

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 217/Chd/Hry/2022

**Under Section 9 of the
Insolvency and Bankruptcy
Code, 2016**

In the matter of C.P. (IB) No. 217/Chd/Hry/2022

Rajinder Infrastructure Private Limited

Having its Registered Office at
H. No. 66, Sector 27-A
Chandigarh - 160019
CIN: U70109CH2010PTC032079

...Petitioner/Operational Creditor

Vs.

Panipat Jalandhar NH-1 Tollways Private Limited

Having its registered office at
5th Floor, Block-2 Vatika,
Business Park, Sector- 49,
Gurgaon, Haryana - 122001
CIN: U45206HR2008PTC037891

...Respondent/Corporate Debtor

Order delivered on: 01.05.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**

Present:

For the Petitioner: Mr. G.S. Sarin, PCS

For the Respondent: Mr. Rajat Khanna, Advocate

Per: Sh. Harnam Singh Thakur, Member (Judicial)

Sh. L. N. Gupta, Member (Technical)

JUDGEMENT

The instant application has been filed by Rajinder Infrastructure Private Limited, (hereinafter referred to as “**Petitioner**”) against Panipat Jalandhar NH-1 Tollways Private Limited (hereinafter referred to as “**Respondent**”) under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process in respect of the Respondent on account of default in the payment of Rs. 1,01,94,426 (Rupees One crore one lakh ninety four thousand four hundred twenty six only) by the Respondent.

2. The brief facts stated in the application are:

- 2.1. The Petitioner supplied laying BC with PMB, bituminous concrete, cold milling, and track coat to the Respondent. Service orders were issued on 31.10.2020, and 24.11.2020 amounting to Rs. 15,16,13,580, Rs. 1,84,86,949, Rs. 80,68,928 and Rs. 4,56,60,791, respectively. Part payment of invoices of Rs. 1,01,94,426 is still pending. The last payment of Rs. 15,28,637 was received on 06.04.2021
- 2.2. The Respondent raised a letter dated 14.07.2021, regarding defects/deficiency in the work undertaken by the Petitioner in regard to service order no. 1100001563, 1100001560 and 1100001903, and the same was replied vide letter dated 03.08.2021.
- 2.3. The Petitioner has issued request letter on 07.06.2021 and 30.10.2021 for the release of the outstanding payment and a demand notice dated 11.03.2022, on

08.04.2022 and no reply to the said notice has been received by the Petitioner from the Respondent.

2.4. The date of default as per Compliance Affidavit dated 29.08.2022 filed vide diary no. 01599/3 is 13.12.2021.

3. The Respondent, in its reply dated 21.09.2023, filed vide diary no. 01599/6, submitted that it entered into Contractual Agreements/Service Orders with the Petitioner for providing services on the project highway, which were issued to the Petitioner from 2020 onwards in accordance with the terms and conditions of the respective work orders, duly accepted by the Petitioner.

3.1. It is further submitted by the Respondent that a specific date, i.e., 29.02.2020, was agreed upon between the parties for the completion of the Service Order/Work Order and there was no provision for extension of time.

"8. Time Extension:

Since the job of repair work is of urgent and critical nature, the same is required to be executed as per the instructions of and directions of the site In-charge within the stipulated time-line. No time extension shall be allowed".

3.2. The Respondent referred to the 'Payment Terms', according to which, it could retain a certain percentage as 'Retention Amount' towards the defect liability:

"Payment Terms

10% advance against submission of ABG of equivalent amount. Balance payment shall be released within 30 days of submission of duly certified fortnightly invoice after adjusting advance on prorata basis and adjustment of all statutory deductions. An amount equivalent to 5% of invoice value shall be retained for a period of 12 months towards defect liability period. However, retention money can be released against

submission of Bank Guarantee of equivalent amount with validity covering the entire D.L.P.”

- 3.3. The Respondent submitted that, vide clause 'Remarks', it was agreed between the parties that any defect during the 'Defect Liability Period' must be attended by agency as per the instructions of Site-in-charge and if the Petitioner fails to attend the defects, then the same shall lead to forfeiture of retention amount .
- 3.4. The Respondent further submitted that it had time and again pointed out the defects and deficiencies in the works undertaken by the Petitioner and has requested the Petitioner to rectify them, which the Petitioner had failed to do so.
- 3.5. It is further alleged by the Respondent that the Petitioner had filed the present petition without ascertaining when the Respondent defaulted in payment of debt. The documents relied upon by the Petitioner evidences pre-existing dispute between the parties and the petition should be dismissed on this ground only.
4. The Petitioner, in its rejoinder dated 04.01.2024, filed vide diary no. 01599/8 stated that the Respondent never pointed out any delay in the execution of work in the letter dated 14.07.2021. Even after the issuance of the demand notice dated 11.03.2022, on 08.04.2022, no notice of dispute was ever raised by the Respondent.
 - 4.1. The Petitioner submitted that it had honoured the service orders as per the arrangement between the parties and completed the work after

removing all defects within one year of the service order, i.e., the due date of completion as per the service order. The date of completion as per service order no. 1100001563 was 29.02.2020; the actual date of work completion was 27.05.2020; and the date of one year completion of the defect liability period was 26.05.2020.

