

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**The Insolvency and Bankruptcy Code, 2016)**  
**(Through Physical Hearing / VC Mode (Hybrid))**

**CP (IB) No.58/BB/2023**  
**U/s. 9 of the IBC, 2016**  
**R/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s.Naushad Alam**

Proprietor of M/s UN Constructions  
5<sup>th</sup> Cheshire Block, Flat No. L501,  
Hamilton Homes by SJR Primecorp, Gattahalli,  
Gattahalli Sarjapura Hobli,  
Bengaluru 560099

... Petitioner/Operational Creditor

**Versus**

**M/s. SJR Prime Corporation Pvt. Ltd.**

Registered Office at:  
"The Hub" S.Y No. 8/2& 9,  
Ambalipura – Bellandur,  
Sarapur Main Road  
Ambalipura Village, Varthur Hobli,  
Bangalore- 560102

... Respondent/Corporate Debtor

**Order delivered on: 19.04.2024**

**Coram:** Hon'ble Shri. K.Biswal, Member (Judicial)

Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Anirudh Suresh  
For the Respondent : Shri Ajesh Kumar Shankar with Shri Srihari.S

**O R D E R**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed on 26.04.2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by **Naushad Alam, Proprietor of M/s UN Constructions** (for brevity 'Operational

Creditor/OC/Petitioner’) inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. **SJR Prime Corporation Pvt. Ltd.** (hereinafter referred as ‘Corporate Debtor’/CD/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 1,53,56,196/-. It is noticed that the date of default mentioned in the Part IV of Form 5 is 27.08.2022. Affidavit U/s 9(3) (b) was placed at page 24 of CP, while Demand Notice in Form No.3 dated 07.03.2023 under Section 8(1) was attached at Page 34.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The CD is a real estate developer and has availed the services of OC for two of his projects namely Blue Waters Project (hereinafter referred to as the 1<sup>st</sup> project) and Pallazza City project (hereinafter referred to as 2<sup>nd</sup> project).
4. In case of the 1<sup>st</sup> project, the CD placed multiple Work Orders (hereinafter referred to as “WO”) between 2016 and 2021 to the OC, pursuant to which the OC provided his services in accordance with the WOs and for that, raised multiple invoices between the years of January 2016 to March 2022. The said invoices along with their terms and conditions were accepted by the CD without any dispute or demur.
5. It is stated that all payments made by the CD to the OC were ad hoc on account payments and no bill wise payments were ever made in any of the two aforesaid projects.
6. That the CD has cleared all the amounts with regards to the invoices raised by the OC in the 1<sup>st</sup> project, and the same was partly done through outright payment to the OC and partly through transferring ownership of 3 (Three) flats being Flat no. 202 in Fiesta Florido, Flat nos L501 and K102 in Hamilton Homes, Bangalore to the OC as payment. It is pertinent to state that the possession of the said flats was handed over to the OC in completely raw and inhabitable state and the OC had to make all necessary additions and furnishing by himself, for which he raised credit notes to the CD as mutually agreed between the parties.
7. In case of the 2<sup>nd</sup> project the CD placed multiple WO’s between September 2020 and July 2022 to the OC pursuant to which the OC provided his

services in accordance with WO and for that raised various invoices between the period of May 2021 and August 2022.

8. The said invoices raised in the 2<sup>nd</sup> project along with the terms and conditions were all accepted by the CD without any dispute or demur i.e the invoices were duly signed and acknowledged with the signature of the quantity surveyor engineer of the CD. The CD issued payment certificate against every invoice raised by the OC which were again duly affirmed by quantity surveyor and site billing engineer. All such payment certificates were issued after deducting 1% TDS. The total outstanding with regard with regard to all the invoices raised by the OC stands at Rs 1,60,54,275.53/-.
9. However, the OC in the instants application filed under section 9 claimed a debt of Rs. 1,53,56,196/-. It is stated that as per the provisions of IBC and as on date of filing this instant application a total sum of Rs 1,53,56,196 is lying outstanding and payable by the CD with regards to the work and services provided by the OC and the invoices raised for such work and service in the second project. Thus an amount of Rs. 1,53,56,196/- is due and payable by the CD as per the provisions of IBC pertaining to the works and services he availed from the OC in the 2<sup>nd</sup> project.
10. As the outstanding amount remains, several request were made by the OC to the CD to make payments to clear such above mentioned outstanding amount, whereby the CD only gave false assurances and never made the payment.
11. The OC left with no other way, issued demand notice under section 8(1) in form 3 to the CD issued on 07.03.2023, calling upon the CD to make payment of the due amount of Rs 1,53,56,196/-, which was deliver through speed post and by email address of the directors and other representatives of the Company. Further, it is noticed that the Corporate Debtor has not issued any reply to the demand notice.
12. The notice in the present case was issued on 05.06.2023. The Learned Counsel for the Petitioner has filed copy of proof of service Diary Nos. 3846 dated 21.07.2023. On 13.07.2023, the Respondent filed its statement of objection vide diary no: 3704 by contending as follows:
  - (i) That the Operational Creditor here had preferred an alternative remedy before the *Samadhaan* – Micro and Small

