only) which is inclusive of the retention amount, remains unpaid along with 12% p.a. interest principal amount. The Corporate Debtor paid a total sum of Rs. 2,02,06,001/- on different dates and a tds of Rs. 5,65,413/- was deducted. The total outstanding includes retention amount also.



10. That the last date of execution of works was on 21.10.2022, where after the OC intimated the completion to the CD and sought for the balance payments which were due. As per the terms of the said Work Order, upon completion of the works, the OC was to submit its final bill and the same would become payable upon approval of the works completed by an engineer or representative of the CD. Accordingly, a representative of the CD, on 12.11.2022, issued a document titled "Sub Contractor Material Issue Details up to 30.10.2022" which indicated as to whether the items supplied and works executed suffered from any defects, and the same bore the remark "No Material Issues", in essence signifying approval of the items supplied and works completed under the said Work Order.
11. That the OC has completed works as granted under the works order, and submitted the RA Bills after verification of the works completed by a representative of the CD.
12. The OC submitted a Performance Bank Guarantee in terms of Clause 10 under the head "B. Invoicing and Payment Terms" of the said Work Order, and thereafter sought release of the amount held by the CD towards retention money. The Performance Bank Guarantee was duly submitted around 15.08.2022, despite which the CD failed to release the retention money. Eventually, the OC sought for return of the Performance Bank Guarantee which was returned only in February 2023.
13. That the OC vide e-mails and WhatsApp messages made numerous requests to the CD to clear the pending payments, however the same were in vain. The CD has never raised any dispute or issue qua the works completed or the invoices/RA



Bills raised upon it or disputed the payments which are due and payable.

14. That thereafter, the OC issued a Demand Notice dated 15.06.2023 under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The said Demand Notice dated 15.06.2023 was duly delivered upon the CD. The CD in reply to the said notice, issued a Notice of Dispute dated 23.06.2023, claiming that certain disputes were pending between the parties. However, the said averments in the alleged notice of dispute are not in terms of law as no dispute exists in the present case, which is clear from the documents exchanged between the parties.
15. It is submitted that apart from the payments shown in the ledger account of the Corporate Debtor as maintained in the books of account of the Operational Creditor, no other payments have been received by the Operational Creditor.
16. Therefore, the Operational Creditor has preferred the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Submissions of the Respondent:

17. The respondent has contested the present petition on the following grounds:
 - i. In terms of the work order dated 15.07.2021, the Respondent has not committed any default.
 - ii. It is also clear that the Retention Amount, as per the own case of the applicant is payable after 2 years of defect liability period which commences at Successful Completion i.e 22.10.2024, hence has not fallen due. Thus the application does not meet the threshold of section 4 of the IBC, 2016.



- iii. No date of default has been pleaded in the section 8 notice.
- iv. The one pleaded in PART IV of the petition has no basis of an event of default, as it was incumbent upon the Petitioner to show that work/service had actually been provided to the Respondent for which the invoice has been raised. Mere raising of an invoice doesn't entitle the Petitioner for payment.
- v. There are pre-existing disputes between the parties, which the Petitioner is well aware of, and yet, has proceeded to file this frivolous and vexatious petition. There is no document appended by the Petitioner which would show that the work had actually been carried out by it as per the terms and conditions of the work order dated 15.07.2021. In the reply dated June 23, 2023 to the Demand Notice, in light of the defects in the portion of the work done by the Petitioner, the Respondent involved arbitration under the Work Order, and also further nominated an arbitrator as stated in the reply. Despite, the same, the Petitioner failed to respond to the reply and has proceeded to file the present petition.

Submissions of the Applicant submitted vide rejoinder:

- 18. It is further submitted by the Operational Creditor that the existence of debt and services has not been denied by the Respondent in its reply. Also, the NeSL record produced by the Operational Creditor is also not disputed by the Respondent.
- 19. Further, the discrepancy claimed by the respondent in the demand notice is not tenable and not fatal to the proceedings as laid down in the case of *Rajendra Bhai Panchal v. Jay Manak Steels*, 2020 SCC Online NCLAT 730 at paragraph 40 & 41.