- 4.2. The Petitioner alleged that, vide letter dated 03.08.2021, it has communicated detailed facts and sought release of dues from the respondent, but the respondent failed to reply to the said letter till date, which proves the bona fide of the Petitioner. For ready reference, a chart of the service orders placed and the date of expiration of the respective defect liability period is reproduced as under:

Sr. No.	Service Order no.	Date of expiration of defect liability period	Balance Outstanding
1.	1100001560	12.02.2021	924336.0
2.	1100001563	26.05.2021	8469161.0
3.	1100001903	13.12.2021	800929
4.	1100001904	15.12.2021	No due

5. Written submissions dated 07.02.2024, were filed by the petitioner vide diary no. 01599/9, reiterating the facts of the petition and rejoinder. Written submissions dated 19.02.2024, were filed by the respondent vide diary no. 01599/10.
6. During the course of arguments, it was contended by the Ld. Counsel for the Petitioner that the Respondent made the payment on the satisfaction of the work and retained only 5% as per the terms of the service orders, which were due after one

year of completion of work. Further, the Petitioner, in its letter dated 30.08.2021 mentioned that all defects were rectified and requested the Respondent for a joint inspection, but no reply was received from the Respondent.

Further, the Ld. Counsel for the Petitioner contended that Section 10A of the Code is not applicable to the facts of the case as Section 10A mentions the occurrence of default, not when the debt fell due. Thus, the date of default, i.e., 13.12.2021, when the debt fell due, does not fall within the scope of Section 10A.

7. The Ld. Counsel for the Respondent contended that, as per Section 10(A) of the Code, no application for initiation of the Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed, for any default arising on or after 25.03.2020, for a period of 1 year, i.e., up to 24.03.2021. Thus, no application can ever be filed for initiation of CIRP for the said default occurring during above mentioned period, i.e., 25.03.2020 to 24.03.2021. Per contra, the respondent alleged that since the petitioner stated that the default occurred from 22.02.2020 to 16.12.2020 and the defect liability period of one year for Service Order No. 1100001560 got over on 12.02.2021, the alleged date of default would be 12.02.2021 and hence, the present petition is barred under Section 10(A) of the Code

- 7.1. The respondent further submitted that, as per the notification dated 24.03.2020 bearing No. S.O. 1205(E) issued by the Ministry of Corporate Affairs, the minimum threshold limit of Rs. 1 Lac was enhanced to Rs. 1 Crore for the initiation of CIRP as stipulated under Section 4 of the Code. The Petitioner, vide its letter dated 30.10.2021, itself stated that, as per the work order conditions, the 'Defect Liability Period' for money amounting to Rs. 9,24,336/- got over on

12.02.2021. Thus, the amount claimed by the Petitioner in the said letter is below the threshold limit of Rs. One Crore, the petition cannot not be admitted for CIRP. Further, the alleged total debt as claimed by the Petitioner is Rs. 1,01,94,426/- (-) Rs. 9,24,336/- = Rs. 92,70,090/-, which is also below the minimum threshold limit of Rs. 1 Crore.

7.2. It is further stated by the respondent that in various communications/letters issued by it about the defects and deficiencies prior to the issuance of the demand notice dated 11.03.2022, it was categorically clarified that in the absence of implementation of the requirements cited by the respondent time and again, no bill/invoice would be entertained and payment would be held until rectifications are made by the petitioner, and such an act would be without prejudice to the petitioner's any right as conveyed in the respective work orders, to maintain quality of work and ensure durability as well without affecting user inconvenience or road aesthetic. The petitioner, vide its letter dated 03.08.2021, itself admitted the defects and deficiencies in the work executed by it. Thus, there exists a pre-existing dispute between the parties.

8. After hearing both parties and a careful perusal of the records produced before us, now we deal with the issues involved in the case in hand:

8.1. Whether the petition has been filed within the period of limitation?

According to the Ld. Counsel for the Petitioner, the final unpaid invoice for service order no. 1100001903 became due on 13.12.2021, which was so deposited in the affidavit dated 24.08.2022, filed vide diary no. 01599/2, when the defect liability period of one year expired. Thus, the consolidated date of

default is 13.12.2021 and the period of limitation would begin on 13.12.2021. The present petition being filed on 28.07.2022, is well within the period of limitation.

- 8.2. The second issue for consideration is whether the amount claimed is above the threshold limit prescribed under the Code?.

It may be noted that every invoice issued by the Petitioner is for an independent claim. The amount of Rs. 9,24,336/- for service order no. 1100001560 fell due on 12.02.2021, when the defect liability period got over. As per Section 10A of the Code, no application for initiation of CIRP could ever be filed for any default occurring between 25.03.2020 and 24.03.2021. Thus, the amount of Rs. 9,24,336 claimed by the Petitioner is barred under Section 10A of the Code and the same cannot form part of the amount claimed. Thus, the total amount of alleged debt works out to be Rs. 1,01,94,426/- (-) Rs. 9,24,336/- = Rs. 92,70,090/-, which is below the minimum threshold limit of Rs. 1 crore, prescribed under IBC, 2016.

- 8.4. The next issue for consideration is whether there existed a pre-existing dispute between the parties.

The letters placed on record by the Respondent, which were issued to the Petitioner pointing out the defects and deficiencies in the work undertaken by the Petitioner and whereby the Respondent requested the Petitioner to rectify the same, dates back to 17.02.2020, much prior to the issuance of the demand notice on 11.03.2022 by the Petitioner to the Respondent. This evidences the existence of a pre-existing dispute between the parties.

9. Having heard both parties and perusing records, it can be safely concluded that the amount claimed by the Petitioner is below the threshold limit of Rs. One crore, as the claim of Rs. 9,24,336/- falls within the ambit of Section 10A of the Code. Moreover, the communication letters dated 27.02.2020 till 14.07.2021, placed on record by the Respondent establish that there was a pre-existing dispute between the parties.
10. In light of the discussion foregoing, the present petition is not maintainable as the amount claimed by the Petitioner is below the minimum threshold limit of Rs. One crore as prescribed under the Code and also lacks merit as there was a pre-existing dispute between the parties.
11. Hence, the petition ***CP (IB) No. 217/Chd/Hry/2022 is dismissed and is disposed off accordingly.***

Sd/-

(L. N. Gupta)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

May 01, 2024
ASG