

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - V

Company Petition (IB) No. 882/ND/2022

In the matter of:

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

AND

In the matter of:

M/s Ahluwalia Contracts (India) Limited

Through its authorized representative

Mr. M.K. Hingorani

Registered Office at:

A-177, Okhla Industrial Area,

Phase-1, New Delhi- 110020

...OPERATIONAL CREDITOR/PETITIONER

Versus

M/s Logix Infratech Private Limited

Registered office at

301-A, World Trade Tower,

Barakhamba Lane,

Connaught Place,

New Delhi, -110001

Also at:

A-4 & 5, Sector - 16,

Noida, U.P.-201301

...CORPORATE DEBTOR/ RESPONDENT

ORDER DELIVERED ON: 03.06.2022

CORAM:

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)



For the Applicant: Adv. Dhruv Rohatgi

For the Respondent: Adv. Nitish K. Sharma

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. **"M/s Ahluwali Contracts (India) Ltd."** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"M/s Logix Infratech Private Limited"**.
2. The Operational Creditor is a construction company. The Corporate debtor is a company engaged in the business of real estate development.
3. Brief Facts of the case are as follows:
 - i. That the Corporate Debtor is developing a group housing project namely, 'Blossom Greens' situated at, Section 143, Noida (hereinafter referred to as "Project").
 - ii. That the Corporate debtor vide Letter of Intent dated 06.09.2010 (LOI) awarded the work of civil and structural works for the said project, as mentioned in the tender document for a contract price of Rs. 235,00,00,000/- excluding taxes to the operational creditor.
 - iii. Accordingly, the operational creditor had submitted Bill of Quantities (BOQ) matching to the contract price vide Letter No. ACIL/TS/ LCC/ 10/ 355 dated 16.09.2010. Thereafter, pursuant to the documents stated above, an Agreement bearing no. M880314 dated 31.12.2010 was executed between the Operational Creditor and the Corporate Debtor which was later amended by Memorandum of Understanding No. AD211608/AD211610 dated 05.10.2012 (hereinafter referred to as "Main Contract").
 - iv. Thereafter, in addition to above, Corporate Debtor had awarded a Work Order bearing No. L-I/Tech/264/2014 dated 11.07.2014 (hereinafter



- referred to as "Work Order") to the Operational Creditor to construct balance work of Non-Tower Area for the said Project for an amount of Rs.24,80,47,690/- excluding taxes. The Main Contract and the Work Order hereinafter collectively referred to as "Work Contracts".
- v. That the Operational Creditor successfully completed the works as mentioned in the Work Contracts on 01.10.2015 and submitted its final bill dated 07.03.2016.
 - vi. That out of the total invoiced amount submitted by Operational Creditor for the Work Contracts,
 - a. An amount of Rs.10,10,52,519/- was certified and which remained unpaid for about more than 2 years by the Corporate Debtor to the Operational Creditor, and
 - b. An amount of Rs, 4,02,00,000/- remained uncertified/unresolved between the Operational creditor and the corporate debtor.
 - vii. Thereafter, a meeting was held on 05.09.2019 between the Corporate Debtor and the Operational Creditor at the Corporate Debtor's office with regard to the unresolved amount mentioned above.
 - viii. That the said meeting was conducted in the presence of Synergy Property Development Services Private Limited ("Synergy"), wherein it was agreed by the Corporate Debtor to settle the unresolved amount for an aggregate amount of Rs. 2,00,00,000/- (Being almost 50 percent of the total unresolved amount of Rs. 4,02,00,000/-).
 - ix. That pursuant to the same, a minute of the meeting held on 05.09.2019 was issued by Synergy to both the Operational Creditor and Corporate Debtor vide email dated 06.09.2019.
 - x. That the final bills for the Work Contracts were certified by the PMC, Synergy, on 24.09.2019, for an aggregate amount of Rs. 11,55,93,501/- ("PMC Certified Amount") and the break-up of the same is explained below:
 - a. The final bill (excluding taxes) in respect of the Main Contract was certified for Rs.171,95,81,790/- for the total value of work done towards Main Contract with current payable amount of Rs.



- 9,06,21,824/- which includes unpaid previous certified amount of Rs. 1,47,22,832/-, release of retention money of Rs. 4,00,00,000/- and unresolved settled amount of Rs. 2,00,00,000/-.
- b. The final bill (excluding taxes) in respect of the Work Order was certified for Rs. 5,87,12,200/- for total value of work done towards Work Order with current payable amount of Rs. 2,49,71,677/- which includes unpaid previous certified amounts of Rs. 1,85,67,208/-, release of retention money of Rs. 29,10,079/- and credit for return of reinforcement steel amounting to Rs. 34,94,390/-.
- xi. That pursuant to above, it was agreed between the parties that out of the PMC Certified Amount mentioned above, an amount of Rs. 55,93,501 /- on account of IMCM Audit Report, Labour Cess, Insurance, Material Supply Debit, EPF, Malba removal and taxes shall be deducted.
- xii. Finally, the parties had arrived at a settlement of lump sum amount of Rs. 11,00,00,000/-, payable by Corporate Debtor to the Operational Creditor against the full and final settlement of money payable against work done by the Operational Creditor under the Work Contracts.
- xiii. That in the terms of the understanding explained above, a Memorandum of Understanding/Settlement Agreement dated 30.09.2019 was executed between the Corporate Debtor and Operational Creditor wherein amongst various other things, following terms for payment as per settlement between the parties were recorded:
- a. Under the Agreement, the corporate debtor agreed to pay a sum of Rs. 11,00,00,000/-(hereinafter referred to as "Settlement Amount"), against the work done under the Work Contract, to the Operational Creditor, in tranches, over a period of Six months from the execution of the Agreement.
- b. As part payment of the Settlement Amount, the Corporate Debtor agreed to allot and grant unhindered /unencumbered possession