Findings:

20. We have heard the submissions of the learned Counsel for the Applicant and Respondent. Perused records.
21. The Operational Creditor raised invoices from 17.12.21 to 3.5.2023 and no payment is stated to be received after 22.7.2022. The invoices have been issued for the work period upto 22.10.2022. These invoices are Tax invoices issued under GST law, which gets reflected on the GST log in of the Corporate Debtor. The Corporate Debtor has not placed on record any evidence substantiating pre-existence of dispute except that (i) an Arbitration notice was issued in terms of conditions contained in the work order, and (ii) Operational Creditor has not completed the work. However, this Arbitration notice was sent after the receipt of demand notice in the case. The Corporate Debtor has also not placed on record any evidence that the work was not completed by the Operational Creditor and the same was completed by itself or by third party for which it had incurred the money. The Corporate Debtor has placed on record certain photographs demonstrating the quality of work done, however, it is not clear whether such photographs were taken on inspection after handing over of completed work or much later.
22. The Respondent has relied upon the decision given in *Mobilox Innovation Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353* at paragraph 51 and *Kay Bouvet engg. Ltd. v. Overseas Infrastructure Alliance (India) (P) Ltd. (2021) 10 SCC*. The Hon'ble Supreme Court in case of Mobilox held that So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application



- A “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6). A dispute should not be illusory or moonshine. In the present case, we cannot conclude that the dispute is real in the absence of any cogent material placed before us.
23. As regards contention that the retention money has not fallen due and it falls due after two years from the date of completion, we find that the Operational Creditor had submitted the Bank Guarantee around 15.8.2022 in lieu of deduction of retention money, which was permissible under the terms of the work order. Accordingly, the amount of retention money withheld till such time becomes due for payment immediately and no amount could be deducted on account of retention money to the extent of value of bank guarantee. We do not find any force in the argument of Corporate Debtor that how could operational creditor have submitted bank guarantee in advance, when the project was completed on 22.10.2022, as the value of work was known to the parties and amount of retention money could be easily estimated on that basis. Accordingly, no adverse inference can be drawn on that count.
24. As regards date of default stated as 15.7.2022 in the Part IV and with NESL, we find that the Corporate debtor was in regular default and paid a sum of Rs. 7,49,866/- and Rs. 36,35,356/- on 22.7.2022 on account. Thereafter, 4 more invoices were raised. The invoices issued upto 15.7.2022 are partly in default. The date of default in relation to operational debt is determinable with reference to each invoice, and in the absence of invoice wise payment settlement first payment is to be appropriated



against first invoice in time. Accordingly, first date of default having being mentioned in Part IV, the non mentioning of date of default in relation to subsequent invoices can not be said to be fatal so as to warrant dismissal of the present petition more so when the date of default in relation to each invoice is ascertainable from the material placed on record.

25. The Operational creditor has placed on record a document titled "Sub Contractor Material Issue Details up to 30.10.2022" which indicated as to whether the items supplied and works executed suffered from any defects, and the same bore the remark "No Material Issues", in essence signifying approval of the items supplied and works completed under the said Work Order. Further, the letter dated 6.7.2023 issued by L N Malviya Infraprojects Pvt Ltd. on request of request made by Corporate Debtor to MRDC clearly states that all the executed work of Thermoplastic Road Markings are inspected and approved by AE's team vide daily RFI's raised by the main EPC contractor (RIL). In the absence of any material placed before evidencing that the Operational Creditor had not completed the work, and the work was completed by the Corporate Debtor, we cannot accept the contention of non-completion of work. The Corporate debtor cannot take advantage of non-certification of work by their representative in this case, where the invoices were duly raised by the Operational creditor and served upon them.
26. From the record, it is seen that the Corporate Debtor has not transferred the amount towards the debt owed to the Applicant. The Corporate Debtor has issued notice of dispute vide its reply dated 23.06.2023 only after the Applicant sent the demand notice dated 15.06.2023. It has been submitted by the



Respondent that during the meetings between the parties, these defects in services were 'discussed' by the Respondent. However, neither minutes of the said meetings have not been placed on record nor any other correspondence showing that the Respondent had any issues with the services provided by the Petitioner have been placed on record.

27. The Corporate Debtor has also placed on record the record of default as registered with the National E-Governance Services Limited and the date of default is stated to be 22.07.2022.
28. The application made by the Applicant is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority **admits** this Petition and orders initiation of CIRP against the Corporate Debtor.
29. Considering the above facts and circumstances, the Petition bearing **CP (IB) 33/MB/2024** filed by **Kataline Infra-Products Private Limited** [CIN:U24222MH2008PTC183728], filed by 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 **Roadway Solutions India Infra Limited** [CIN:U45201PN2017PLC169565], the Corporate Debtor, is disposed as **admitted**.



30. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
31. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
32. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31



- of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
33. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
34. The Applicant has proposed the name of **Mr. Prasad Kamalakar Dharap** as the Interim Resolution Professional (IRP). We hence, hereby appoint **Mr. Prasad Kamalakar Dharap** having registration no. **IBBI/IPA-001/IP-P00702/2017-2018/11228**, address at 47 Prasad, New Ramdaspath, Nagpur, Maharashtra ,440010 and **email ID prasad.dharap65@gmail.com** as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
35. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
36. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – 1

CP(IB) NO. 33 OF 2024

expenses are subject to approval by the Committee of Creditors (CoC).

37. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
38. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.
39. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)
MK

Sd/-

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