



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing)

CP (IB) No.46/BB/2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Ceyone Marketing Private Limited

1st& 2nd Floor, 44/1, 16th Cross,
Supreme Overseas Exports Building,
Jayanagar 7th Block (WEST),
KR Road, Bangalore 560 070.

... Petitioner/Operational Creditor

Versus

Windsor Edifices Private Limited,

Registered Office at:
No: 81, 36th Cross, 6TH Main,
5th Block, Jayanagar,
Bangalore- 560 041.

... Respondent/Corporate Debtor

Order delivered on: 15th September, 2023

Coram: Hon'ble Justice (Retd.) T. Krishnavalli (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)


PRESENT:

For the Petitioner : Shri K. Arun Kumar, Sr Adv. Along
with Yanni Uthappa, Adv
For the Respondent : Shri C. K Nandakumar, Sr. Adv. Along with
Shri Kaustubh Prakash, Ms. Hita Sharma,
Ms. Lekha Chandrashekar, Advs

O R D E R


Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 24.02.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code),




r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Ceyone Marketing Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Windsor Edifices Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for Principal Amount of Rs. 4,89,22,252/- along with interest calculated on principal amount @ 6% per annum i.e. Rs. 25,70,699/- from 16th February, 2021 till 1st December, 2021.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor was engaged by the Corporate Debtor for its expertise and service in marketing, advertising and sale of the Corporate Debtor's residential apartment project, 'Windsor Troika'. The agreed terms and conditions of advertising, marketing, sale of apartments and payment of commission are contained in the Marketing and Sales Agreement dated 18.11.2019. The Petitioner undertook the execution of the work under the Contract and sold 81 units in the project.
4. It is submitted that as per Article 9.1 of the Agreement, the Corporate Debtor agreed to pay 9.1% of the Total Sales Consideration to the Petitioner as Contract Fees per unit, which amounts to Rs. 6,47,64,196/-.
5. The respondent made a part-payment of Rs. 1,58,41,944/- towards this liability to the Operational Creditor between 11.02.2020 and 22.03.2021. However, the respondent failed and defaulted to pay the remaining outstanding of Rs. 4,89,22,252/- despite various requests and reminders.
6. Further, the petitioner issued statutory Demand Notice dated 04.01.2022 and another on 27.01.2022 under Section 8 of the IBC, 2016 for recovery of its outstanding dues for a principal sum of Rs. 4,89,22,252/- plus accrues interest of Rs. 25,49,318/-




calculated at 6% p.a. on delayed payment from the date of default in terms of Article 9.7 of the Agreement. It is submitted that the corporate debtor received Demand Notice dated 27.01.2022 on 28.01.2022, despite the same, the corporate debtor has failed to either pay or issue any response denying the liability. However, the corporate debtor continues to be in default in making payment of the outstanding sums due to the Operational creditor.

7. The Learned Counsel for the Respondent filed his objection vide diary No. 3586 dated 24.08.2022 contenting that the Operational creditor at Page 9 of its petition admits that the invoices were due and payable when raised on the corporate debtor. It is the Petitioner's own case that the invoices have been raised by the Operational Creditor from 16.02.2021 and that they were payable immediately upon receipt. Hence it is submitted that the petitioner acknowledges that some of the payment purportedly due towards it falls within the suspended period of 25.03.2020 and 24.03.2021. Further, the proviso to section 10A of the IBC makes it unequivocally clear that no petition shall ever be filed for default occurring within the time period when the provisions of Section 7,9 and 10 were suspended.
8. The Learned Counsel further relied on the judgment of Hon'ble Supreme Court in the case of *RemeshKymal v M/s Siemens Gamesa Renewable Power Pvt Ltd.*, in Civil Appeal No. 4050 of 2020, dated 09.02.2021, where in it was held that *"the proviso to Section 10A stipulated that no application shall ever be filed for the initiation of the CIRP for the said default occurring during the said period. The expression shall ever be filed is a clear indicator that the intent of the legislature is to bar the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25.03.2020 for a period of six months, extendable up to one year as notified"*.
9. Hence it is submitted that for an Operational Debt arising out of invoices raised during the suspended period, no application under section 9 of the IBC is maintainable.
10. The next main contention raised by the respondent is that the invoices attached along with the petition that are alleged to be due




are sham invoices. The Respondent submits that the invoices from pages 43 to 72 of the petition have been raised by the Operational Creditor in terms of the Agreement between the parties and therefore, have been acknowledged by the Corporate Debtor and also paid except invoices no 76-78, which the Corporate Debtor has not paid since it is pending reconciliation. However, invoices from pages 73 to 80 are sham and bogus which neither have been raised by the Operational Creditor nor, consequently, received by the Corporate Debtor.

