

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP No.36/ALD/2023 AND IA No. 194/2024

(An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

CP No. 36/ALD/2023

Valplast Technologies Private Limited

Having Its Registered Office at: -

1025 BH 10th Floor,

Puri Business Hub-81 High Street

Sector-81, Faridabad, Haryana-121004

Also Having Office At:

Unit No. (BH-1026 BH-1021) 81 Puri Business Hub,

Sector-81 Faridabad Haryana.

...Operational Creditor/Petitioner

Versus

Supercast Technologies Pvt. Ltd.

Having Its Regd. Office At:

C-45, Sector-62 Noida,

Also at:

Plot No.2 Ecotech Sector-16,

Greater Noida West,

Gautam Budh Nagar,

Uttar Pradesh-201301.

...Corporate Debtor/Respondent

AND IN THE MATTER OF:

IA No. 194/2024

Supercast Technologies Pvt. Ltd.

.....Applicant

Versus

Valplast Technologies Private Limited

.....Respondent

Order pronounced 14th May, 2024

Coram:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

Appearances: -

Sh. H.L. Tiku, Sr. Adv. Assisted by : For the Operational Creditor
Sh. Rakesh Kumar, Adv.

Sh. Varad Nath, Adv. : For the Corporate Debtor

ORDER

1. The instant application has been filed on 02.06.2023 by M/s Valplast Technologies Pvt. Ltd. (hereinafter referred as '**Operational Creditor/ Applicant/Petitioner**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as **the Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "**the Rules**") with a prayer to initiate Corporate Insolvency Resolution Process (hereinafter referred as '**CIRP**') against M/s Supercast Technologies Pvt. Ltd. (hereinafter referred as '**Respondent/Corporate Debtor**') due to default in payment of total outstanding amount of Rs. 2,29,48,069.19/- (Rupees Two Crores Twenty-Nine Lacs

Forty-Eight Thousand Sixty-Nine and Nineteen paisa only) with the date of default as mentioned in the application being various dates on which RA bills were issued but part of them are not paid.

2. Facts of the present case have been averred by the Applicant/Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V and the same are discussed in paras as below.
3. As stated in the Application, the Operational Creditor which was formerly known as “Renesco India Pvt. Ltd.” was incorporated on 10.01.2014 under the provisions of the Companies Act, 2013 having CIN-U45400UP2014FTC074462. The Operational Creditor is engaged in the business of civil constructions like, waterproofing of underground structures, tunnels, Disposal site, landfill, water proofing of civil works, injecting grouting work, thermoplastic lining systems, spray applied membrane, precast works etc.
4. The Corporate Debtor is a company incorporated on 25.10.2016 having CIN: U70109UP2016PTC087328 engaged

in the business of Real Estate activities with owned or leased property.

5. As stated by the Petitioner in the Application, the Corporate Debtor had approached the Operational Creditor to carry out the work for Production, Transportation, Grouting and Erection of Precast Elements, Fabrication and manufacturing of solid precast concrete element, Reinforcement for RCC work, Erection & Installation of precast/prestressed concrete element etc. (hereinafter referred to as "the said works") at the site "Ghitorni, New Delhi" (hereinafter referred to as "the said site") which belongs to DRDO, a Government entity that is developing a housing project for its employees at the said site.
6. The DRDO engaged M/s Girdhari Lal Construction Pvt. Ltd. (hereinafter referred to as "GCPL") as the main contractor for the project, and then a subcontract was given by GCPL to the Corporate Debtor to perform certain work on the said site. The Corporate Debtor approached the Operational Creditor to carry out these works, to which the latter agreed after negotiations.
7. The Operational Creditor, under the supervision and control of the concerned person of the Corporate Debtor as well as the

main contractor of GCPL, performed the aforementioned works and raised RA bills/invoices against them, for which partial payment was made. The aforementioned RA bills were prepared after the Abstract (measurement of work as well as quantity used) of the work done by the Operational Creditor was duly approved by the concerned In-charge/Head of the said project. The bills were duly approved and acknowledged by the Corporate Debtor, who also made partial payment. Copies of the RA bills have been annexed as **Annexure E (Colly)** with the petition, and the Abstracts of work on which RA bills were raised by the Operational Creditor have been annexed as **Annexure F (Colly)**. The Corporate Debtor had also complied with statutory compliances like GST in respect of the said invoices, which indicate that the materials and services rendered by the Operational Creditor were utilized by the Corporate Debtor in furtherance of its business activities and in this respect, returns in GSTR-3B have been filed. Copies of Form GSTR-3B for the relevant months have been annexed as **Annexure G (Colly)** with the petition.

8. As stated in the Application, the Operational Creditor maintained accounts of the transactions entered into with the

Corporate Debtor and payments made by the Corporate Debtor, showing an outstanding balance of Rs. 2,29,48,069.19, which has not been paid by the Corporate Debtor despite making various requests and sending reminders. With respect to this outstanding balance, it is also mentioned that the Corporate Debtor sent a Reconciliation of Statement of Accounts on 28.04.2023, admitting the outstanding amount of Rs. 1,27,64,778/ but did not release the said admitted amount, thus it has been argued in the Application that the Corporate Debtor is in default and accordingly liable to pay a sum of Rs.2,29,48,069.19/ as per the ledger account maintained by the Operational Creditor. Copy of Ledger of Account/Statement of Account in the name of the Corporate Debtor maintained by the Operational Creditor has been annexed as **Annexure-H** with the Application. Copy of Reconciliation of Statement of Account sent by the Corporate Debtor through Email dated 24.04.2023 has also been annexed as **Annexure-I** with the Application

