C.P. (IB) No.322/KB/2024

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH-II

KOLKATA

C.P. (IB) No.322/KB/2024
Date of Order:16.10.2026

In the Matter of:

Rohit Garg,
Proprietor of Garg Infratech,
5108, Post Office Bazar,
Bathinda, Punjab-151001
Email: garginfratech07@gmail.com

APPLICANT/OPERATIONAL CREDITOR

Versus

Bridge & Roof Company(India) Ltd.
A company within the meaning of
Companies Act, 2013, having its
Registered office at 2/1,
Russel Street, Park Street Area,
Kolkata-700 071.

RESPONDENT/CORPORATE DEBTOR

Coram: **Labh Singh Hon'ble Member(Judicial)**
Rekha K Shah Hon'ble Member(Technical)

Present:

For the applicant	Mr. Shounak Ghosh Ld. Advocate Ms. Abishek Anand Ld. Advocate Ms. Shreyashi Matity Ld. Advocate
For the respondent	Mr. Amit Meharia Ld. Advocate Ms. Paramita Banerjee Ld. Advocate Mr. Rohan Rah Ld. Advocate Ms. Anushka Sarkhel Ld. Advocate

ORDER

Labh Singh Member(Judicial)

1. The present Company Petition has been filed under Section 9 of the IBC Code 2016 by the applicant being proprietor of Garg Infratech, claiming itself to be operational creditor, seeking initiation of CIRP against the Respondent company, M/s Bride & Roof Company(India) Limited (hereinafter to be referred as "Corporate Debtor"), for the alleged default on the part of the Corporate Debtor for an amount of Rs. 1,43,37,562.14/-(Rupees One Crore Forty Three Lakh Thirty Seven Thousands Five Hundred Sixty Two and Paisa Fourteen Only) as principal amount and Rs. 46,95,367.96(Rupees Forty Six Lakh Ninety Five Thousands Three Hundred Sixty Seven and Paisa Ninety Six Only) as interest outstanding as on 31.03.2024 for availing services for carrying out general civil work like excavation, PCC, reinforcement, shuttering, RCC, Black filing and finishing work etc for Trestle

Foundation and other miscellaneous structure at off site area in connection with Civil Structural & U/G Piping work for the various sites of the Corporate Debtor .

2. Briefly stated the facts of the present case are that the applicant, a registered MSME, is proprietorship firm of Mr. Rohit Garg, was providing services for carrying out various general civil works like exacerbation, PCC, reinforcement, shuttering, RCC, black filling and finishing works etc. Trestle Foundation and other machine structure at off site area in connection with Civil, Structural and U/G Piping Works for various sites of the Corporate Debtor.

3. The Corporate Debtor, to its satisfaction, had been availing services and other construction activity from the Operational Debtor from time to time. The Corporate Debtor was making payment regularly; however, after some time, it started delaying the payment which resulted in accumulation of dues to an extent of Rs. 1,43,37,562.14 as on 31st March 2024. The Operational Creditor was maintaining an open and running out in the name of the Corporate Debtor in its books of accounts where in the cost of service and other construction activities/material availed by the Corporate Debtor used to be debited and the part payment made against services and other construction activities and material used to be credited.

4. The services and other construction activity availed were always to the satisfaction of the Corporate Debtor. The applicant has relied upon Ledger Account of the Corporate Debtor in the book of Operational Creditor for the period 16.10.2020 to 31st March 2024 as Annexure-'E'.

5. The Operational Creditor has raised invoices for services rendered and materials supplied and the Corporate Debtor never raised any dispute on this behalf. As on 31st March 2024, the Operational Creditor has raised invoices for an amount of Rs. 5,44,33,323.00. The copy of invoices raised to the Corporate Debtor till 31st of March 2024 are Annexure 'F'. The Corporate Debtor out of the said invoices made payment of Rs. 3,84,26,192.64 as is clear form Annexure 'G'. The Corporate Debtor also deducted an amount of Rs. 16,69,568.22 toward labour cess, TDS and store recovery.

6. That, after considering all the adjustment from 31st March 2024, an amount of Rs. 1,43,37,562.14 is outstanding as principal amount which is due and payable by the Corporate Debtor to the Operational Creditor.

