

**In the National Company Law Tribunal  
Single Bench, Chennai**

**CP/575/ (IB)/CB/2017**

Under Section 9 of the IBC, 2016

**In the matter of**

**M/S. MITCON CONSULTANCY & ENGINEERING SERVICES LTD**

**V/s**

**M/S. AL – AMEEN GREEN ENERGY PVT LTD**

Order delivered on: 23/10/2017

For the Petitioner/OC: Shri. M.L. GANESH, Advocate

For the Respondent/CD: Shri T.V.P SAI VIHARI, ROSHAN ATIQ, Advocates

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

1. Under Consideration is a Company Petition filed by M/S. Mitcon Consultancy & Engineering Services Ltd (in short Petitioner/ Operational Creditor) against M/s. Al-Ameen Green Energy Pvt Ltd (in short Respondent/ Corporate Debtor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016), r/w rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 (for brevity, IB Rules, 2016).
2. Before, proceeding with this matter it would be appropriate to make a note of background of facts for the purpose of determination of this Petition.

3. The Petitioner/OC is a Company duly incorporated under the Companies Act, 1956 engaged in the business of providing consultancy services for project management, engineering services including services of preparation of Techno Economic Viability (TEV) study report, Loan Syndication services and Assistance in EPC etc.
4. The Learned Counsel for the petitioner/OC submitted that the Respondent/CD had approached for consultancy services for preparation of TEV study report, Loan Syndication Services and Assistance in EPC/Vendor finalization for proposed 50 MW solar project at veera cholam village, Virudhu Nagar District, Tamil Nadu.
5. It is submitted that the Respondent/CD paid an advance amount of Rs. 4 Lakhs on 18.10.2015 along with the work order and instructed the operational creditor to commence the work immediately. It is further submitted that as per the said work order the scope of work as well as the payment terms were mutually agreed by both the parties. As per the acceptance letter by the corporate debtor indicates that 50% of 0.62% of the sanctioned amount to be paid immediately on receipt of sanction letter from bank and the balance 50% on first disbursement.
6. The Petitioner/OC as per the agreed terms of the work order raised three invoice bills vide invoice no SI/ECS/15-16/0064 dated 25.05.2015 amounting to Rs. 49,440/-, invoice no SI/ECS/15 – 16/0630 dated 29.01.2016 amounting to Rs. 4,74,750/- & invoice no SI/ECS/15 – 16/0750 dated 22.03.2016 amounting to Rs. 8,83,375/- total to the due of Rs. 14,11,565/-. The Counsel further submitted that pursuant to the Loan Syndication Services rendered by them, Punjab National Bank & Canara Bank had issued sanctioned Letters.

7. The Learned Counsel for the Petitioner/OC submitted that though assurances were made for the payment of the outstanding dues, the Corporate Debtor failed to make good such assurances and the outstanding amounts due to the petitioner/OC remained unpaid. Hence the Petitioner/OC issued notice u/s 8 of IB code, 2016 in Form III & IV dated 10.03.2017 calling upon the Corporate Debtor to pay the said outstanding amount of Rs. 14,11,565/- along with interest within 10 days of receipt of the said Demand Notice. In response to the said notice, the Corporate Debtor had sent a letter on 18.04.2017 stating that the Operational Creditor has not arranged sanction letters from all the consortium banks and obtained sanction only from two Banks. Therefore the terms and conditions of the agreement are not fulfilled, hence the corporate debtor is not liable to pay the claim amount at this stage.
8. The learned counsel T.V.P. Sai Vihari appearing for the Respondent/CD strongly opposed the Petition and submitted that the Petitioner/OC had failed to arrange the loan with IDBI Bank which was initially agreed and further gave a proposal for carrying out the above said service, through syndication process, the Respondent Company made changes to the proposal given by the Petitioner Company and gave the work order with terms and conditions, in favour of the Petitioner/OC. The Respondent/CD suggested names of Canara bank and Punjab National Bank, with which it was already in discussions for funding the above said project. It is further stated that as per the agreement Petitioner has to arrange loan for 125 crores from a consortium of banker's i.e. (i) Canara Bank (ii) Punjab National Bank (iii) Bank of India & (iv) Corporation Bank.
9. It is pertinent to point out that it was agreed between both the parties that the work of the Petitioner/OC ends only after the term loan had been