11. Further, the invoices raised by the Operational Creditor on 01.12.2021 are visually and perceptively distinct from those previously raised invoices that had already been cleared by the Corporate Debtor. All of the latter invoices from pages 73-80 are dated 01.12.2021. Moreover Article 11.2 of the Agreement stipulated that the Operational Creditor shall charge Goods and Service Tax (GST) on all the “Services that are invoiced”. The Corporate Debtor seeks to rely on the GST account statement of the Corporate Debtor which demonstrates that the Operational Creditor has charged and paid to the Government, the applicable GST, on the genuine and verified invoices from pages 43-72. However, on the sham invoices dated 01.12.2021, no GST has been paid.
12. Accordingly, since no GST has been charged and paid by the Operational Creditor, neither were services “invoiced” nor do they qualify as “service” under the Agreement/law. It is further submitted that a comparison of the invoices from pages 43-72 would reveal that the invoices have a distinguished number followed by the year on which they are raised such as invoice number 052/2019-2020 or invoice number 059/2019-2020. The invoices which the Corporate Debtor also acknowledges subject to reconciliation have a distinguished invoice number on them. However, the sham invoices have no distinguished invoice number but only on “EST”, followed by a number. The EST mentioned on the invoices means estimate, meaning that these invoices dated 01.12.2021 are “estimated” invoices. Moreover, a bare perusal of the sham invoices from pages



73-80 would reveal that the invoices do not have any terms and conditions such as PAN, payment method, registered RERA details etc., which all of the invoices from pages 43-72 have.

13. Hence, it is submitted that 8 invoices raised by the Petitioner on 01.12.2021 are clearly false and fabricated. There is a clear demarcation between genuine and verified invoices and the ones raised on 01.12.2021, which points towards fraud committed by the Operational Creditor upon the Corporate Debtor.
14. The Learned Counsel for the Petitioner vide rejoinder dated 30.09.2022 vide diary No. 4139 submits that the Corporate debtor has deliberately suppressed the fact that the invoices raised on 16.02.2021 is not the only invoice raised in this case and there are several invoices raised thereafter on 01.12.2021, which totals to approximately Rs. 4,08,70,614/-. Moreover, all these invoices fall outside the purview of Section 10A.
15. It is further submitted that the invoices issued were not sham invoices and the respondent has not raised any dispute as to the amounts due and veracity of the invoices.
16. On 21.06.2023 this Tribunal directed both counsels to file written submissions covering all the arguments and the same was complied vide diary Nos. 3450 and 3487 dated 28.06.2023 and 03.07.2023.
17. Heard both parties and perused the records available.
18. The present petition is filed by M/s Ceyone Marketing Private Limited claiming default of Principal amount Rs. 4,89,22,252/- along with interest calculated on principal amount at 6% per annum i.e. Rs. 25,70,699/- from 16th February, 2021 till 1st December,2021 against M/s Windsor Edifices Private Limited. The Date of default as mentioned in Part IV of Form No. 5 filed with the application is 16.02.2021.
19. The Learned Counsel for the Respondent strongly opposed the petition by stating that the present petition is barred by Limitation as some of the invoices raised falls within the suspended period under section 10A of the Code, between 25.03.2020 and 24.03.2021. However, it was argued by the Petitioner that not all the invoices



raised by the petitioner falls within the purview of section 10A period and the invoices raised on 01.12.2021 (Pg 74-81) totally amounting to Rs. 4,08,70,614/- fell outside the 10A period.

