



**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

Office of the Central Processing Centre

Manesar, Plot No. 6,7, 8, Sector 5, IMT Manesar, Gurgaon, Haryana, 122050, India

Certificate of Incorporation pursuant to change of name

[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): **U74140DL2011PTC224038**

I hereby certify that the name of the company has been changed from R A D CONSULTANCY PRIVATE LIMITED to SKGI CONSULTANCY PRIVATE LIMITED with effect from the date of this certificate and that the company is Company limited by shares.

Company was originally incorporated with the name R A D CONSULTANCY PRIVATE LIMITED

Given under my hand at ROC, CPC this FOURTH day of JULY TWO THOUSAND TWENTY FOUR

Signature Not Verified

Digitally signed by
DS CPC 1

Date: 2024.07.04 18:11:52 IST

M.Yadubhushana Rao

Assistant Registrar of Companies/ Deputy Registrar of Companies/ Registrar of Companies

Central Processing Centre

Note: The corresponding form has been approved by M.Yadubhushana Rao, Central Processing Centre, and this order has been digitally signed by the Registrar of Companies through a system generated digital signature under rule 9(2) of the Companies (Registration Offices and Fees) Rules, 2014.

Mailing Address as per record available in Registrar of Companies office:

SKGI CONSULTANCY PRIVATE LIMITED

Plot No- 108 Sainik Enclave Sec- V, Mohan Garden, Uttam Nagar, New Delhi- 110059, Delhi, India

Note: This certificate of incorporation is in pursuance to change of name by the Company and does not affects the rights and liabilities of stakeholders pursuant to such change of name. It is obligatory on the part of the Company to display the old name for a period of two years along with its new name at all places wherever a Company is required to display its name in terms of Section 12 of the Act. All stakeholders are advised to verify the latest status of the Company and its Directors etc and view public documents of the Company on the website of the Ministry www.mca.gov.in/MCA21





IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - VI

C.P. (IB) No. 341/2024

IN THE MATTER OF:

Faelcon Corporate Solutions Private Limited

.... Financial Creditor

Versus

RAD Consultancy Private Limited

.... Corporate Debtor

CORAM:

(MS.ANU JAGMOHAN SINGH)
HON'BLE MEMBER (TECHNICAL)

(JUSTICE JYOTSNA SHARMA)
HON'BLE MEMBER (JUDICIAL)

PRESENT:

For the Petitioner : Adv. PBA Srinivasan, Adv. Akash Swami, Adv. Akhilesh Tejpal, Adv. Srishti Bansal, Adv. Sumit, Adv. Aanchal Pundir, Adv.

For the Respondent : Adv. Agir Gupta

ORDER

ORDER DELIVERED ON: 12.06.2025

1. The operational creditor, **M/s Faelcon Corporate Solutions Private Limited**, has filed this petition under **Section 9** of the IBC, 2016, seeking initiation of the Corporate Insolvency Resolution Process against the corporate debtor, **RAD Consultancy Private Limited**. The petition claims an operational debt of Rs. 1,35,90,386/-, comprising Rs. 1,28,81,293/- as the principal amount for manpower supply services provided under a service agreement dated 20.10.2023, and Rs. 7,09,093/- as interest at 18% per annum from 16.11.2023.



2. The applicant has made the following brief submissions: -

- a. The Operational Creditor entered into a Service Agreement dated 20.10.2023 with the Corporate Debtor for the supply of manpower services. Pursuant to the agreement, manpower services were duly provided by the Operational Creditor between 16.11.2023 and 08.12.2023, and invoices were raised on the Corporate Debtor for a total principal amount of ₹1,28,81,293/-. The invoices were to be paid within 7 days of issuance, as per **Fees and Payment** clause of the agreement entered between the parties, but the Corporate Debtor failed to make any payment despite having received the services and availed the corresponding GST benefits.
- b. A demand letter dated 17.12.2023 was issued by the Operational Creditor, demanding payment. Further follow-up emails were sent on 27.12.2023 and 04.01.2024, thereby giving a final opportunity to the Corporate Debtor to discharge the outstanding debt.
- c. In an email dated 08.01.2024, the Corporate Debtor acknowledged the debt and sought two days' time for payment. Thereafter, a response was sent by the Operational Creditor, wherein the Corporate Debtor was notified that legal action would be initiated. This was followed by a reply from the Corporate Debtor dated 12.01.2024, again acknowledging the debt and seeking further time for payment, thereby admitting the liability.
- d. The total amount claimed is ₹1,35,90,386/-, comprising ₹1,28,81,293/- as principal and ₹7,09,093/- as interest. Even without the interest component, the outstanding debt exceeds the statutory threshold of ₹1 crore under Section 4 of the IBC.
- e. Despite repeated demands and communication, no payment was made by the Corporate Debtor. Consequently, a formal demand notice (Form 3) under Section 8 of the IBC was issued on 21.03.2024.

