

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) NO. 450 of 2023

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Weatherspell Aircon Engineers

Private Limited

[CIN: U51909PN2010PTC135886]

Having Registered Office at -
3, 1st Floor, Crescent Exclusee,
Behind Meteorological Department,
Shivajinagar, Pune - 411005

**... Operational Creditor/
Petitioner**

Versus

RT Tricone Design & Build

Contractors Private Limited

[CIN: U45309MH2022PTC391828]

Having Registered Office at -
72, Floor 7th, Plot-230, Sakhar Bhavan
Ramnath Goyanka Marg,
Nariman Point, Mumbai - 400021

**...Corporate Debtor/
Respondent**

Order Delivered On : 04.07.2024

Coram:

Hon'ble Member (Judicial) : Sh. Justice Virendrasingh G Bisht (Retd.)

Hon'ble Member (Technical): Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Sanam Kabre, Advocate

For the Respondent : Counsel was present, however attendance
wasn't marked.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by **Weatherspell Aircon Engineers Private Limited ("Operational Creditor/Petitioner")**, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **RT Tricone Design & Build Contractors Private Limited ("Corporate Debtor/Respondent")**.

Brief Facts of the case:

2. The Corporate Debtor was incorporated on 16.05.2016 under the Companies Act, 2013. Its Corporate Identity Number (CIN) is U51909PN2010PTC135886. Its registered office is at 3, 1st Floor, Crescent Exclusee, Behind Meteorological Department, Shivajinagar, Pune, Maharashtra - 411005. Therefore, this Bench has the jurisdiction to entertain and decide this Petition.

3. The Operational Creditor is a private limited company primarily engaged in the business of installing Air Conditioning and Fire Fighting Systems. The Corporate Debtor is a company engaged in civil contracting work.

Submissions made by the Ld. Counsel on behalf of the Operational Creditor

4. The Corporate Debtor approached the Operational Creditor in and around September 2018 for a construction project for which it was appointed by M/s. Saifee Burhani Upliftment Trust (“Trust”). Subsequently, the Corporate Debtor placed a work order dated 09.10.2018 with the Operational Creditor for a total amount of Rs. 5,27,82,678/- which was revised and later enhanced to Rs. 5,84,71,025/- on 29.06.2019. On 03.10.2019, the Corporate Debtor placed a subsequent work order of total Rs. 3,24,184/- with the Operational Creditor.

5. The Operational Creditor submits that the Corporate Debtor had requested the Operational Creditor the extra work prior to issue of the said Work Orders and provided assurance that appropriate payment for the same will be made. Accordingly, the Operational Creditor completed the requested work. There was additional work, rework, extra work and against all such work and delays, the Operational Creditor has incurred a cost of Rs. 36,81,333/-. This amount was claimed as RA 13 towards miscellaneous expenses. The Operational Creditor submits that they continuously requested the Corporate Debtor to provide clearance of work front at the said site to avoid any delay caused due to non-clearance. The Operational Creditor submits that between 29.03.2019 to 23.06.2021, they incurred a loss of Rs. 53,30,060/-. It is further submitted that the Project Management Company appointed by the Trust was in charge of providing certifications of work done by the contractors on the site. However, the

work at the site was abruptly stopped by the Project Management Company in November 2020 without any prior intimation. Despite continuous reminders to clear the amount due to the Operational Creditor, the Corporate Debtor has failed to pay the outstanding dues. Owing to these circumstances, the Operational Creditor has incurred an opportunity loss of Rs. 59,00,000/-.

6. The Operational Creditor submits that the total amount of outstanding debt is Rs.1,64,86,843/- (Rupees One Crore, Sixty Four Lakhs, Eighty Six Thousand, Eight Hundred and Forty Three Only), exclusive of interest @24% per annum for 2 years and 4 months which amounts to Rs. 1,18,70,526.96/- (Rupees One Crore, Eighteen Lakhs, Seventy Thousand, Five Hundred and Twenty Six Only). The Particulars of Claim are placed on record as Annexure 6 of the Petition.
7. The Operational Creditor submits that despite receiving 95% of the deliverables from the Operational Creditor, the Corporate Debtor has defaulted in payment of dues and has acknowledged the same in a letter dated 15.03.2022.
8. The Operational Creditor on realising that Respondent was unable/incapable of paying the Operational Creditor, served upon the Respondent Demand Notice dated 16.11.2022 in Form 3 as well as Form 4 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor has also placed on record proof of delivery of Form 3 and Form 4 to the Corporate Debtor. The Corporate Debtor has neither acknowledged nor replied to the Demand Notice sent under Form 3 and Form 4.
9. The Operational Creditor in support of its claim has placed on record the following documents:

- i. Work Orders placed on the Operational Creditor by the Corporate Debtor
- ii. Invoices raised by the Operational Creditor on the Corporate Debtor
- iii. Balance Confirmation Letter sent by RT Tricone Design & Build Contractors Private Limited dated 15.03.2022
- iv. Legal Notice sent to SBUT and RT Tricone Design & Build Contractors Private Limited.