9. The Operational Creditor sent statutory legal notice to the Corporate Debtor in Form 3 under Section 8 of the Code on 08.05.2023, calling upon it to pay within ten days of receipt of

the notice an amount of Rs. 2,29,48,069.19 along with interest until the date of realization of the unpaid operational debt. This notice was duly served upon the Corporate Debtor. However, despite receipt of the notice, the Corporate Debtor neither replied nor made any payment in this regard. Copy of the said notice along with the postal receipt has been annexed as **Annexure J** (Colly) with the Application

10. Consequent to filing of this Application, a notice was issued to the Corporate Debtor vide our Order dated 15.06.2023 calling upon it to file reply within seven days. Then again, two weeks' time was given vide our order dated 01.08.2023 to file the reply and again, further time was allowed vide our order dated 28.08.2023. However, the Corporate Debtor failed to timely file a reply within the period allowed by us pursuant to the order of this Tribunal dated 28.08.2023, due to which their right to file the reply was forfeited. The Corporate Debtor then filed an application bearing IA No. 477/2023 for recalling the orders dated 28.8.2023 and praying to allow the reply filed by the Corporate Debtor to be taken on record, as the delay in filing was not deliberate but due to the medical ailment of the Counsel for the Corporate Debtor. Subsequently, the late reply

filed by the Corporate Debtor was permitted to be taken on record subject to the cost of Rs. 15,000/-, which was paid into the 'Prime Minister's National Relief Fund'.

11. The Corporate debtor has filed reply affidavit on 19.10.2023, which was taken on record after payment of Rs. 15,000/- as mentioned above. In the reply, the Corporate Debtor denied all the allegations raised by the Operational Creditor in the Applications and has made following submissions to counter the allegations of the Operational Creditor in the Application:

- i. The Corporate Debtor is neither bankrupt nor facing solvency issues as is evident from the various construction/engineering projects undertaken by it running smoothly across the country with up to date payment chains without any default except the construction project in the present case which is currently ongoing at the site and is incomplete due to the Operational Creditor abandoning the work site and leaving the work incomplete.
- ii. Earlier this work was awarded to some other contractor as per a work order that has been annexed in **Annexure -R2** with the Reply. However, the said earlier contractor

could not do that work and hence, he surrendered the said work order. Subsequently, the CFO of the Operational Creditor approached the Respondent showing interest in the work order and issued letter of acceptance as per BOQ & rates mentioned in the original work order. Pursuant to signing of the said work order, the Operational Creditor began the work and the Respondent Corporate Debtor supplied materials for construction and issued debit note for the same. The Respondent Corporate Debtor also made multiple payments to the Petitioner amounting to Rs. 1.5 crores of which last payment amounting to Rs. 20 lacs was paid on 20.03.2023.

- iii. The Respondent has not admitted the debt of Rs. 2,29,48,069.19/- as demanded by the Petitioner. Further, it is stated that there is a dispute between the parties regarding work completion, quality of work delivered and the inflated rates at which the invoices were raised by the Petitioner.
- iv. The RA bills presented by the Operational Creditor in its petition are false, back dated and are denied in its

entirety by the Respondent Corporate Debtor as the said RA bills bear signature of one Mr. M.P. Singh who resigned from the Respondent Company w.e.f. 25.04.23 after the Respondent Corporate Debtor issued warning to him vide email dated 24.04.2023 and it is alleged that he gained employment with the Operational Creditor. Mr. M.P. Singh was communicated with respect to making wrong signatures on behalf of the Respondent and was asked to return all the material available with him within three days. Thereafter, Mr. M.P. Singh communicated vide email dated 8.9.2023 that someone else might have been using his email id and accounts and submitted an apology.

- v. Furthermore, the RA bills annexed with the petition at pages 72-81 shown to have been signed by Mr. M.P. Singh are stated to be altered as the invoices which were sent to the Respondent vide email dated 07.06.2023 were in different format and are without the signatures of Mr. M.P. Singh. The ledger account statements at pages 92 & 93 of the petition are also contended to be forged and fabricated by one of the former accountants of the

Respondent Mr. Ritesh Kumar who resigned from the Respondent Company w.e.f. 26.11.22 and is alleged to be currently engaged by the Petitioner. The mail dated 28.04.23 annexed with the petition at page 92 is stated to be sent by Mr. Ritesh Kumar from Petitioner's office after it was verified by the Respondent. The Respondent filed a complaint in this regard with the Cyber Police Station and the investigation is underway.

- vi. The Petitioner also raised the dispute of the instant petition in the SAMADHAN portal of MSEFC, Haryana with Applications No. UDYAM-HR-03-00006496/S/00002 and UDYAM-HR-03-00006496/S/00003 and the Respondent received the notice dated 10.05.2023 and duly filed a reply to the same. However, after the filing of reply by the Respondent the Petitioner withdrew both of its applications and thereafter approached this Tribunal for adjudication.
- vii. There exists no written contract between the Operational Creditor and Corporate Debtor, which has been signed by both the parties, as the written contract was firstly signed between the Respondent and & M/s Shree Amarnath

Earthmovers, who subsequently surrendered the work order due to some personal difficulties and finally the Operational Creditor accepted the work order by handing over a written letter signed by the CFO of the Operational Creditor.

viii. The Respondent Corporate has also tried to show about existence of pre-existing dispute stating that it noticed that the work executed in March 2023 by the Petitioner was improper wherein construction mistakes and errors were committed by the Petitioner at the work site and the quality of work delivered were not up to the requirements of the work order which was also admitted by the Petitioner in various mails from March to May 2023. Furthermore, the Petitioner did not respond to the invitation of a joint survey of the project to be conducted to check the amount and quality of work done.

