



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III**

Item No.02

(IB) – 343(ND)/2020

IN THE MATTER OF:

M/s. ARCHIGROUP ARCHITECTS (REGD.)

..... Operational Creditor

VERSUS

M/s. SUSHIL ANSAL FOUNDATION

..... Corporate Debtor

SECTION

U/s 9 of IBC, 2016

Order Pronounced On: 07.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Bharat Bhushan Sethi, Ms. Chetna Bisht,
Adv.

For the Respondent : Mr. Arvind Kumar Gupta, Ms. Henna George,
Adv.

ORDER

Order pronounced in open court vide separate sheets. **IB-343(ND)/2020** is **dismissed.**

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III
IB – 343/ND/2020**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. ARCHIGROUP ARCHITECTS (REGD.)

Having Its Registered Office at:

B-15B (Second Floor) Kalkaji,
New Delhi – 110019.

Through Its Authorised Representative

Mr. Nitin Goel, (Vide Resolution dated 11.11.2019)

..... Applicant/Operational Creditor

VERSUS

M/s. SUSHIL ANSAL FOUNDATION

Having Its Registered Office at:

No-2, Half Mezzanine, Sandhyadeep Building 15,
East of Kailash Community Centre,
New Delhi – 110065.

..... Respondent/Corporate Debtor

Order Pronounced On: 07.08.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Mr. Bharat Bhushan Sethi, Ms. Chetna Bisht,
Advs.

M/s. Archigroup Architects (Regd.) Vs. M/s. Sushil Ansal Foundation
IB – 343(ND)/2020
Date of Order: 07.08.2023



For the Respondent : Mr. Arvind Kumar Gupta, Ms. Henna George,
Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by M/s. Archigroup Architects (Regd.), the Applicant/Operational Creditor on 21.01.2020, before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Sushil Ansal Foundation, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 1,22,90,375/- (Rupees One Crore Twenty Two Lakh Ninety Thousand Three Hundred and Seventy Five Only) as on 29.11.2019.

2. Submissions of the Applicant:

- i.** The Operational Creditor had been providing architectural consultancy services to the sister concern of the Corporate Debtor, i.e., M/s. Ansal Properties & Infrastructure Ltd. since 2009. It was only in appreciation of the work that the Corporate Debtor took comprehensive architectural consultancy services for its projects, being developed in Lucknow, Uttar Pradesh.
- ii.** In pursuance of the same parties entered into a Work Order/Agreement with the Operational Creditor. The details of the work order/contracts are as follows:

Date	Work Contract	Fees (Rs.)
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04.05.12	SAF/CA/WO/1/2/01	2,43,89,000
03.02.14	SAF/CA/WO/1/4/02	3,31,68,051

- iii.** In accordance with Clause 5 of the work contracts, the Operational Creditor had to deliver the work done upon the completion of every stage to the Corporate Debtor, upon receiving which the Corporate Debtor will clear the payments. In view of the same, the work was being done and delivered. Thereafter provisional bills were raised and post confirmation with regard to the taxes from the Corporate Debtor, final bills were raised and the payments were being released timely. Being impressed with the quality of work, the Corporate Debtor wrote an appreciation mail dated 13.05.2014 to the Operational Creditor.
- iv.** The Corporate Debtor started defaulting the payments. The details of the unpaid bills are as follows:

Date	Invoice/Bill No.	Amount (Rs.)
13.05.2013	887	17,79,184
13.10.2014	949	16,85,400
09.12.2015	984 (Provisional)	68,46,509
09.12.2015	986 (Provisional)	17,17,500
	Total	1,20,28,593

- v.** The Applicant made various follow-ups with the Corporate Debtor for clearance of the outstanding debt. However, no answer was received from the Corporate Debtor, thereafter the Operational Creditor delivered the above-stated final and provisional bills to its office on 26.07.2016 and again on 13.10.2016 to the Corporate Debtor, which were duly received by them. Yet neither any dispute was raised nor the payments were made. Again the pending bills were sent to the Corporate Debtor on 09.01.2017. Thereafter, certain settlement talks were held between the parties.