3. The Respondent, Corporate Debtor has made the following contentions in their reply:

- a. The Corporate Debtor submits that no operational debt is due and payable, as claimed by the Operational Creditor. It asserts that the services rendered under the Service Agreement dated 20.10.2023 were sub-standard and led to substantial financial losses.
- b. The Corporate Debtor disputes the inclusion of ₹7,09,093/- as interest in the claimed amount of ₹1,35,90,386/-, arguing that



interest cannot be added to determine the threshold under Section 4 of the IBC, 2016. Reliance was placed on **CBRE South Asia Pvt. Ltd. v. United Concepts and Solutions Pvt. Ltd. (IB-797(ND)/2021)**, wherein it was held that interest cannot be clubbed with the principal amount to reach the minimum threshold of ₹1 crore for initiating a petition under Section 9.

- c. It is further contended that there existed a pre-existing dispute regarding the quality of services and hence the matter does not satisfy the test laid down under Section 9(5) of the Code.
 - d. The Corporate Debtor also disputes the proper service of the statutory demand notice under **Section 8** of the Code, which is a mandatory precondition for initiating proceedings under Section 9.
4. The following submissions were made by the Petitioner in their Written Submissions:
- a. The Service Agreement contains an express provision under **Fees and Payment** clause stipulating penal interest at 18% p.a. on delayed payments
 - b. The corporate debtor's claim of not receiving the demand notice is not sustainable. Postal receipts and tracking reports demonstrates that the demand notice was duly served via Speed Post and courier services. Furthermore, the NCLAT ruling **in Alloysmin Industries Vs. Raman Casting Pvt. Ltd. (2019)** clarifies that serving the demand notice at either the registered office or the corporate office is valid under **Section 8(1)**. Thus, the Adjudicating Authority cannot reject a Section 9 application on the grounds that the notice was served at the corporate office instead of the registered office, making the service legally valid. Additionally, the corporate debtor's failure to respond to the demand notice is treated as a deemed admission of the debt.
 - c. Corporate Debtor's plea regarding sub-standard services is an afterthought. No such issue was raised contemporaneously, nor was any dispute communicated prior to the demand notice. As per **Mobilox Innovations Pvt. Ltd. v. Kirusa Software (P) Ltd.**, any pre-existing dispute must precede the demand notice, which is absent in this case.
5. The respondent made the following averments in their Written Submissions:
- a. IBC is a resolution mechanism for genuine cases of insolvency and is not intended to serve as a recovery tool for disputed claims. The



present petition has been filed with mala fide intent solely to exert undue pressure on the Corporate Debtor for recovery of alleged dues. In ***S.S. Polymers v. Kanodia Technoplast Limited***, it was held that a petition under **Section 9** filed with malicious intent- particularly for the recovery of interest or for purposes other than resolution or liquidation is impermissible.

- b. The services rendered under the said agreement were of sub-par quality. As a result, the Corporate Debtor suffered severe financial repercussions. Consequently, the Corporate Debtor withheld payment, as even its own vendors had withheld corresponding dues from the Corporate Debtor due to the deficiencies in service.