- of 7 flats/inventories, being 2 bedrooms plus study apartment having super area of 1234 square feet each, having aggregate value of Rs. 3,28,00,000/- in the said Project, in favour of Operational Creditor within 10 days of entering of the Agreement.
- c. Further, it was agreed under the Agreement that the Corporate Debtor shall pay the remaining Settlement Amount of Rs. 7,72,00,000/- in 6 instalments (first five instalments of Rs. 1,25,00,000/- each and the 6th instalment of Rs. 1,47,00,000/-) on monthly basis by the 25th of every month commencing from October, 2019.
- xiv. That vide email dated 14.10.2019, the operational creditor reminded the corporate debtor to pay first instalment of Rs. 1,25,00,000/- of remaining settlement amount by 25.10.2019.
- xv. Vide email dated 26.10.2019, the operational creditor apprised the corporate debtor of his failure to release first instalment by the due date.
- xvi. Thereafter, a letter dated 05.11.2019 was further issued by the Operational Creditor to Corporate Debtor whereby the Corporate Debtor was again reminded to adhere to terms of Agreement dated 30.09.2019 and requested to pay the first instalment amount within seven days of receipt of the said letter.
- xvii. Thereafter, the Corporate Debtor vide email dated 15.11.2019 admitted to its failure to honour its commitment as per the Agreement and further blamed the non-payment of first instalment amount on slow down and bad shape of Real Estate market. It is submitted that the contents of the email dated 15.11.2019 proves the undisputed admission of the corporate debtor to pay the amounts of first instalment.
- xviii. That several reminders were sent by the applicant for the payment of the instalment amounts but the corporate debtor did not pay the amount.
- xix. Consequentially, the operational creditor issued a Notice dated 09.01.2020 to the Corporate Debtor whereby the Operational creditor



requested to clear an amount of Rs. 3,75,00,000/- which became due and payable by the corporate debtor under first, second and third instalment within 7 days of receipt of the notice.

xx. The Corporate Debtor vide email/letter dated 17.01.2020 replied to the Notice dated 09.01.2020 issued by the Operational Creditor, whereby the Corporate Debtor acknowledged and admitted its liability to pay the amounts as agreed under the Agreement dated 30.09.2019 and further reiterated the contents of email dated 15.11.2019 as the reasons for failure to clear the necessary payments.

4. The Operational Creditor delivered a Demand Notice dated 15.02.2020 under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of an unpaid operational debt amounting to Rs. 7,72,00,000/- which is due and payable by the corporate debtor.

5. The total amount of debt claimed to be in default is Rs. 7,72,00,000/- and default in payment of operational debt due and payable began from 25.10.2019.

6. The Corporate Debtor in its reply dated 27.10.2020 has submitted that:

- i. The Memorandum of Understanding/Settlement Agreement dated 30.09.2019 was executed by the Corporate Debtor only after considering all the prevalent real estate conditions, wherein Corporate Debtor was confident that the above mentioned project shall be finished on time and the proceeds from the sales of the said project would then be utilized towards the payment of the installment amounts to the Operational Creditor as per the Settlement Agreement.
- ii. However, the delay in payment of installment amounts was caused due to the fact that the construction of the said project was stopped due to the various EPCA/ NGT Orders in the month of October 2019 and thereafter unprecedented conditions created due to COVID-19 pandemic.

- iii. That due to poor air quality and air pollution in the National Capital Region ('NCR'), the Environment Pollution (Prevention & Control) Authority ('EPCA') vide its Notification dated 09.10.2019 suggested measures and efforts to be made in order to ensure that the levels of air pollution do not rise further even with adverse weather conditions so that the pollution level in the NCR can be contained. Thereafter vide EPCA Notification dated 25.10.2019, construction activities were banned between 6:00 AM to 6:00 PM during 26th October 2019 to 30th October 2019 in Delhi and satellite towns namely Gurugram, Faridabad, Noida, Greater Noida, Ghaziabad, Sonipat and Bahadurgarh. Similarly, EPCA vide its Notifications dated 01.11.2019, 04.11.2019, 08.11.2019, 11.11.2019 and 18.11.2019 continued its ban of the construction activity in the NCR region till further orders of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide its Order dated 09.12.2019 lifted the complete ban and imposed a partial ban wherein the construction activities per permitted only during the day time from 6:00 AM to 6:00 PM only, subject to the criteria stipulated in GRAP, wherein strict enforcement of rules for dust control in construction activities and closure of non-compliant sites is mandated in moderate to poor AQI category.
- iv. Further due to the construction banned imposed by the various authorities and institutions, the daily wage laborers and construction workers also becomes unemployed.
- v. That it is only in late February 2020, the Corporate Debtor was able to begin construction activity again, which became possible only after finding skilled construction laborers and workers.
- vi. No operational debt is due and payable on behalf of Corporate Debtor, however, the Corporate Debtor in terms of Settlement Agreement dated 30.09.2019 is ready and willing to pay the Operational Creditor as per the Settlement Agreement.
- vii. The Corporate Debtor pray for the leniency of this Tribunal to provide further reasonable time to make payments to the Operational Creditor



