THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
Court- I

IA No. 2048/2023 and
CP (IB) No.170/Chd/Pb/2020
Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

<u>IN THE MATTER OF</u>:

Trade Perfections
having office at Plot No. 193, 199-200 N.S.E.Z.
Phase II, Noida 201305, Uttar Pradesh

... Petitioner/Operational Creditor

Versus

M/s. H. R. Power Projects Private Limited
having registered office at A-1,
New Focal Point Darwali Road,
Bathinda, Punjab 151001

... Respondent/Corporate Debtor

<u>In I.A. No. 2048/2023</u>

M/s. H. R. Power Projects Private Limited
... Applicant/ Corporate Debtor

Versus

Trade Perfections
... Respondent/ Operational Creditor

Judgment delivered on: 09.09.2024

Coram: **Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)**
Hon'ble Mr. D. Arvind, Member (Technical)

For the Petitioner- Operational Creditor: Mr. Sanyam Jain, Adv.

For the Respondent-Corporate Debtor
and Applicant in IA 2048/2023 : Mr. Aalok Jagga, Adv.
Mr. APS Madaan, Adv.
Ms. Villu Aggarwal, Adv.
Ms.Gulrukh Kaur Sidhu,Adv.

Per: Harnam Singh Thakur, Member (Judicial)
D. Arvind (Technical)

I.A. No. 2048/2023

The instant application has been preferred under Section 60(5) of the I&B Code, by the Corporate Debtor **H. R. Power Projects** against the Operational Creditor **Trade Perfections** seeking direction to place on record the Sur-rejoinder on behalf of the Corporate Debtor to the Rejoinder dated 05.01.2023, which has been necessitated in view of the subsequent documents i.e. the Settlement Agreement dated 12.04.2021 and the Board Resolution of the Corporate Debtor Company dated 05.04.2021, being placed on record by the Petitioner and as alleged to be executed by the Corporate Debtor.

2. The Learned Counsel appearing on behalf of the Corporate Debtor has vehemently argued that the purported Settlement Agreement dated 12.04.2021, as attached in the Rejoinder Affidavit dated 05.01.2023, was never executed by the Corporate Debtor and the said Settlement Agreement is a fabricated document. It is alleged that the Operational Creditor has forged the signature and stamp on behalf of the Corporate Debtor. The Learned Counsel has tried to

strengthen his argument that at the end of the alleged Settlement Agreement, there is a place for the signature and stamping of both parties, wherein it would be apparent that the Corporate Debtor has signed and stamped at two different distinct places when there is only one place to append signature. Further, it is alleged that the Operational Creditor has misused the security cheques by appending the details of the said cheques to the alleged Settlement Agreement having malicious intention to take benefit of those security cheques and to substantiate the fact that the Corporate Debtor has acknowledged the said amount alluded in the alleged Settlement Agreement.

3. Further, the Learned Counsel for respondent-corporate debtor has alleged that the Board Resolution of the Respondent company for authorising Mr. Ajay Kansal to sign the Settlement Agreement is false and has never been executed by the Respondent company. The Learned Counsel has claimed that as per the case of the Petitioner, the Settlement Agreement was executed on 12.04.2021, and the Board Resolution was executed on 05.01.2021, however, the said documents were placed on record through the Rejoinder Affidavit on 05.01.2023, after two years. It is claimed that if those documents existed in real, the Operational Creditor would not have hovered for a long two years to file the same before the Adjudicating Authority. The delay in placing the Settlement Agreement in question shows that the

document has been created by misusing the blank documents which seem to have been retained with the Petitioner.

4. It is further alleged that in Clauses 7, 9, and 16 of the Settlement Agreement, there is overwriting by pen at significant areas like the portion of amount and interest. It is claimed that as per Clause 14 of the said Settlement Agreement, the Operational Creditor will withdraw the present company petition upon execution of the Settlement Agreement, however, he has not acted the same. Further, it is claimed that no person will execute this Settlement Agreement when the issues are pending for consideration before this Adjudicating Authority.

5. The Learned Counsel on behalf of the Corporate Debtor would assert that on 12.04.2021 and 13.04.2021 when the Settlement Agreement was being signed and duly notarized at Notary Delhi, the directors of the Respondent company were at Bathinda not at Delhi, thus, in any event, the Settlement Agreement in question has not been executed by the Respondent company and accordingly alleged that the same is a forged and fabricated document having a malicious intention to strengthen the case of the Petitioner.

