

S.No.5

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-05-2024 AT 10:30 AM**

CP(IB) No. 57/9/HDB/2023

AND

**Unnumbered IA(IBC) /2024 with E-filing No:1361/2024 in CP(IB) No. 57/9/HDB/2023
u/s. 9 of IBC, 2016**

IN THE MATTER OF:

M/s. MECA Projects Engineers

...Operational Creditor

AND

M/s. Novus Green Energy Systems Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

CP(IB) No. 57/9/HDB/2023

Orders pronounced. In the result, **this petition is dismissed as not maintainable.**
No costs.

Unnumbered IA(IBC) /2024 with E-filing No:1361/2024

Orders pronounced. In the result, **this application is dismissed.** **No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH-1**

CP (IB) No.57/9/HDB/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s. MECA Project Engineers,
5-2-228, Flat No.202, Second Floor,
Siddamsetti Sadan, Hyder Basthi,
Hyderabad – 500003

...Operational Creditor

Versus

M/s. Novus Green Energy Systems Limited
CIN U40300TG2009PLC064410,
Plot No. 100, “SIDDHI”, P&T Colony,
Trimulgherry, Secunderabad – 5000015,
Telangana.

Also at

Sy. No. 920/A, 921/A, Nandigama Revenue Village,
Mekaguda, Kothur Post, Nandigama Mandal,
Ranga Reddy District-509228, Telangana

...Corporate Debtor

Date of Order: 03.05.2024

Coram:

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
HON’BLE MEMBER (JUDICIAL)**

SHRI CHARAN SINGH, HON’BLE MEMBER (TECHNICAL)

Parties/Counsels present:

For Petitioner/Operational Creditor : Mr. P. Pratap (Counsel)

For Respondent/Corporate Debtor : Mr. Y. Suryanarayana (Counsel)

PER BENCH

ORDER

1. This is a Petition filed by 'M/s. MECA Project Engineers' (hereinafter referred as 'Operational Creditor') under Section 9 of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') against 'M/s. Novus Green Energy Systems Limited' (hereinafter referred as 'Corporate Debtor') seeking initiation of 'Corporate Insolvency Resolution Process' (CIRP) of the Corporate Debtor. It was alleged by the Operational Creditor that the Corporate Debtor defaulted in payment of an amount of Rs.2,00,91,501/- (Rupees Two Crore Ninety One Thousand Five Hundred and One Only) as on 31.08.2022.

• Principal amount	..	Rs.1,30,78,276/-
• Interest amount	..	Rs. 70,13,225/-
• Total	..	Rs. 2,00,91,501/-

Alleged Date of default: 10.01.2020

2. The Operational Creditor is a Proprietary Concern being registered as an MSME (**UDYAM Registration Certificate at Annexure XI of The Petition**) engaged in the business of Consultancy & Construction of Civil Projects, other civil activities and constructions. The present Petition was

filed by one Mr. Venkatesh, the Authorized Signatory of the Operational Creditor being Authorized by K V Kanya Kumari, the Proprietor of the Operational Creditor vide Letter of Authorization dated 28.06.2022 (**Annexure I of The Petition**). The Corporate Debtor is a company incorporated under The Companies Act, 1956 and engaged in the business of manufacture of Solar Energy Systems and Panels.

3. It was submitted that the Corporate Debtor issued a work order to the Operational Creditor vide 'NGES-TS/MMU/19-20/00561 dated 21.08.2019' (hereinafter referred as 'Work Order') amounting to Rs.4,14,18,000 (**Annexure II of The Petition**) for carrying out Internal Electrification Works, DG Electrification Works, Machinery Electrification Works at the industrial unit of the Corporate Debtor situated at Mekaguda Village, Ranga Reddy District. As per the terms of the Work Order, the payment in respect of the Running Bills raised will be made within 30 days after the same being approved by the Engineer-in-charge at the site or within 30 days of submission of Bill whichever is later.