sanctioned by all the bankers and the obligation of the Petitioner Company ends only then. The acceptance given by the Respondent Company does not contain anything contrary to the above said obligation. It is further submitted that the Respondent Company had already paid Rs. 13, 00,000/- (Rupees Thirteen Lakhs Only) as an advance amount for the loan syndication services, though the Petitioner Company has not done its work as per the work Order. It is further submitted that all the four banks have to give sanction letters, out of which only two banks gave sanction letters. Further counsel pointed out that in a syndication process unless all the banks issue the sanction letters, none of the four banks will disburse the loan amount, hence the contract is not concluded.

10. The Counsel for the Petitioner submitted that the work order and acceptance of work order clearly postulate a condition with syndication services shall be paid upon receipt of sanction letter from the Bank and not from four banks as alleged by the Respondent/CD and the Petitioner also submitted that as per the agreement the Loan Approval decision rests with financial institution/Banks after due processing/evaluation of the project promoter/project viability etc. MITCON (OC) cannot guarantee terms of the loan sanction.

11. The Counsel for the Respondent placed case law **Mobilox Innovations Pvt Ltd vs. Kirusa Software Pvt Ltd (S.C)** stating that adjudicating authority is to see whether there is plausible contention which requires further investigation. The counsel further submitted that the clause which Petitioner relied in the agreement, which says that the Loan Approval decision rests with financial institution/banks after due processing/evaluation of the project promoter/project viability etc. MITCON (OC) cannot guarantee terms of the loan sanction is not there in

the work order. The Counsel for the Respondent further submitted that the claim of the Petitioner/OC is a premature claim at this stage, and that the claim amount has not been crystallized and it requires further investigation. Therefore, finally submitted that this petitioner/OC cannot invoke section 9 of IB Code 2016.

12. After hearing both the sides and perusing the entire record. The point for consideration is whether the instant Petition can be admitted or not?
13. As per the submissions of both sides and the documents relied by the petitioners shows that there is an agreement between the parties showing that the petitioner has to extend services for preparation of TEV study report, Loan Syndication Services, etc. as mentioned. The respondent has paid an initial advance of Rs. 4 Lakhs on 18/10/2015 along with work order, and the same could be seen in the given work order. The scope of work to be executed and the payment terms were mutually agreed by both the parties. The specific contention of the Respondent is that the petitioner is to arrange the loan for 125 crores from a consortium of the bankers i.e. (i) Canara Bank, (ii) Punjab National Bank (iii) Bank of India (iv) Corporation Bank. But the fact remains that only two banks i.e. Punjab National Bank & Canara Bank gave sanction letters. The Respondent counsel submitted that as per the terms agreed between the parties they have to pay the amount only after getting sanction by all the banks. It is pertinent to mention that the Petitioner/OC pointed out that Respondent/CD has to pay 50% of 0.62% of the sanctioned amount at the stage of receiving sanction letters and the total amount after the disbursement of loan amount by the banks. But here the vehement contention the Respondent is that they have accepted to pay the first part of amount only after receiving the sanction letters from all the four banks,

and the agreement between the parties and the work order given to the Petitioner/OC is still in force. Therefore in my consider view the claim of the petitioner company is premature.

In the light of the above discussion the adjudicating authority arrives to a conclusion that the amount claimed by Petitioner/OC is not yet crystallized and the case law referred above is also supporting the contention of the respondent.

14. Therefore in the circumstances, I am not inclined to admit the instant Petition at this stage. Accordingly this Petition is rejected with no costs.
15. Registry is directed to communicate this order to operational Creditor and Corporate Debtor immediately.



**K. ANANTHA PADMANABHA SWAMY**

**MEMBER (J)**