

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.696/MB-IV/2020**

Under Section 9 of the IBC, 2016

*In the matter of*

High Ground Enterprise Limited.

[CIN: L74999MH1986PLC22261]

...Operational Creditor

v/s.

M/s. Swastik Productions Private Limited

[CIN: U7494MH2011PTC217155]

...Corporate Debtor

**Order Delivered on: 19.12.2023.**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Operational Creditor:

Mr. Anirudh G. Purusothaman a/w  
Mr. Aditya Sharma, Ld. Counsel.

For the Corporate Debtor:

Mr. Shekhar Jagtap a/w. Mr.Akash  
Pandey, Ld. Counsel.

**ORDER**

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by High Ground Enterprise Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Swastik Productions Private Limited., the Corporate Debtor.

1.1. The Company Petition is filed on 18.02.2020 claiming that an amount of Rs. 5,07,38,816/- (Principal Rs2,93,75,195/- plus Interest @ 18 % of Rs.2,13,63,621/-) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 28.02.2016.

**Submissions of the Operational Creditor**

2. The Operational Creditor is a company engaged in providing engineering, procurement, construction management, and media, consulting and allied services.

2.1. Around December,2015 the Corporate Debtor approached the Operational Creditor to do the procurement, arrangement and post production works for its cinemas. The Corporate Debtor raised purchase order for the same.

2.2. After the completion of work the Operational Creditor raised various tax invoices on the Corporate Debtor the same are reproduced below:

Sr. No	Tax Invoice No.	Date	Amount (Rs)
1	HGEL/SPPL/2015-2016/1	31.01.2016	1,41,57,982
2	HGEL/SPPL/2015-2016/2	31.01.2016	52,08,428
3	HGEL/SPPL/2015-2016/3	28.02.2016	1,32,19,598
4	HGEL/SPPL/2015-2016/4	31.03.2016	1,55,29,635
<b>TOTAL</b>			<b>4,81,15,643</b>

- 2.3. The Operational Creditor vide letter dated 12.08.2019 demanded outstanding dues of Rs. 2,93,75,195/-. The Corporate Debtor vide letter dated 28.08.2019 responded to the said letter denying the contentions raised by the Operational Creditor.
- 2.4. In view of the failure on part of Corporate Debtor to make payments of the outstanding dues, the Operational Creditor was constrained to issue demand notice in Form No. 3 dated 17.10.2019, the demand notice sent through speed-post has been delivered to the Corporate Debtors registered office on 19.10.2020. Thus, the Demand Notice under the Insolvency and Bankruptcy Code, 2016 was served to the Corporate Debtor. The said notice was replied by the Corporate Debtor stating that no amounts are due and payable and the demand made by the Operational Creditor in the said notice is false and untenable.
3. Further the Operational Creditor vide its affidavit in rejoinder dated 30.01.2023 states that the objections taken by the Corporate Debtor in its reply is frivolous and untenable. The entire liability under the invoices raised by the Operational Creditor is an admitted debt. The Corporate Debtor has miserably failed to show that there exists any pre-existing dispute or any embargo in law or otherwise to initiate Corporate Insolvency Resolution Process proceedings qua the Corporate Debtor.

**Submissions of the Corporate Debtor**

4. The Corporate Debtor in its reply dated 19.01.2023 denied each and every statement, averment, allegation and insinuation made by the Operational Creditor in the present.

4.1. The Corporate Debtor submits that the present Petition is facile and meritless as the same purports to present a distorted version of the actual facts to mislead this Hon'ble Tribunal in an attempt to extract monies from the Respondent towards its illegal and time barred claim and deserves to be dismissed in limine for the following amongst other grounds:

A. The Petition is barred by limitation;

The present petition is filed after 4 years after alleged date of default is clearly time barred.