4. **Case of the Operational Creditor:**

- 4.1. It was submitted that the progress and quality of the work done by the Operational Creditor in pursuance of the Work Order was reviewed on daily basis by the Corporate Debtor and M/s. NR Consultants (the Project Consultant appointed by the Corporate Debtor).

- 4.2. It was submitted that the Operational Creditor issued a Running Account Bill vide R.A. Bill No. 01 for an amount of Rs. 1,71,13,211/- (Rupees One Crore Seventy-One Lakhs Thirteen Thousand Two Hundred and Eleven Only) (**Page 71 of The Petition**) for the works done at the site of the Corporate Debtor. That M/s. NR Consultants, who supervised the work of the Operational Creditor certified the R.A. Bill No.01 issued by the Operational Creditor for an amount of Rs. 1,71,13,211/- excluding the taxes and communicated the same to the Corporate Debtor by way of a letter dated 20.11.2019 (**Annexure III of Petition**).
- 4.3. It was submitted that the Corporate Debtor is liable to pay this amount of Rs. 1,71,13,211/- along with an amount of Rs.30,80,378/- (towards GST) to the Operational Creditor. That the Corporate Debtor made an advance payment of Rs.71,15,313/- along with 18% GST and that a balance amount of Rs.1,30,78,276/- remains to be paid by the Corporate Debtor, which is due since November, 2019.
- 4.4. It was submitted that the Operational Creditor being an MSME, is entitled to claim an interest at the rate of three times the bank rate i.e. @19.5% per annum on the due amount as per Section 16 of The MSMED Act, 2006 and the amount of interest thus calculated amounts to Rs.70,13,225/- (**Calculations of Operational Debt alleged to be**

owed by the Corporate Debtor towards Operational Creditor provided at Page No.12 of The Petition).

4.5. It was submitted that though there were reminders from the Operational Creditor to the Corporate Debtor pertaining to these dues, the Corporate Debtor failed to pay the same. Hence, the Operational Creditor issued a Statutory Notice dated 11.07.2022 in terms of Section 8 of IBC to the Corporate Debtor in Form-4 enclosing the Tax Invoice (**Annexure V of The Petition**). It was submitted by the Operational Creditor that the Corporate Debtor replied to the Statutory Notice by way of A Reply Notice dated 23.07.2022 admitting the Work Order but disputing the liability of payment of Rs.2,01,93,558/-. It was submitted by the Operational Creditor that the Corporate Debtor, citing the email dated 17.06.2019 stated that there is a pre-existing dispute between the Corporate Debtor and the Operational Creditor with respect to the issue raised in the Statutory Notice. It was submitted by the Operational Creditor that this email dated 17.06.2019, does not constitute a pre-existing dispute.

5. Reply of the Corporate Debtor:

5.1. At the outset, the Corporate Debtor denied the allegations of debt and default on part of the Corporate Debtor and prayed for dismissal of the present Petition. It was submitted that the Corporate Debtor is a solvent

Company with good financial strength and that the claim made by the Operational Creditor against the Corporate Debtor is false and not maintainable on law or facts.

5.2 It was submitted that there are several infirmities and defects in the Petition filed by the Operational Creditor. That in the Petition, the Operational Creditor states that the date of default is 31.08.2022 whereas the Running Account Bill was raised in the month of November, 2019 and the Statutory Notice to the Corporate Debtor was issued on 11.07.2022 which is much prior to the alleged date of default.

5.3 It was submitted that the Operational Creditor never raised any invoice on the Corporate Debtor and that for the first time raised a “Dummy Tax Invoice” along with the Statutory Notice instead of a proper tax invoice. That this Dummy Tax Invoice was never raised by the Operational Creditor any point of time prior to the issuance of the Statutory Notice and that the same is also not recognised by the law. That this Dummy Tax Invoice do not create any liability or debt and hence there could not be any default on the part of Corporate Debtor arising out of this Dummy Tax Invoice.

