

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-(Court-I)
KOLKATA**

CP (IB) No. 81/KB/2023

I.A (I.B.C) No. 314/KB/2024

*An application 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:

AKJ Engineers Pvt. Ltd.
[CIN: U45203WB2005PTC104812]

...Operational Creditor

Versus

Simplex Infrastructures Ltd.
[CIN: L45209WB1924PLC004969]

...Corporate Debtor

Date of Hearing: 10/05/2024

Date of pronouncing the order: 23/07/2024

Appearances (through hybrid mode):

For the Operational Creditor : Mr. Rishav Banerjee, Advocate
: Mr. Abhishek Sikdar, Advocate
: Ms. Sahili Dey, Advocate

For the Corporate Debtor : Mr. Shaunak Mitra, Advocate
: Mr. Snehasis Sen, Advocate

Coram:

Bidisha Banerjee : **Member (Judicial)**
Balraj Joshi : **Member (Technical)**

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ORDER

Per Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.

Brief facts of the case:

2. This is a Company Petition filed 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 by AKJ Engineers Private Limited (***“Operational Creditor”***), represented by **Shri Subrata Naha (Director)**, authorized *vide* a Board Resolution dated 09.02.2023¹ seeking to initiate Corporate Insolvency Resolution Process (***“CIRP”***) against Simplex Infrastructures Limited (***“Corporate Debtor”***).
3. It is submitted in Part-II of the Petition that the authorised share capital of the Corporate Debtor is Rs.75,00,00,000 (Rupees Seventy Five Crore Only) with paid up capital as Rs. 11,47,00,000 (Rupees Eleven Crore Forty-Seven Lakh Only).
4. Part-IV of the Petition the details of operational debt for an amount of Rs.3,52,92,431/- (Rupees Three Crore Fifty-Two Lakh Ninety-Two Thousand Four Hundred and Thirty-One only) alongwith interest @ 18% per annum till 30.11.2022.
5. The Corporate Debtor was incorporated on **19 December 1924**, having CIN: L45209WB1924PLC004969, under the Companies Act, 1956. Its registered office is at ‘SIMPLEX HOUSE’, 27, Shakespeare Sarani, Kolkata-700017, West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.

¹ Annexure B at Page 24 of the Petition

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6. The present petition was filed on 28 February 2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.3,52,92,431/- (Rupees Three Crore Fifty Two Lakh Ninety Two Thousand Four Hundred and Thirty One only) alongwith interest @ 18% per annum till 30.11.2022. The date on which the debt fell due is on 09.07.2022.
7. The Operational Creditor had issued a Demand Notice under Section 8 of IBC, 2016 on 09.01.2023² to the Corporate Debtor and the same was replied to by a letter dated 24.01.2023.

Submissions of the Learned Counsel for the Operational Creditor

8. The Ld. Counsel for the Operational Creditor states that the Corporate Debtor had been maintaining a running account for several years. It is stated that payments made by the Corporate Debtor were ad-hoc payments and not payments against any particular bills.
9. It was also submitted that the Corporate Debtor continuously made ad hoc payments from 9th April 2013 to 13th October 2022, a fresh period of limitation would start every time an ad hoc payment was made., therefore the debt is not time barred and the application has been filed within the prescribed period of limitation.
10. It was also submitted that the Operational Creditor issued a statutory notice under Section 8 of the IBC, 2016 to which the Corporate Debtor had replied and only raised the point of limitation in the said reply.
11. It was submitted that there are no pre-existing disputes between the Operational Creditor and Corporate Debtor has never raised any dispute as existing between them. The Ld. Counsel for the Operational Creditor submitted that as there is an admitted debt and default on the part of the

² Annexure F of the Petition

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Corporate Debtor, the present petition be admitted and CIRP be initiated against the Corporate Debtor.

12. A supplementary affidavit has also been filed by the Operational Creditor supporting its contention which comprise of bank statements showing the date of payments. This information was filed after seeking permission of the Adjudicating Authority vide IA 314/KB/2024.

