



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

**CP IB NO. 722/(ND)/2023
Along with I.A. NO. 2588/ND/2024**

An Application 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 along with an application under Section 65 read with Section 60(5) of the Insolvency & Bankruptcy Code, 2016.

IN THE MATTER OF:

M/S MAHI BUILDHOME PRIVATE LIMITED

G-496, GAMA-II,
GREATER NOIDA UP 201306

...OPERATIONAL CREDITOR

VERSUS

M/S KAVERI TECHNOBUILD PRIVATE LIMITED

460, GALI NO.17 VISHWAS NAGAR,
SHAHADARA DELHI
110032

...CORPORATE DEBTOR

AND IN THE MATTER OF:

M/S KAVERI TECHNOBUILD PRIVATE LIMITED

...APPLICANT/CORPORATE DEBTOR

VERSUS

M/S MAHI BUILDHOME PRIVATE LIMITED

...RESPONDENT/OPERATIONAL CREDITOR

Order Delivered on: 03.12.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

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

**APPEARANCES:**

For the Applicant	:	Mr. Pranav Gupta, Adv.
For the Respondent	:	Mr. Adhish Srivastav, Adv.

ORDER**PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)****C.P. (IB) No. 722 of 2023**

1. This is a Company Petition filed 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, by M/s Mahi Buildhome Private Limited (hereinafter referred to as ‘Operational Creditor’), represented by Mr. Arvind Soam authorized vide Board Resolution dated 24.05.2022, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Kaveri Technobuild Private Limited (“Corporate Debtor”).
2. The Operational Creditor was incorporated on 18.04.2013, bears the Corporate Identification No. U45400UP2013PTC056319. The Corporate Debtor was incorporated on 29.03.2011, having CIN: U45204DL2011PTC216765 registered under the Companies Act, 1956. Its registered office is at 460, Gali No.17 Vishwas Nagar, Shahadara, Delhi, India - 110032. Therefore, this Bench has jurisdiction to entertain this petition. The Authorized Share Capital of the Corporate Debtor is INR 6,00,00,000 (Six Crores). The Paid-Up Capital of the Corporate Debtor is INR 2,06,00,000 (Two Crores Six Lacs).
3. The present petition was filed on 17.10.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of INR 7,38,01,266.00 (Rupees Seven Crores Thirty-Eight Lacs One Thousand Two Hundred and Sixty-Six) and the alleged date of default is stated as 01.04.2023.



I.A. No. 2588 of 2024

4. Further during the course of proceedings, the Corporate Debtor has filed an Interlocutory Application bearing I.A. No. 2588 of 2024 under Section 65 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 thereby stating that the Applicant Operational Creditor has filed the present Section 9 Petition maliciously and with fraudulent intent. The Applicant/Corporate Debtor has sought the following reliefs.

- a) Allow the present Application and initiate appropriate proceedings against the Operational Creditor for fraudulent initiation of insolvency resolution process against the Applicant with a malicious intent and impose a penalty as this Hon'ble Tribunal deems fit in the present facts and circumstances;
- b) Pass any such other and further orders as this Hon'ble Adjudicating Authority deem fit and proper in the interest of justice.

5. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.

- a) The Operational Creditor was engaged as a contractor by the Corporate Debtor for construction-related work on the real estate project "Kaveri City Center" located at C-6, Gama-1, Greater Noida, Gautam Budh Nagar, Uttar Pradesh. The engagement was based on the terms and conditions agreed upon between the parties, as outlined in the Work Orders dated 18.11.2016. The Operational Creditor raised various RA Bills/Invoices for the work completed at the Corporate Debtor's construction site, which were approved by the Corporate Debtor through its director.
- b) The total amount payable under the work order executed between the parties up to 31.03.2021 was INR 15,05,79,789.00 (Rupees Fifteen Crore Five Lakh Seventy-Nine Thousand Seven Hundred Eighty-Nine only). After accounting for taxes and retention money, the total payable amount comes to INR 16,68,08,117.00. Further, an amount of INR 2,50,00,000.00, including GST, was adjusted by the Corporate Debtor through the allotment of flats, and an amount of INR 7,43,53,023.00



was paid by the Corporate Debtor. Therefore, the net payable amount has been reduced to INR 6,74,55,094.00.