12. The Operational Creditor has filed rejoinder on 02.11.2023 in response to the averments made by the Corporate Debtor in his Reply Affidavit and has made following submissions: -

i. The Operational Creditor had raised the bills against the performance of the work done which were duly

acknowledged and admitted by the Corporate Debtor and made part payments for the same as well. Additionally, the Corporate Debtor categorically admitted the outstanding amount of Rs. 1,27,64,778/- out of total outstanding amount of Rs. 2,29,48,069.19/-. However, the Operational Creditor is entitled to receive a sum of Rs. 2,29,48,069.19/-, which is also admitted by the Corporate Debtor.

- ii. The Respondent Corporate Debtor had also complied with the statutory compliances like GST and taken the statutory benefits. It is also submitted that the Abstract of the material was also signed by the Head of the Project of the Corporate Debtor.
- iii. The Corporate Debtor has not made the payment of the invoice amounts more than crores of rupees as the documents filed with the petition itself reflect non-payment of the invoices amount raised by the Operational Creditor. It is further emphasised that the statutory benefits taken after filing of GST returns by the Corporate Debtor against the said invoices/Bills further reveal that the Corporate Debtor did not pay the

legitimate debt towards Operational Creditor despite admission thereof.

- iv. As regards the allegation of the Corporate Debtor about abandoning the work by the Operational Creditor at the project of DRDO situated at Ghitorni, New Delhi, it is again submitted that a huge sum of Rs.2,29,48,069.19/- against the various invoices/bills are due to be paid to the Applicant Operational Creditor from the Respondent Corporate Debtor but the Corporate Debtor did not release the said amount in favour of the Operational Creditor. It is then argued that the vendors, employees and other stake-holders are required to be paid on regular basis or in terms of the agreement arrived with the said vendors or employees without which the said stakeholders cannot perform the work without getting remuneration or receiving of payment from the Operational Creditor and the Corporate Debtor has withheld the Invoices/Bills amount, despite admission. As the huge payments in crore of rupees are outstanding from the Corporate Debtor, the Operational Creditor has stopped the work at the said site due to its inability to

make payments to other persons working at the project site but it is submitted that the Corporate Debtor itself admitted that 80% work is completed.

- v. The Operational Debtor submitted that it was unaware of the fact that the Corporate Debtor initially appointed one M/s Shree Amarnath Earthmovers for execution of the project and the same was surrendered by it due to personal difficulties of the concerned proprietor.
- vi. The Operational Creditor submitted that no work order was ever executed between the Operational Creditor and the Corporate Debtor. Claim of the Corporate Debtor about CFO of the Operational Creditor approaching the Corporate Debtor for completing the work of DRDO Project at Ghitorni, New Delhi site after it was not done by the earlier vendor M/s Shree Amarnath Earthmovers, has been denied and it is said that the Corporate Debtor itself approached the Operational Creditor to perform the work at the aforesaid site. The Operational Creditor commenced and continued the work after Corporate Debtor approached it for doing the work at the aforesaid site and raised the invoices which

were based on the Abstract of the work. The said Abstract of the works/material were duly approved and signed by the Head of the Project of the Corporate Debtor against which part payments were also made by the Respondent Corporate Debtor as admitted by it in its Reply Affidavit.

- vii. The Operational Creditor denied that the Corporate Debtor supplied various materials to the Operational Creditor, used for construction i.e. Steel bars, Dowel tubes, RMC etc., and issued debit note regarding the same.
- viii. As regards the claim of the Corporate Debtor about there being a dispute existing between the Corporate Debtor and Operational Creditor regarding the amount of work completed, quality of work completed, rates at which invoices were raised, it is submitted that there is no dispute between the parties herein regarding the amount of work completed, quality of work complete or rates at which the invoices were raised, the Operational Creditor denied about existence of any such dispute. In this regard, it is submitted that there is no agreement executed between the Operational Creditor and the

Corporate Debtor as much as no agreement on Arbitration Clause. As further submitted that as the Corporate Debtor has categorically admitted the liabilities vide one email dated 28.04.2023 sending the reconciliation statement of accounts, therefore in view of the Operational Creditor, no dispute exists between Operational Creditor and Corporate Debtor.

- ix. It is vehemently denied that the RA bills annexed by the Operational Creditor at Pages nos. 72-81 are false or back-dated in their entirety. It is also denied that the said RA bills which bears signature of one Mr. Mukund Pratap Singh has already resigned from the Respondent company w.e.f. 25.04.2023 as not being in the knowledge of the Operational Creditor, and his alleged gaining of employment with the Operational Creditor has also been denied. As regards the missing status of Mr. M. P. Singh, who was working as Head of Projects at aforesaid site and knowledge of further action taken against him by the Corporate Debtor, has also been denied. It is also emphasised that the Corporate Debtor itself admitted that Mr Mukund Pratap Singh was working as Head of

Projects of the Corporate Debtor at the site of Ghitorni where the Operational Creditor was working and he resigned from the Corporate Debtor on 25.04.2023 but his signature on all the RA Bills/Invoices and Abstracts are put quite well before the date of his resignation. An Email dated 10.12.2022 sent by the Corporate Debtor to the Operational Creditor has also been referred in which it was informed that Mr Mukund Pratap Singh was the Head of the Project being executed by the Operational Creditor from the side of the Corporate Creditor and all the problems of the project should be directly addressed to him, who is senior enough to address such matters and if he is unable to resolve it, he will himself contact the head office. In the said email, it has also been stated that the Head Office is for policy matters not for daily issues. Keeping in view of such communication received from the Corporate Debtor as regards to Mr Mukund Pratap Singh, the Operational Creditor got the said Invoices and Abstracts signed by him as being the competent person appointed by the Corporate Debtor, hence such signature by him were done on the Invoices

and Abstracts during the course of the execution of the work. The said email of the Corporate Debtor has been annexed as **Annexure -A** with the Rejoinder.

