

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 212 of 2020**

**In the matter of:**

**M/s Harish Amilineni  
Shareholder and erstwhile Director of Amillionn  
Technologies Private Ltd. Plot 15 A ,  
Sai Prthivi Enclave, Kondapur,  
Hydrabad- 500084.**

**....Appellant**

**Vs.**

**M/s Rajkumar Brothers and Production Pvt.  
Ltd. & Anr.  
Registered office at Arazi No. 242,  
Bharlai Shivpur, Varanasi- 221001,  
Uttar Pradesh, India.**

**...Respondents**

**Present**

**For Appellant: Mr. Surya Narayana & Mr M. Maharshi Viswaraj, Advocates.**

**For Respondents: Mr. Abhishek Kumar Tripathi, Advocate for R-1.  
Mr. Siddharth Acharya, Advocate for R-2.**

**ORAL JUDGMENT**

**(Virtual Mode)**

**10.08.2020:** Heard Learned Counsel for both sides. Respondent No. -1 'Operational Creditor' filed an application Before Adjudicating Authority (NCLT Hyderabad) under Section 9 of Insolvency & Bankruptcy Code, 2016 (in short IBC) against M/s Amillionn Technologies Private Limited (the Corporate Debtor) claiming that the Corporate Debtor defaulted in payment of Rs. 2,30,62,247.90/-. The 'Operational Creditor' claimed that the Operational Creditor had supplied goods and services to the Corporate Debtor from July, 2016 till first week of November, 2016 based on Master Services Agreement entered into and executed between Revenue, Registration and Land Records Department, Government of Jharkhand and Jharkhand Agency. The Operational Creditor claimed that as per meeting dated 13<sup>th</sup> July, 2016 with Directors of Corporate Debtor the Operational Creditor Agreement was to be executed. The Operational Creditor claimed that the Corporate Debtor issued Work/Purchase Order, but avoided entering into agreement. The Operational Creditor

claimed that it had completed approximately 90% work as on 30<sup>th</sup> September, 2016 at Ramgarh and Khunti sites and 65-70% of other locations. The Corporate Debtor never raised issue of deficiency of work and material. The Operational Creditor attached copies of trail of e-mails at 'Annexure-9' before the Adjudicating Authority and stated that the Corporate Debtor sent e-mail on 17<sup>th</sup> November, 2016 to the Operational Creditor stating the termination of Work Order on ground of non-completion of work within time and non-furnishing of Bank Guarantee as per terms & conditions. It is claimed that in spite of such termination, by Oral Directions the work continued. The Operational Creditor claims that he sent notice on 14<sup>th</sup> January, 2019 (Annexure- A7) under Section 8 of IBC. It seems that the Corporate Debtor had sent reply as at 'Annexure- A8' raising disputes.

2. Before the Adjudicating Authority it appears that the Corporate Debtor was not represented. The Impugned Order states that notice was served on the Corporate Debtor and that postal track record is filed per Memo. The Adjudicating Authority went on to hear the Operational Creditor and held there was undisputed operational debt. And thus Adjudicating Authority admitted application under Section 9 of IBC.

3. The Appellant Harish Amilineni, Shareholder of the Corporate Debtor has filed Appeal pointing out various documents to show that there were deficiencies in service including delays and because of that the Work Order was terminated and that Adjudicating Authority did not give proper opportunity to the Appellant to defend the action.

4. The Learned Counsel for the Appellant has referred 'Annexure- A 12' which is a copy of proceeding dated 23<sup>rd</sup> December, 2019 before the Adjudicating Authority and referring to the same the Counsel points out that the document shows that the Operational Creditor had filed Memo to the effect that he had obtained information from India post website that notice was not served on the Corporate Debtor with an endorsement "Left without instructions". The Order mentioned that notice issued through the e-mail to Corporate Debtor was served and therefore, proper service of

Corporate Debtor was there. Counsel for Appellant states that no such e-mails was received.