- c) The work completed by the Operational Creditor between 1st April 2021 and August 2022 amounts to INR 2,30,49,342.00. After deducting the amount of INR 1,92,38,598.00 paid by the Corporate Debtor, the net payable amount stands at INR 63,46,172.00. Therefore, the total amount payable by the Corporate Debtor to date, after deducting all payments, comes to INR 7,38,01,266.00.
- d) Further, the Running Account Bills issued by the Operational Creditor were maliciously left unverified by the Corporate Debtor, despite having been regularly submitted and the Corporate Debtor had also made some part payments. The Corporate Debtor has also acknowledged its failure to pay the invoices and bills issued, through phone calls, site visits, and multiple correspondences
- e) It is further stated that on 16.05.2019 and 18.05.2019, the parties entered into a mutual agreement to resolve the outstanding liabilities. As a result, the Corporate Debtor allocated two shops, identified as Shop Nos. 130 and 146, and six studio apartments, identified as Unit Nos. 1001, 1002, 1003, 1043, and 1044, collectively valued at INR 2.52 crores, to the Operational Creditor. Subsequently, the Operational Creditor remitted an initial booking amount of INR 2,00,000.00 on 27.05.2019, with the remaining amount adjusted against the outstanding dues. However, despite repeated requests, the Corporate Debtor has failed to provide receipts for the said units.
- f) The Operational Creditor further submitted that they continued to work on the Corporate Debtor's real estate project based on assurances that all previous and future outstanding amounts would be cleared. Further, all RA Bills for the work completed between 01.04.2021 and 31.08.2022 have been emailed by the Operational Creditor but no payment was made since 01.04.2023.
- g) Due to non-payment of outstanding dues, the Operational creditor has issued a Statutory Demand Notice dated 07.09.2023 under Section 8



of the Code, however, no correspondence regarding payment or any reply has been received by the Operational creditor.

- h) The Operational Creditor asserts that the Corporate Debtor's failure to settle the outstanding amount has resulted in the non-generation of tax invoices, thereby precluding the payment of GST on services rendered for construction purposes. The outstanding amount of INR 7,38,01,266.00 has not been recorded in the balance sheets of either party, due to the absence of payment from the Operational Creditor for the outstanding bills and because the GST was not remitted by the Corporate Debtor on the said amount. The absence of tax invoices against the Operational Creditor has led to the non-inclusion of the claim in the financial statements of both the parties.

6. Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor.

- a) The Corporate Debtor stated that the Work Order dated 18.11.2016 provided for INR 12,40,84,678.00 Construction Work of commercial site being developed by Corporate Debtor. As per the terms of agreement, time was of essence and the entire work is to be completed within 16 months.
- b) As per the invoices received from the Operational Creditor and further certified by the Corporate Debtor, the amount payable stands at INR 6,22,43,673.49. Contrary to the submissions of Operational Creditor, no work was undertaken by the Operational Creditor after September, 2019.
- c) Based on the payments made by the Corporate Debtor, which were recorded and audited by a Chartered Accountant, the Respondent Corporate Debtor is entitled to recover INR 19,41,928.90 from the Operational Creditor, as this amount was paid in excess. Therefore, no amount is due or payable to the Operational Creditor.
- d) The Corporate Debtor asserts that the demand notice was issued on 07.09.2023, with the date of default stated as 01.04.2023. The Applicant, Operational Creditor, categorically claims that no payments



were made by the Respondent after 01.04.2023. However, at the written request of the Operational Creditor in November 2023, the Corporate Debtor paid INR 9,33,900.00 to the sub-contractors of the Operational Creditor.

