



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 290/(KB)/2022

4. The Corporate Debtor was incorporated on 19/12/1924 having Authorized Share Capital of Rs. 75,00,00,000/- and Paid-up Share Capital of Rs. 11,42,85,640/-.
  
5. **Briefs facts of the case:**
  - 5.1. The Operational Creditor is engaged in works contracts supplying goods and services to the Corporate Debtor in terms of work order issued by the Corporate Debtor from time to time. The Operational Creditor, the Petitioner herein have been supplying goods and services raising invoices as and when supplies are made. In respect of invoices issued during the period from 2018 to 31<sup>st</sup> March, 2019, the Operational Creditor has alleged non-payment/default totalling to Rs. 76,77,072/- as per pages 108 and 109 of the petitions.
  - 5.2. Ld. Counsel for the Petitioner claims that this amount has not been paid till date.
  - 5.3. In terms of Section 16 of the MSME Act when the buyer fails to make payment to the supplier, the buyer shall notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed date or as the case may be from the date immediately following the date agreed upon at three times of the bank rate notified by the Reserve Bank.
  - 5.4. The Ld. Counsel for the Petitioner claims that the operational creditor is an MSME and therefore entitled to interest on the defaulted amount as per Section 16 of the MSME Act mentioned above and accordingly has calculated 18 per cent interest on the defaulted amount making the default amount including interest at Rs. 1,32,97,688/- which is in excess of the threshold limit for the purpose of initiating CIRP of the Corporate Debtor under Section 9 of the IBC.

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**5.5.** The Ld. counsel for the Petitioner further submits that notice under Section 8 of the IBC has been issued and there have been no payments within 10 days.

**6. Per contra, Ld. Counsel for the Respondent submits that:**

**6.1.** The Ld. Counsel for the Corporate Debtor claims that the debt as alleged by the Operational Creditor is disputed and the demand is not sustainable.

**6.2.** The Ld. counsel for the Corporate Debtor submits that the invoices are from 05/02/2018 and ending on 31.03.2019. Nothing has been placed on record by the Petitioner to demonstrate acknowledgment of debt incurred in 2018, in the subsequent years. Therefore, the invoices are time barred and the same cannot be used to press a Petition under Section 9 under IBC.

**6.3.** The Ld. counsel also submit that this Petition has been filed on **12<sup>th</sup> September 2021** whereas board resolution authorising the petitioner to file such a petition is dated **18<sup>th</sup> October, 2021** in first copy of the board resolution and in the duplicate copy of the same document it has been recorded as if the resolution has been passed **on 13<sup>th</sup> September, 2021**. In any event, the affidavit has been verified and filed on 12<sup>th</sup> September which is before the date of authorization to the Petitioner and, therefore, the petition is not maintainable on this ground alone as he is not authorised on the date of filing this petition.

**7. Analysis and Findings: -**

**7.1.** We find that authorisation by the partnership firm the Petitioner has been given by way of board resolution in the meeting of partners held on 18<sup>th</sup> October, 2021 as claimed in the first copy of the resolution and on 13<sup>th</sup> September, 2021 as claimed in the second copy of the same document. In any event, the affidavit has been verified on 12<sup>th</sup>

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October, 2021 which is before the debt of authorisation given by the partnership firm to the Petitioner. On this ground alone this Petition is required to be dismissed as the petitioner is not authorised to file this petition on the date of verification and filing.

- 7.2.** Further to claim interest as per MSME Act, the Petitioner has not placed any record to prove that he is registered MSME. He has not stated this even in the affidavit filed and therefore, the claim of interest is also not sustainable and consequently the defaulted amount is less than the threshold limit for admission of this petition under Section 9.
- 7.3.** Without getting into the amount of default which is in any case less than the threshold limit, (as the Corporate Debtor has challenged the quantum of defaulted amount), we dismiss the Petition filed under Section 9 by the Applicant and direct both the parties to reconcile the amount to be paid by the corporate debtor to the Applicant herein for ultimate payment or otherwise.
- 7.4. On three grounds, we are dismissing this Company Petition filed by the Petitioner under Section 9 of IBC: -**
- a.** The invoices issued in 2018 are barred by limitation for the purpose of making this petition under IBC.
  - b.** Further, it has come to fore that the Petitioner has filed this petition prior to the Board Authorisation and/or the Resolutions and the Board Resolution in the first copy and the second copy of the Petition appear to be forged and the copies are not identical. We reproduce the Copies of the Board Resolutions annexed to the Copy I and Copy II of the Petition at Page 41 as below:

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**BHUPENDER SINGH THAKUR**  
SHIV GHAT, RATANPUR ROAD, SARKANDA, BILASPUR CG-495001

**CERTIFIED TRUE COPY OF THE BOARD RESOLUTION PASSED IN THE MEETING OF PARTNER OF M/s BHUPENDRA SINGH THAKUR, HELD ON 13TH SEPTEMBER, 2021 AT 11:00 A.M. AT ITS REGISTERED OFFICE AT SHIV GHAT, RATANPUR ROAD, SARKANDA, BILASPUR CG-495001.**

The Chairman informed the Board that the Firm is initiating Corporate Insolvency Resolution Proceeding (CIRP) against its Corporate Debtor such as **SIMPLEX INFRASTRUCTURE** and other. The board discuss the same and passed the following resolution:

**"RESOLVED THAT Mr. Bhupendra Singh Thakur** Managing Partner of **M/s Bhupendra Singh Thakur** having registered office at **Shiv Ghat, Ratapur Road, Sarkanda, Bilaspur CG-495001** is be and hereby authorized by the partners to declare/file/affirm all plaints, applications, petitions, affidavit and other necessary documents in the name of the company and on behalf of the company."

**"Further Resolved That Mr. Bhupendra Singh Thakur** is also be and hereby authorized by the Partners to appear in or before any Judicial Bodies and Statutory Authorities including Supreme Court, High Court, National Law Tribunal and Appellate Tribunal and or before other officers, empowered by law to hear any suits, petitions or proceedings or any other inquiry relating to any matters of the company and to appoint Advocate(s) Or Attorney or any other person(s) or any other substitute at such fee or remuneration as mutually agreed and to dismiss or discharge the same"

For **M/s Bhupendra Singh Thakur**

Soumya Singh Thakur  
**M/s. Bhupendra Singh Thakur**  
(Partner)

Veena Singh Thakur  
**M/s. Bhupendra Singh Thakur**  
(Partner)

Bhupendra Singh Thakur  
**M/s. Bhupendra Singh Thakur**  
(Partner)

**Copy I of the Petition**

**BHUPENDRA SINGH THAKUR**  
SHIV GHAT, RATANPUR ROAD, SARKANDA, BILASPUR CG-495001

**CERTIFIED TRUE COPY OF THE BOARD RESOLUTION PASSED IN THE MEETING OF PARTNER OF M/s BHUPENDRA SINGH THAKUR, HELD ON 18<sup>TH</sup> OCTOBER, 2021 AT 11 A.M. AT ITS REGISTERED OFFICE AT SHIV GHAT, RATANPUR ROAD, SARKANDA, BILASPUR CG-495001.**

The Chairman informed the Board that the Firm is initiating Corporate Insolvency Resolution proceeding (CIRP) against its Corporate debtors such as **SIMPLEX INFRASTRUCTURE** and others. The board discuss the same and passed the following resolution:

**"Resolved that Mr. Bhupendra Singh Thakur** Managing Partner of **M/s Bhupendra Singh Thakur** having registered office at **Shiv Ghat, Ratanpur Road, Sarkanda, Bilaspur CG-495001** is be and hereby authorized by the partners to declare/file/affirm all plaints, application, petitions, affidavit and other necessary documents in the name of the company and on behalf of the company."

**" Further Resolved that Mr. Bhupendra Singh Thakur** is also be and hereby authorized by the Partners to appear in or before any Judicial Bodies and Statutory Authorities including Supreme Court, High Court, National Company Law Tribunal and Appellate Tribunals and or before other officers, empowered by law to hear any suits, petitions or proceedings or any other inquiry relating to any matters of the company and to appoint Advocate(s) Or Attorney or any other person(s) or any substitute at such fee or remuneration as mutually agreed and to dismiss or discharge the same "

M/s. Bhupendra Singh Thakur,  
For **M/s Bhupendra Singh Thakur**

Soumya Singh Thakur  
(Partner)

Veena Singh Thakur  
(Partner)

Bhupendra Singh Thakur  
(Partner)

**Copy II of the Petition**

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- c. In the absence of MSME certificate or even claim in any of the affidavit filed, question of claim of interest does not arise and once that is factored then the Petitioner will not meet the threshold limit even assuming that the defaulted amount is Rs. 76,77,072/- is correct as claimed by him.
8. In terms of the discussion above, we **dismiss** this Company Petition being **C.P. (IB) No. 290/(KB)/2022**.
9. Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

**D. Arvind**  
Member (Technical)

**Bidisha Banerjee**  
Member (Judicial)

**This Order is signed on the 10th Day of October, 2023**

Bose, R. K. [LRA]