7. The Operational Creditor requested the Corporate Debtor to clear its outstanding dues with interest as agreed between them vide invoices at the rate of 18% per annum but the Corporate Debtor did not pay the same despite repeated demand and request by the Operational Creditor. Consequently

the Operational Creditor issued demand notice dated 19th July 2024 under Section 8 of the Code.

8. It is further submitted that the applicant, as per regulation 20(1) of the IBBI(Information Utility) Regulation 2017 has issued information of default in form 'C'. The demand notice was duly served upon the Corporate Debtor on 19th July 2024 by NeSL in Form 'D'. The Corporate Debtor disputed the demand on NeSL portal with the remarks that the claim made by the Rohit Garg is incorrect and disputed. The demand notice again being served on the Corporate Debtor by way of email dated 10th August 2024.

9. The affidavit under Section 9(3)(B) of the Code is Annexure-M. The date of default as claimed by the applicant is 09.04.2023. The Corporate Debtor has defaulted in payment against such invoices starting from 16th October 2020 up to 31st March 2024 and has further failed to clear the outstanding dues till date despite repeated acknowledgement of its liability. The date of default is 9th April 2023 when the Corporate Debtor has made payment of Rs. 3,58,315.00.

10. The applicant, in order to prove its claim, relied upon the MSME Registration Certificate Dated 20.08.2019 as Annexure-A, Master Data of CD as Annexure-'B', Copies of LOI Annexure-'C & D', Copy of Ledge Account Annexure-'E',

Copy of Invoices Annexure-‘F’, Details of Payment Annexure-‘G’, Copy of Deduction Annexure-‘H’, Copy of Demand Notice Annexure-‘I’, Copy of Form ‘C’ Annexure-‘K’, Affidavit Annexure-‘L & M’ and Calculation Sheet Annexure-‘N’.

10.1. As per part-IV of the application, an amount of Rs. 1,43,37,562.14 as principal amount and Rs. 46,95,367.96 as interest is still due and outstanding to be paid by the corporate debtor.

11. Respondent/the alleged Corporate Debtor appeared in pursuance of notice issued by this Tribunal and filed its reply raising preliminary objection that the present petition has been filed in gross abuse of the process of law and on this ground alone, the present application is liable to be rejected in limine with exemplary costs.

11.1. The alleged Corporate Debtor, a Central Public Sector Enterprise of the Government of India under administrative control of the Ministry of Heavy industries, is engaged in design, engineering, manufacture, procurement of materials and construction of industrial projects, oil refineries, etc. and other similar Engineering works/projects in India.

11.2. On various dates, the alleged Corporate Debtor had issued different and unconnected Notice Inviting Tenders (for short "NIT”) for works; however, the present application fails to

disclose such "NIT" or details thereof or offer letters issued in pursuance thereof. The present application is based on twelve(12) letters of intents issued between 08.07.2020 to 123.11.2021 as detailed in Annexure 'C' to the application.

11.3. On 12.03.2022, an email was issued by the alleged Corporate Debtor to the alleged Operational Creditor for pending nozzle drain work and request made to immediately execute the same within one week or in the alternative, the same will be done at the risk and cost of the alleged Operational Creditor and same will be recovered from the bills.

11.4. On 31.03.2022, the alleged Operational Creditor issued another email (Annexure-'D') regarding halt of civil woks within the scope of alleged Operational Creditor work and reminded that the work has not been completed within one week and requested to complete the balance work on utmost priority. It was reminded that else liquidated damages will be imposed and recovered from subsequent bills. The Corporate Debtor, vide email dated 31.03.2022(Annexure-'E'), requested from manpower to complete the pending work.

11.5. On 05.02.2023, 08.07.2023, and 21.08.2023, the alleged Corporate Debtor issued completion certificates at the request of the alleged Operational Creditor for the purpose

of future tendering with gross value mentioned in the respective completion certificate.

11.6. Upon receipt of demand notice dated 19.07.2024 issued under Section 8 of the Code through National E-Governance Services Limited in form- 'D', the answering respondent duly replied on 29.07.2024 to same on the server of NeSL that the claim made by Rohit Garg is incorrect and disputed as would appear from Annexure 'J' attached to the petition. The status of the alleged claim is "DISPUTED" as per Record of Default of National E-Governance Services Limited as would appear form Annexure 'K' filed with the petition.