20. Further, Respondent argued that the invoices attached along with the petition at Pages 73 to 80 are sham and bogus invoices. However, the Learned Counsel for the Petitioner only submits that no dispute was raised by the Respondent when they received these invoices.
21. On perusal of the documents available on records it is observed that the petitioner has attached all the invoices raised by it as Annexure C to the petition. Out of the above; Invoices from Page Nos. 44-66 are already paid, and the 'Balance due' is shown at 'nil' in these invoices. Therefore, invoices attached from Pg. 67 to 81 (14 invoices) are, claimed as due and payable by the respondent. However, on perusal of these invoices, 3 invoices nos. 58, 59 and 60 with due date being 29.01.2021 and 3 more nos 76,77, and 78 and having due date of 23.02.2021, 23.02.2021 and 24.02.2021 respectively, totalling to Rs. 1,34,15,958/- fall within the Excluded Period under section 10A of IBC. Hence, these six invoices cannot be considered for this application under section 9 of the IBC.
22. Coming to the remaining invoices, it is the contention of the respondent that these invoices attached from pages 74 to 81 are sham and bogus invoices. It is the claim of the Petitioner in the Rejoinder that since these invoices are raised on 01.12.2021; and the total amount is Rs. 4,08,70,614/-; these are outside the purview of Section 10A of IBC; and hence to be considered for the purpose of this application. On a perusal of these 'invoices', all dated 01.12.2021 attached at pages 74 to 81 to the Company Petition (8 invoices), it is observed by this Tribunal that these 'invoices' are indeed distinct from the other invoices raised by the Petitioner.
23. It is contented by the Corporate Debtor in the objection that these particular 'invoices' dated 01.12.2021 are visually and perceptively different from the previously raised invoices which have already been accepted as genuine. This was corroborated by the GST account's statement of the Corporate Debtor which were attached to the reply

from page nos. 49-58, which clearly show that while the GST was paid on the earlier invoices and were duly reflected in the statement filed with the GST Dept., no GST was paid on the sham 'invoices' which were all dated 01.12.2021. The respondent has also emphasised on the different format in these sham 'invoices' dated 01.12.2021 stating that there was a prefix 'EST' followed by the number, which was not therein in the earlier genuine invoices; and stated that this meant that all the 'invoices' dated 01.12.2021 were estimated ones. Further at the bottom, details such as PAN, payment method, RERA number etc. were not mentioned in these 'invoices' dated 01.12.2021, which were duly mentioned in the correct invoices.

24. For a ready comparison, the copies of the earlier invoices and the 'invoices' dated 01.12.2021 stated to be sham have been scanned and shown in this order as under:

#	Description	Qty	Rate	Amount
1	Commission Unit No. A-1412 (1st & 2nd Tranche) Customer Name : Zico Castello SAC: 997222	1.00	3,04,330.00	3,04,330.00
Sub Total				3,04,330.00
CGST@ 9%				27,389.70
SGST@ 9%				27,389.70
Total				3,59,109.40
Payment Made (-)				3,59,109.40
Balance Due				0.00
Total in Words: Rupees Three Lakh Fifty-Nine Thousand One Hundred Nine and Forty Paise Only				

Terms & Conditions

* Pan No: ABACS4252Q
 * Pay by cheque or DD in favour of Ceyone Marketing Private Limited or online transfer to |
 Bank: HDFC Bank, Kalyan Nagar Branch | Address: 402, 4th A Cross, HRBR Layout 2 Block, Bangalore
 560043 | AC No: 5020032474062 | IFSC Code: HDFC0000353
 * This document is valid only for the project and deliverable mentioned.
 * Registered Rera No: PRM/KA/RERA/1251/308/AG/180727/001045

Director _____

True Copy

True Copy

Earlier Invoice (accepted as genuine by the CD)



ceyone #44/1, 1st & 2nd (West) K R Road BANGALORE Karnataka 560070 India GSTIN 29ABACS4252Q1ZR

Open with Google Docs

Date : EST-000008 : 01/12/2021 Place Of Supply : Karnataka (29)

Bill To: Windsor Edifices Pvt. Ltd. No. 81, 36th Cross, 6th Main, 5th Block, Jayanagar, Bangalore 560041 Karnataka India GSTIN 29AABCW0797Q1ZE

Ship To: GSTIN 29AABCW0797Q1ZE


#	Item & Description	HSN /SAC	Qty	Rate	CGST		SGST		Amount
					%	Amt	%	Amt	
1	Commission : (1st & 2nd Tranche) Rajshekar M B-513 Yogesh B-1518 Shashi B-1219 Abhishek Kumar B-1015 Ashish Kumar Sahu B-1411 Navyesh B-1420	997222	1.00	40,59,989.00	9%	3,65,399.01	9%	3,65,399.01	40,59,989.00
Total In Words Rupees Forty-Seven Lakh Ninety Thousand Seven Hundred Eighty-Seven and Two Paise Only					Sub Total		40,59,989.00		
Looking forward for your business.					CGST9 (9%)		3,65,399.01		
					SGST9 (9%)		3,65,399.01		
					Total		₹47,90,787.02		