as the Corporate Debtor is always ready and willing to make the payments in terms of the Settlement Agreement.

7 We have heard the Ld. Counsel for the Applicant and perused the averments made in the application, reply filed by the respective parties.

8. On perusal of the averments made in the application, we observe that as per part IV of the application, the claim of the Applicant is based upon a settlement agreement dated 30th September, 2019. We further observe in paragraph 12 of the part IV the Applicant has referred to the terms and conditions of the settlement agreement.

9. At this juncture, we would like to refer to the scanned copy of the relevant portion of **part IV of the** Application and the same is reproduced as below:

Therefore, as per the above terms, the Operational Debt is due and payable under Memorandum of Understanding/Settlement Agreement dated 30.09.2019 whereby, the Corporate Debtor agreed and undertook to pay the remaining settlement amount of Rs.7,72,00,000/- (Seven Crore Seventy-Two Lakh Only) in six instalments wherein the first five instalments were of Rs.1,25,00,000/- and the 6th instalment of Rs. 1,47,00,000/- on monthly basis by the 25th of every month commencing from October 2019.

10. On perusal of part IV, it is seen that first instalment was due for payment on 25th October, 2019 but the amount was not paid, therefore, the Applicant has filed this application to initiate CIRP for the violation of terms and conditions of the settlement agreement arrived between the parties.

11. At this juncture, we would also like to refer to the averments made in the reply filed by the Respondent. The Respondent also admits that there was a settlement agreement and in terms of settlement agreement there is a default in making the payment of instalment amount.

12. Ld. Counsel for the Applicant submits that since the Respondent has not paid the amount, which was due and payable, in terms of the settlement agreement dated 30.09.2019 and that has also been admitted by the Respondent. Therefore, the CIRP may be initiated against the Respondent for the default in making the payment of instalment amount.

13. At this juncture, we would like to refer to section 5(21) of the “Operational Debt” means *a claim in respect of the provision of goods or services including employment or a debt in respect of the dues arising under any law for the time being enforce and payable to the Central Government or any State Government or any local authority.*
14. In terms of the definition, now we consider the submissions of the Applicant whether terms and conditions of the settlement comes within the purview of Operational Debt or not?
15. As per the definition referred to supra, Operational Debt means a claim in respect of provision of goods or services including employment. Now we consider the case of the Applicant and we observe, the claim of the applicant do not fall either under the category of the supply of the goods or service rendered by the Corporate Debtor. Rather the claim of the Applicant is based on the breach of terms and conditions of the settlement agreement, on the basis of which the Applicant has claimed that there is default in payment of the amount as referred to part IV of the application. And the second part of the Operational debt says a debt in respect of payment dues arising under any law for the time being enforce. Admittedly the claim of the Applicant also do not come under this part of the definition of the Operational debt.
16. “At this juncture, we would also like to refer a decision of NCLT Allahabad Bench in **“Company Petition (IB) No. 343/ALD/2018 in the matter of M/s Delhi Control Devices (P) Limited Vs. M/s Fedders Electric and Engineering Ltd.”** decided on 14.05.2019, in which the NCLT Allahabad bench and same is reproduced below:
- “unpaid instalment as per the settlement agreement cannot be treated as operational debt as per Section 5 (21) of IBC. The failure or Breach of settlement agreement can’t be a ground to trigger CIRP against Corporate Debtor under the provision of IBC 2016 and remedy may lie elsewhere not necessarily before the Adjudicating Authority”.*
17. **A similar view is followed by this Bench in IB No. 507/ND/2020 in the matter of Nitin Gupta vs International Land Developers Private Limited.”**

18. Applying this principle decided in the matters referred to Supra, we are of the considered view that the case of the Applicant is also covered with the aforesaid decision. Therefore, in our considered view, the default of payment of settlement agreement do not come under the definition of Operational debt. Hence, we are not inclined to allow the prayer of the Applicant.

16. Accordingly, the prayer to initiate CIRP against the Corporate Debtor is hereby rejected and **the application is dismissed.**

Sd/-

Hemant Kumar Sarangi
Member (Technical)

Sd/-

Abni Ranjan Kumar Sinha
Member (Judicial)