- x. The Petitioner denied that the ledger account statements sent vide Email dated 28.04.2023 of the Corporate Debtor placed at Pages 92-93 of the Petition are forged & fabricated by one of the former employees (accountant) of the Respondent i.e. Mr. Ritesh Singh, who was subsequently engaged by the Petitioner herein and was purportedly sent him while sitting in the office of the Petitioner Operational Creditor itself. As regards the resignation of Mr Ritesh Singh and complaint lodged against him in Cyber Police Station, it is submitted by the Operational Creditor that the Corporate Debtor is making frivolous statement just to avoid liability. It is also submitted that the Corporate Debtor admitted that Mr Ritesh Kumar resigned from the Corporate Debtor on 26.11.2022 rather the email and confirmation of the account was admittedly sent on 28.04.2023.
- xi. With respect to the complaints filed in the SAMADHAN portal of MSEFC, Haryana with Applications No. UDYAM-

HR-03- 00006496/S/00002 & UDYAM-HR-03-00006496/S/00003, it is submitted by the Operational Creditor that there is no bar which prevents the Operational Creditor from approaching to this Tribunal once the Operational Creditor approached to the MSME Samadhan for securing its payment.

- xii. The Operational Creditor has denied in the submission that any construction mistakes and errors were made at the construction site. It is also denied that quality of work was also not as per the requirements of the work order. Allegation of the Corporate Debtor that the said issue was also admitted by the Petitioner in various emails exchanged between parties from March 2023 to May 2023, has also been denied by the Operational Creditor in its rejoinder. It is submitted that there are no pre-existing disputes between Operational Creditor and the Corporate Debtor regarding performance of the work on the part of the Operational Creditor. As contended by the Operational Creditor, false and frivolous emails have been started to be sent by the Corporate Debtor when the Operational Creditor demanded the outstanding

admitted amount from the Corporate Debtor. The date of the email itself reflect that the said email is much after raising the substantial invoices against the work performed by the Operational Creditor.

13. During the course of hearing of the case, written submissions have also been filed. In the written submission Operational Creditor apart from reiterating the submissions already made in the Application and Rejoinder, has emphasized following points:

- i. The Operational Creditor performed the work assigned to it and the Invoices /RA Bills were raised after approval of the Abstract (measurement of work as well as quantity used) of work done by the Operational Creditor. It is further pointed out that the said Abstracts of the work done by the Operational Creditor is duly approved by the concerned Incharge/Head of the said Project by putting his signature and then the said Invoices/RA Bills were duly approved. It is also asserted that the said Invoices/RA Bills were approved and acknowledged by the Corporate Debtor and made part payment and also complied the statutory compliances like GST in respect

of said invoices. These facts manifest that the Corporate Debtor has utilised the materials and services rendered by the Operational Creditor in furtherance of its business activities.

- ii. Against above invoices, the Corporate Debtor released only part payment in favour of the Operational Creditor and now, an amount of Rs. 2,29,48,069.19/- as per the Account maintained by the Operational Creditor is outstanding which is not being paid by the Corporate Debtor despite the Corporate Debtor has received the amount from the main contractor M/s Girdhari Lal Construction Pvt. Ltd. It is also emphasised that an amount of Rs. 1,27,64,778/- is admitted by the Corporate Debtor vide its email dated 28.04.2023 vide which a reconciliation statement of account was sent by it, though the claim of the Operational Creditor remains at Rs. 2,29,48,069/-.
- iii. As regards the claim of the Corporate Debtor about there being pre-existing dispute , the same has been denied and it is specifically pointed out that the Corporate Debtor did not bother to reply the Statutory notice sent

in Form 3 u/s 8 of the Code despite receipt of the same and thus, the Corporate Debtor has never raised the issue of pre-existing dispute prior to filing of the petition and now, the submission on the part of the Corporate Debtor regarding pre-existing dispute is just to mislead .

- iv. The Operational Creditor submitted that the Hon'ble National Company Law Tribunal, Mumbai Bench-IV in **CP(IB) No.341/MB-IV/2022 titled as M/s LBF Publications Pvt. Ltd. Vs. M/s A & A Business Consulting Pvt. Ltd.** held that "*pursuing the matter before MSME facilitation Council under MSME Act is not a bar for filing a petition u/s 9 of the Code, the proceedings before Council are not in nature of dispute*". Hence the filing of the Application to Samadhan Portal of MSEFC to facilitate the mediation between the parties not to adjudicate the dispute.