6. Thus, it is prayed by the respondent-corporate debtor that IA No. 2048/2023 be allowed to place on record the sur-rejoinder in the interest of justice.

7. After hearing the Ld. counsel for the parties and careful perusal of the record. We are of the considered view that the plea of

fraud and fabrication of alleged settlement and Board Regulations cannot be adjudicated upon by this Adjudicating Authority.

8. We would refer the decisions passed by the Hon'ble Apex Court and by the Hon'ble NCLAT, as under:

a. ***Radha Exports (India) Pvt. Limited vs. K.P. Jayaram*** reported at **MANU/SC/0646/2020: (2020) 10 SCC 538,** wherein the Hon'ble Apex Court held that:

"*16. Allegations of forgery and fraud are not decided in proceedings Under Sections 433 and 434 of the Companies Act 1956 for winding up of a company. Such disputes necessarily have to be adjudicated in a regular suit, on the basis of evidence, including forensic examination reports.*'

"*17. By an order dated 4th August 2017 the NCLT dismissed the said winding up petition, on the ground that the Respondents had failed to comply with the provisions of Section 7(3)(b) of the Insolvency and Bankruptcy code, 2016, hereinafter "IBC", with the liberty to file a fresh petition, if so advised*.'

xxx **xxx** **xxx**

"*40. There are, as observed above cogent records including letters signed by the Respondent Nos. 1 and 2 which evince that on 6th October, 2007, Respondent No. 2 resigned from the Board of the Appellant Company and at that time the Respondent No. 2 requested the Appellant Company to treat the share application money of Rs. 90,00,000/- as share application money of Mr. M. Krishnan and to issue shares for aforesaid value to Mr. M. Krishnan. The amount was to be treated as a personal loan from the Respondent No. 2 to Mr. M. Krishnan. A personal Loan to a Promoter or a Director of a company cannot trigger the Corporate Resolution Process under the IBC*. ***Disputes as to whether the signatures of the Respondents are forged or whether records have been fabricated can be adjudicated upon evidence including forensic evidence in a regular suit and not in proceedings Under Section 7 of the IBC***."

(Emphasis Added)

b. ***Satori Global Limited v. Shailja Krishna*** reported at **2023 SCC OnLine NCLAT 249,** the Hon'ble NCLAT has further held that:

> **"*15.*** *We are conscious of the fact that the 'Gift Deed' was not challenged which is of significance more so when the 'title of Shares' is relevant to decide the issue of the maintainability.* ***<u>At the cost of repetition, any dispute with respect to issues relating to 'fraud', 'manipulation', and 'coercion', and false statements cannot be decided in a summary jurisdiction</u>****. The contentions of the Learned Counsel for the Respondent that there is 'over writing on the certificates', signatures were taken on blank forms, there is mala fide suppression of some documents all require examination of evidence and hence cannot be decided by the NCLT in a summary fashion***."**

(Emphasis Added)

9. Thus, in view of the precedents cited (supra), it is seen from the records that no action for criminal proceedings against the petitioner has been initiated by the corporate debtor for the alleged forgery and fabrication of the settlement agreement. Further, we are of the considered view that this Adjudicating Authority is not empowered to adjudicate the issues relating to serious allegations of fraud and forgery, as raised by the Corporate Debtor herein relating to the documents with regard to the Settlement Agreement dated 12.04.2021 and the Board Resolution authorizing Mr. Ajay Kansal to sign the alleged Settlement Agreement. We have further noted the plea of alibi taken by the Respondent that during the time of signature and notarization of the alleged Settlement Agreement on 12.04.2021 and 13.04.2021, the directors of the Corporate Debtor company had not been in Bathinda where the alleged Settlement

Agreement was being notarized and executed, but they were in Delhi. We would infer that this kind of serious allegation cannot be considered in this summary proceeding under I&B Code for admission. The issue is not within ambit of this forum but can only be considered and adjudicated by a Civil Court having proper jurisdiction.

10. Thus, we reach to the irresistible conclusion that the plea of respondent-corporate debtor is not maintainable before us and the I.A. 2048/2023 is dismissed and stands disposed of accordingly.

JUDGMENT in CP (IB) No.170/Chd/Pb/2020

11. The instant petition has been preferred by **Trade Perfections**, hereinafter referred to as the **"Petitioner"/ "Operational Creditor"** under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" against **H. R. Power Projects Private Limited**, hereinafter referred to as **"Respondent"/ "Corporate Debtor"**, seeking a direction to initiate the Corporate Insolvency Resolution Process, for brevity "CIR Process" in respect of the Corporate Debtor.