5. We find that the Appellant had admittedly sent reply to Section 8 notice. Copy of the said reply is at 'Annexure A-8'. It referred to be Work Order which was issued and the deficiencies and mentioned in Para-14 of the Reply Notice as under:-

*"It is submitted that your Client has not complied with any of the above terms and conditions. Your Client has done work for only one location out of 10 locations even that one location was not done properly. That incomplete one location also was beyond the time line of the Work Order. No Bank Guarantee was provided by your Client. My Client had no option but to cancel the Work Order as per its terms while bringing out the said lapses in e-mail communication dated 17.11.2016. There are also several other e-mail communications from my Client point out failure of your Client in execution of the work. All in all my Client states that your client has failed miserably to execute the work. In the circumstances, the invoices raised by your Client are without any basis and are raised in order to make frivolous and vexatious claims to unjustly enrich itself."*

6. The Adjudicating Authority was proceeding with an important proceeding like one under IBC and even if the Appellant had not appeared, it was apparent from the application under Section 9 filed itself that there was pre-existing dispute. The Adjudicating Authority referred to the averments made by the Operational Creditor in Para- 2 of its Order and the averments themselves show there were incomplete works and Corporate Debtor had terminated Work Order. The Appellant has shown e-mail dated 17<sup>th</sup> November, 2016 which was admittedly sent by the Corporate Debtor terminating the Work Order. The copy of the same is at Page- 55 of the Rejoinder which reads as under :

"..... Dear VK Singh,

This is to inform you that after giving ample of time beyond the dead line of 8<sup>th</sup> October 2016 to complete agreed locations, Rajkumar Brothers has missed the

timelines and there is no response even after repeated follow ups.

Rajkumar Brothers has not even completed one location(KHUNTI) as agreed even after giving ample time

with regular warnings. Rajkumar Brothers also failed to provide Bank Guarantee as agreed in the terms of the work order.

The project is crucial to Amilionn, Amilionn has no other option than to terminate the Work Order. Through this

letter, we inform you that Rajkumar Brothers work order issued by Amilionn stands cancelled.

Thanks & Regards

Ram Reddy”

7. Adjudicating Authority did not go into the contents. The Learned Counsel for the Appellant has referred to Rejoinder and trail of e-mails dated 27.09.2016, 29.09.2016, 30.09.2016, 04.10.2016, 14.10.2016, 19.10.2016, 23.10.2016, 26.10.2016 & 09.11.2016. sent by Appellant to Corporate Debtor which show that there were disputes regarding workmanship and time factor and the Learned Counsel for Appellant states that because of such aspects the Work Order was terminated on 17<sup>th</sup> November, 2016. The Operational Creditor kept quiet for long time and then sent Notice under Section 8 which was duly replied. Considering all this we find that there were pre-existing disputes and it was inappropriate for the Adjudicating Authority to admit application under Section 9.

8(A). For above reasons, the Appeal is allowed. Impugned Order is quashed and set aside. The Application under Section 9 of IBC filed by Respondent No.1 – Operational Creditor M/s Rajkumar Brother and Production Private Ltd. before the Adjudicating Authority is dismissed.

(B). Actions taken by IRP/RP in consequence of the Impugned Order are quashed and set aside. The Corporate Debtor is released from the rigour of law and is allowed to function independently through its Board of Directors. The IRP/RP will

hand back the records and management of the affairs of Corporate Debtor, to the Board of Directors of the Corporate Debtor.

(C). The IRP/RP will place particulars regarding CIRP costs and fees before the Adjudicating Authority and the Adjudicating Authority after examining the correctness of the same, will direct the Operational Creditor to pay the same in time to be specified by the Adjudicating Authority.

The Appeal is disposed accordingly. No costs.

**[Justice A.I.S Cheema]**  
**Member (Judicial)**

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Kanthi Narahari]**  
**Member (Technical)**

***Sim/md***