

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB)No.116/9/HDB/2017
U/s 9 of the IBC, 2016
R/w Rule 6 of IB (AAA)
Rules, 2016

In the matter of

Vijay Nirman Company Private Limited
105, 7th Main, 4th Cross, MLA Lay Out RMV,
2nd Stage, Near "KKR Vajra" Apartments,
Bangalore-500068.

.... Petitioner / Operational Creditor

Versus

Ksheeraabd Constructions Private Limited
Regd. Office at 8-2-120/114/1, Plot No.96,
Road No.2, Banjara Hills,
Hyderabad-500 034.

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

....Respondent/Corporate Debtor

Date of order: 06.09.2017

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties/ Counsels Present:

For the petitioner/ Operational Creditor: Dr. P.V. Amarnadha Prasad, Senior
Advocate along with Shri. K. Suresh
Kumar, Advocate

For the respondent/Corporate Debtor : Shri C.V. Mohan Reddy, Senior Advocate
along with Shri K. Dhanjaya Naidu, Shri
C. Raghu, Ms. R.S. Manasa and Shri M.
Karthik Pavan Kumar, Advocates.

Per: Rajeswara Rao Vittanala, Member (J)



ORDER

1. The present Company Petition bearing CP (IB) No. 116/9/HDB/2017 is filed by M/s. Vijay Nirman Company Pvt. Ltd (Petitioner / Operational Creditor) U/s 9 of IBC 2016, R/w Rule 6 of I&B (Application to Adjudicating Authority), Rules 2016, by seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Ksheerabd Constructions Private Limited (Respondent/ Corporate Debtor).
2. Brief facts, leading to filing the present case, are as follows:-
 - i. M/s. Vijay Nirman Company Private Limited (hereinafter referred as VNCPL for brevity) and M/s. Ksheerabd Constructions Pvt. Ltd., (hereinafter referred as KCPL for brevity) have entered into a sub contract agreement on 01.02.2008. Accordingly, VNCPL had to undertake 50% of Section 2 work of "Construction and widening of existing 2 lane Highway to 4 lane on NH-67 at Km 190.000 to Km 218.215 (Total 28.215 KM) for and on behalf of KCPL, retaining 50% of the work with themselves.
 - ii. Out of the balance 50% work, KCPL sub contracted 25% of the work to M/s. SDM Projects Pvt. Ltd., vide a separate agreement dated 01.02.2008 and retained 25% of the work with themselves. Later KCPL and SDM agreed to award these respective portions of works also to VNCPL for consideration amounts as per the terms agreed through a tripartite MOU signed on 09.05.2008. Thus VNCPL has agreed to become the sole sub-contractor in executing the total and 100% work of Section 2 of 28.215 Km referred above.
 - iii. Ksheeraabd Constructions Private Limited (Respondent/ Corporate Debtor) is incorporated on 05.08.2005. The petitioner addressed a detailed letter No. VNCPL/ BNG/KCPL/CL/02/2013-14 dated 19.03.2014 to Respondent by making a claim of Rs. 47,28,98,922/- based on the available information with regard to measurements and other details at that time.
 - iv. The Claimant worked out and submitted the final bill at revised rates for a total work done, amounting to Rs. 222,83,71,423/-. The project cost if worked out at initial rates is Rs. 204,98,70,758 . The difference in the amount is Rs. 17,85,00,665/-. Out of the above, after deducting



the consideration amounts of 1.4% and 6% on the value of the work as per the agreements, difference of Rs. 17,21,63,891/- stands payable.

- v. The above amount was also included in the Statement of Claims filed before the Arbitral Tribunal duly constituted on 17.08.2014 along with other claims. The Arbitral Tribunal adjudicated on the above and gave its award on 21.01.2017 and upheld the above claim of VNCPL after agreeing with the stand taken by the VNCPL (vide page nos. 27 & 28 of the Award) and awarded Rs. 13,56,98,624/- as against a claim of Rs. 17,21,63,891/- (Claim No.4) in favour of VNCPL and against KCPL, along with interest@ 6% payable since the date of the constitution of the Arbitral tribunal i.e., 25.07.2014. Thus, the total amount payable including interest would be Rs. 15,87,67,390/- as on date, which remains unpaid by the Corporate Debtor..
- vi. Thus, the above amount has become an '**Operational Debt**' to be paid by the corporate debtor M/s. KCPL as defined U/s. 3(11) of the I&B Code 2016.
- vii. A notice in Form-3 U/s. 8(1) of the I & B Code 2016 has been served on the Corporate Debtor, KCPL vide its letter dated 27.05.2017 and a reply received from KCPL vide their letter dated 05.06.2017.
- viii. Therefore, the present Company petition is filed by seeking the relief as mentioned above as the Respondent failed to pay the outstanding amount.

3. Heard Dr. P.V. Amarnadha Prasad, Learned Senior Counsel and Shri. K. Suresh Kumar, Learned Counsel for the petitioner and Shri C.V. Mohan Reddy, Learned Senior Counsel along with Shri K. Dhanjaya Naidu, Shri C. Raghu, Learned Counsels for the Respondents.
4. The case is listed before this Bench on 02.08.2017 and 06.09.2017. The Learned Counsel for the Petitioner has filed a Memo dated 06.09.2017 which reads as under:

"It is respectfully submitted that the Petitioner has filed two Company Applications under Section 9 of the I&B Code, 2016 vide Nos. CP (IB) No. 100/9/HDB/2017 and CP(IB) No. 116/9/HDB/2017 against the Respondent.



It is submitted that, since the First Application vide No. CP(IB) No. 100/9/HDB/2017 was admitted by this Hon'ble Tribunal on 29.08.2017 and the Insolvency process has been commenced, the Petitioner prays the Hon'ble Tribunal to allow to withdraw the Second application vide No. CP (B) No. 116/9/HDB/2017 against the Respondent.

Hence this Memo".

5. Therefore, the learned counsel for the petitioner submit that he may be permitted to withdraw the present petition. The learned counsel for the respondent has no objection for the same. The petitioner can approach IRP with its claim.
6. In view of the facts and circumstances of the case, we disposed of the CP (IB) No. 116/9/HDB/2017 as withdrawn, by granting liberty to petitioner to approach the IRP appointed in CP No.100/2017 immediately after getting the copy. No order as to costs.



Sd/-

**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**

Sd/-

**RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)**

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OF THE ORIGINAL**

[Signature]
**Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench**

**प्रमाणित प्रति
CERTIFIED TRUE COPY**
केस संख्या
CASE NUMBER... *CP (IB) No. 116/9/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT... *6.9.2017*
प्रति तैयार किया गया तारीख
COPY MADE READY ON... *27.9.2017*