- e) Furthermore, the Operational Creditor filed its ledger with the present petition, reflecting 24 bills, of which 22 have been paid. The 22 admitted bills, raised from June 2017 to July 2019, generally follow the same monthly pattern. However, the two disputed bills, alleged to have been raised on 01.02.2021 and 30.06.2022, represent a distinct departure from this pattern. The Petitioner failed to explain why running bills were not raised between July 2019 and February 2021, and from February 2021 to June 2022.
- f) During the course of present proceedings, the Corporate Debtor has filed an interlocutory application bearing I.A. No. 2588 of 2024 under section 65 read with section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the NCLT Rules, 2016 seeking action against Operational Creditor for fraudulent initiation of insolvency proceedings with a malicious intent.
- g) The Corporate Debtor in its Interlocutory Application states that the Operational Creditor has relied on false and fabricated documents for the purpose of filing of present petition. Ledger relied by the Operational creditor which is for the period of 01.04.2017 to 31.05.2018 shows eighth and ninth entry of 31.06.2023 and the invoice dated 31.07.2019 is stated to be of INR 30,27,620.00, however, as per GSTR-2A, said amount of invoice is INR 3,13,620.00.
- h) Further, in the balance sheet of the Operational Creditor, it shows that it has made sales of only INR 4.16 Crores, but out of nowhere invoice dated 01.02.2021 accompanied with the petition is for INR 10,96,87,490.00. Either both the invoices bearing Bill No. MBPL/021/20-21 dated 01.02.2021 for INR 10,96,87,490 and Bill No. MBPL/036/22-23 dated 30.06.2022 for INR 2,71,98,224 are not reflecting in GSTR 2A and thus forged and fabricated.



- i) As per the Ledger submitted by the Operational Creditor, 24 RA Bills were issued to the Respondent Debtor. However, covering letters for RA Bills 32, 33 and 34 are false, forged and fabricated. Furthermore, the contrary of the submission of Operational Creditor that certain flats and shops were allotted toward alleged outstanding amounts payable to the Operational Creditor, those allotments were cancelled due to non-payment of outstanding amounts and booking amounts have been returned through RTGS on 12.01.2024. Thus, in light of above contentions, the present petition is liable to be dismissed and proceedings under Section 65 of the Insolvency and Bankruptcy Code should be initiated against the Operational Creditor.

Analysis and Findings

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7. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, and the written submissions presented by the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
8. As per Section 9 of the Insolvency and Bankruptcy Code, 2016 and various judicial precedents, in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine that there must be an existence of Operational Debt, documentary evidence which shows that the aforesaid debt is Due and Payable and whether there exists a Pre-existing Dispute between the parties.
9. In the present case, the Operational Creditor alleged total operational Debt owed by the Corporate Debtor to the tune of INR 7,38,01,266.00 pertaining to Work order dated 18.11.2016. Further, as alleged by the Operational



Creditor, the total computed debt is for the period 2017-2023, ledger for the Corporate Debtor maintained by the Operational Creditor is attached with the Petition as Annexure A4.

10. For a Section 9 petition to be tenable under the Insolvency and Bankruptcy Code, 2016, there must exist an Operational Debt in terms of Section 5(21). In this case, the Operational Creditor has based its claim of operational debt on 24 invoices, purportedly issued pursuant to work order dated 18.11.2016. However, out of these invoices, the Corporate debtor has disputed the existence of two invoices bearing Bill No. MBPL/021/20-21 dated 01.02.2021 for INR 10,96,87,490 and Bill No. MBPL/036/22-23 dated 30.06.2022 for INR 2,71,98,224. The Respondent/Corporate Debtor further contended that all the invoices except these dispute invoices were reflected in the GSTR 2A Return. During the proceedings, the Operational Creditor failed to furnish copies of aforesaid disputed invoices or any substantiating document to support their existence. Per Contra, the Corporate Debtor presented a CA Certificate issued by Lochan & Co. annexed as Annexure R1 at page no. 27 of the reply, certifying the validity of all the invoices raised by the Operational Creditor except the two disputed ones.
11. The Respondent/ Operational Creditor contended that it was precluded to pay the GST on the disputed invoices raised subsequent to services rendered, thereby impeding to fulfill its tax obligations and filing of GST Returns. The Respondent further claimed that the amount of INR 7,38,01,266 was not recorded in the balance sheets of either the Corporate Debtor or the Operational Creditor solely due to non-payment of dues by the Corporate Debtor against the outstanding invoices. However, it is observed that the non-payment of tax obligations cannot be an excuse for alleging the existence of aforesaid disputed invoices. It is a settled principle of law that one who approaches the court, must come with clean hands. Thus, the contention that the non-inclusion of aforesaid two invoices is due to non-payment of dues by the Corporate Debtor cannot be accepted. Further, the Operational Creditor has failed to provide any



acknowledgement from the Corporate Debtor on the said invoices or any proof of submission to the Corporate Debtor.