12. The Corporate Debtor, namely, is a Company incorporated on 25.03.2010 under the provisions of the Companies Act, 1956 with CIN No. U40101PB2010PTC033733 with its registered office at A1, New Focal Point, Dabwali Road, Bathinda, Punjab-151001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure-I/A.

13. The brief facts as stated in the petition are that The Operational Creditor Trade Perfections has supplied Lamination Core to the Corporate Debtor H. R. Power Projects Pvt. Ltd., for the value of Rs. 2,45,42,970/- from 04.11.2016 to 31.03.2017, which is claimed as due and payable towards the Petitioner. The Petitioner has further supplied laminated core for the value of Rs. 1,90,32,194/- from 01.04.2017 to 31.03.2018. The Corporate Debtor had paid of Rs. 37,99,150/- from 01.04.2017 to 31.03.2018. It is claimed that during the period from 01.04.2017 to 31.03.2018, the total outstanding due and payable by the Corporate Debtor is Rs. 3,97,88,246/-.

14. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 3,87,88,246/- (Rupees Three Crores Eighty Seven Lakhs Eighty Eight Thousand Two Hundred and Fourty Six Only) and the default occurred on 28.02.2017 i.e. when the invoice dated 15.11.2016 fell due as the payment was to be made within 90 days from receipt of material. Copy of unpaid invoices (Annexure-I/C), Computation of default (Annexure- I/D), Statement of Account for the period 01.04.2016 to 31/03/2019 (Annexure- I/E), Statement of Account for the period 01.04.2019 TO 30.01.2020 confirming the payment of Rs. 10 lakhs received on 29.05.2019 (Annexure- I/H), Bank Statement for the period 09.02.2020-25.02.2020 confirming no payment recieved (Annexure-I/I) are attached with the main petition.

15. A demand notice in Form 3 is stated to be issued by the operational creditor on 18.04.2019 and the same has been delivered to the corporate debtor vide registered post as the postal receipts are attached as Annexure-I/F with the petition. The corporate debtor did not reply to the said demand notice. However, the Corporate Debtor had made a payment of Rs. 10 Lakh on 29.05.2019. Thereafter, again a demand notice was issued in Form-3 dated 05.02.2020 the same has been delivered to the corporate debtor vide registered post as the postal receipts are attached as Annexure-I/H with the petition. The corporate debtor also did not reply to the said demand notice.

16. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of services were filed vide Diary Nos. 01870/3 dated 16.04.2021 and 01870/4 dated 13.10.2021. The reply was filed by the corporate debtor vide Dairy No. 01870/6 dated 09.11.2022 wherein it is stated that:-

16.1. The Learned Counsels appearing on behalf of the Corporate Debtor would per contra submit that the instant company petition is barred by limitation as the first Section 8 Demand Notice issued on 18.04.2019, and duly served on 25.04.2019, mentions the date of default as 02.02.2017. However, in the petition, the date of default is claimed as 28.02.2017.

16.2. It is claimed that at any event, issuance of demand notices twice containing two different dates of default cannot be entertained and there is no provision under the Code and its Regulations also to consider the same. It is submitted that while initiating a proceeding under Section 9 of the I&B Code, the date of default which is mentioned in the first Section 8 Demand Notice cannot be altered and the date of default mentioned in the first Section 8 Demand Notice, i.e., 02.02.2017 in this case, shall have the binding effect and thus, the instant company petition filed on 25.02.2020, which is beyond three years after the date of default claimed is barred by limitation.

16.3. The Learned Counsel for the Corporate Debtor further submits that all the supplies effected pursuant to the invoices dated 01.04.2017, were substandard quality and the same was brought to the notice of the Petitioner on several occasions. It is contended that upon examination of the quality of the materials supplied, the Petitioner realized the same and on 08.10.2017, the Petitioner granted a discount of Rs. 7,99,150/- which is apparent from page 42 of the company petition.

16.4. It is claimed that the computation of default, annexed at page 42 to the company petition, is defective as the same states in a column of 'due date', however, the invoices annexed to the petition do not reflect any such due date.