11.7. Therefore, there is already a pre-existing dispute, as would appear from the emails dated 09.02.2022, 12.03.2022 and 31.03.2022 issued by the alleged Corporate Debtor to the alleged Operational Creditor and admission of capacity of non-performance of contract in email dated 31.03.2022 between the parties. The said non-performance or deficiency of performance were intimated prior in time to the said Application or even the Demand Notice and are with consequences such as imposition of Liquidated Damages or completion of pending work at the risk and cost of the alleged Operational Creditor.

11.8. The alleged claim not only disputed and denied in totality as being wrong and inadmissible, the alleged Operational

Creditor has sought to create the alleged claim of Rs. 5,44,33,323.00/ - in respect of 12 numbers of LOIs when 'Completion Certificate' has been issued, that too merely for tendering purpose and issued at the request of the Operational Creditor, in respect of only 7 LOI's and for the remaining the alleged Operational Creditor had abandoned site without completing work.

11.9. It is stated that the work is not complete, and alleged Operational Creditor has delayed in the performance of the contract as would appear from the communications between the parties. The alleged Operational Creditor has failed to show any evidence which can establish that the alleged Corporate Debtor has actually defaulted in payment of invoices issued by the alleged Operational Creditor.

11.10. The disputed questions of facts cannot be adjudicated in an insolvency proceeding which is a summary proceeding in nature. The present Application needs to be adjudicated by adducing evidence in a process of complete trial. This Tribunal cannot engage in finding facts in dispute. There is no default on the part of the alleged Corporate Debtor and hence the instant application deserves to be dismissed with cost.

12. The applicant has filed rejoinder to the reply of the Corporate Debtor denying each and every content of reply

affidavit and reiterating the averment made in the application. It has been prayed for allowing the present application.

13. From pleading of the parties, the following question arise for consideration and decision by this Tribunal:

i. Whether there is debt and default as defined in the IBC Code 2016?

ii. Whether there is a pre-existing dispute between the parties as defined in Section 5(6) of the IBC Code 2016?

iii. Relief, if any, to which the applicants are entitled?

14. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by Learned Advocate appearing for the applicant and Ms. Urmila Chakraborty Ld. Advocate appearing for the Corporate Debtor; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of points involved in the instant application.

Issue No. (i) & (ii)

15. Before entering upon merit of the present application, it is relevant to refer the provision of Section 9 of the IBC Code 2016 which is as under:

"(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no

payment of an unpaid operational debt by the corporate debtor; if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,--

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if–

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

16. Thus, provision of sub clause(d) of clause (ii) of Sub Section 5 of Section 9 of the IBC Code provides that the Adjudicating Authority has to reject an application under Section 9 if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.

17. Now it is relevant to refer the provision of Section 8 of the IBC Code 2016 which provides for issuance of demand notice and manner in which the demand notice for unpaid operation debt and the same is as under:

"8. (1) An Operational Creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the

default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

a) existence of a dispute, if any or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

18. Thus, it is settled proposition of law that an application under Section 9 of the Code is acceptable once the demand by

way of delivery of notice or invoice demanding payment at least an amount of Rs. One crore is made by the operational creditor under Sub Section (1) of Section 8 of the IBC Code 2016 and there is no pre-existing dispute between the parties as defined in Sub Section (6) of Section 5 of the IBC Code 2016. The moment default is of rupees one crore or more, and there is no pre-existing dispute between the parties, the application to trigger Corporate Insolvency Resolution Process under Section 9 of the IBC Code is maintainable.

19. The question arises what is dispute as referred in sub-clause (d) of clause (ii) of Sub-Section (5) of Section 9 and Section 8 of the IBC Code 2016. The provision of Section 5(6) IBC Code 2016 defines dispute which *includes a suit or arbitration proceedings relating to (a) the existence of the amount of debt; (b)the quality of goods or service; or (c) the breach of a representation or warranty*. Thus, the definition of dispute as defined in Section 5(6) of the IBC Code 2016 is an inclusive definition which includes dispute with regards to the existence of amount of debt, quality of goods and services and the breach of representation or warranty.

20. The word ‘dispute’ has been defined in Black’s Law Dictionary in the following manner:-

"Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a relation to which jurors are called and witnesses examined. See Cause of action; Controversy; Justiciable controversy; Labour dispute."

