

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

**Company Appeal (AT) (Insolvency) No. 19 of 2019**

**IN THE MATTER OF:**

**N. S. Rangachari**

**...Appellant**

**Versus**

**Consolidated Construction Consortium Ltd.**

**...Respondent**

**Present:**

**For Appellant :**

**Mr. K. Kumar, Senior Advocate with  
Mr. Y.Lokesh and Mr. Ashish Kumar Upadhayay,  
Advocates**

**For Respondent :**

**Mr. R. Sudhakaran, Advocate**

**O R D E R**

**12.12.2019** 'M/s. Consolidated Construction Consortium Limited'- ('Operational Creditor') moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Hitro Energy Solutions Private Limited'. The Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai, by impugned order dated 6<sup>th</sup> December, 2018 having admitted the application, the present appeal preferred by Mr. N.S. Rangachari, Shareholder of 'M/s. Hitro Energy Solutions Private Limited'.

2. Learned counsel appearing on behalf of the Appellant submits that the application under Section 9 was preferred by 'M/s. Consolidated Construction

Consortium Limited'- ('Operational Creditor') was not maintainable against 'M/s. Hitro Energy Solutions Private Limited' which is not the 'Corporate Debtor' of the 'Operational Creditor'.

3. Relying on the record, it is submitted that 'M/s. Consolidated Construction Consortium Limited'- ('Operational Creditor') has issued order for supply of material to one 'M/s. Hitro Energy Solutions', which is a separate Company.

4. It is submitted by the counsel for the Appellant that neither goods were supplied by 'M/s. Consolidated Construction Consortium Limited'- ('Operational Creditor') nor given any services to 'M/s. Hitro Energy Solutions Private Limited' who was shown as 'Corporate Debtor', 'M/s. Consolidated Construction Consortium Limited' does not come within the meaning of 'Operational Creditor' in terms of Section 5(20) read with Section 5(21) of the 'I&B Code'.

5. Further, according to the counsel for the Appellant, the requisition for supply was made to 'M/s. Hitro Energy Solutions Private Limited' by 'Purchase Order' to one 'M/s. Hitro Energy Solutions', which is a proprietary concern and 'M/s. Hitro Energy Solutions Private Limited' which is a separate entity (Company). If the period of limitation is counted, the application under Section 9 was also barred by limitation.

6. Mr. R. Sudhakaran, learned counsel appearing on behalf of 'M/s. Consolidated Construction Consortium Limited'- ('Operational Creditor') submitted that 'M/s. Hitro Energy Solutions Private Limited' prepared a 'Memorandum of Association' on 22<sup>nd</sup> January, 2014 to take over 'M/s. Hitro

Energy Solutions Private Limited' to whom 'Purchase Order' was issued by 'M/s. Consolidated Construction Consortium Limited'- ('Operational Creditor').

7. However, there is nothing on the record to suggest that by any list prepared 'M/s. Hitro Energy Solutions Private Limited' has taken over 'M/s. Hitro Energy Solutions'. The 'Purchase Orders' are on the record which has been referred to in Part IV of Form 5 (application under Section 9), relevant of which is extracted below:

8.	List of other Documents attached to this application in order to prove the existence of operational debt and the amount in default	<p>1. Purchase Order No. : KH000015 dated 24.06.2013.</p> <p>2. Purchase Order No. : KH000016 dated 24.06.2013.</p> <p>3. Purchase Order No. : KH000017 dated 24.06.2013.</p> <p>4. Cheque given by CMRL to the Corporate Debtor.</p> <p>5. Letter dated 23.07.2016 sent by the Operational Creditor.</p>
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8. The 'Purchase Orders' have also been enclosed by the Appellant, one of which is the sample copy of the 'Purchase Order' is extracted below:

PURCHASE ORDER		FOR FUTURE REFERENCE PLEASE QUOTE				DOC CODE		
VENDOR		P.O. No.	P.O. DATE	AMEND. NO.	AMEND. DATE	REQUESTING STORE		
HITRO ENERGY SOLUTIONS NO:3,M.V.BADRAN STREET, PERIAMET,CHENNAI - 600 003		CHH00044	KH000115	24/06/2013		TC707		
BILLING & DELIVERY AT		PAYMENT TERMS						
CHENNAI METRO RAIL - PHASE - 1 CCCL - Project Site, CHENNAI		AS GIVEN BELOW						
33080525060		SITE M.R.	ERP REF.:	APPROVAL No.	YOUR REF.:			
		H000169K,H00	H000170K		AAACC42148			
		DELIVERY SCHEDULE						
		as per						
TIN No. : 33490701326		CST No. : 0655970/24-8-97						
Please supply the following against this order in accordance with terms and conditions printed overleaf.								
S. No.	ITEM CODE	DESCRIPTION	UOM	QUANTITY	RATE ₹	VAT %	VALUE ₹	
16		LIGHT FITTING ---AQFC LX SS T5 228 (ELH)(WITH 3 HRS BATTERY BACKUP FOR 1 LAMP)	NOS	18.00	8,971.12	14.5	161,480.16	
17		CFL LAMP 11W ---(DULUX S 11W/840)	NOS	18.00	80.64	14.5	1,451.52	
18		METAL HALIDE BULB 150W ---(NAV-T 150W/830 (4000K))	NOS	128.00	1,922.97	14.5	246,140.16	
19		LIGHT FITTING ---MFSR II 228 T5 (ELH)(WITH 3HRS BATTERY BACKUP FOR 1 LAMP ( WITH 2 BATTERY KIT))	NOS	82.00	21,506.10	14.5	1,763,500.20	
20		T5 LAMP ---F28 W/ 840 T5 / STAR V	NOS	5,256.00	186.09	14.5	978,089.04	
21		SODIUM VAPOUR LAMP - WATTS --- (HCI-TT 70W/830 (4000K))	NOS	61.00	1,922.97	14.5	117,301.17	
22		LIGHT FITTING ---FTBS 228 (ELH) + LR 228(WITH 3 HRS BATTERY BACKUP FOR 1 LAMP)	NOS	196.00	8,848.22	14.5	1,734,251.12	
23		LIGHT FITTING ---FCIR 414 R595 Cat.2 MB (ELH)(WITH 3HRS BATTERY BACKUP FOR 1 LAMP)	NOS	288.00	8,026.02	14.5	2,311,493.76	
24		LIGHT FITTING ---MFSR I 228 T5 (ELH)(WITH 3 HRS BATTERY BACKUP FOR 1 LAMP ( WITH 2 BATTERY KIT))	NOS	57.00	20,891.64	14.5	1,190,823.48	
<ul style="list-style-type: none"> <li>* Unless otherwise mentioned, the total amount is inclusive of Excise Duty, all other statutory taxes and other incidental charges.</li> <li>* Your invoice should clearly specify ED / VAT amount separately wherever applicable.</li> <li>* Test Certificate for the material supplied should be enclosed with your invoice.</li> </ul>								
%		DISCOUNT	%	EXCISE DUTY	%	CST/DistribTax	%	VAT
%		0	0		0		2988391.1	
%		OCTROI	%	TRANSPORT / DELIVERY CHARGES	%	INSURANCE	%	OTHERS
%		0	0		0.00		0.00	
<ul style="list-style-type: none"> <li>* Receipt of this purchase order must be acknowledged immediately.</li> <li>* Bills in DUPLICATE should be sent to our Regional Office directly.</li> <li>* Unless otherwise mentioned, Transit insurance will be arranged by you at your cost and transit damages if any will be to your account only.</li> <li>* Unless otherwise mentioned, the rate is inclusive of Packing / Forwarding / Transportation / Delivery and all other incidental charges.</li> <li>* Material rejected on account of non - conformity to our specifications / standards shall be replaced by you free of cost.</li> <li>* Mail us at &lt; redressal@ccclindia.com &gt; for lodging your complaints.</li> </ul>				CHECKED BY		GRAND TOTAL		
				AUTHORISED BY		For Consolidated Construction Consortium Ltd.		
						PAGE :		

9. The 'Purchase Orders', which makes it clear that 'M/s. Consolidated Construction Consortium Limited' is a 'Purchaser' and do not come within the meaning of 'Operational Creditor' having not supplied any goods nor given any services to 'M/s. Hitro Energy Solutions Private Limited'. In any case, whether 'M/s. Hitro Energy Solutions Private Limited' or 'M/s. Hitro Energy Solutions' all

'Purchase Orders' having issued on 24<sup>th</sup> June, 2013 and advance cheques have been issued for subsequently such orders, 'M/s. Consolidated Construction Consortium Limited' cannot move application under Sections, 7 or 9 or the 'I&B Code'.

10. As the application under Section 9 was not maintainable at the instance of 'M/s. Consolidated Construction Consortium Limited', we set aside the impugned order dated 6<sup>th</sup> December, 2018. The application under Section 9 preferred by 'M/s. Consolidated Construction Consortium Limited' is dismissed. 'M/s. Hitro Energy Solutions Private Limited' is released from rigour of the 'Corporate Insolvency Resolution Process'. The case is remitted to the Adjudicating Authority, Single Bench, Chennai to notice the 'Interim Resolution Professional' / 'Resolution Professional' and decide the fees and cost incurred by him which is to be paid by 'M/s. Consolidated Construction Consortium Limited'.

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

/ns/gc