- 14.** The Corporate Debtor apart from reiterating the submissions already made in the Reply, has emphasized following points in the written submissions and another additional written submission filed:

- i. It is admitted in the written submission that there is no written agreement which was executed between the Operational Creditor and the Corporate Debtor. All the bills were raised to the Corporate Debtor by the Operational Creditor through emails and the same were endorsed by the General Manager (Technical) of the Operational Creditor out of which a sum of Rs. 1.5 crore has also been paid by the Corporate Debtor.
- ii. However, in the written submission, a table has been filed showing that the Operational Creditor is liable to pay a sum of Rs. 50,00,000/- to the Corporate Debtor instead.
- iii. It is also argued that in the present case, there is no date of default as there was no prescribed time limit for payment of bills and during the course of the work, a commercial dispute arose between parties relating to quality and delay in the work executed by the Operational Creditor which had arisen much prior to the notice dated 08.05.2023 was issued in terms of section 8 of the IBC. In this regard, various emails/letters written to the Operational Creditor attached from page nos. 103-158 of the Reply have been referred.

- iv. Dispute regarding the Email dated 28.04.2023 containing the ledger account of the Operational Creditor as maintained by the Corporate Debtor showing an outstanding amount of Rs. 1,27,64,778/- and signature put by Mr. Mukund Pratap Singh on RA Bills have been reiterated.
- v. The Services Agreement which was originally entered into by the Corporate Debtor and M/s Shree Amarnath Earthmovers is applicable on the Operational Creditor as well and there was no prescribed time limit to release payments against RA bills which were to be raised by the Operational Creditor. Since no time limit was prescribed to release payments in favour of the Operational Creditor there is no date of default as such either which is essential for the purpose of filing a petition under Section 9 of the Code.
- vi. The copy of ledger account annexed with the petition lacks seal or certification of the Corporate Debtor and is also not attested by any employee of the company which indicates that it is a manipulated document fraudulently sent from the offices of the Corporate Debtor. The copy of

the ledger account annexed with the petition has “NOIDA” misspelled as “NAIDA” indicates that the document is manufactured since it is a computer software generated copy and such error is impossible. The ledger is purportedly sent via mail by one Nandan Singh of Finance and Account department who is willing to submit an affidavit that the said mail was not sent by him. The format of the copy of the mail attached with the petition has also been doubted.

- vii. The 10th RA Bill dated 25.4.2023, attached with the main petition, is not genuine since the bill bears the signature of Mr. M.P. Singh and was received by the Corporate Debtor on a later date than what has been produced by the Operational Creditor. It is submitted that the above-mentioned manipulation was deliberately done since Mr. M. P. Singh had tendered his resignation on 25.04.2023 and could not have possibly endorsed a bill dated 26.04.2023.
- viii. The Corporate Debtor has continuously questioned the inflated RA bills raised by the Operational Creditor even after the purported delivery of the alleged email dated

28.04.2023 and at no stage admitted any debt. Further, even if the ledger account is prepared based on invoices raised, the release of payments is always subject to clearance and verification by the main contractor and they are a subject of dispute between the parties.

- ix. There is no mention of the email dated 28.04.2023 in the copy of the letter dated 2.5.2023 annexed with the Reply affidavit by which the Operational Creditor is alleging admission of debt which only establishes that the email and the ledger have been manufactured only for the purposes of filing the present petition.

ORDER

- 15.** We have heard the arguments of Learned Counsels appearing for both Applicant Operational Creditor and Respondent Corporate Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto. Having heard the Learned Advocates appearing for the parties and on perusal of the records, exhibits/annexures and after considering arguments advanced by respective Learned Advocates, we are of the considered view that following points would arise for consideration.

(a) Whether there is a Debt and Default

(b) Whether there is a Pre-Existing Dispute

(a) Debt and Default

- 16.** The Operational Creditor has sought initiation of CIRP against the Corporate Debtor based on the dues mentioned in Part-IV of the Application which is of Rs. 2,29,48,069.19/. Date of default as mentioned in section 8 notice issued by the Operational Creditor on 08.05.2023 as well as in Part IV of Application in Form 5 is from the dates the Bills/Invoices were raised by the Operational Creditor and sent to the Corporate Debtor on account of which the Corporate Debtor has become liable to pay from various dates of these bills. These bills are attached with the Application in Annexure-E (Colly) from Page 42 to 81. Last bill i.e. 10 th RA Bill was sent on 26.04.2023 and thereafter, no payment was made after making last payment of Rs. 20,00,000/- on 20.03.2023. Therefore, since 26.04.2023 after taking into account the payments made till 20.03.2023, the outstanding amount existing as per the ledger account attached by the Operational Creditor at page no. 91 of the Application comes to Rs. 2,29,48,069/- and the same has not been paid till date.

Accordingly, as per the record of the Operational Creditor, the Corporate Debtor is in default of not paying the amount of Rs. 2,29,48,069 since 26.04.2023.

- 17.** As regards the above default, it has been averred in the application that the Corporate Debtor had approached the Operational Creditor to carry out a project work at a site belonging to DRDO which engaged M/s Girdhari Lal Construction Private Ltd. (GCPL) as a main contractor to complete the work and further GCPL engaged the Corporate Debtor to perform the certain work on the said site. Furthermore, the Corporate Debtor approached the Operational Creditor to carry out the said works which the Operational Creditor agreed to perform and no written agreement was executed between the parties in this regard.
- 18.** The Operational Creditor raised 10 invoices/RA Bills from 26.11.2022 to 26.04.2023 totalling to Rs. 5,43,68,706/- after approval of Abstract by the Head/In charge of the Corporate Debtor, against the works done by the Operational Creditor to which the Corporate Debtor made part payment of Rs. 1,50,73,572/- out of which last payment of Rs. 20,00,000/- was made on 27.03.2023 and Rs. 1,63,47,065 was deducted

on account of materials supplied by the Corporate Debtor to the Operational Creditor. All these transactions are recorded in the Ledger Account maintained by the Operational Creditor in the name of the Corporate Debtor and the same is attached at page number 91 of the Application as per which the Corporate Debtor owes an outstanding sum of Rs.2,29,48,069.19/- to the Operational Creditor.