5.4 It was submitted that the Operational Creditor initially raised an uncertified Running Account Bill for an amount of Rs. 1,71,13,211/- and subsequently, after discussions and reconciliation, the final amount to be paid by the Corporate Debtor to the Operational Creditor was arrived at

Rs.60,63,788/- excluding GST. It was submitted that acknowledging this reconciliation, the Operational Creditor vide an email dated 09.03.2021 raised an invoice dated 25.01.2021 for an amount of Rs.71,55,270/- (including GST of Rs.10,91,482/-) (**Annexure 1 of The Counter**) in terms of Work Order. It was submitted by the Corporate Debtor that this was the only invoice raised by the Operational Creditor against the Corporate Debtor and that the same was not brought before this Tribunal by the Operational Creditor.

- 5.5 It was submitted that the Corporate Debtor had already paid an amount of Rs.72,60,643/- as an advance payment and that after adjusting this advance payment towards the total payable amount of Rs.71,55,270/-, it is the Operational Creditor who owes Rs.1,05,373/- to the Corporate Debtor. It was also stated that the Corporate Debtor communicated the same by way of email dated 18.01.2021 (**Annexure 6 of The Counter**) and that there was no demand made by the Operational Creditor for any extra amount in response to this email dated 18.01.2021. It was submitted by the Corporate Debtor that the Operational Creditor, after this email dated 18.01.2021, communicated with the Corporate Debtor by way of emails dated 19.01.2021 and 22.09.2021 (**Annexure 7 & 12 of The Counter**) requesting the Corporate Debtor to return the material of the Operational Creditor lying in the premises of the Corporate Debtor and that the Operational Creditor did not raise any demand as to any amounts

claiming to be due by the Corporate Debtor towards the Operational Creditor.

5.6 It was submitted that there is a pre-existing dispute pertaining to the quality of work performed by the Operational Creditor in terms of the Work Order and that the same is evident from the email communications dated 06.01.2020, 19.03.2020, 17.06.2022 (**Annexure 4, 5 & 13 of The Counter**).

5.7 It was specifically submitted by the Corporate Debtor that the project consultant M/s. NR Consultants only recommended the payment of an amount of Rs.1,71,13,211/- for the R.A. Bill No.1 raised by the Operational Creditor and did not certify the same. It was submitted by the Corporate Debtor that the bill raised by the Operational Creditor will not become payable until and unless it was certified by the Engineer-in-charge at the site. It was further submitted that when the Corporate Debtor sought for explanation from M/s. NR Consultants pertaining to the recommendation of R.A. Bill No.1, it was replied by M/s. NR Consultants that it only 'recommended' the payment of the and did not certify the same as the bill was not checked and verified by the PMC Engineer at site (**Annexure 2 & 3 of The Counter**). It was submitted by the Corporate Debtor that as per the terms of the Work Order, the bills are to be certified by the Engineer-in-charge at the site and that the recommendation by M/s. NR Consultants doesn't entitle the Operational Creditor for the amounts

claimed in the bill. It was contended that M/s. NR Consultants was nowhere named in the work order dated 21.08.2019.

- 5.8 It was submitted that even after a Reply Notice dated 23.07.2022 was issued by the Corporate Debtor to the statutory Notice of the Operational Creditor, the Operational Creditor remained silent for a period of about 6 months and filed the present Petition on 30.01.2023.

6. Rejoinder of the Operational Creditor:

- 6.1 With respect to the date of default, it was submitted by the Operational Creditor that in the Petition, it is pleaded that the amount of default *as on 31.08.2022* is Rs.2,00,91,501/- and that the date of default as per the terms of the work order dated 21.08.2019 is 30 days from the PMC letter dated 20.11.2019.

- 6.2 It was submitted that the Corporate Debtor neither terminated the work order nor initiated any legal proceeding with respect to the defects in the quality of work performed by the Operational Creditor prior to issuance of Statutory Notice dated 18.07.2022. Hence, there can be no defence of pre-existing dispute in favour of the Corporate Debtor.