Enterprises Facilitation Council in Application No. UDYAM-KR-03-0045439/M/0001 before the MSEFC Bangalore against the Respondent herein. The Hon'ble Council has rightfully rejected the said Application as on 03.01.2023.

- (ii) The Respondent does not admit to the contents of the letter itself or any sums being due to the Operational Creditor herein, the Operational Creditor, even as late as of 03.02.2023, had admitted in Para 3 of the said letter [produced at Page 164 to the Petition] that a sum of INR 68,45,010/- had been paid 03.02.2023. The alleged Ledger Account, the Bill Wise Details and the Total Claim amount portrayed in a tabular form cannot be looked into firstly – they have been grossly mischaracterized and secondly, they do not reflect a deduction/debit of INR 68,45,010/-. This is done to meet the minimum threshold under Section 4 of the Code.
- (iii) The Operational Creditor, does concede that in so far as the 1<sup>st</sup> Project i.e., Blue Waters Project, the bills raised along with the Invoices have been completely honored by the Respondent. The Operational Creditor fails to bring the true facts of the case with respect to the disputed bills concerned with respect to the 2<sup>nd</sup> Project i.e., Pallazza City, and has suppressed material facts.
- (iv) The Operational Creditor herein, has failed to furnish the correct information/amounts and also all relevant documents along with the Demand Notice under Form No. 3 which according to the Respondent is not due.
- (v) It is submitted that on a perusal of the Terms and Conditions provided along with the Work Orders placed for the 1<sup>st</sup> Project i.e., Blue Waters, which are similar to those entered into with the 2<sup>nd</sup> Project, i.e., Palazza City, it comes to light that there are various Terms and Conditions enumerated therein, including a process by which the Final Product by the Contractor was to be certified for quality and quantity by the SJR along with the Engineers in charge of the Quality.

(vi) It is submitted that on a perusal of the incomplete Work Orders/Invoices produced by the Operational Creditor it is noticed that the same were not signed by the Project Manager and General Manager-QS which is at page No: 95 to 149 of the Application. Therefore, it would showcase that there were disputes between the Parties, in so far as either the Quality provided, or the Quantity provided with respect to the invoices raised; and were therefore not certified in accordance with the Terms and Conditions of the Work Orders. There is no gainsaying in the fact that, until and unless the Bill/Invoice has been certified by all parties, it does not become due. Accounts were reconciliated between the Parties, the total outstanding was calculated, and a certain arrangement was reached. It is to be noted that the Operational Creditor was made aware of the Debit Note with respect to the Quality Hold on various invoices to the tune of more than INR 25 lakhs. Further it was agreed that there would be registration of 2 flats in the Operational Creditor's name in so far as the debts relating to settlement of invoices towards the 2<sup>nd</sup> Project was concerned. In total, a total of 3 flats were registered in the Operational Creditor's name in lieu of the invoices raised and certified to that extent by the Operational Creditor. A Copy of the Reconciliation Statement and the Sale deeds dated 28.12.2018, 09.03.2021 and 19.04.2022 are attached as Document No. 5, 6, 7, 8 respectively.

(vii) It is further submitted that in so far as the GST Debits are concerned, it was the liability of the Operational Creditor to pay the same, which have not been paid till date and therefore, as per the Reconciliation Statement appended at *supra* would showcase that the Parties were in the process of negotiating the said payment. It is further submitted that in support of the aspect of Debit notes raised in so far as Quality Debits are concerned, the same were due to the poor execution of the works entrusted to the Operational Creditor.