19. The Operational Creditor has tried to support his above claim against the Corporate Debtor showing an email received by it on 28.04.2023 sent from an email account of the Corporate Debtor i.e. accountsupercast@supercast.in by one Mr. Nandan Singh attaching a Reconciliation Statement of Account of the Operational Creditor in the books of Corporate Debtor admitting an outstanding amount of Rs. 1,27,64,778/- payable by the Corporate Debtor to the Operational Creditor as on 26.04.2023. This email has been seriously disputed by the Respondent Corporate Debtor stating that this mail was sent from the device of the ex-accountant Mr. Ritesh Singh using Wi-Fi of "VALPLAST TECH_5GHZ (*belonging to Operational Creditor*) and that the said employee had already resigned w.e.f. 26.11.2022 (*long*

back before the disputed email was sent) and it is also alleged that he was subsequently engaged by the Petitioner Operational Creditor and against him a complaint has been lodged with the concerned Cyber Police Station. All these allegations have been denied by the Operational Creditor. No evidence could be produced by the Ld. Counsel of the Corporate Debtor during the hearing in support of these allegations except showing a complaint letter lodged against this ex-employee on 12.09.2023 with the Police Station of Bisharkh Central Noida, Gautam Budhnagar. However, neither any evidence showing that this accountant/ex-employee of the Corporate Debtor was engaged by the Operational Creditor nor any investigation report of the Police could be produced to prove that the email was sent by the said accountant, Mr. Ritesh Kumar using Wi-Fi of Operational Creditor i.e. “*VALPLAST TECH_5GHZ*”.

However, as per the facts available from the record, it has been found that this email was sent from the email account i.e. account.supercast@supercast.in having email domain of the Corporate Debtor itself and it was sent by one Mr. Nandan Singh and not by Mr. Ritesh Kumar. Nothing has

been stated about Mr. Nandan Singh in the Reply Affidavit filed by the Corporate Debtor or even during the hearing of the case by the Ld. Counsel appearing on behalf of the Corporate Debtor. However, in an additional written submission filed after reserving the order, it has been stated that although the said email has been purportedly sent by Nandan Singh of the Department (Finance & Accounts) of the Corporate Debtor, Mr Nandan Singh is willing to submit an affidavit to the effect that the said email was not sent by him. It is also mentioned that the timing of email is 14.44 hours on 28.04.2023, however Mr Nandan Singh had left the office premises of the Corporate Debtor at 14.20 hours on that day for which evidence of exit through biometrics is available if required. However, these pleadings were never taken up either at the time of filing of Reply Affidavit or before hearing was concluded and hence, not allowed.

- 20.** Even otherwise, if we don't consider the above email dated 28.04.2023, we find that all the 10 RA bills were sent by the Operational Creditor to the Corporate Debtor through email duly endorsed by the General Manager (Technical) of the Operational Creditor namely, Mr Kamlesh Vaidya as admitted

by the Corporate Debtor in its written submission. All the Abstracts based on which RA bills have been made are also found countersigned by one Mr. Mukund Pratap Singh (M.P. Singh) working with the Corporate Debtor and made the head of the Project of Ghitorni Site being executed by the Operational Creditor as per the email dated 10.12.2022 sent by Mr Rabish Kumar of the Corporate Detor, who is the authorised person of the Corporate Debtor. Now, the Corporate Debtor has disowned him stating that he has resigned on 25.04.2023 (*the date on which 10th RA bill is shown to have been signed by him*) due to indiscipline found in his conduct and alleged to have taken employment with the Operational Creditor but the same has been denied by the Operational Creditor. The Corporate Debtor could not produce any such evidence showing that Mr. M.P. Singh took employment with the Operational Creditor. However, the facts remain that all the Abstracts on the basis of which 10 RA Bills from 26.11.2022 to 26.04.2023 have been prepared certifying the measurements of work done and quantity of materials used, are signed by the Manager (Technical) of the Operational Creditor and Head of the Project of the Corporate Debtor as

available in the record. The Corporate Debtor has alleged that all these abstracts are signed in back date and such signed copies are not available with it and also signature of Manager Technical of the Operational Creditor is at different place in the copies available with him. In all these objections, we don't find any merit looking to the facts that RA Bills raised by the Operational Creditor on the basis of these Abstracts, have been duly received by the Corporate Debtor and also effect of claiming GST credits have been taken in the GSTR-3B returns filed by it. As Mr. M.P. Singh was working in the capacity of Head of Project of the Corporate Debtor, his signature on the Abstract of the work on the basis of which these RA Bills were prepared cannot be ignored.

- 21.** In the written submission, the Operational Creditor has attached a table showing transactions between parties on account of which it has been claimed that the Operational Creditor is liable to pay a sum approximately Rs. 50,00,000/- to the Corporate Debtor. Though this table was not produced while filing the Reply Affidavit, we find certain transactions are common in this table as well as the Reconciliation Account Statement sent by email dated 28.04.2023. In both table as