- 6.3 It was submitted that the Corporate Debtor instead of explaining how the amount claimed by the Operational Creditor is not due, is interpreting the words “DUMMY TAX INVOICE” so as to escape its liability of default. It is further stated that the terms “Proforma Invoice” and “DUMMY TAX

INVOICE” are used interchangeably to claim bills on a running account wherein the transaction was not completed. It was submitted that this Dummy Tax Invoice was provisionally issued as the Corporate Debtor was attempting to avoid the payment of the outstanding debt by way of an email dated 06.01.2020 wherein for the first time the Corporate Debtor raised the issues relating to quality of work.

6.4 It was submitted that the existence of a debt and default cannot be gathered from a single Tax Invoice, but is to be ascertained from the series of facts and documents arising from the work order dated 21.08.2019 to the last email communication dated 17.06.2022. It was submitted that in the email communication dated 17.06.2022 (**Page 44 & 45 of The Counter**), it was also admitted by the Corporate Debtor that the Operational Creditor raised R.A. Bill No.1 dated 18.01.2020 for an amount of Rs. 1.71 crore. That in lieu of this fact, the contention that the Operational Creditor never raised an invoice for an amount of Rs.1,71,13,211/- cannot stand.

7. Both the parties filed written submissions reiterating the contentions put forth and also relied on the rulings of different Judicial Authorities in respect of the contentions raised. In addition to these written submissions, a memo dated 12.03.2024 was filed by the Operational Creditor and a reply memo dated 12.03.2024 was filed by the Corporate Debtor.

8. In the light of the contest put forth by both the parties herein, the points that emerge for our consideration are:

POINTS:

- (1) Whether the present Petition, being filed by a Proprietorship Firm is maintainable?**
 - (2) Whether there is an operational debt overdue and in default by corporate debtor for an amount exceeding rupees One Crore ?**
 - (3) Whether there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor prior to the issuance of a Demand Notice under Section 8 of IBC with respect to the claim raised in the present Petition?**
9. Heard the Ld. Counsel Mr. Pratap for the Operational Creditor and Ld. Counsel Mr. Y, Suryanarayana for the Corporate Debtor, perused the record and the written submissions.

POINT (1):

Whether the present Petition, being filed by a Proprietorship Firm is maintainable?

The submissions

10. The Ld. Counsel for the Corporate Debtor vehemently contended that the sole Proprietorship Firm, not being a legal entity, cannot bring a Petition under Section 9 of IBC against the Corporate Debtor and that the same is not maintainable and liable to be rejected. In support of this contention, the Ld. Counsel for Corporate Debtor placed reliance on *Neeta Saha vs. Ram Nivas Gupta, Company Appeal (AT) (Insolvency) No.321 of 2020* dated

25.02.2020 by ‘**The Hon’ble National Company Law Appellate Tribunal**’ (hereinafter referred as ‘The Hon’ble NCLAT’), New Delhi and *Fipola Retail (India) Private Limited* vs. *M2N Interiors, Company Appeal (AT) (CH) (Ins) No.89 of 2021* dated 01.09.2021 by **The Hon’ble NCLAT**, Chennai.

11. On the other hand, the Ld. Counsel for the Operational Creditor submitted that this defect in the present Petition is a curable one by way of amending the cause title of the present Petition and the same does not affect the maintainability of the present Petition.

Our analysis & findings

12. The cause of action to file a Petition under Section 9 of IBC arises when the recipient of Demand Notice sent under Section 8 of IBC fails to discharge the amount that is claimed to be in default in the notice in 10 days. Hence, it is necessary to consider whether the demand notice issued under Section 8 of IBC was proper.
13. The Demand Notice in the present case was issued to the Respondent on 11.07.2022 in Form – 4. This Demand Notice was issued to the Respondent by the Proprietorship Firm and not by the Proprietor.
14. It is a well settled position of law that a Proprietorship Firm is not a separate legal entity while a firm is a separate legal entity from its partners. The

Proprietorship Firm is not recognised by any of the statutes. It is a name given to the business carried on by a person referred to as ‘Proprietor’.

