

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

CP (IB) 3739/MB/C-II/2019

Under Section 9 of the Insolvency and Bankruptcy Code,
2016

In the matter of

Drilltech Engineers Private Limited

[CIN: U45400MH2009PTC194509]

505-B, Kanara Business Centre, Near Laxmi Nagar Bus
Stop, Ghatkopar East, Mumbai- 400075.

... Operational Creditor/Applicant

Versus

Shapoorji Paloonji & Co. Private Limited

[CIN: U45200MH1943PTC003812]

70 Nagindas Master Road, Fort, Mumbai – 400023.

...Corporate Debtor/Respondent

Order Delivered on 01.07.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. Manoj Mishra, Advocate.

For the Corporate Debtor : Mr. Amir Arsiwala, Advocate.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This is a Company Petition filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Drilltech Engineers Private Limited (“the Operational Creditor”)**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shapoorji Paloonji & Co. Pvt. Ltd. (“the Corporate Debtor”)**.
2. The Corporate Debtor was incorporated 23.01.1943 under the Companies Act, 1913. Its Corporate Identity Number (CIN) is **U45200MH1943PTC003812**. Its registered office is at 70 Nagindas Master Road, Fort, Mumbai – 400023.

Brief Facts of the case:

3. The Corporate Debtor issued work orders dated 29.03.2011 and 10.05.2011 to the Operational Creditor for services of mobilization, drilling, cutting, binding, mock disposal and other related activities.
4. The Operational Creditor states that there was a pre-condition of retention money to be released after one year from every R.A Bill so raised. After completion of work, the Operational Creditor raised various R.A. Tax invoices which were paid by the Corporate Debtor from time to time. However, the Corporate Debtor has not paid the balance invoice amount and retention money.

5. The Applicant submits that the Total Debt Amount is Rs.23,86,882/- (Rupees Twenty-Three Lakh Eighty-Six Thousand Eight Hundred and Eighty-Two) this outstanding amount includes amount due from invoice Rs.8,98,753/- and amount due from retention Rs.14,88,128/-. The date of default is 31.03.2013. The working computation of default is placed at Exhibit 12 at page 56 of the Petition.

Amount Due from invoice amount are detailed as under:

Sr. No.	Bill Date	RA BILL	Invoice Amt (in Rs.)	Amount Due
1	31.12.2011	RA08	Rs.24,06,651/-	Rs.1,45,80,970/-
2	01.02.2021	RA09	Rs.5,86,953/-	Rs.3,81,260/-
3	29.02.2012	RA11	Rs.6,43,427/-	Rs.2,48,964/-
4	31.03.2012	RA11	Rs.6,49,212/-	Rs.1,22,718/-
Total			Rs.42,86,243/-	Rs.8,98,753/-

Amount due from retention amount is detailed as under:

RA BILL	Due Date	Payable after one year
RA01	31.05.2021	1,45,852/-
RA02	01.06.2012	20,489/-

RA03	30.06.2012	2,01,303/-
RA04	31.07.2012	1,70,554/-
RA05	31.08.2012	1,06,324/-
RA06	31.10.2012	3,62,929/-
RA07	30.11.2012	2,66,362/-
RA08	31.12.2012	1,20,332/-
RA09	01.02.2013	29,347/-
RA10	29.02.2013	32,171/-
Total		14,88,128/-

6. The Operational Creditor states that the Corporate debtor during the retention period never intimated of any defect pursuant to which the retention money was to be retained by the Corporate Debtor. Thereafter, the Operational Creditor addressed an email dated 13.11.2013 to the Corporate Debtor seeking repayment of outstanding dues. (Exhibit 3 at Page 32 of the Petition).
7. The Operational Creditor further states that the Corporate Debtor placed yet another quotation for works. However, the Petitioner did not take further work till outstanding amount is repaid. The Corporate Debtor vide

email dated 28.09.2017 enclosed statement of ledger account of the Operational Creditor. (Exhibit B at page 30-31).

8. The Petitioner sent reminder emails dated 14.12.2018 and 23.07.2019 requesting payment of the outstanding amount. (Exhibit 7&9 at page 45 and pages 46-48 respectively).
9. The Petitioner realising that the Corporate Debtor was unable to pay the outstanding amount. The Petitioner through its advocate served upon the Corporate Debtor Demand Notice dated 01.08.2019 in Form 3 under section 8 form the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which was duly received by speed post by the Corporate Debtor. The Corporate Debtor vide letter dated 26.08.2019 replied to demand notice wherein the Corporate Debtor inter alia disputed the debt.

Submissions by the Respondent / Corporate Debtor:

10. At the outset, the Respondent states that the present Petition is not maintainable as the invoices alleged to be unpaid by the Petitioner are barred by limitation. Further, with respect the contention of the Petitioner that RA bills dated 31.12.2011, 01.02.2012, 29.02.2012 and 31.03.2012 are unpaid by the Respondent, the Respondent states that the Petitioner has not provided aforementioned invoices to the Respondent. Moreover, the due date of the said invoices is not provided.
11. The Respondent states that the date of default stated by the Petitioner is 31.03.2013. Therefore, the period of limitation would have ended in

March 2016. Moreover, the Respondent states that in email dated 28.09.2017 the amount reflected in the ledger account do not tally with the outstanding amount claimed by the Petitioner.

12. It is the contention of the Respondent that the acknowledgement of debt must be within the period of limitation. In the present case the email dated 28.09.2017 is much after the period of limitation which expired in March 2016.
13. The Respondent had issued a debit note amounting to Rs.7,12,606/- to the Petitioner and the same is reflected in the ledger account for the period between 1.04.2009 to 22.03.2019 of the Petitioner. (Exhibit 'C' at page 10 of Reply).

Finding:

14. We have heard the submissions of Petitioner as well as the Respondent and perused the records.
15. The last invoice raised by the Operational Creditor is dated 31.03.2013 and the date of default indicated by the Petitioner is 31.03.2013. Therefore, the limitation period to file the Petition would end on 31.03.2016. The acknowledgement of debt, if any must be made by the debtor before the expiry of period of limitation. The Hon'ble NCLAT in *Hussain Kadri vs Edelweiss Asset Reconstruction Co. Ltd.* Company Appeal (AT)(Ins.) No. 1073 of 2019 held as under:

“7. The effect of Section 18 of the Limitation Act, 1963 is that an acknowledgment of liability in respect of a right made in writing and

signed by the debtor before expiration of prescribed period for a suit or an application would result in a fresh period of limitation being computed from the time when acknowledgment was so signed. It is abundantly clear that such acknowledgment of liability must be made
9 Company Appeal (AT) (Insolvency) No. 1073 of 2019 by the debtor in writing and signed by him before the expiration of prescribed period of limitation....”

16. Therefore, we are of the view that the Petitioner’s contention that the Corporate Debtor acknowledged the liability vide email dated 28.09.2017 does not lie owing to the fact that the debt was already time barred on 31.03.2016.
17. In the above circumstances the petition bearing **CP (IB) 3739/MB/C-II/2019** filed by **Drilltech Engineers Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Shapoorji Pallonji and Company Private Limited [CIN: U45200MH1943PTC003812]**, the Corporate Debtor, is **rejected**.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

01.07.2022

SAM

Sd/-
JUSTICE P.N. DESHMUKH
Member (Judicial)