

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III (SPECIAL BENCH)  
IB-187(ND)/2024**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**IN THE MATTER OF:**

M/s. Agarwal Sanitation

**... Operational Creditor**

**Versus**

M/s. RPS Infrastructure Limited

**... Corporate Debtor**

**Order Pronounced on: 23.07.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS  
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR  
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Nitesh Jain, Mr. Vatsal Chandra, Advs.  
For the Respondent : Mr. Harshit Khare, Mr. Prafful Saini,  
Mr. Deepankar Paras, Mr. Suraj Anand,  
Mr. Shobhit Shukla, Advs.

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The present Application has been filed by M/s. Agarwal Sanitation, the Applicant/Operational Creditor before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. RPS Infrastructure Limited, the Respondent/Corporate Debtor on the ground that the

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Corporate Debtor has defaulted/failed to clear the outstanding Principal amount of Rs. 2,88,46,676/-.

2. It is the case of the Applicant/Operational Creditor that the Corporate Debtor issued various work orders to the Operational Creditor for plumbing work. The details of the work orders are mentioned below:

- Work Order No. 48 dated 03.01.2021 of Rs.1,09,38,600/- for “External Plumbing Basement work [supply, installation, testing and commissioning of Basement Sewerage and Storm water drainage work] at RPS Auria”.
- Work Order No. 34 dated 14.01.2021 of Rs.1,06,19,999.99/- for “External Plumbing work [supply, installation, testing and commissioning of Basement Sewerage and Storm water drainage work] at RPS Auria”.
- Work Order No. 36 dated 25.08.2021 of Rs.8,23,72,742/- for “Fire Fighting work [supply, installation, testing and commissioning of Fire Fighting Work] at RPS Infinia”.
- Work Order No. 54 dated 14.10.2021 of Rs.1,38,73,400/- for “Fire Fighting work [supply, installation, testing and commissioning of Fire Fighting Work (T3 Tower)] at RPS Infinia”.
- Work Order No. 125 dated 22.12.2021 of Rs.3,36,22,184.24/- for “External Plumbing work [Supply Installation, Testing and Commissioning of External Plumbing Work (T4 & T5) at RPS Infinia”.
- Work Order No. 165 dated 29.01.2022 for “Fire Alarm and PA System work [supply, installation, testing and commissioning of Fire Alarm and PA System Work (T2, T4 and T6 with Basement) at RPS Auria”.

3. It is submitted that as per the work orders, the Operational Creditor executed the work of Rs. 9,48,24,463.63/- in total against all the work orders. The Operational Creditor has been executing the work and raising bills from time to time after verification/ certification of work by the Corporate Debtor, but the Corporate Debtor never made the payment on bill to bill basis or on work to work basis. The Corporate

Debtor made the payments on ad hoc basis. The Operational Creditor, on 29.05.2023 sent an email to the Corporate Debtor requesting to clear all outstanding bills which are due since 2022 and also requested the Corporate Debtor to depute their team for certification of the bills along with joint certification of work done & material stock at site for final settlement. The billing department of the Corporate Debtor sent the certified bills and list of pending Tax Invoices for the period 16.02.2023 to 11.09.2023.

4. The Operational Creditor sent an email on 13.09.2023 wherein it was mentioned that the Operational Creditor and the Corporate Debtor in a meeting held on 12.09.2023 decided to close the work. The Operational Creditor requested the Corporate Debtor to make the pending payment. The Corporate Debtor stopped the entry of the Operational Creditor at the site.
5. On 27.09.2023, the Corporate Debtor wrote to the Operational Creditor and alleged that no payment was pending and requested the Operational Creditor to submit final bills by the end of the month. On 30.09.2023, the Operational Creditor raised the final bills to the Corporate Debtor.
6. The Operational Creditor, on 02.10.2023 gave a reply to the email dated 27.09.2023 received from the Corporate Debtor and requested the Corporate Debtor to clear the payment.
7. The Operational Creditor sent a demand notice under Section 8 of IBC, 2016 to the Corporate Debtor on 28.02.2024, which was duly served on the registered email-id of the Corporate Debtor on 28.02.2024. The said notice was also served on the registered office of the Corporate Debtor by courier post on 01.03.2024 and by speed post on 04.03.2024. The Corporate Debtor neither replied to the demand notice nor made any payment.