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Authorized Signature


Later Invoice claimed to be sham

25. On a comparison of the two sets of invoices it is observed that 1st invoice dated 30.11.2020 is having a number 044/2020-2021 whereas there is no such invoice number is mentioned in the 2nd invoice. However, the 'EST' prefix followed by a number is given to the 2nd invoice. This is the format for all invoices dated 01.12.2021; where the 'EST' prefix is existing. On the other hand, the invoice shown on the last page bearing no. 044/2020-2021 reflects the format for all invoices which are attached to the Company Petition and accepted as proper invoices by the Corporate Debtor.
26. Further, the 'Terms and Conditions' followed by PAN number, mode of payment along with Bank account details, validity and RERA no. given at the bottom left side of the Invoices accepted to be genuine are totally missing in the 'Invoices' dated 01.12.2021 which are with a prefix of 'EST'; alleged to be sham. Another thing noticed on a comparison of the two formats that while the accepted genuine



invoices mention, two dates; 'Invoice date' and 'Due date' separately on the Right Hand Side (top); the 'Invoice' dated 01.12.2021 mention just one 'Date' on the Left Hand Side. Still further, in the genuine invoices, at the bottom Left Side, below the Terms and Conditions, there is a space marked for the signature of the Director; whereas in the 'invoices' dated 01.12.2021, there is no such marked space.

27. Moreover, on perusal of the copy of the document related to GST payment deposited by the Petitioner which is attached along with the objection filed on 24.08.2022, it is seen that the GST payments have been deposited only for the earlier invoices, and the invoice nos. and dates are duly matching for them in the GST payment statement, which are accepted as genuine invoices. However, no such GST deposits have been made for 'invoices' dated 01.12.2021.
28. It is further stated in the written submission dated 28.06.2023 filed by the Corporate Debtor that all the alleged 'sham invoices' have been given the same date of 01.12.2021 whereas the earlier genuine invoices were having different dates. Further, the 'sham invoices' have been contended to be raised two months after the expiry of the agreement. Subsequently, it is stated that these 'invoices' can at best be considered as 'proforma invoices' and the Respondent has cited the judgment of the Hon'ble NCLAT in *SLB Welfare Association vs. PSA Impex Pvt. Ltd. Co. App. (AT) (Ins.) no.905/2022 (para 41)* where a petition under Section 9 of the IBC was dismissed on the ground that petition was filed basis "proforma invoices, claimed to be prepared on one day". Similarly, reliance is placed on Hon'ble NCLAT in *Apavarga Trading Co. vs. Hazel Foods Pvt. Ltd. Co. App. (AT) (Ins.) no.1416/2022 (para 10-13)*, whereby the Hon'ble NCLAT dismissed a Section 9 Application on the ground inter alia that the invoices raised were forged and fabricated and the liability of the Corporate Debtor was created by fraudulent means.
29. It is noticed in the rejoinder filed by the Petitioner that one e-mail dated 20.09.2021 has been quoted of which the contents were extracted. The table given in this e-mail showed that an amount was mentioned as "commission due (to be invoiced)" at Rs.3,46,36,113/- as against the commission invoiced which was up to February 2021. Obviously, when the such 'commission due' was yet to be invoiced as on 20.09.2021;



there cannot be a case of their inclusion as on the Date of default which is stated to be 16.02.2021 in Form No. 5. Thus, from the above discussion, it is apparent that this so-called invoices dated 01.12.2021 was only 'proforma invoices' as stated by the Respondent, and these 'invoices' were not actually issued to the Respondent. The averment and the documentation regarding the actual payment of GST amply corroborates this fact.

30. Having considered the comparative features of the two sets of invoices discussed above, along with the scanned copies thereof, we are of the considered opinion that the so called eight 'invoices' dated 01.12.2021 were not genuine invoices which were issued to the respondent; as they lack all the features of the genuine invoices issued earlier discussed above; along with the GST payment documents.
31. Hence this Tribunal doubts the genuineness of the eight invoices attached from Pg. 74 to 81 of the Petition. Accordingly, out of the 14 alleged due invoices, 6 invoices fall within the excluded period under Section 10A, and the remaining 8 'invoices' are observed to be non-genuine invoices; which cannot be considered by this Tribunal. Therefore, there is no unpaid operational debt which can qualify under section 9 of IBC.
32. Accordingly, **CP (IB) No. 46 of 2022 is dismissed.**

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)