



SL. No.3

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 15.07.2025 at 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>Company Petition IB/128/9/2024</b>
<b>NAME OF THE COMPANY</b>	<b>Sri Avantika Contractors (I) Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>S.K. Constructions</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Sri Avantika Contractors (I) Ltd</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**HYDERABAD BENCH – II**

*(Under Section 9 of Insolvency and Bankruptcy Code 2016, read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudication Authority Rules, 2016)*

**IN THE MATTER OF M/s S. K. CONSTRUCTION**

**CP (IB) No.128/09/HDB/2024**

**BETWEEN:**

**M/s. S.K. CONSTRUCTION**

Through its Proprietor, Sh. Suresh Kumar Jain  
Having office at: Manglem Building,  
1<sup>st</sup> Floor, Thangal Bazar,  
Imphal, Manipur- 795001

**...Petitioner/Operational Creditor**

**AND**

**SRI AVANTIKA CONTRACTORS (I) LIMITED**

Registered office at:  
610- B. Nilgiri Block,  
Aditya Enclave, Ameerpet,  
Hyderabad- 500048, Telangana

**.... Respondent/Corporate Debtor**

**Date of Order: 15.07.2025**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**COUNSELS PRESENT:**

For the Applicant : Mr. Singh Chawla and Mr. Ashish KR Gupta.

For the Respondent : Ms. Sughosh Subramanyam and Mr. D. Pavan Kumar.



**[PER: BENCH]**

**O R D E R**

The present application is filed by the Applicant, M/s. S.K. Construction (“**Operational Creditor**”) against the Respondent Sri Avantika Contractors (I) Limited (hereinafter referred to as ‘**Corporate Debtor**’) seeking initiation of CIRP<sup>1</sup> under Section 9 of IBC<sup>2</sup> for the nonpayment of Rs. 2,48,21,261 as operational dues payable to the Petitioner.

**The Application**

1. The Petitioner, an **OC**, is a registered partnership firm engaged in construction contracting, trading of construction materials, and other related activities. The Respondent, a private limited company, is duly incorporated under the Companies Act and registered with the Registrar of Companies, Hyderabad, bearing CIN: U51100TG2005PLC046422.
2. The Respondent was awarded a contract for the "Construction of Capital Complex (Civil Secretariat Component)" at Mantripukhari, Imphal, Manipur, and subsequently approached the Applicant in 2021 to execute the work as a subcontractor to expedite completion.
3. It is submitted that the terms and conditions relating to the scope of work and payment were outlined in a Sub-Contract Agreement dated 09.05.2021. Although this agreement was shared via email, the CD did not formally execute it. Nevertheless, a copy of the unsigned agreement is annexed to prove the mutual intention to formalize the contractual relationship. Despite the absence of a signed contract, the OC commenced and executed construction work for the project titled "Construction of Capital Complex (Civil Secretariat Component) at Mantripukhari – Balance Work," relying on the verbal assurances provided by the CD

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<sup>1</sup> Corporate Insolvency Resolution Process

<sup>2</sup> Insolvency & Bankruptcy Code, 2016



4. It is stated that the OC completed the assigned work and raised invoices between January 2022 and December 2022. The CD made partial payments for the invoices. Additionally, the CD recorded these invoices in Form 26AS and paid the TDS to the government on behalf of the OC. The Applicant seeks appropriate relief based on the payments made and tax-related actions taken.
5. The Applicant executed construction work for the CD amounting to Rs 31,59,51,832, against which payments totalling Rs 29,60,07,723 were received. However, an amount of Rs 1,99,44,109, including Rs 79,43,857 towards retention money/security deposit, remains unpaid. The CD had assured the release of the outstanding dues, which constitute the unpaid operational debt under the IBC proceedings.
6. The Applicant submits that while the CD initially made full payments against a few invoices, it subsequently defaulted in making part payments on the remaining invoices, as reflected in the statement of account. As of the date, an amount of Rs 1,99,44,109, along with interest of Rs 48,77,152 at 18% per annum, totalling Rs 2,48,21,261. remains unpaid despite repeated demands and reminders. A statutory demand notice under Section 8 of the IBC was duly issued on 24.01.2024, but no payment was made. The Applicant contends that the CD is unable to pay its operational debt and, therefore, seeks initiation of the CIRP under Section 9 of the Code.