16.5. Further, it is claimed by the respondent-corporate debtor that in the ledger for 01.04.2016 to 31.03.2017, annexed at page 43 to the petition, it is apparent that the closing balance is Rs. 2,45,55,202/- shown as credit in favour of the corporate debtor, which refers that the said amount was paid in excess and was to be adjusted. However, in the computation of default as well as the demand notice, the said amount has neither been adjusted nor accounted for.

16.6. The Learned Counsel has submitted that this Section 9 petition is not maintainable as the claim of interest therein does not fall within the definition of 'Debt' and 'Default' under Section 3(11) and (12) of the I&B Code.

17. The rejoinder was filed by the operational creditor vide Dairy No. 01870/8 dated 18.01.2023 and was re-filed on 01.03.2023 wherein it is stated that the Corporate Debtor never disputed regarding the supply of substandard quality of goods with the Operational Creditor at any time prior to the issuance of the Section 8 demand notice on 05.02.2020. Further, the Corporate Debtor has neither intimated the Operational Creditor nor taken any action regarding the supply of alleged inferior quality goods as claimed in the Reply Affidavit. Further, after filing the petition, both the parties agreed to settle the issue and accordingly a settlement agreement was made on 12.04.2021, annexed at pages 8-16 to the Rejoinder Affidavit, wherein, at Clause 9 of the Settlement Agreement, the

Corporate Debtor, acknowledges a sum of Rs. 3,87,90,271/- towards the principal amount along with interest is due and payable by the Corporate Debtor. It is further submitted that the Demand Notice issued on 18.04.2019, was only a reminder notice and after issuance of the same, the Corporate Debtor made a payment of Rs. 10 Lakh on 29.05.2019. After such payment, no payment was made by the Corporate Debtor. Thus, Petitioner issued another Demand Notice on 05.02.2020 invoking the proceeding under the I&B Code. It is submitted that the date of default as claimed in the Demand Notice dated 05.02.2020 as well as in the petition is proper and the petition is not barred by limitation.

18. The short written submissions have been filed by the petitioner vide Diary No. 01870/11 dated 11.04.2023 and by the corporate debtor vide Dairy No. 01870/12 dated 18.08.2023 reiterating the above-mentioned facts.

19. We have heard the learned counsels for the parties and have perused the records.

20. The first issue for consideration is whether the demand notices in Form 3 dated 18.04.2019 and 05.02.2020 were properly served. The demand notices dated 18.04.2019 and 05.02.2020 had been delivered to the corporate debtor vide registered post as the postal receipts are attached as Annexure- I/F, I/H with the petition. The corporate debtor made payment of Rs. 10 lakhs after the first demand notice on 29.05.2019. However, the corporate debtor did not

reply to both demand notices. Hence, adverse inference can be drawn against the respondent-corporate debtor.

21. The other issue for consideration is whether this petition is filed within limitation. A demand notices issued dated 18.04.2019 and 05.02.2020 in Form 3 attached as (Annexure- I/F, I/H) were duly served on the corporate debtor. It is the contended on behalf of the Respondent-corporate debtor that the petition has been filed on 25.02.2020, is barred by limitation in respect of the date of default i.e., on 02.02.2017, as claimed in the first demand notice issued on 18.04.2019. The Respondent had alleged that to overcome the delay, the Petitioner has changed the date of default to 28.02.2017, in the second demand notice which is issued on 05.02.2020. The Respondent has alleged that the second demand notice dated 05.02.2020, served on 15.02.2020, intentionally changed the date of default to 28.02.2017, so that the petition preferred on 25.02.2020, does not become time barred. This is because the first notice issued on 18.04.2019, claimed the date of default to be 02.02.2017. In our view, this contention is absolutely irrelevant as subsequent to 02.02.2017, transactions have taken place, invoices have been raised up to 28.07.2017 (Annexure-I/C). Further, after the issuance of first demand notice on 18.04.2019, an amount of Rs. 10 Lakh was paid to the Petitioner on 29.05.2019. At this juncture, we would refer to Section 19 of the Limitation Act, 1963, which envisages that:

Effect of payment on account of debt or of interest on legacy. –

Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

We note that the account of the Operational Creditor is a running account with ad hoc payments and thus, the above provision with reference to the Limitation Act can be applied. As the last payment was made on 29.05.2019, the period of limitation is extended which takes us up to 28.05.2022. We find that this petition has been filed on 25.02.2020 which is well within the period of limitation. Even otherwise, for the purpose of calculating the period of limitation, what is relevant is the date of invoice and the due date mentioned in the invoice. In the absence of a due date mentioned in the invoice one can infer that the amount would become payable within 30 days from the date of invoice as per industrial practice.