Hence, the present application has been filed under Section 9 of IBC, 2016.

8. The Corporate Debtor filed reply affidavit denying the allegations made by the Operational Creditor. It is submitted that the Corporate Debtor

issued a tender document for the purposes of appointing the contractor, to carry on the required work at the project sites being (i) Auria; and (ii) Infinia, and shared the same with the Applicant vide email dated 07.11.2019. Pursuant to the said tender, the Applicant had issued Booking of Quantity (BoQ) vide email dated 17.11.2021. Thereafter, in terms of the Tender Documents, the Respondent awarded 11 (eleven) work order contracts to the Applicant vide different work orders dated 14.01.2021, 03.01.2021, 29.01.2022, 31.05.2022, 31.05.2022, 25.08.2021, 30.03.2022, 31.05.2022, 04.10.2021, 22.12.2021, 29.01.2022, 31.05.2022 (Amendment) pertaining to two projects i.e. (1) Auria & (2) Infinia respectively.

9. The Corporate Debtor submitted that the Applicant issued a demand notice under Section 8(1) of the Code on 02.02.2024 claiming the outstanding payment of Rs. 2,88,56,676 /- with interest wherein the date of default has been mentioned as 02.02.2024 which is the date on which the demand notice was sent. Therefore, no default exists as on that date.
10. The Corporate Debtor also submitted that no documents have been annexed by the Operational Creditor with the demand notice or with the present application to show that the date of default is 02.02.2024. The Operational Creditor submitted information in Form C with the NeSL wherein the Applicant has mentioned the date of default as 02.02.2024.
11. The Operational Creditor has not annexed the record of default issued by NeSL in Form D. The Applicant has only annexed the record of financial statement in Form C, which has been disputed by the Corporate Debtor. The NeSL vide email dated 29.03.2024 has confirmed the dispute raised by the Respondent and therefore, the Form C cannot be relied upon for proving of debt and default of date of default.
12. The Respondents have contended that a total number of 11 work orders were issued to the Applicant out of which the Applicant has only annexed and relied upon 6 work orders i.e. work order No. 34, 48, 165, 36, 54 and 125.

13. The Applicant did not complete the work on time in terms of the contract despite several communications being sent to it, even though, the Applicant received advance payment from the Corporate Debtor with respect to all the 11 work orders. The Respondent further submitted that the parties are required to resolve the disputes between the parties by way of arbitration as per Clause 120 of the tender document. However, instead of invoking the arbitration clause, the Applicant has opted to file the present application. The relevant portion of the arbitration clause mentioned in the tender document is reproduced below:-

*"If any disputes arises and persists between contractor and the Employee, the same shall be referred to a sole Arbitrator to be appointed by the Client, whose award shall be final and binding on both parties. The Arbitrator shall submit his award within four months of his entering on the reference. This period may be extended by the Arbitrator with the consent of both the parties."*

14. The Respondent also submitted that the alleged amount in default is incorrect and misleading. The Applicant raised a demand for a debt of Rs. 2,88,46,676/- to be due and payable from the Respondent, as stated in Part-IV of the present application which is completely incorrect and baseless. It is submitted that the Applicant had evaluated the amount in default by comprising three factors i.e. (A) Work (allegedly) already certified by Corporate Debtor- Rs. 79,43,729/-, (B) Retention Money - Rs. 28,07,307/-; and (C) Balance amount for the executed work-not disputed - Rs. 1,80,95,640/-.

15. It is submitted that an amount of Rs. 79,43,729/-, which the Applicant had claimed, pertains to the work that has already been certified by the Respondent herein. However, on the contrary, the Respondent submitted that it did not certify any such invoices. Further the Applicant had also not annexed any document in support of such certification. It is also submitted that the Respondent had not certified any amount of Rs. 79,43,729/-. Therefore, the said amount cannot be claimed to be due and payable by the Respondent.