### **The Counter**

7. The Respondent denies all claims and statements made by the Applicant, except where explicitly acknowledged herein.
8. The Respondent Company entered into a contract dated 08.06.2021 with the PWD<sup>3</sup>, Government of Manipur, for a construction project at Mantripukhri, Manipur. However, as the project progressed, various challenges arose. The work was repeatedly delayed due to frequent

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<sup>3</sup>Public Works Department



changes in scope, requests for additional work, and disruptions caused by the COVID-19 pandemic. Although the completion date was extended until 13.09.2022, the project was still not fully completed. The Respondent claims that about 95% of the work was finished despite this.

9. Concerning payments, the Respondent raised invoices totalling Rs 100.78 Crores; however, only Rs 69.11 Crores were paid, and Rs 31.67 Crores remain unpaid.
10. On 11.04.2023, the Executive Engineer of the PWD abruptly terminated the contract. The Respondent promptly challenged this action by submitting a reply dated 12.04.2023. Aggrieved by the termination, the Respondent filed Writ Petition No. 358 of 2023 before the Hon'ble High Court of Manipur. On 01.08.2023, the Court directed both the Respondent and the Executive Engineer of the PWD to maintain the status quo. The Petitioner subsequently applied for impleadment on 19.10.2023. The matter is currently pending adjudication before the High Court.<sup>P-7</sup><sup>4</sup>
11. The Petitioner has filed the present Petition based on a Sub-Contract Agreement dated 09.05.2021. Subsequently, on 02.11.2022, the Petitioner sent an email to the Respondent enclosing a draft agreement. In response, the Respondent, via communication dated 05.11.2022, suggested certain modifications to the draft.
12. The Respondent states that, under the payment terms<sup>5</sup> as outlined in the Sub-Contract Agreement, payments to the Petitioner are contingent upon the Respondent receiving funds from the main client. Due to an ongoing dispute with the client, these payments to the Respondent have been withheld.
13. The Respondent submits that under Clause 4(iii) of the Sub-Contract Agreement<sup>6</sup>, the Sub-Contractor was required to provide all necessary

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<sup>4</sup>Annexure P-7 of the Counter Copy of the Order dated 01.08.2023 in Writ Petition No. 358 of 2023

<sup>5</sup>Page no 141 of Counter.Sub-Contract Agreement dated 09.05.2021.

<sup>6</sup>Page no 141 of Counter.Sub-Contract Agreement dated 09.05.2021.



Bank Guarantees, including performance and FSD release, within 15 days of signing. Failure to do so entitled the Respondent to recover related costs. Since the Sub-Contractor did not furnish these guarantees, the Respondent arranged them and is recovering the cost at 3% per annum plus GST, as agreed. This default has caused an ongoing dispute. While some invoices were paid, the Respondent has rightfully withheld a portion as damages.

14. Relying on the Supreme Court judgment in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353***, the Respondent submits that a genuine and substantial dispute exists between the parties, which precludes admission of this application under Section 9 of the IBC.
15. The Respondent submits that the Petitioner is aware of the ongoing dispute between the Respondent and the Client, as demonstrated by the Petitioner's impleadment application dated 19.10.2023 in Writ Petition No. 358 of 2023, currently pending before the Hon'ble Manipur High Court. The Respondent contends that, being a party to the dispute, the Petitioner has filed a frivolous petition with the intent to bypass legal procedures. Therefore, the Respondent asserts that the present petition lacks merit and should be dismissed.

### **Petitioner's Rejoinder**

16. The Applicant denies all claims made by the Respondent, except where explicitly acknowledged.
17. The Applicant submits that the CD's counter-affidavit contains unsubstantiated and misleading allegations. It is contended that the CD falsely claims non-receipt of full payment from PWD, Manipur, to justify non-payment to the Operational Creditor. However, documentary evidence, including a statement of accounts from the Executive Engineer, PWD, Manipur<sup>7</sup>, indicates that the CD received over Rs 27

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<sup>7</sup> Annexure R- 1 of OC Rejoinder.



crores for the subcontracted work. The Applicant asserts that the CD is concealing material facts to evade its liability and mislead the Tribunal.