15. In this regard, it is obvious to refer to the following observation of The Hon’ble Supreme Court in *Vinayak Purushottam Dube (Deceased), through LRs vs. Jayashree Padamkar Bhat and Ors., 2024 INSC 159* which clears the cloud:

“13. In this regard, it is necessary to discuss the jurisprudential status of a proprietary concern. In a report of the Insolvency Law Committee submitted in February, 2020, the definition of ‘Proprietorship Firms’ reads as under:

“2.DEFINITION OF ‘PROPRIETORSHIP FIRMS’

2.2 Proprietorship firms are businesses that are owned, managed and controlled by one person. They are the most common form of businesses in India and are based in unlimited liability of the owner. Legally, a proprietorship is not a separate legal entity and is merely the name under which a proprietor carries on business. [**Raghu Lakshminarayanan vs. Fine Tubes (2007) 5 SCC 103.**]

Due to this, proprietorships are usually not defined in statutes. Though some statutes define proprietorships, such definition is limited to the context of the statute. For example, Section 2 (haa) of the Chartered Accountants Act, 1949 defined a ‘sole proprietorship’ as “an individual who engages himself in practice of accountancy or engages in services...”. Notably, ‘proprietorship firms’ have also not been statutorily defined in many other jurisdictions.”

[**Source:** Report of the Insolvency Law Committee, Page No.117-118, Government of India (Ministry of Corporate Affairs, February, 2020).]”

16. It is clear from the above observation of Hon’ble Supreme Court that a Proprietorship Firm is not a legal entity. Here it is important to refer to Section 3(23) of IBC, which is as below:

Section 3(23) of IBC reads as follows:

“3. Definitions

In this Code, unless the context otherwise requires, -

.....
(23) “person” includes—

*(a) an individual;
(b) a Hindu Undivided Family;
(c) a company;
(d) a trust;
(e) a partnership;
(f) a limited liability partnership; and
(g) any other entity established under a statute,
and includes a person resident outside India;”*

Now we hereby refer to the definition of operational creditor under IBC, which is mentioned below:

Section 5(20) of IBC reads as follows:

“5. Definitions

In this Part, unless the context otherwise requires, -

(20) “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.”

17. The Proprietorship Firm is not included in the above definition of person under IBC.
18. Therefore, the Proprietorship Firm, not being a person, cannot be termed to be an operational creditor under Section 3(23) of IBC. This leads to a conclusion that a Proprietorship Firm, not being a legal entity (or) recognised entity, more particularly under IBC, cannot issue a Demand Notice under Section 8 of IBC, since a Demand Notice. It is so because a Demand Notice under Section 8 of IBC can be issued by an Operational Creditor only. Thus, the Petitioner herein being a Proprietorship Firm is not qualified to be an Operational Creditor.

19. With regard to the submission of the Ld. Counsel for Corporate Debtor that the defect in filing the present Petition in the name of a Proprietorship Firm is a curable one, it is pertinent to note the following ruling:

The Hon'ble NCLAT *in M/s. Mateshwari Minerals vs. Jet Granito Private Limited, Company Appeal (AT) (Ins) No.776 of 2020*, observed as follows:

11. As regards the question of maintainability of the Application in the name of proprietorship firm, we had already noticed Section 2(f) of IBC in Judgement in the matter of "Neeta Saha" (supra) where the Section provides that the provisions of this Code shall apply to:-

"(f) partnership firms and proprietorship firm; and".

However, without entering into legal issue if such Trade Name is "person", we find that it was a curable defect. The learned Counsel for Appellant has rightly relied on the Judgement in the matter of "Neeta Saha" (supra). The Adjudicating Authority should have given opportunity to the Appellant to appropriately amend the Application in part – 1 of the Format where name of the Operational Creditor is shown. Mr. Piyush Bangar can show his name and suffix that he is sole proprietor of M/s. Mateshwari Minerals.