To fortify our view, we would refer the decision passed by the Coordinate Bench of NCLT Kolkata in ***Manisha Infrasolutions Pvt. Ltd. v. Bhonu Hulshi Real Estate*** in **C.P. (IB) No. 304/KB/2022** reported in **(2024) ibclaw.in 243 NCLT,** wherein it was observed that:

> **"*33.*** *Further we find that there is nothing on record to prove that the date of default is 02.04.2021. There is nothing in the invoices on payment terms, in the absence of which, we can only infer that the invoices are due for payment within reasonable time, from the date of receipt of such invoices. <u>We are of the view that as per the trade practice of this Industry 30 days</u>*

> *from the date of receipt of such invoices, is reasonable*."
>
> **(Emphasis Added)**

This petition has been filed vide Diary No. 1530 on 25.02.2020. Therefore, this Adjudicating Authority finds that this petition is filed within limitation.

22. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by learned counsel for the petitioner by way of affidavit filed under Section 9(3)(b) dated 24.02.2020 that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. It is contended on behalf of the Corporate Debtor that supplies reflected in invoices dated 01.04.2017, were of inferior quality and the same was brought to the notice of the Operational Creditor on several occasions and pursuant to the same, after verification done by the Petitioner, an amount of Rs. 7,99,150/- was allowed as a discount on 08.10.2017, to the Respondent.

We have found that no document has been furnished by the Respondent prior to the issuance of both the Demand Notices under Section 8 of the Code, which can substantiate the allegations of the Respondent that the disputes or grievances relating to the supply of substandard goods were raised by the Respondent. The first demand notice has been issued on 18.04.2019, which was duly served on 25.04.2019, and the second Section 8 Demand Notice was issued 05.02.2020, which was duly served on 15.02.2020. Moreover, service of both the Demand Notices has not been disputed. If the Corporate Debtor disputed the demands, they could have replied to those notices. We find nothing on record on the replies if any to such Notices issued under Section 8 of the I&B Code, by the Corporate Debtor.

Further, we have noted that subsequent to receipt of this demand notice dated 18.04.2019, the Respondent has paid Rs. 10 Lakh on 29.05.2019, that would be evident from the bank statement (entry no. 2, being Transaction ID: S50476611) annexed at page 53 to the petition, clearly indicating that the Corporate Debtor acknowledges liability against the total outstanding towards the Operational Creditor, and his keenness to settle the matter with the applicant. The Demand Notice dated 18.04.2019 indicates the date of default to be on 02.02.2017 and subsequently, after receiving Rs. 10 Lakh on 29.05.2019, the Petitioner did not receive further payments against the total outstanding due and payable and consequent to the same, the second Demand Notice under Section 8 of the I&B Code, was issued on 05.02.2020, indicating the amount claimed to be in default is Rs. 5,72,09,297/-, inclusive of interest of Rs. 1,84,21,051/-, however, in the second demand notice, date of default is claimed as on 28.02.2017.

We have examined the records and analysed the arguments made by both the parties. The issue relating to the quality of goods supplied stood settled by giving a discount of Rs. 7,99,150/- on 08.10.2017.

Nothing has been placed on record by the respondent to suggest that he continued to raise the issue of quality of goods supplied after getting this discount. Therefore, we would infer that whatever pre-existing disputes (if at all) stood settled before the issue of demand notice under Section 8 and therefore, the boggy of pre-existing disputes cannot be taken by the respondent at this stage.

23. The last issue for consideration as contended on behalf of the corporate debtor that the petition is pre-mature as it is filed before the expiry of ten days from the date of issuance of the second demand notice dated 05.02.2020. The corporate debtor has placed reliance on the judgment passed by the ***Hon'ble National Company Law Apppellate Tribunal, Principal Bench, New Delhi titled, "J.K Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mill Company Ltd. Company Appeal (AT)(Ins.) No. 82 of 2017" decided on 17.03.2023*** wherein it is stated that,

> *10. It is provided in Section 8 of the Code that the Operational Creditor, on occurrence of a default, may deliver a demand notice of the unpaid operational debt and the Corporate Debtor has to react to the notice within a period of ten days from the receipt by bringing it to the notice of the operational creditor-- (a) about existence of a dispute (b) payment of unpaid operational debt. Section 9 of the code provides that the Operational Creditor is eligible to file application under Section 9 only after the expiry of the period of ten days from the date of delivery of the notice prescribed under sub-section (1) of section 8. A careful reading of the aforesaid two provisions, thus, shows that the demand notice of unpaid operational debt is a sine qua non to invoke the provision of Section 9 of the Code. The*

Corporate Debtor has to react within 10 days from the receipt of demand notice to set up a defence and the application under Section 9 could only be filed by the Operational Creditor after the expiry of 10 days from the date of delivery meaning thereby the application under Section 9, in no case, can be filed before the expiry of 10 days from the date of delivery.

