

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No.(IB)-538(ND)/2023

**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:

Gagan Chhabra

.... Applicant/ Operational Creditor

Vs.

M/s. Sms Vishwa Jv.

.... Corporate Debtor

Order Delivered on: 14.05.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

The instant application is filed by Mr. Gagan Chhabra (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. SMS Vishwa JV, a joint venture between SMS Paryavaran Limited, M/s. Vishwa Infrastructures & Services

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Limited and M/s. GSJ Envo Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.2, 49,00,0000/- (Rupees Two Crore Forty-Nine Lacs Only).

2. The Respondent Company M/s. SMS Vishwa JV, is a joint venture emanating from a Joint Venture Agreement dated 20.08.2008 between three corporate entities namely (i) SMS Paryavaran Limited, (ii) M/s. Vishwa Infrastructures & Services Limited and (iii) M/s. GSJ Envo Limited, having its office situated at SH-2, Vardhman Grand Plaza, Plot No. 7, Mangalam Place, Sector-3, Rohini, New Delhi. Since the office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

AVERMENTS BY THE APPLICANT

3. Briefly stated, the facts of the present case as averred by the applicant are that the applicant had rendered legal services to the Corporate Debtor regarding an arbitration matter wherein the award was passed on 13.08.2018. Pursuant to the passing of award, the Applicant had raised two separate Bills dated 13.08.2018 of Rs.2.5 Crores each totalling to Rs. 5 Crores for providing his legal services. The applicant submits that Corporate Debtor is a Joint Venture emanating from Joint Venture Agreement dated 20.08.2008 between three Companies namely "SMS Paryavaran Limited, M/s Vishwa Infrastructures & Services Private Limited and M/s GSJ Envo Limited. Under this Joint Venture Agreement, M/s SMS Paryavaran Limited was the Lead Company out of the three legal entities.

4. The Applicant further submits that the invoices raised in the name of the Corporate Debtor had remained unpaid for a long time, consequently, the Applicant and Corporate Debtor had entered into a Memorandum of Understanding (MOU) 09.06.2018 by virtue of which, the Corporate Debtor agreed to pay a sum of Rs 2.5 Crores to the Applicant in full and final settlement of its Professional Fees. The Corporate Debtor had made a part payment of Rs. 1,00,000/- (Rupees One Lacs Only) only to the Applicant against an outstanding total amount of Rs. 2,50,0000/- (Rupees Two Crores Only). As per the MOU dated 09.06.2018, the Corporate Debtor had to make the Balance Payment of the admitted dues of Rs. 2.49 Crores within a period of 12 Months i.e. by 08.06.2019 and if, the Corporate Debtor was not able to make this Payment, then the Applicant would have, had the right to take legal remedies.
5. Heard and perused the application and affidavit filed by the Applicant. This Adjudicating Authority had heard the arguments on the maintainability of the present application. Before going into the issue whether the present application is within the period of Limitation. This Adjudicating Authority observe that the present petition preferred by the applicant under Section 9 of the Code, 2016 is based on the basis of a Memorandum of Understanding dated 09.06.2018 entered between the Applicant and the Corporate Debtor, where it was provided that out of the Two Professional Fees Bills raised by the Operational Creditor, only one Bill of Rs. 2.5 Crore would be considered as payable by the Corporate Debtor to the Operational Creditor.
6. Further, on perusal of the part-IV of Form-5 of the present application, it is observed that the Applicant had demanded Rs.2,49,00,000/- as outstanding operational debt arising out of the Memorandum of Understanding dated 09.06.2018.

7. It is pertinent to note that the moment the parties entered into the Memorandum of Understanding dated 09.06.2018 pursuant to which the debt had arisen out of rendering of legal services, the nature of which being the debt being operational debt defined under Section 5(21) of the Code, 2016 is bygone as now the debt is not owed for outstanding invoices raised by the applicant towards the legal services. The amount demanded in Part-IV of the present application is outstanding pursuant to the Memorandum of Understanding dated 09.06.2018, which is only a settlement amount which can merely be considered a debt as defined under Section 3(11) of the Code, 2016 but in no circumstances can be an operational debt as it has lost its substratum of operational debt and is only a debt pursuant to the settlement between the parties.
8. It is no more res-integra that IBC is not a recovery proceeding only because the settlement has been failed and the settlement debt or part of it has not come, the party cannot repeatedly come to the Adjudicating Authority for the recovery of the amount. The Hon'ble Supreme Court in M/s. Invent Asset Securitisation and Reconstruction Private Limited v. M/s. Girnar Fibres Limited [Civil Appeal No. 3033/2022] observed that time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor.
9. Having regard to the conspectus of all relevant facts and discussions and the judgments cited supra, we are of the view that pursuant to the settlement arrived between the parties and on the strength of that Memorandum of Understanding, the present application being filled for recovery of the settled amount which is governed by the Memorandum of Understanding dated 09.06.2018, the outstanding debt as claimed in the

company application has lost its substratum of being operational debt as defined under Section 5(21) of the Code, 2016 and accordingly, the present application cannot be maintained.

10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the applicant before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

11. Accordingly, the present application **(IB)-538(ND)/2023, filed under Section 9 of the Code, 2016, being non-maintainable stands dismissed.** No orders to cost.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**