Submissions made by the Ld. Counsel on behalf of the Corporate Debtor

10. The Corporate Debtor submits that the RA 13 Bill amounting to Rs. 36,81,133/- is not found in the Petition. The RA 13 Bill was not served upon the Corporate Debtor in the Demand Notice. It is further submitted that the alleged RA 13 Bill was never served upon the Corporate Debtor even before the Demand Notice as it is not found in the Corporate Debtor's records. It is submitted that the Tribunal vide Order dated 06.09.2023 had directed that the RA 13 Bill be placed on record.
11. The Corporate Debtor submits that the Project Management Company was responsible for the clearance of RA bills and the payment by the Corporate Debtor shall be due only when the bill is served and approved by the Project Management Company as correct. In this regard, it is submitted that none of the invoices filed in the present Petition have been approved or confirmed by the Project Management Company.
12. The Corporate Debtor also submits that the Trust had abruptly terminated the Contract with the Corporate Debtor on 11.11.2020 and the Corporate Debtor has also claimed its dues from the Trust which is still in dispute and has not been cleared.

13. On 07.12.2023, the Corporate Debtor received an e-mail with the copy of the alleged RA 13 Bill dated 23.06.2021 along with an alleged letter dated 10.12.2020. It is submitted that the alleged Invoice No. 8 annexed with the Petition and the RA 13 Bill are questionable as the date and description of goods, unit, quantity, rate, etc. all are same except for Sr. No. 9 where the rate/amount only changes from Rs. 6,17,203/- to Rs. 14,52,801/-.
14. It is further submitted that Invoice No. 9, 1/RA-9 and 1/RA-11 have also not been submitted nor received by the Corporate Debtor.
15. It is therefore the Corporate Debtor's contention that the present Petition is incomplete as the Operational Creditor has failed to establish debt and default as required under the Code and there is a pre-existing dispute.

Findings

16. We have heard learned Counsel and perused the records.
17. The Corporate Debtor has put forth two main contentions opposing the initiation of CIRP which are –
 - a) The invoices submitted are not certified by the Project Management Company and hence have not become payable.
 - b) The questionable reliance on the alleged RA 13 Bill.
18. After perusing the invoices placed on record, it is observed that the invoices indeed do not bear the signature or stamp of either the Corporate Debtor or the Project Management Company.
19. We note that the Operational Creditor had not annexed the RA 13 Bill with the Petition and this Tribunal had directed the Operational Creditor to cure this defect and place the Bill on record. The Operational Creditor filed the RA 13 Bill on 12.12.2023.

20. After examining the RA 13 Bill, we find force in the Corporate Debtor's contention that the Invoice No. 8 and the RA 13 Bill are indeed similar. The details from Sr. No. 1 to Sr. No. 8 in both invoices are identical. The only difference is in Sr. No. 9, where the Rate per Unit has been changed resulting in different invoice amounts. It is also to be noted that the Invoice No. mentioned in the alleged RA 13 Bill is "8/RA 13", wherein RA 13 has been written by hand. This leads us to believe that the Operational Creditor has inflated its claim by duplicating invoices.
21. The Operational Creditor has claimed amounts under three categories-
- a) The Balance Amount of Rs. 52,56,783/- including the miscellaneous expenses amounting to Rs. 36,81,133/- claimed vide the RA 13 Bill.
 - b) Project Management Cost incurred due to delays amounting to Rs. 53,30,060/-.
 - c) Opportunity Cost amounting to Rs. 59,00,000/-.
22. According to the Computation of Claim placed on record by the Operational Creditor, the total amount owed to the Operational Creditor by the Corporate Debtor was Rs. 2,71,72,540/-, out of which Rs. 2,19,15,757/- has already been paid. Interest has then been calculated on the remaining balance amounting along with the Project Management Cost and the Opportunity Cost, which brings the total outstanding amount to Rs. 2,73,81,349/-.
23. However, it is pertinent to note at this stage that it is settled law that a claim for damages does not become operational debt until the liability is adjudicated upon and damages are assessed by a competent authority in law. The claim for operational debt due made therein should be undisputed, crystallized, payable and not something which

requires further adjudication by a competent authority. In the present case, the Project Management Cost and the Opportunity Cost claimed by the Operational Creditor seem to be arbitrary amounts as the Operational Creditor has not substantiated as to how these costs were arrived at. Hence, the Operational Creditor cannot be allowed to claim Project Management Cost and Opportunity Cost as operational debt.

24. The test now is to ascertain whether the operational debt claimed still crosses the threshold limit prescribed under the Code after disregarding the Project Management Cost and Opportunity Cost. We observe that upon re-calculation as stated above, the outstanding operational debt amounts to Rs. 15,75,651/- after elimination of RA 13 bill, which appears to be duplicate of Invoice no. 8. The interest component on such operational debt amounts to Rs. 8,82,364/-. The total outstanding debt amounts to Rs. 24,58,015/- which does not cross the threshold limit as prescribed under Section 4 of the Code, thereby making the present Petition non maintainable under law.
25. It is also noted that the Operational Creditor has not specified the date of default as required in Part IV of Form 5.
26. In light of the above, we are of the view that the Operational Creditor has inflated his claims and the actual operational debt claimed does not cross the threshold limit as prescribed under the Code.
27. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The Petitioner is at liberty to seek remedy under the other applicable laws and the rights of the Petitioner shall not be prejudiced on the grounds of dismissal of the present Petition.
28. In the above circumstances, the Petition bearing CP(IB) No. 450 of 2023 filed by **Weatherspell Aircon Engineers Private Limited**, the Operational Creditor, under Section 9 of the Code read with Rule 6(1)

of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **RT Tricone Design & Build Contractors Private Limited**, the Corporate Debtor, stands **rejected**.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)