20. From the above cited observation of the Hon'ble NCLAT, the contention of the Ld. Counsel for the Corporate Debtor may seem tenable. But, in the present case, the Demand Notice issued under Section 8 of IBC, which gives the cause of action for bringing the present Petition is itself defective and invalid as the same being issued by a non-legal entity or a non-recognised entity. In such scenario, the contention of the Ld. Counsel for Operational Creditor will not hold good, as the defect in the Demand Notice is not a curable one.
21. In lieu of the above analysis, it can be concluded that the Demand Notice dated 11.07.2022 issued by the Operational Creditor to the Corporate

Debtor under Section 8 is not valid. In lieu of the same, there cannot be any cause of action accruing in favour of the Operational Creditor so as to bring the present Petition before this Tribunal against the Corporate Debtor.

22. In light of the finding on Point (1) supra, no further finding is required on the other points and petition can be dismissed only on this point but we are inclined to examine other issues also to test the petition on touchstone of merit also.

Point No 2: Whether there is an operational debt overdue and in default by corporate debtor for an amount exceeding rupees One Crore?

23. The learned counsel for the petitioner submitted that the Corporate Debtor issued a work order to the Operational Creditor for Rs.4,14,18,000/- for electrification Works and as per the terms of the work order, the payment of the running bills was to be made within 30 days from the date of approval of Engineer-in-charge or submission of bill whichever is later. Learned counsel further submitted that petitioner issued a running bill vide R.A. Bill No. 01 for an amount of Rs. 1,71,13,211/- for the works done as per the work order and M/s. NR Consultants who supervised the work of the petitioner certified it and communicated the same to the Corporate Debtor by way of a letter dated 20.11.2019. The Corporate Debtor had already paid an amount of Rs.71,15,313/- including 18% GST towards

advance payment but did not pay balance amount of Rs.1,30,78,276/- till date.

24. The respondent/ corporate debtor refuted the arguments of the counsel for the petitioner and pointed out some infirmities and defects in the Petition filed by the Operational Creditor. The Learned counsel submitted that in the Petition, the Operational Creditor states that the date of default is 31.08.2022 whereas the running account bill was raised in the month of November, 2019 and the Statutory Notice to the Corporate Debtor was issued on 11.07.2022 which is much prior to the alleged date of default. He further stated that the petitioner /Operational Creditor never raised any invoice on the Corporate Debtor and that for the first time it raised a “Dummy Tax Invoice” along with the Statutory Notice instead of a proper tax invoice.
25. Learned counsel further submitted that the Operational Creditor initially raised an uncertified Running Account Bill of Rs. 1,71,13,211/- but subsequently, after discussions and reconciliation, the final amount to be paid by the Corporate Debtor to the Operational Creditor was arrived at Rs.60,63,788/- excluding GST for which Operational Creditor raised an invoice dated 25.01.2021 for an amount of Rs.71,55,270/- (including GST of Rs.10,91,482/-). He further stated that the Corporate Debtor had already paid an amount of Rs.72,60,643/- as an advance payment and that after adjusting this advance payment, it is the Operational Creditor who owes

Rs.1,05,373/- to the Corporate Debtor. He also stated that the Corporate Debtor communicated the same to the petitioner by way of email dated 18.01.2021. The learned counsel, thus finally contended that there is no debt and default and therefore this petition is liable to be dismissed.

26. Learned Counsel for the petitioner replying to the contentions of the corporate debtor submitted that the terms “Proforma Invoice” and “DUMMY TAX INVOICE” are used interchangeably to claim bills on a running account wherein the transaction was not completed therefore, the Dummy Tax Invoice referred by corporate debtor was provisionally issued as the corporate debtor was attempting to avoid the payment of the outstanding debt by way of an email dated 06.01.2020 wherein for the first time the Corporate Debtor raised the issues relating to quality of work. Learned counsel further stated that in the email communication dated 17.06.2022 Corporate Debtor admitted that Operational Creditor raised R.A. Bill No.1 dated 18.01.2020 for an amount of Rs. 1.71 crore.