21. In the present case, the applicant has claimed operational debt on the basis of ledger account of the Corporate Debtor in the books of the Operational Creditor from 16.10.2021 to 31.03.2024, the copies of LOI received from the Corporate Debtor; the copy of invoices(Annexure-'F'), the Calculation Sheet of Payments and Deductions Annexure-'N'), the Copy of Demand Notice(Annexure-'I') and Copy of Form-'C'/'D'(Annexure-'J' and 'K') and Copy of GSTR-1 and GSTR-3B.

22. A perusal of calculation sheet Annexure-'N' reveals that the total value of invoices raised from the period 16.10.2020 to 31.03.2024 is Rs. 5,44,33,323/-. The amount received during the period 17.10.2020 to 19.04.2023 is Rs. 3,84,26,192.64. The total deduction made by the Corporate Debtor during the period 17.10.2020 to 01.07.2023 is Rs. 16,69,568.22. Thus after adjusting the amount received and deduction claimed by

the Operational Creditor, an amount of Rs. 1,43,37,562.14 is claimed to be due and payable by the Corporate Debtor. The Operational Creditor has claimed an interest amount of Rs. 46,95,367.96 calculated for the period 28.03.2022 to 31.03.2024. Thus total amount claimed is Rs. 1,90,32,930.01 as on 31.03.2024. This is the same amount which has been claimed in Part-IV of the present application.

23. The applicant has specifically pleaded that the applicant, in compliance of provision of Section 9 of the IBC Code 2016, had issued Demand Notice u/s 8 of the IBC Code on July 19th, 2024 by Information Utility under Sub Regulation (4) of Regulation 21 of the IBBI(Information Utility) Regulation 2017. It has specifically been pleaded in para no. 13 of Part-IV of the present petition that the Corporate Debtor disputed the demand with the NeSL with remarks that there is a pre-existing dispute and the claim made by the Operational Creditor is incorrect and disputed. The applicant has himself relied upon Annexure-'K' wherein dispute is shown to be raised by the Corporate Debtor.

24. The question arises whether there was a pre-existence dispute as defined in Section 5(6) of the IBC Code 2016 before service of demand notice upon the Corporate Debtor as recorded in the record of the information utility.

25. The Corporate Debtor, in order to substantiate its plea, has relied upon copy of email dated 09.02.2022(Annexure-'B'), copy of email dated 12.03.2022(Annexure-'C'), copy of email dated 31.03.2022(Annexure-'D' and copy of reply email of Operational Creditor dated 31.03.2022(Annexure-'E'). As per email dated 09.02.2022, the Operational Creditor was appraised of slow progress of work and complete the work on priority else claim for liquidated damages. It was further reminded vide email dated 12.03.2022 and 31.03.2022 to expedite the work and otherwise the work will be done at risk and costs of the Operational Creditor. The Operational Creditor vide reply email dated 31.03.2022 admitted the slow work.

26. Learned Counsel appearing for the Operational Creditor argued that the dispute raised is moonshine dispute and there is no basis for such dispute. It is pertinent to note that though the petition in his petition has admitted about a pre-existing dispute registered with the Information Utility; however, there is not a single iota of facts in the entire petition that the dispute registered with information unitality is not genuine or only a moonshine dispute.

27. Thus, the corporate debtor has disputed the existence of operational debt in entirety as defined in Section 5(21) of the IBC Code 2016. The Corporate Debtor has further disputed

the existence of default as defined in Section 3(12) of the IBC Code 2016.

28. On this aspect, Hon'ble Supreme Court in case of ***M/s. Saraswati Wire and Cable Industries versus Mohammad Moinuddin Khan and others 2025 SCC, OnLine SC 2756***, noted the settled proposition of law while referring its earlier judgment passed in case of Mobilox Innovations Private Limited Versus Kirusa Software Private Limited 2018(1) SCC 373 and held that:

> *"15. This being the factual scenario, we may now note the settled legal position on the issue. In Mobilox Innovations Private Limited vs. Kirusa Software Private Limited this Court held that the adjudicating authority dealing with an application filed under Section 9 of the IBC is required to determine whether there is an operational debt; whether evidence has been furnished to show that the said debt was due and payable but had not been paid; and whether there was any dispute in existence between the parties or any suit or arbitration was pending in relation to such dispute on the date of receipt of the demand notice of the unpaid operational debt. It was further observed that it would be important to separate the grain*

from the chaff and to reject a spurious defence which was mere bluster and that, while doing so, the Court did not need to be satisfied that the defence was even likely to succeed. It was clarified that, at that stage, the Court would not examine the merits of the dispute in toto and as long as the dispute truly existed in fact and was not spurious, hypothetical or illusory, the adjudicating authority would be entitled to reject the application".