B. There is a pre-existing dispute between the parties

i. On 12.08.2019, the Operational Creditor addressed a letter to the Corporate Debtor demanding a sum of Rs. 2,93,75,195/- to which Corporate Debtor replied by its letter dated 28.08.2019 and informed that, no money is due on their part, in fact the respondents are receivable for a sum of Rs. 3,12,422/- and requested to clear the same.

ii. Thereafter, on 19.09.2019, the Corporate Debtor received a letter from Bank of Baroda, stating that M/s. High Ground Enterprise Limited has been availing capital credit facilities from the bank on sole banking arrangement. As per the conditions of the sanction, the company has submitted the book debts statement. As per the statement, Corporate Debtor owes a sum of Rs. 2,93,75,195/- to the Operational Creditor to which the Corporate Debtor clarified by its letter dated 05.10.2019 stating that, the

Operational Creditor is in fact liable to pay the Corporate Debtor a sum of Rs. 3,12,422/-.

- iii. There is a pre-existing dispute as regards Invoice No. HGEL/SPPL/2015-16/01 dated 31.01.2016 and HGEL/SPPL/2015-16/04 dated 31.03.2016.

- C. There is no proof of default;

The Operational Creditor has failed to furnish any of the certificates as required under Bankers Book Evidence, 1891. Further, the Operational Creditor has failed to furnish a copy of the certificate from the financial institutions maintaining accounts of the Operational Creditor which is a sine qua non for proving default.

- D. Petitioner is not entitled to claim interest;

The claim of Rs. 2,13,63.621/- raised by the Operational Creditor towards interest charged @18% p.a. is an afterthought and an attempt to duplicitously extract monies from the Corporate Debtor. In absence of any provisions to claim any interest under the purchase orders, the Operational Creditor pre-empted from raising any superfluous claim of interest.

- E. Petitioner has not approached the Hon'ble Tribunal with clean hands.

The Petitioner has suppressed various material facts and the have not approached this Hon'ble tribunal with clean hands.

### **Findings**

5. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

5.1. The Corporate Debtor has taken a plea regarding pre-existing dispute as regards Invoice no. HGEL/SPPL/2015-16/01 dated 31 January 2016 and HGEL/SPPL/2015-16/04 dated 31 March 2016. This bench observes that the Operational Creditor vide dated 12.08.2019 had demanded an outstanding amount of Rs. 2,93,75,195/-. The Corporate Debtor on 28.08.2019 replied to the said letter stating that they have received only 2 bills amounting to Rs. 1,84,28,025/- for which payments had been made in full and same is reflected in ledgers of Operational Creditor for the period 01.04.2015 to 31.03.2017. The same dispute was raised by the Corporate Debtor while responding to the letter issued by the Bank of Baroda 05.10.2019. The bench notes that, all then communications are prior to the issuance of Demand Notice on 17.10.2019. Therefore, it is abundantly clear there exists a prior dispute. Accordingly, this petition is not maintainable u/s 9(3)(b) of the Code.

5.2. Additionally, the Operational Creditor has placed reliance on Balance Confirmation letter dated 01.04.2017 filed through its Affidavit in Rejoinder. The Corporate Debtor submitted that the Operational Creditor has brought in new set of documents which are un-related to the pleadings and sought time to inspect the original copy of those documents. The same was allowed by this bench vide order dated 02.05.2023. On 01.08.2023, this bench directed the Corporate Debtor to state the position of the said document through an Affidavit. The Corporate Debtor vide its affidavit dated 25.10.2023 stated that the said document is fabricated and been introduced under the garb of a Rejoinder merely a delaying tactic. As per the material on record this Bench finds that, the letter dated 01.04.2017 forming part of the Rejoinder is nowhere part of the averments in the Petition and it is completely a new fact. This bench is of the considered view

that, the reliance of the Operational Creditor on letter dated 01.04.2017 to extend the limitation on the ground of acknowledgement of debt has no substance and cannot be taken into consideration.

5.3. Further the bench observes that, date of default specified in Part IV of the petition is 28.02.2016 that means the period of 3 years will expire on 27.02.2019 and the present petition is filed on 18.02.2020 which is clearly states that the present petition is barred by limitation.

6. The bench observes that, there is a pre-existing dispute and petition is barred by limitation hence section 9 of the Insolvency and Bankruptcy Code, 2016 is clearly not attracted. In light of the aforesaid, we find that the present case is fit for dismissal.

### ORDER

7. The petition bearing C.P. (IB) No. 696/MB/C-IV/2020 filed by High Ground Enterprise Limited (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Swastik Productions Private Limited., the Corporate Debtor is **dismissed**.
8. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**19.12.2023.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**