18. The CD, despite repeated reminders, has failed to clear the outstanding dues and is now attempting to mislead this Tribunal by falsely claiming partial receipt of funds from PWD. In reality, PWD has duly paid the amount of Rs 33,72,49,271 against the bills raised by the CD for the construction of the Minister Block-balance work, which was fully executed by the Operational Creditor. The CD is so, they are purposely twisting the facts to avoid paying and to delay the payment.
19. The Applicant submits that the CD is wrongfully withholding the retention amount, which forms part of the principal outstanding, despite having received full payment from PWD for the subcontracted work. As per the contractual terms, the retention amount was to be released upon submission of a bank guarantee, which the OC was never asked to furnish during or after completion of work. Despite the Operational Creditor's willingness and repeated requests to provide the guarantee, the CD failed to respond, indicating a malicious intent to withhold the dues.
20. The Applicant asserts that the CD's claim of a pre-existing dispute is groundless and fabricated. The Writ Petition filed by the CD before the Hon'ble High Court of Manipur pertains to a dispute with PWD, not with the Operational Creditor. The Operational Creditor's application for impleadment in the writ petition was solely to protect its rights, not to claim any dispute with the CD. The Applicant argues that the CD's effort to fabricate a pre-existing dispute is a deliberate strategy to evade its liability under Section 9 of the IBC, 2016. The CD has raised no issues regarding the operational debt, and the Applicant seeks the rejection of the CD's submissions with exemplary costs for misleading the Tribunal and causing delays in the proceedings. The Applicant further maintains that the reliance on precedents cited by the CD is misplaced and irrelevant.



### **Written Submissions of the Applicant**

21. The Applicant has briefly reiterated the contentions presented in the Petition and the Rejoinder.

### **Written Submissions of the Respondent**

22. The Respondent submits that it solely bore the cost of the Performance Bank Guarantee (PBG) furnished for the Petitioner's sub-contract valued at Rs. 27,46,00,000, which was allegedly wrongfully forfeited by the PWD. This matter is presently sub judice before the Hon'ble High Court of Manipur (W.P. No. 358 of 2023), indicating a genuine dispute over the unpaid PBG. Further, the Respondent states that the Security Deposit (SD) of Rs. 1,43,37,732, including Rs. 82,92,279 attributable to the Petitioner, was forfeited by the PWD. It is alleged that the Operational Creditor concealed this fact but included the forfeited SD in its claim. Since payments were to be released only upon receipt from the PWD, which terminated the contract and forfeited all SDs on 11.04.2023, a bona fide dispute exists.
23. The Respondent denies the Petitioner's claim, asserting that no court decree has determined the principal amount, and without an established principal, interest is inapplicable. The Respondent further contends that Sri Avantika (CD) had a direct agreement with PWD, Manipur, and was not merely a forwarding agent as alleged. It is submitted that the RA bills raised by the Petitioner differed from those submitted to PWD, including additional components. The Respondent also disputes Annexure R-1 of the Petitioner's rejoinder, allegedly issued by the Executive Engineer, PWD, as unauthenticated, unverified, and neither acknowledged nor endorsed by the Respondent, and therefore not a binding settlement of accounts.
24. The Respondent asserts that a dispute exists regarding the debt, as





defined under Section 5(6) of the IBC, including a challenge to the termination of the principal contract before the Hon'ble High Court of Manipur. The petitioner voluntarily joined the litigation, acknowledging the pending dispute. The respondent argues that under settled law, the existence of a pre-existing dispute warrants the dismissal of the petition under Section 9 of the IBC, as affirmed by the Hon'ble Supreme Court in the case of *Sabarmati Gas Ltd. v. Shah Alloys Ltd.* (2023).

25. The respondent contends that the IBC, 2016, is not a substitute for debt recovery and cannot be invoked where a genuine dispute exists. Relying on ***Mobilox Innovations (2018)***, ***Transmission Corporation (2019)***, and ***K. Kishan (2018)***, it is submitted that an undisputed operational debt is a prerequisite for initiating CIRP. Citing *Agarwal Foundries v. POSCO* (2024), the respondent alleges misuse of Section 9 for coercive recovery rather than genuine insolvency resolution. Hence, the petition is liable to be dismissed at the threshold due to the existence of a pre-existing dispute and abuse of IBC provisions.

### **Findings and Decision**

26. We heard the learned counsel for both the Applicant and the Respondent and have carefully perused the entire record.
27. The Applicant's Case is that in 2021, the CD proposed to subcontract a portion of the main contract it had received from the Executive Engineer, PWD, Government of Manipur, concerning the construction of the "Capital Complex (Civil Secretariat Component) at Mantripukhari – Balance Work" in Manipur. A draft Subcontract Agreement dated 09.05.2021 was prepared but remained unsigned by the CD. Nevertheless, relying on oral assurances from the CD, the OC executed and completed the assigned construction work. The total value of the completed work is Rs 31,59,51,832, of which the CD has paid Rs 29,60,07,723, inclusive of applicable statutory deductions such as TDS and labour cess.