29. In the facts of the present case, in the record of information utility which is not disputed by the Operational Creditor, the Corporate Debtor has disputed the debt which is recorded in the information utility. The proceeding under Section 9 of the Code is a proceeding which clearly contemplates that in event, when the notice of dispute has been received by the operational creditor and there is a record of dispute in the information utility, application is to be rejected.

30. This Adjudicating Authority can not adjudicate contractual dispute arsing between the parties in application filed under Section 9 of the Code. It has clearly been provided in Section 9 of the Code as discussed above that when there is

a record of dispute in the information utility, the Adjudicating Authority had to reject the application.

31. We further take note of the fact that the respondent, a Public Sector Company is a solvent company and is a going concern. Hon'ble NCLAT in the case Anita Jindal v. Jindal Build tech Pvt. Ltd. & Anr. 2022 Anita Jindal v. M/s Jindal Buildtech Pvt. Ltd. Throught IRP, (2022) *ibclaw.in 564 NCLAT "held* that IBC cannot be used to penalise solvent companies. The relevant observation of Hon'ble NCLAT are as follow:

> *"**14**. The Preamble of IBC is carefully worded to describe the spirit and objective of the Code to be 'Reorganisation' and 'Insolvency Resolution', specifically omitting the word 'Recovery'. The Parliament has made a conscious effort to ensure that there is a significant difference between 'Resolution' and 'Recovery'. The Hon'ble Supreme Court has time and again observed that the fundamental intent of IBC is 'maximising the value of assets' in the process of 'Resolution'. In **'Mobilox Innovations Private Limited' Vs. 'Kirusa Software Private Limited', (2018) 1 SCC 353**, the Hon'ble Apex Court has examined in detail the United Nations Legislative Guide on Insolvency, in which the IBC finds its roots. Any Application*

to commence CIRP can be denied when the Creditor is using Insolvency as an inappropriate substitute for Debt Recovery Procedures. If IBC is purely used for the purpose of Debt Recovery, particularly when the amounts due are small, and the Company is a solvent entity and is a going concern, the question of 'Reorganising' or 'Resolution of the Company' does not arise. This Tribunal in ***'Binani Industries Limited' Vs. 'Bank of Baroda & Anr.', Company Appeal (AT) (Ins.) No. 82 of 2018,*** *has differentiated between 'Recovery' and 'Resolution' and has observed that IBC is not a Recovery Proceeding. 'Recovery' dispossesses the 'Corporate Debtor' of its assets while a Resolution is an effort to keep it afloat. Further, this Tribunal in* ***'Asset Advisory Services' Vs. 'VSS Projects', CP (IB) No. 96/7/HDB (2017), and also in 'Praveen Kumar Mundra' Vs. 'CIL Securities Ltd.', 2019 SCC OnLine NCLAT 334,*** *has noted that CIRP cannot be initiated with fraudulent and malicious intent 'for any purpose other than the Resolution of Insolvency or Liquidation' and therefore it is clearly covered under Section 65 of the Code."*

32. Considering the facts of the present case and law applicable thereon, we hold that the appellant has not been able to establish its case for initiation of CIRP process against the Corporate Debtor. There is a pre-existing dispute which has been registered with the information utility. The petitioner, in his entire application, has not averred that the dispute is not genuine or only a moonshine dispute.

33. In view of our observation made herein and the law applicable thereon, the present application filed under Section 9 of IBC Code 2016 read with Rule 6(1) of the IBBI(AAA) Rules 2016 for initiation of CIRP process against respondent is not maintainable as there is pre-existing dispute between the parties as defined in Sub Section (6) of Section 5 of the IBC Code 2016.

Issue No.(iii)

34. Therefore, the present application being CP(IB) No. 322/KB/2024 deserves to be dismissed being devoid of merits and hence, the same is dismissed with no order as to cost.

35. A Certified copy of this order may be supplied, if applied for, as applicable rules.

Rekha Kantilal Shah
Member(Technical)

Labh Singh
Member(Judicial)