12. The Corporate Debtor has not disputed the remaining invoices as claimed by the Operational Creditor. However, the Corporate Debtor has placed on record a CA Certificate stating the list of payments made by the Corporate Debtor to the Operational Creditor between November, 2016 and March, 2024. As per the said certificate, amount of INR 6,40,76,330.39 was paid to the Operational Creditor under various heads, including payments to M/s Mahi Buildhome Private Limited (Operational Creditor), as well as payments for suppliers, sub-contractors, and Electricity Charges. In support of its assertion, the Corporate Debtor further stated that a sum of INR 9,33,900.00 has been paid to laborers & sub-contractors based on a request letter issued by the Operational Creditor, the proof of payment is already placed on record. The Operational Creditor neither refuted the payments made by the Corporate Debtor nor provided any substantiating document in support of its claim of the alleged operational debt.
13. On perusal of documents placed on record and submissions made before us, the Operational Creditor has failed to substantiate the existence of disputed invoices. Moreover, there exists no operational debt which is due and payable in terms of Section 5(21) of the Insolvency and Bankruptcy Code, 2016, as all the invoices except the disputed invoices were already paid to the Operational Creditor. Thus, in light of above findings, the present petition bearing **C.P. IB No. 722/ND/2023** stands **dismissed**.

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14. The Corporate Debtor has filed an interlocutory application under Section 65 read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking action against the Operational Creditor on the basis that the it had relied on certain forged and fabricated documents in order to make the present petition maintainable in terms of Section 9 and Section 4 of the Code. Vide order dated 20.05.2024, the Operational Creditor stated that while filing the present I.A. No. 2588 of 2024 the Operational Creditor has repeated its stand taken in the reply to main petition.

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Along with
I.A. NO. 2588/ND/2024
Order pronounced on 03.12.2024



Section 65 of the Insolvency and Bankruptcy Code, 2016 is reproduced below:

“Fraudulent or malicious initiation of proceedings. –

(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.”

15. The Corporate Debtor contended that following the issuance of Section 8 demand notice, the Operational Creditor requested full and final payment due to laborers and petty contractor. The Corporate Debtor subsequently made these payments, which were acknowledged by the Operational Creditor, with proof of the same placed on record. Furthermore, the Corporate Debtor asserted that, based on the tax invoices received from the Operational Creditor and certified by the Corporate Debtor, the amount payable was INR 6,22,43,673.49. However, in accordance with the work order, the Corporate Debtor had already paid INR 6,41,85,602.39, resulting in an excess payment of INR 19,41,928.90, which is recoverable from the Operational Creditor.
16. In terms of Section 65 of the Insolvency and Bankruptcy Code, 2016, there must be substantial and corroborative evidence to prove that the Operational Creditor initiated the current proceedings fraudulently and with malicious intent. In the present case, the Corporate Debtor contended that the Operational Creditor has relied on forged and fabricated



documents to establish the existence of operational debt in terms of Section 5(21). However, the Applicant has not provided any material to substantiate that the Operational Creditor has filed Section 9 petition with any fraudulently or with malicious intent. Merely filing a weak case is not ground to exercise power under Section 65. Moreover, the payments of undisputed invoices made by the Corporate Debtor was also never rebutted by the Operational creditor during the proceedings. Based on these facts and circumstances, it appears that the Operational Creditor relied on certain claims for which it could not provide substantiating evidence. However, merely on the basis that the Operational Creditor has relied on certain facts without substantiating documents, an action under Section 65 cannot be initiated against the Operational Creditor.

17. In light of above observations, we find no merits in the contentions of Operational Creditor as there exists a operational debt due and payable by the Corporate Debtor, and hence, the present petition shall be rejected on this ground alone.
18. Consequently, **C.P.(I.B.) No. 722/ND/2023** shall stands **Dismissed**. Further, for I.A. No. 2588 of 2024, the Applicant Corporate Debtor has failed to provide sufficient material/proof to substantiate that the Petitioner/Operational Creditor has filed Section 9 Petition with fraudulent/malicious intent. Therefore, with the aforesaid observation, the Application bearing **I.A. No. 2588 of 2024** stands **dismissed** and **disposed of**.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)