

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

Company Petition (IB) No. 70/KB/2021

*A Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, for
brevity "I&B Code", read with other provisions of law.*

IN THE MATTER OF:

Kumkang Kind Co. Limited	Verses	... Operational Creditor/ Petitioner
Simplex Infrastructures Limited		... Corporate Debtor/ Respondent

**Date of Hearing: September 29, 2023.
Date of Pronouncement: October 10, 2023**

CORAM:

**HON'BLE SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)
HON'BLE SHRI D. ARVIND, MEMBER (TECHNICAL)**

Appearance:

For Petitioner: Ms. Radhika Kabra, Adv.

For Respondent: Mr. Snehashis Sen, Adv. and Mr. Danyal Ahmed, Adv.

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Counsels.
3. This Petition is filed under **Section 9** of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by **Kumkang Kind Co. Limited (Operational Creditor/ Petitioner)** against **Simplex Infrastructures Limited (Corporate Debtor/ Respondent)** seeking to initiate Corporate Insolvency Resolution Process (for brevity "CIRP") in respect of the Corporate Debtor herein.
4. The Petitioner claims that the total amount of debt due and payable to the Operational Creditor by the Corporate Debtor is a total outstanding amount of **USD 2,59,718.90/-** which is **INR 1,91,36,737.85/-** along with interest as per applicable law and Date of Default is on **26.02.2020**.

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5. It is further claimed that the Demand Notice dated 26.10.2020 under Section 8 of the I&B Code through the Advocate of Operational Creditor was also delivered on 26.10.2020, via email on 30.10.2020 and via speed post on 29.10.2020.
6. Vide an **Order dated 05.08.2022**, this Tribunal has ordered as:
 - “2. Ld. Counsel for the Financial Creditor states that the matter has been fully and finally settled between the parties and in terms of the settlement Rs.70 Lakhs has been received by the Financial Creditor today at 12.45 P.M. The balance amount of US\$ 1,73,144 shall be paid in two tranches; one on 10/08/2022 and the other on 10/09/2022.”
 - “3. In view of the settlement between the parties, Ld. Counsel for the Financial Creditor seeks permission to withdraw the petition. The permission is granted. C.P.(IB)/70(KB)2021 is disposed of as withdrawn.”
7. Vide an **Order dated 31.08.2023**, this Tribunal has ordered as:
 - “2. Ld. Counsel for the Corporate Debtor submits that as per settlement arrived at between the parties full payments has been made. However, Ld. Counsel for the Operational Creditor has controverted the submissions of the Ld. Counsel for the Corporate Debtor.”
 - “3. Ld. Counsel for the Corporate Debtor is hereby directed to file an affidavit within one week disclosing the payment details showing/proving that all the payments have been made as per the settlement arrived at between the parties. A copy the affidavit shall be served on the Ld. Counsel-on-Record for the Operational Creditor.”
8. Further, vide an **Order dated 14.09.2023**, this Tribunal has ordered as:
 - “2. Hard copy of the affidavit as directed vide order dated 31/08/2023 be filed with the Registry during the course of the day.”
9. In terms of the said orders, the **Assistant Manager, Shri Hemanta Kumar Baliarsingh** – Legal and the Authorized Signatory of the Corporate Debtor, through his **Advocate Shri Snehashis Sen (Registration No. WB/1223/2012)** has filed an **Affidavit dated September 14, 2023**, submits that:

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“3. ... by way of the *Settlement Agreement dated 15.07.2021, annexed as Annexure “A” to this Affidavit dated September 14, 2023, it was agreed between the parties that a sum of INR 1,91,36,737.85/- shall be paid by Simplex (Corporate Debtor) towards full and final payment of the dues of the Operational Creditor. The said payment was to be made in three instalments as agreed.*”

Further,

“4. ... under the said *Settlement Agreement, the Corporate Debtor agreed upon to pay the entire sum which was claimed to due and payable in the Company Petition filed by the Operational Creditors.*”

Furthermore that,

“5. ... although there has been some delay in releasing the payments under the *Settlement Agreement, however, there has been no default on part of the Corporate Debtor inasmuch as the Corporate Debtor has made a payment for a total sum of Rs. 2,10,00,000/- under the Settlement Agreement, the detailed whereof are as follows:*

Date	Description	RTGS / NEFT UTR No.	Paid Rs.
5-Aug-22	NRTGS/PUNBR52022080515194044/KUMKANG KIND INDIA PV	PUNBR52022080515194044	70,00,000
24-Apr-23	NRTGS/PUNBR52023042414078233/KUMKANG KIND INDIA PV	PUNBR52023042414078233	70,00,000
10-Aug-23	NEFT_OUT:PUNBH23222364421/KUMKANG KIND INDIA PVT LTD /HDFC0000486/5020000675464	PUNBH23222364421	35,00,000
28-Aug-23	NEFT_OUT:PUNBH23240422541/KUMKANG KIND INDIA PVT LTD /HDFC0000486/5020000675464	PUNBH23240422541	35,00,000

For SIMPLEX INFRASTRUCTURES LIMITED

14 SEP 2023


Authorized Signatory

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10. In view of the admitted position as above, we would dismiss of this Company Petition as there should not be any subsisting claim of the Operational Creditor against the Corporate Debtor in terms of the **Settlement Agreement dated July 15, 2022**, and the **Affidavit dated September 14, 2023**, filed by the Corporate Debtor.
11. Thus, the **Company Petition (IB) No. 70/KB/2021** is **dismissed** and **disposed of** accordingly.
12. No costs.
13. Urgent certified copy of this order, if applied or, be supplied to the parties, subject to 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]