28. The total outstanding amount is Rs 2,48,21,261, which comprises a principal debt of Rs 1,99,44,109. Interest of Rs 48,77,152 has accrued on the principal at an annual rate of 18%. Out of the principal amount, Rs 79,43,857 has been retained by the Corporate Debtor as Retention Money or Security Deposit. However, the CD has raised objections to the outstanding amount in his written submissions.
29. The Operational Creditor issued a statutory demand notice under the IBC, 2016, on 24.01.2024 to the CD.
30. The main contract between the Executive Engineer of the PWD, Government of Manipur, and the CD was terminated by the Executive Engineer through a termination letter dated 11.04.2023<sup>8</sup>. The letter further states that the security deposit and performance guarantee, including those furnished on behalf of the Operational Creditor by the CD, have been forfeited to the Government.
31. Aggrieved by the termination of the contract and the forfeiture of the security deposit and performance guarantee by the Executive Engineer of the PWD, Government of Manipur, the CD filed Writ Petition No. 358 of 2023 before the Hon'ble Manipur High Court. The matter remains pending. On 01.08.2023, the Court directed both the CD and the Executive Engineer of the PWD to maintain the status quo.
32. According to the subcontract agreement dated 09.05.2021<sup>9</sup> under the heading Payment Terms<sup>10</sup> The Corporate Debtor shall be liable to make

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<sup>8</sup> Annexure P-4 of Counter.

<sup>9</sup> Annexure A-3 of Petition.

<sup>10</sup> PAYMENT TERMS:

a) The Parties have agreed to distribute the amount received for works against the Running Account Bills and Claims as follows:

- i. Upon receipt of the net payments from the Client account, AVANTIKA is liable to pay the Sub-Contractor after retaining 5% of the gross amount of work done, including GST, as the Contract Fee.
- ii. The remaining balance, after this deduction, shall be transferred to the Sub-Contractor's account within 3 working days.
- iii. Income Tax TDS will be deducted as per applicable rates.

b) The Sub-Contractor is entitled to receive payment after deductions for Contract Fee, Income Tax TDS, Security Deposit/Retention Amount, Cess, Royalty, and other recoveries.

c) The Sub-Contract value of work done shall be considered as the gross amount of work done minus the 5% Contract Fee.

d) These payment terms apply to all payments received from the Client.



payment to the Subcontractor only upon receipt of the corresponding net payment from the client, namely the Executive Engineer, PWD Manipur.

33. The Applicant has failed to provide any conclusive or reliable documentary evidence to prove that the Corporate Debtor received full payment from the Executive Engineer, Public Works Department, Government of Manipur, for the outstanding construction work on the “Capital Complex (Civil Secretariat Component)” project at Mantripukhri, Manipur.
34. The Statement of OC, submitted along with the Rejoinder as Annexure R-1, also reflects the figure of Net Receivable by the CD, with the 'Received' column remaining blank.
35. In any case, there is no clear or credible evidence proving that the Corporate Debtor received any specific payment from the Executive Engineer, PWD, Government of Manipur, for the subcontracted work performed by the Operational Creditor.
36. Moreover, the present petition is an attempt to misuse the provisions of the IBC for the recovery of outstanding debt, rather than for the resolution of the Corporate Debtor, which is the primary objective of the IBC.
37. In ***M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd***<sup>11</sup> The Hon'ble Supreme Court clarified the scope and objective of the Insolvency and Bankruptcy Code (IBC), holding that the National Company Law Tribunal (NCLT) cannot function as a debt recovery forum. The Court observed:

*“The NCLT, exercising powers under Section 7 or Section 9 of the IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.”*

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e) The Security Deposit/Retention Amount can be released to the Sub-Contractor upon submission of the necessary Bank Guarantee to AVANTIKA, after completion of work to PWD on behalf of SACIL, and after receipt of payment from the Client.

<sup>11</sup> (2022) ibclaw.in 92 SC



38. Due to the aforesaid reasons, we hold this petition to be inadmissible and, accordingly, this petition is **dismissed**.

**Sd**  
**SANJAY PURI**  
**MEMBER (TECHNICAL)**

**Sd**  
**RAJEEV BHARDWAJ**  
**MEMBER (JUDICIAL)**