16. The Respondent requested the Applicant through various communications to comply with the terms and conditions of the work orders in the project Auria and project Infinia vide email communication dated 16.11.2022, 21.11.2022, 20.12.2022, 27.12.2022, 11.01.2023, 27.02.2023, 27.09.2023 and also raised various issues and discrepancies with respect to the RA bills, which would show that there was a pre-existing dispute between the parties.
17. The Respondent further submitted as per Clause 20 of the work order, the Respondent vide email dated 27.09.2023, terminated the work order with the Applicant.
18. The Respondent has therefore submitted that the present application is devoid of any merit and liable to be dismissed.
19. The relevant portion of the Clause of the work order is reproduced below:

*"RPSIL reserves the right to terminate the contract at any stage without assigning any reason thereof and no extra claim shall be entertained in this regard."*

20. Learned Counsel for the Respondent on the contrary submitted that the Corporate Debtor has raised various disputes that existed prior to the issuance of the demand notice. Learned Counsel referred to the email dated 27.09.2023 which was sent by the Corporate Debtor to the Operational Creditor and the same is reproduced below:

*"Dear Mr. Nikhil,*

*With reference to your mail dated September 13, 2023, please find below the factual position for your kind reference.*

- There's no pending payment against your bills certified by us and invoices received. You may please refer the account statements attached herewith for details. In fact, there's a debit balance (adva nee) of Rs. 6,24,021 for Auria Project and outstanding of mere Rs. 73,624 as per the statement of Infinia.*
- We have a very clear vision regarding completion of work but, had to finally give up on all hopes; from you in view of your inability to submit schedule of completion for remaining activities and to make*

*adequate efforts for timely completion of activities. None of the above could be seen happening even after our repeated requests and reminders in this regard.*

- Even as the tenure for completion of works as per the respective Work Orders have long been over, we trusted you and allowed additional time for completion. As assured by you two months ago, all balance work at Auria is supposed to have been completed by now. However, not a single activity was taken up by you during this period. The residents continue to suffer due to such non-performance.*
- Even as we relied upon the assurances for timely delivery, the manpower deployed at site have never I been sufficient to complete the works, neither at Auria nor at Infinia.*
- As already mentioned above, all your claims received and verified till date stands paid. Further claims if any from your end should have already been submitted along with necessary supporting documents and detailed measurements. For the sake of amicable closure, you may submit your final bills, if any latest by end of this month.*
- As the stipulated tenure of all Work Orders are over and we did not get required cooperation from you to complete the work, we are left with no other choice but to suitably intervene in the larger interest of other stakeholders and get the work completed at your risk and cost.*
- After assessing all the work done by you and adjusting the advances paid, we shall intimate you and take suitable action regarding balance amount if any found to be payable/recoverable.*

*With Regards*

*SP Singh Chief Coordinating Officer*

*RPS Infrastructure Limited”*

21. We have heard the submissions made by the Learned Counsel appearing for the Applicant/Operational Creditor as well as Learned Counsel appearing for the Respondent/Corporate Debtor and perused the records.

22. Learned Counsel appearing for the Applicant submitted that the Applicant has executed the work in terms of the work orders issued by

the Corporate Debtor and raised bills. The Applicant has also issued a demand notice under Section 8 of IBC to the Corporate Debtor. However, no payment has been made by the Corporate Debtor to the Applicant.

23. A perusal of the said email dated 27.09.2023 shows that the Corporate Debtor had informed the Operational Creditor that the payment against the bills certified by the Corporate Debtor and invoices received by them have been paid and there is no pending payment against those bills. The Corporate debtor has further raised issues with regard to non-completion of the work in time.
24. Learned Counsel appearing for the Applicant on the contrary has submitted that the Operational Creditor also issued various emails in response to the email dated 27.09.2023. Thus, it is a matter of record that there has been an exchange of various emails by both parties with respect to various issues between them. We, therefore, are of the opinion that disputes existed between the parties even before the issuance of a demand notice under Section 8 of the Code.
25. Therefore, after considering and perusing the facts and circumstances of the present case, we do not find any cogent reason to entertain this application which is liable to be dismissed on the grounds mentioned in the preceding paragraphs.
26. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfil the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:
  - i. The Application bearing **IB-187(ND)/2024** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.

Sd/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**