17. Keeping in view, the aforesaid facts and circumstances of the case, we are of the concerned opinion, that the presumption of delivery of notice cannot be drawn in the present case w.e.f.17.03.2017 when it was first offered for delivery but could not be delivered because the premises was found locked as the notice was ultimately delivered on 21.03.2017. Therefore, the date of delivery has to be taken as 21.03.2017 when it was actually delivered and not the date when it was firstly offered to be delivered on 17.03.2017. The question posed in the beginning has, thus, been decided accordingly, in favour of the Respondent and against the Appellant.

As per the authority cited by the respondent-corporate debtor, the Operational Creditor is eligible to file an application under Section 9 only after the expiry of the period of ten days from the date of delivery of the notice prescribed under sub-section (1) of section 8. However, this contention of the corporate debtor is devoid of legal force as it is seen from the records that the present petition is filed on 25.02.2020 after the expiry of 10 days of the issuance of the demand notice dated 05.02.2020 which was successfully delivered on 15.02.2020. While including 15.02.2020 for calculating 10 days, this period of 10 days expired on 24.02.2020 and petition was filed on 25.02.2020. Therefore, petition is not pre-maturely filed.

24. The other authorities i.e. ***Harinarayan G. Bajaj v. Rajesh Meghani (2005) 10 SCC 660, Neeraj Jain v. Cloudwalker***

Streaming Technologies Private Limited Company Appeal (AT) (Ins.) No. 1354 of 2019, Brand Reality Services Limited v. Sir John Bakeries India Pvt. Ltd. Company Appeal (AT) (Ins.) No. 958 of 2020, Bharat Petro Resources Limited v. Monnet Ispat & Energy Limited Company Appeal (AT) (Ins.) No. 550 of 2018, Harukhbhai P. Lakkad v. Bank of Baroda (Erstwhile dena) Company Appeal (AT) (Ins.) No. 32 of 2020 and International Road Dynamics South Asia Pvt. Ltd. v. Reliance Infrastructure Ltd. Company Appeal (AT) (Ins.) No. 72 of 2017 relied upon by the corporate debtor in relation to the demand notice. However, these authorities cannot be considered as the demand notice was very well served upon the corporate debtor in the prescribed format under IBC, 2016 and was found to be satisfactory.

25. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 3,87,88,246/- (Rupees Three Crores Eighty Seven Lakhs Eighty Eight Thousand Two Hundred and Fourty Six Only) still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of unpaid invoices (Annexure-I/C), Computation of default (Annexure- I/D), Statement of Account for the period 01.04.2016 to 31/03/2019 (Annexure- I/E), Statement of Account for the period 01.04.2019 TO 30.01.2020

confirming the payment of Rs. 10 lakhs received on 29.05.2019 (Annexure- I/H), Bank Statement for the period 09.02.2020-25.02.2020 confirming no payment recieved (Annexure-I/I) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

26. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

27. In the present petition all the requirements of Section 9 of IBC i.e. debt, default and no dispute between the parties have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **M/s H. R. Power Projects Limited** and declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002;

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

28. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. Therefore, in view of the same we appoint Mr. Anil Arora, Registration No. IBBI/IPA-001 /IP-P00729 /2017-18 /11224 , E-mail: ca.anil@gmail.com, Mobile No. +91- 9876110038 from the list provided by the Insolvency and Bankruptcy Board of India. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anil Arora and there is nothing adverse against him. His AFA is

valid upto 30.06.2025. This Adjudicating Authority further directs that:

i.) The term of appointment of Mr. Anil Arora be in accordance with the provisions of Section 16(5) of the Code, subject to the written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with a request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

29. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

30. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

31. The petitioner is directed to deposit an amount of ₹3,00,000/- (Rupees Three lakhs Only) with the Interim Resolution Professional to

meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

32. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

33. This petition is accordingly admitted.

Sd/-
(D. Arvind)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

September 09, 2024
Bose, R. K./ Tamanna