13. The Learned Counsel for the Petitioner in the rejoinder filed vide diary no: 4383 dated 24.08.2023 submitted that the amount of Rs. 68,45,010/- as paid by the CD to the OC, was towards payment for the outstanding towards the OC in the 1<sup>st</sup> project. The ledger account pertaining the 1<sup>st</sup> project has been attached. The claim amount of the OC amounting to Rs. 1,53,56,196/- stems completely from the 2<sup>nd</sup> project as has stated in the Sec.9 Application.
14. The Learned Counsel for the Petitioner filed his written submission vide diary no: 838 dated 07.02.2024 contending that the work orders of 2<sup>nd</sup> project amounted to Rs. 2,38,37,722 and every outstanding invoice attached is accompanied by payment certificate which is provided by the financial department of the CD. Payment certificates are not proof of payment but indicate the nominal TDS amount of around 1% has been paid for all invoices raised. It is not practicable for the OC to demand that the other engineers and management of the CD to sign the payment certificate. Further, stated that the legal notice clearly states that the total outstanding for the 2<sup>nd</sup> project is Rs. 1,79,51,842/-. It is submitted that Rs. 68,45,010/- was paid towards the 1<sup>st</sup> project. Both the OC and CD have admitted that the dues for 1<sup>st</sup> project have been cleared. Moreover, the debit notes allegedly raised is only with regard to 1<sup>st</sup> project and on the contrary the CD has admitted that the payments to 1<sup>st</sup> project is cleared in their objections. The work orders for 2<sup>nd</sup> project clearly shows that there is 1.22 crore liability with regard to plaza city FY 2017-2022 and there are no debit notes for 2<sup>nd</sup> project. A mere debit note in 1<sup>st</sup> project cannot be construed as dispute for operational debt in 2<sup>nd</sup> project. Further it is noted that the amount stated in the Reconciliation Statement do not match with the Ledger Accounts. The matter before the MSEFC was withdrawn even before the conciliation stage.
15. The petitioner has counsel has placed reliance upon the decisions of Hon'ble NCLAT, New Delhi dated 13.01.2020 in the case of *Ivalue Advisors Pvt. Ltd vs Srinagar Banihal Expressway Ltd, 2020 SCC Online NCLAT 522, Rajeev R. Jain vs Aasan Corporate Solutions Pvt Ltd & Anr, dated 12.01.2022 MANU/NL/0035/2022, Vipul Himatlal Shah and Ors vs Teco Industries and Ors. Dated 18.05.2022, MANU/NL/0342/2022* and in the

case of *Naresh Choudhary Vs. Sterling Enamelled Wires Pvt. Ltd.* dated 16.08.2023 *Company Appeal (AT)(Insolvency) No. 39 of 2023*. Further, reliance has also been placed on Hon'ble NCLT in the matter of *LBF Publications Pvt. Ltd. Vs. A & A Business Consulting Pvt. Ltd.*, CP (IB) No.341/MB-IV/2022, *Melange Systems Private Limited APPELLANT Vs PME Infratech Pvt. Ltd* dated 09.05.2023 *MANU/NC/2776/2023*.