ANALYSIS & FINDINGS

6. We have heard the Learned Counsel(s) and perused the records.
7. It is undisputed that the parties entered into a service agreement dated 20.10.2023, whereby the Operational Creditor was to provide manpower supply services. Pursuant to the said agreement, the Operational Creditor duly rendered services on various occasions and raised corresponding invoices dated between 16.11.2023 and 08.12.2023. As per the terms of the agreement, payments towards the invoices were to be made within seven days. However, no payments were received. Accordingly, the Operational Creditor issued a letter dated 17.12.2023 to the Respondent, requesting payment. This was followed by an exchange of various emails between the Operational Creditor and the Corporate Debtor during the period from 04.01.2024 to 20.01.2024. Thereafter, the Operational Creditor issued a demand notice in Form 3 on 21.03.2024, under Section 8(1) of the Insolvency and Bankruptcy Code, 2016, calling upon the Corporate Debtor to clear the outstanding operational debt.
8. The respondent has contended that there is a dispute in existence with respect to services rendered under the agreement. The first and foremost point which the Adjudicating Authority needs to see is whether there is a pre-existing dispute or not. The Section 8 of the Code provides that if there is a pre-existing dispute, the Corporate Debtor shall bring such dispute to the notice of Operational Creditor within 10 days of Demand Notice. However no evidence has been placed before this Adjudicating Authority to show that the Corporate Debtor notified the same to the Petitioner before service of the Statutory Demand Notice under **Section 8(1)** of the Code.
9. The Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited 2018 1 Supreme Court Cases 353***, observed that:



“So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

10. Further in **Sabarmati Gas Limited Vs Shah Alloys Limited, Civil Appeal No. 1669 of 2020** the aforementioned precedent i.e., **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited** was reaffirmed by the Hon’ble Supreme Court:

“Certainly, when the expression ‘pre-existing dispute’ is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as ‘pre-existing dispute’. In that view of the matter once we find that the Tribunals have rightfully held that there existed a ‘pre-existing dispute’ between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC.”

11. The pre-existing dispute must be a genuine one. The law doesn’t intend that a dispute is raised just to defeat proceedings under **Section 9** and it has no legal stand. In the instant matter the Corporate Debtor never brought to knowledge of the Operational Creditor any dispute which might have bearing on his duty to repay for the services rendered under the agreement. The defence of pre-existing dispute has been taken for the first time by the Corporate Debtor in this case. He even never replied to the demand notice. No notice of dispute was ever given to the Operational Creditor as required under **Section 9(5)(1)(d)**.
12. The legal position stands well-settled that for a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, to be not maintainable, any “existence of dispute” must be pre-existing, i.e., it must have arisen prior to the issuance of the statutory demand notice under **Section 8(1)** of the Code. No evidence has been put forth before us by the Corporate Debtor to substantiate the existence of any dispute. Non-existence of any genuine dispute is further reinforced by the fact that admittedly the Corporate Debtor never replied to the statutory demand notice of the Petitioner dated 21.03.2024.
13. As far as service of demand notice is concerned, in the present case, it was duly served at the address of the Corporate Debtor where the books of account are maintained. Consequently, we find no merit in the Respondent’s contention alleging improper service of the demand notice.
14. Furthermore it can’t be overlooked that the Corporate Debtor has acknowledged default on his part which is evident from E-Mails dated



08.01.2024 and 12.01.2024 wherein more time has been sought to discharge the debt.

15. The reliance placed by the Respondent on the decision in **CBRE South Asia Pvt. Ltd. v. United Concepts and Solutions Pvt. Ltd. [IB-797(ND)/2021]** is misplaced. In the instant case, even excluding the interest component, the principal amount claimed i.e., Rs. 1,28,81,293 exceeds the threshold of Rs. 1 crore as prescribed under **Section 4** of the IBC. Therefore, the requirement of minimum default stands satisfied, rendering the present petition maintainable under **Section 9** of the Code.

16. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfils the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- a. The Application bearing **IB-341/ND/2024**, filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating Corporate Insolvency Resolution Process against the Respondent is hereby **admitted**.
- b. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - i. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or



right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]"

- c. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of **Section 14(3)(b)** of the Code.
- d. The Operational Creditor has not proposed any name for the Interim Resolution Professional ("IRP"). Therefore, we appoint Mr. Ranjan Chakraborti as Interim Resolution Professional ("IRP") having Email address: ranjanns@gmail.com and Contact No.- 9811703727. His registration number is IBBI/IPA-002/IP-N00541/2017-2018/11618. Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.
- e. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f. During the Corporate Insolvency Resolution Process period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.



- g. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
- i. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP, and shall be paid back to the Operational Creditor.
- j. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.
- k. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.
- l. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD/-
(MS.ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

-SD/-
(JUSTICE JYOTSNA SHARMA)
MEMBER (JUDICIAL)