Our Findings:

27. The respondent has not denied issuance of Running Account Bill of Rs. 1,71,13,211/- but contend that subsequently, after discussions and reconciliation, the final amount to be paid by the Corporate Debtor to the Operational Creditor was arrived at Rs.60,63,788/- excluding GST for which Operational Creditor raised an invoice dated 25.01.2021 for an amount of Rs.71,55,270/- (including GST of Rs.10,91,482/-) . He further

stated that the Corporate Debtor had already paid an amount of Rs.72,60,643/- as an advance payment and that after adjusting this advance payment, it is the Operational Creditor who owes Rs.1,05,373/- to the Corporate Debtor. Therefore, there exist no debt and default if we accept the submissions made by the corporate debtor. The operational creditor has offered no explanation or counter to the above submissions made by the corporate debtor. The corporate debtor has also filed a copy of the said invoice but operational creditor has not refuted or submitted any explanation on it.

28. We further find that application under section 8 is based on dummy invoice whereas pleadings are based on running account bill and because of this some infirmities are there in the petition. Running account bill was raised in the month of November, 2019 and as per the terms of the contract if the bill is not paid within 30 days it becomes overdue but the date of default is shown as 31.08.2022. Further, Statutory Notice to the Corporate Debtor was issued on 11.07.2022 which is much prior to the alleged date of default i.e. 31.08.2022.
29. In the above background, we are of the opinion that operational creditor has failed to prove existence debt and default of Rs 1.00 crore and above. Accordingly, the point is decided.

Point no 3: Whether there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor prior to the issuance of a Demand Notice under Section 8 of IBC with respect to the claim raised in the present Petition?

30. The counsel for the applicant submits that We further find that R.A. Bill No.1 raised by the Operational Creditor was certified by (Project Consultants) on 20.11.2019 without any qualification on quality of work, hence there can not be any dispute before issuance of demand notice.
31. Per contra, the learned counsel for Corporate Debtor submits that M/s. NR Consultants only recommended for payment and not certified the payment. Learned advocate also referred to some communication between corporate debtor and consultant in this regard.
32. After careful perusal of the documents, we find that M/s. NR Consultants has recommended for payment and corporate debtor has also not denied it, but the CD submits that it is only recommendation and not certification of works which have been clarified by consultant in correspondence with the CD. We further find from the records that Operational Creditor was not a party to the communications made between the Corporate Debtor and M/s. NR Consultants pertaining to the explanation on certification of the R.A. Bill raised by the Operational Creditor. Moreover, these communications dated 23.07.2020, 05.08.2020, 08.08.2020 between the Corporate Debtor and M/s. NR Consultants were made at a very later stage after the

certification of the bill on 20.11.2019. However, as per the terms of the work order dated 21.08.2019, these bills become payable within 30 days from the date of approval of Engineer-in-charge. The other contention of the Corporate Debtor that it is the Engineer-in-charge at the site who has to certify the bill and not M/s. NR Consultants can also not come to the rescue of the Corporate Debtor as if it was so, then this fact should have been brought to the notice of the Operational Creditor by the Corporate Debtor in the email communications dated 06.01.2020 and 19.03.2020 which were made after the certification of the bill dated 20.11.2019 which was sent to Corporate Debtor.

33. Further to the above facts the contention of corporate debtor is not maintainable as in ordinary prudence the recommendation for payment is succeeded by certification of works, meaning thereby that first certification of work is done as per standard norms and thereafter the recommendation for payment is made. Therefore, if recommendation for payment is made by consultant it includes certification of the work. Hence, the plea of pre-existing dispute cannot stand in lieu of these findings. Accordingly, point no 3 is decided.
34. Therefore, in the light of the findings on the points above, this Tribunal hold that this petition firstly is not maintainable and also it is liable to be rejected on merits as operational creditor could not prove the existence of

debt and default beyond threshold limit. Accordingly, this petition is hereby rejected however, without costs.

35. In the result, this petition is hereby rejected. No order as to costs.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Anil/Pavani