16. The learned counsel for respondent in his written submission vide dairy no: 1021 dated 15.02.2024 stated that Application filed by the Applicant, has suppressed the fact that the case was filed and rejected by the MSEFC and the fact regarding the sum of INR 68 lakhs having being paid by the Respondent prior to the filing of the Application. On considering the sums having already been paid by the Respondent to the tune of INR 68 lakhs, as admitted by the Applicant in the Legal Notice dated 03.02.2023, the threshold of INR 1 Crore, has not been met by the Applicant, in view of the amount of Debt as per the Application being INR 1,53,56,196/-. The Application having already been rejected by the MSEFC, on the very same cause of action, the present Application is hit by the principles of *Res Judicata* and *Issue Estoppel*. Due to the dispute preferred before the MSME Counsel/MSEFC, prior to the filing of the Application under Section 9 of the Code, the present Application is barred, as there is a pre-existing dispute between the Parties.
17. The Respondents counsel has placed relied on the decisions in the natter of Mr. C Vijayakumar vs. M/s. Sahaj Bharti Travels, *Company Appeal (AT) (Ins.) No. 58 of 2022*, Sabarmati Gas Limited vs. Shah Alloys Limited (2023) 3 SCC 229, SFO Technologies Pvt. Ltd. vs. Vanu India Private Ltd. 2023 SCC OnLine NCLAT 301, Vidharbha Industries Power Ltd. vs. Axis Bank Ltd. (2022) 8 SCC 352.
18. We have considered the pleadings and material available on record.
19. The primary issue for consideration in this petition is whether the threshold under section 4 of the Code is satisfied. It is noted that the demand notice in form 3 has been issued on 07.03.2023 demanding payment of Rs. 1,53,56,195.87/- by stating that the 1<sup>st</sup> project has been partly cleared through payments and partly cleared through transfer of ownership of 3 flats to the OC. Further, it is pertinent to mention the legal notice dated

03.02.2023 issued by the OC (Page 164 -167 of CP) demanding the payment for 2<sup>nd</sup> project work orders only which stated that in Para 3 “... ***in above total due amount you have paid only Rs. 68,45,010/- till date to my client and remaining is pending from your side....***”. In this Legal Notice dated 03/02/2023 in Para 1 ( at page 165 of CP), all the 6 work orders mentioned are clearly related to the 2<sup>nd</sup> project “Plazza city”; which is also specified in this Para. It is clear from the written submissions filed by the petitioner in para 8 states about “*the total outstanding for the 2<sup>nd</sup> project is Rs. 1,79,51,842/-*”, which is the final total in the legal notice dated 03.02.2023. Further, it is observed that from the calculation sheet and Invoices dated from 06.01.2021 to 27.08.2022 filed by the petitioner (at page 150 of CP) that for the amount of Rs. 19,21,449.72/- the default dates are falling in the exclusion period of Section 10A of the Code and hence the net default amount is worked out at Rs.1,53,56,195.87/-, after exclusion of the particular invoices which are falling in the period covered by Section 10A of IBC. The petitioner has also filed the Record of Default in Form – D from NESL at page 176 of CP stating that the total amount in debt was Rs. 1,53,56,195.87/-; which was also mentioned in Form No 5.

20. In view of the submissions it is noticed that all invoices from 06.01.2021 to 27.08.2022 were raised with respect to 2<sup>nd</sup> project only. Therefore, in the Legal notice and written submissions the petitioner has accepted that the payment of Rs. 68,45,010/- has been made. Moreover, application has been filed for the 2<sup>nd</sup> project only i.e., Plazza City claiming, Rs. 1,53,56,196/- to be the outstanding amount payable. In the Demand Notice U/s 8(1) dated 07.03.2023 at para 1(3), it was clearly stated that the entire amount for the 1<sup>st</sup> Project was already paid.
21. It is apt to note that the legal notice has been solely issued for the 2<sup>nd</sup> project, demanding the remaining payment for the specific work orders related to the 2<sup>nd</sup> project, along with accepting the fact that the amount of Rs.68,45,010/- paid by the CD related to the 2<sup>nd</sup> project.
22. It is thus noticed that the OC in the legal notice dated 03.02.2023, the rejoinder and in the written submissions has clearly acknowledged the partial payment of Rs. 68,45,010/-. Accordingly, in view of the contention raised by the Corporate Debtor, on reducing the payment of Rs.68,45,010/-



the threshold required to be fulfilled as per the section 4 of IBC is not met. Therefore, the Petition under Section 9 of the IBC is not maintainable. Further, it is noticed that the citations made by the petitioner are related to section 7 of IBC and for pre-existing dispute in Section 9 matters.

- 23.** Accordingly, this Tribunal is of the considered opinion that this Petition is not a fit case for admission under section 9 of the IBC as the threshold requirement is not satisfied. Therefore, the instant petition **CP (IB) No. 58/BB/2023** is hereby **dismissed**. However, this order shall not preclude the petitioner from pursuing other remedies in accordance with law, if so required.

**-Sd/-**

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

**-Sd/-**

**(K.BISWAL)**  
**MEMBER (JUDICIAL)**