Submissions of the Learned Counsel for the Corporate Debtor

13. The Ld. Counsel for the Corporate Debtor has stated that the total debt claimed by the Operational Creditor is Rs.3,62,92,431/- which comprises of a principal sum of Rs. 1,95,79,585/- and an interest of Rs.1,57,12,846/- calculated @ 18% per annum.
14. It submitted by the Ld. Counsel that the chart annexed at Page 26 of the Application shows that the alleged claim of the Operational Creditor pertains to the period from 25th February 2009 to 28th November, 2022 against different projects. From the said chart it is evident that the claims of the Operational Creditor against invoices raised in the years 2009, 2011, 2014, 2016 and 2017 amounting to a sum of Rs.1,18,43,606/- are ex facie barred by limitation, therefore out of the total principal amount in default i.e., Rs. 1,95,79,585 an amount of Rs. 1,18,43,606/- is not legally payable to the Operational Creditor. Hence the total amount in default equals to Rs.77,35,979/- which is below the threshold limit.
15. It was submitted that the Corporate Debtor has already paid the amount of Rs.77,35,979/- on 04.06.2024, hence there are no dues against the Corporate Debtor. The interest amount in default as claimed by the Operational Creditor is not payable as there was no contract of interest between them.

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16. It has been submitted that from the purchase orders annexed at pages 298-382 of the application it can be seen that the invoices were payable within 30 days from the date of submission of the bills and therefore the alleged claims of the Operational Creditor pertaining to the years 2009 to 2017 are clearly barred by limitation.

17. It has also been submitted that the authorized representative of the Operational Creditor is not authorized to file any application against the Corporate Debtor and hence this application is liable to be dismissed.

Analysis and Findings

18. We have heard the Learned Counsels appearing for both the parties and perused the record.

19. The contention of the Corporate Debtor that the authorized representative of the Operational Creditor is not authorized to file any application is not maintainable in view of **Annexure-B** annexed at **Page 24** of the Application which is a board resolution dated 9th February, 2023 passed in favour of the authorized representative Mr. Subrata Naha.

20. We find that the amount claimed by the Operational Creditor comprises of a principal sum of Rs. 1,95,79,585/- and interest of Rs.1,57,12,846/- calculated @ 18% per annum totaling to an amount of Rs.3,62,92,431/-. In para 13 of the Reply Affidavit, the Corporate Debtor has stated that since there is no contract for payment of interest therefore the Operational Creditor cannot make any claim with regard to interest from the Corporate Debtor.

21. We find at **Page 26** of the application, a computation sheet showing debt due to the Corporate Debtor is annexed. From a perusal of the same, we find the principal outstanding amount pending as on 30.11.2022 is Rs.

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1,95,79,585/. A table showing the outstanding dues alongwith last payment dates as indicated at Page 26 of the application is set out herein below:

Contract/Project Code	Total Outstanding Amount (in Rs.)	Last Payment Received/Transaction date	Interest amount @ 18% (in Rs.)	Total amount including interest
C-2500	4286078	18/06/2016	4979836	9265914
C-3127	3108790	28/11/2022	3067	3111857
C-3170	809066	14/11/2022	6384	815450
C-3212	2469415	07/07/2022	177798	2647213
C-2864	2054368	17/03/2017	2111328	4165696
C-2825	2047702	10/02/2016	2509417	4557119
C-3011	603984	18/06/2018	484313	1088297
C-3101	513958	16/05/2017	513001	1026959
C-2980	264109	15/03/2017	271693	535802
C-3186	107144	12/06/2018	86232	193376
C-2774	72550	24/07/2018	56888	129438
C-2930	20768	24/01/2019	14400	35168
C-3316	849	21/01/2022	132	981
C-3189	433520	27/07/2022	26938	460458
C-2850	40336	10/06/2022	3442	43778
C-2872	69557	29/08/2018	53306	122863
C-2362	153506	06/05/2014	236946	390452
C-2338	212152	25/02/2009	525835	737987
C-2190	1399054	04/04/2014	2181605	3580659
C-2190	899434	04/01/2014	1442446	2341880
C-3242	13245	31/03/2011	27839	41084

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Total amount	19579585	-----	15712846	35292431
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Since, there were multiple debts between the Operational Creditor and the Corporate Debtor and the payments were not made billwise, Section 59 and 60 of the Indian Contract Act shall apply which are as follows:

“59. Application of payment where debt to be discharged is indicated.—Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

60. Application of payment where debt to be discharged is not indicated. —Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.”