well as Reconciliation Account Statement, amount of debit note issued by the Corporate Debtor for material supplied are Rs. 2,34,60,223, the payments made are of Rs. 1,50,73,572/- . The only difference is that in the Reconciliation Statement, all the 10 RA Bills are accounted for but in table filed along with the written submission, only 7 RA Bills are accounted for . Also, in the said table, an amount of Rs. 95,96,150/- is shown as Unbilled Debit Note and Hold On amount of Rs. 15,00,000/- on account of quality issue and Rs. 20,11,587/- as Retention are claimed, which are not reflected in the reconciliation statement sent vide email dated 28.04.2023. All these amounts shown in the table were never claimed to have been raised against the Operational Creditor either at the time of filing of Reply Affidavit or even during the course of hearing by the Ld. Counsel for the Corporate Debtor. Therefore, such claim made in the written submission after conclusion of the hearing cannot be accepted. Also, as regards the last 3 RA Bills, except for last RA Bills i.e. 10 th RA bill as being signed by Mr. M.P. Singh on the date of resignation, no dispute was raised during hearing. Thus, we find that after taking into account the 9 RA bills and deducting the debit notes issued by

the Corporate Debtor and payments so far made by it as recorded in the reconciliation statement sent vide email dated 28.03.2023 as well as shown in the table attached with the written submission, the outstanding amount would come to Rs. 1,09,48,436/- which is more than Rs. 1 crore and meet the threshold limit for admitting the application u/s 9. Since the outstanding amount more than Rs. 1 crore is still outstanding to be paid by the Corporate Debtor even as per its own account, we find that default has occurred, We don't agree with the Corporate Debtor that there is no date of default as there was no prescribed time limit for payment of any bill because if works have been done and bills have been raised for the same by the Operational Creditor, it is incumbent upon the Corporate Debtor to pay the amount within a reasonable time limit and in the present case , a demand of more than Rs. 1 crore is outstanding for a period of about 1 year. Therefore, we are satisfied that there is a debt of more than Rs. 1 crore and a default has occurred on part of the Corporate Debtor to pay this debt.

(b) Pre-Existing Dispute

- 22.** The Corporate Debtor contended that there is a pre-existing commercial dispute between the parties related to the quality and delay in the work executed by the Operational Creditor, which arose much before the demand notice dated 8.5.2023 was issued.
- 23.** The Corporate Debtor has shown the whole timeline of series of email exchanged between the Operational Creditor and Corporate Debtor regarding the dispute on quality of work. Even if the quality of work is disputed and bills were raised therein, it has not been explained properly by the Corporate Debtor as to how his Head of Project has signed the Abstracts made for preparing the RA bills. While signing of Abstracts, all the issues regarding quantity and quality of work is taken care of. All such 7 bills have been accepted by the Corporate Debtor in the table attached with the written submission, then how remaining 3 bills can be ignored, while these three bills are also recorded in the reconciliation statement sent vide email dated 28.04.2023 which though disputed but could not be conclusively proved to be false as discussed by us in foregoing paras of this order.

24. Various emails and letters exchanged between parties attached with the Reply Affidavit from page 103 to 158 have been found to be in the nature of communication regarding issues arising out of any ongoing project which were being pointed out by the Corporate Debtor and discussions being held with the Operational Creditor for their resolution. Had these issues been of any serious nature to be termed as pre-existing dispute, the same could have been pointed out by the Corporate Debtor after receipt of notice u/s 8 of the Code taking into account the fact that as per the provision of section 8, the Corporate Debtor within a period of ten days of the receipt of the demand notice shall bring to notice of the Operational Creditor existence of any such dispute but no such reply was filed by the Corporate Debtor even after receipt of demand notice in Form 3 U/s 8 dated 08.05.2023. Even consequent to filing of the Application u/s 9 by the Operational Creditor on 02.06.2023 and issuance of notice to the Corporate Debtor to file reply in response to this Application, no reply was filed initially till 21.09.2023 for which its right to filing of reply was also struck down but later, vide our order dated 17.10.2023, the Corporate Debtor on filing of any IA

477/2023 to recall our earlier order, it was allowed to file its reply after payment of Rs. 15,000/- to PM Relief Fund and then its reply filed on 19.10.2023 was accepted and taken on record. Therefore, now taking recourse to these emails and letters exchanged between parties during the course of execution of project would not have much bearing to demonstrate about there being any pre-existing dispute. Had there been any pre-existing dispute, it should have been brought on record by the Corporate Debtor in response to demand notice u/s 8 within 10 days of its receipt or at least immediately after notice was issued to it by this Tribunal during the proceeding which started after filing of the Application u/s 9 by the Operational Creditor. However, at both occasions, the Corporate Debtor has failed to file any such claim of being any pre-existing dispute within a prescribed time limit. Having failed to comply at both occasions on which the Corporate Debtor was statutorily required to bring on record any such pre-existing dispute which is admissible as per the provision of section 9, the reliance placed by the Corporate Debtor now on the emails and letters exchanged between parties during the course of

execution of project cannot be termed as existence of any pre-existing dispute.

25. Even the contract of Operational Debtor was terminated by the Corporate Debtor on 12.05.2023 after issuance of demand notice u/s 8 on 08.05.2023 which was delivered to it on 10.05.2023 as per Track Consignment of Postal Department attached in the Application at page no 98. It is also strange that even after termination of contract, no reply to demand notice was filed to bring on record that there was any pre-existing dispute. Therefore, we are not inclined to accept the emails and letters attached by the Corporate Debtor in its Reply at page no. 103 to 158 as being existence of any pre-existing dispute. Accordingly, claim of the Corporate Debtor about there being any pre-existing dispute as regards the outstanding debt is rejected.