22. The Corporate Debtor has not given sufficient proof to show that payments were made bill-wise and not on ad-hoc basis. The only issue raised by the Corporate Debtor is with regard to the claim of the Operational Creditor based on the last date of payment vis-à-vis the balance due in a particular contract and that these were barred by limitation. It is important to note that the table at page no 26 presented in the petition is admitted by the Corporate Debtor in its reply as well and therefore the additional information filed by the OC vide a supplementary affidavit is also taken as admitted.

23. In order to consider the matter more objectively let us examine two scenarios namely:

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- (i) The payment has been made Contract wise by the Corporate Debtor for each of the contracts considered on a standalone basis. (Since bill-wise payment is not available)
- (ii) The payment has been made on ad-hoc basis for all the Contracts taken together.

In scenario (i), the table above (excluding the interest) would appear as follows:

S.no,	Contract/ Project Code	Total Outstanding Amount (in Rs.)	Last Payment Received/Tr ansaction date	Limitation under section 18 extended to	Time barred debt
1	C-2500	4286078	18-06-2016	17-06-2019	4286078
2	C-3127	3108790	28-11-2022		
3	C-3170	809066	14-11-2022		
4	C-3212	2469415	07-07-2022		
5	C-2864	2054368	17-03-2017	16-03-2020	2054368
6	C-2825	2047702	10-02-2016	09-02-2019	2047702
7	C-3011	603984	18-06-2018		
8	C-3101	513958	16-05-2017	15-05-2020	513958
9	C-2980	264109	15-03-2017	14-03-2020	264109
10	C-3186	107144	12-06-2018		
11	C-2774	72550	24-07-2018		
12	C-2930	20768	24-01-2019		
13	C-3316	849	21-01-2022		
14	C-3189	433520	27-07-2022		
15	C-2850	40336	10-06-2022		
16	C-2872	69557	29-08-2018		
17	C-2362	153506	06-05-2014	05-05-2017	153506
18	C-2338	212152	25-02-2009	25-02-2012	212152
19	C-2190	1399054	04-04-2014	03-04-2017	1399054
20	C-2190	899434	04-01-2014	03-01-2017	899434
21	C-3242	13245	31-03-2011	30-03-2014	13245
Total		19579585			11843606
	Remaining debt			7735979	

24. However, when it comes to Scenario (ii) above, the last payment for all the contracts taken together has been made 28.11.2022, whereby the entire

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debt gets revived and the threshold of Section 4 shall get crossed even if we exclude the interest amount claimed by the Operational Creditor as the principal amount itself is beyond the threshold limit as prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016.

25. From the submissions made by the parties and the documents on record, we find that there is no pre-existing dispute on the issue of the payments being made bill wise or on an adhoc basis. Since the table at page 26 of the Petition is admittedly agreed by both the parties, we see that the Scenario (i) above is applicable and as such the inference drawn on the basis of postulate (i) above holds well. Simply put, the dues as S.No. 1,5,6,8,9,17-21 become time barred as the petition is filed on 28.02.2023 while the period of limitation gets over duly considering the effect of Suo Motu writ petition no 3 of Hon'ble Supreme Court of India. That being so, the resulting amount works out to Rs. **77,35,979/-** and the same being less than the threshold of Section 4, the petition deserves to be rejected.
26. In view of the above facts and circumstances, **CP (IB) No. 81/KB/2023** stands **rejected**. However, the Petitioner shall be at liberty to seek other remedies that may be available to it under any other law.
27. Accordingly, **I.A (I.B.C) No. 314/KB/2024** also stands **disposed of**.
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

This order is pronounced on 23rd day of July, 2024.

FA_LRA