26. One of the ground taken by the Corporate Debtor while opposing the present application is that it is a solvent company carrying out various projects without any dispute except the present project executed by the Operational Creditor and hence, it should not be put under the CIRP just because of an application u/s 9 has been filed claiming default of payment

of some outstanding dues on account of this project regarding which some commercial disputes have been raised by it. In this regard, we have found as discussed in the previous paras of this order that there is an outstanding debt against which default on payment has occurred and also, it has been found by us that there is no pre-existing dispute in terms of section 8 and section 9 of the Code. As regards the solvency of the Corporate Debtor, it has been held by the Hon'ble NCLAT in case of ***Monotrone leasing Private Ltd. Vs. PM Cold Storage Private Ltd. 2020 SCC online NCLAT 581***, it has been held that *"We are bound to emphasize that a presumption cannot be drawn merely on the basis that a company, being solvent, cannot commit any default. As observed in financial and economic parlance, the inability to pay off debts and committing default are two different aspects which are required to be adjudged on equally different parameters. Inability to pay debt has no relevance for admitting or rejecting an application for initiation of CIRP under the IBC."* This decision of NCLAT was delivered After replying on the judgment of Hon'ble Supreme Court in case of ***Swiss Ribbon (P) Ltd. Vs. Union of India, (2019) 4 SCC 17: 2019 SCC Online SC 73*** wherein it was

held that *“Legislative policy now is to move away from the concept of “inability to pay debts” to “determination of default”. The said shift enables the financial Creditor to prove, based upon solid documentary evidence, that there was an obligation to pay the debt and that the debtor has failed in such obligation.”*

Therefore, in view of above decisions the argument of the Corporate Debtor about it being solvent would not be material after it is found that the default has occurred and it will be liable for CIRP. We also find that all the case laws relied upon by the Corporate Debtor are not relevant to facts of this case.

- 27.** After finding that in present case, there is a debt more than the threshold limit of Rs. 1 crore and there is default in repayment of the said debt and there is no pre-existing dispute with respect to this debt and claim of the Corporate Debtor raised in this regard as not found to be tenable and all other conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, has been fulfilled , we find this application as being fit for admission under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor.

- 28.** The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) and therefore, the court appoints Mr. Satyendra Sharma as IRP. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Mr. Sarim Husain and it is found that there is no proceeding pending against the proposed IRP. Hence, we hereby appoint Mr. Satyendra Sharma having Registration No. IBBI/IPA-002/IP-N00737/2018 -2019/12260, R/o of M-3, BLOCK NO 51, ANUPAM PLAZA -II, FIRST FLOOR, ABOVE AXIS BANK, SANJAY PLACE, Agra, Uttar Pradesh ,282002, Email: satyendrasirp@gmail.com as the IRP.
- 29.** Accordingly, this application is admitted u/s 9 of the Code, 2016 under the following terms and conditions.
- i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. **Supercast Technologies Pvt. Ltd.** is hereby admitted.
 - ii. We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

- iii. This Adjudicating Authority hereby appoints Mr. Satyendra Sharma to act as the IRP under Section 13(1)(c) of the Code as decided by us in para 28 above.
- iv. The IRP shall cause a public announcement for the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
 - a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- vi. The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii. The provisions of sub-section (1) of Section 14 of I & B Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.

- ix. Provided that where at any time during the Corporate Insolvency Resolution Process period if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- x. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant in accordance with I & B Code, 2016 read with the relevant rules & regulation framed thereunder.
- xi. The Operational Creditor/Applicant is directed to deposit Rs. 1,00,000/- with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.
- xii. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP

and the jurisdictional Registrar of Companies by Speed Post as well as through email.

- xiii. List the matter on 05.07.2024 for filing of the progress report.
- xiv. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

IA No. 194/2024

1. This application has been filed under Section 65 of the Code for appropriate orders for instituting CP No. 36 of 2023 with fraudulent and malicious intent.
2. It has been stated in the application that the Applicants/Respondent Corporate Debtor was granted a subcontract for the purpose of production, transportation, grouting and erection of precast elements fabrication and manufacturing of solid precast concrete elements and part of this work was given to Operational Creditor/ Non-Applicant Respondent.
3. It is also further averred that the certain amount has been paid towards this services rendered to the Operational Creditor/ Non-Applicant Respondent, the Applicants/Respondent

Corporate Debtor in the present application has referred the several communications made interse between the parties and while making about the case under Section 65 of the Code, however has reiterated its submission made in a reply to the Section 9 petition.

4. It has been alleged that the debt defined in Section 3(11) of IBC has not become due, there cannot be default in terms of Section 3(12) of the Code.
5. It has also been alleged insolvency proceedings cannot be used as a tool for debt recovery mechanism. And according to the Applicants/Respondent Corporate Debtor, the very filling of the Section 9 petition by the Operational Creditor is with a malicious intention to recover the alleged due.
6. We have perused the record of the present application and also gone through the record of the Section 9 petition as well as the reply filed by the present Applicant/Respondent Corporate Debtor of the main petition filed under Section 9 of the Operational Creditor.
7. By way of our detailed order passed in CP No. 36 of 2023 while adverting to the entire factual matrix and the law, the petition

filed under Section 9 has been admitted and CIRP has been initiated. In terms of the order separately passed by us.

8. We don't see in the present application any grounds for maintaining the present application under Section 65 as the issue regarding existence of debt and default has been a subject matter of the aforesaid decision passed by us in the main petition i.e. CP No. 36 of 2023.
9. We are therefore not inclined to entertain the present application filed by the Applicants/Respondent Corporate Debtor under Section 35 of the Code and the same is therefore, dismissed.

-Sd-

(Ashish Verma)
Member (Technical)

Date: 14th May, 2024

Pravin Dubey
(PS)

-Sd-

(Praveen Gupta)
Member (Judicial)