- vi.** After deliberations for settling the bills, the Corporate Debtor agreed to give land in lieu of the payments, which was accepted by the Operational Creditor. However, no further step was taken by the Corporate Debtor and thus the Applicant sent mail dated 27.01.2017 to the Corporate Debtor for accepting the proposal of taking the land in lieu of the pending dues. However, even after the acceptance no answer was received from the Corporate Debtor.
- vii.** The Applicant aggrieved by the act of the Corporate Debtor, raised final and updated bills dated 21.11.2019 along with the final bills of 2014 and delivered the same to the office of the Corporate Debtor, which was duly received, as shown in the following table:

Bill/Invoice	Debt (Rs.)
887 [SAF/CA/WO/12/01]	17,79,184
1060 [SA94F/CA/WO/12/01]	70,55,792
949 [SAF/CA/WO/14/02]	16,85,400
1061 [SAF/CA/WO/14/02]	17,70,000
TOTAL	1,22,90,375

- viii.** Vide the final invoices/bills, the Corporate Debtor was given a period of 7 days to clear the dues, but the Corporate Debtor neither cleared the dues nor raised any objections against the same, even after duly accepting the same.
- ix.** The demand notice dated 30.12.2019 (Form-3 & Form-4) under Section 8 of the Code was also served upon the registered address of the Corporate Debtor on 30.12.2019, which was duly delivered to him on 31.12.2019 via speed post and e-mail. After the lapse of 10 days i.e. on 17.01.2020, the Counsel for the Operational Creditor received a frivolous reply from the Corporate Debtor. The reply to the demand notice received was



devoid of any merits as no substantial dispute has been raised and further, no substantial proof/document/evidence has been adduced to merit the spurious contentions as raised by the Corporate Debtor. The Corporate Debtor vide the reply has not denied the fact of receiving services from the Operational Creditor under the said work order/contract.

- x. Further the balance sheet of the Creditor acknowledges the Operational Creditor in the list of Creditors of the Company. Despite the fact that no payments have been made to the Operational Creditor till date due to the insolvent position of the company, thus the Corporate Insolvency Resolution Process should be initiated against the Corporate Debtor.

3. **Submissions of the Respondent:**

- i. It is submitted that the Applicant has prayed for the initiation of the CIRP against the Respondent Company on the basis of the fallacious and erroneous premise that an alleged amount of Rs. 1,22,90,375/- (Rupees One Crore Twenty Two Lakh Ninety Thousand Three Hundred and Seventy Five Only) is due and payable to the applicant by the Respondent Company.
- ii. The present application has been filed with vexatious and oblique motives, whereas in reality, the Applicant is trying to take unwarranted benefit of the Code. The Applicant has deliberately concealed and suppressed material facts in order to mislead this Tribunal and with a core motive to pressurize and extort monies from the Respondent Company which is neither due and payable on part of the Respondent Company to the Applicant.
- iii. It is submitted that the Applicant has no cause of action for filing the said application against the Respondent Company. It is submitted further that whatever amount was due and payable on part of the Respondent Company, same has been



already paid and settled by the Respondent Company and the rest of the invoiced amount is disputed by the Respondent Company. The dispute has been specifically communicated on several occasions by the Respondent Company to the Applicant and the Applicant is well aware of the same. Despite there being a pre-existing dispute between the parties, the Applicant has, with malicious and dishonest intentions, suppressed the very fact from this Tribunal.

- iv.** Without prejudice to the contention that no amount whatsoever is due and payable, it is submitted that the said application is beyond the period of limitation. A substantial portion of the alleged amounts claimed by the Applicant is beyond the period of limitation. It is a settled law that the Limitation Act, 1963 is applicable to the proceedings under the Insolvency and Bankruptcy Code, 2016 and therefore, the proceedings under the Code cannot be instituted, if at all, the same is filed beyond the period of three years as stated under Article 137 of the Limitation Act, 1963. The same has been reiterated by the Hon'ble Supreme Court in the matter of **B.K. Educational Services Private Limited Vs. Parag Gupta and Associate** 2018 SCC Online SC 1921.

Therefore, the said application is barred by limitation and the same is liable to be dismissed under section 238A of the Insolvency and Bankruptcy Code, 2016. The said provision of the Code, clearly bars any application or suit which is time barred by the virtue of provisions mentioned herein the Limitation Act, 1963.

- v.** The Applicant has entered into a work contract with one of the sister concerns of the Respondent Company. It is pertinent to mention that the Applicant has never entered into any agreement or contract with the Respondent Company. The Applicant has wrongly and malevolently made Respondent



Company a party in order to exercise undue pressure for bending the Respondent Company to its illegal demands.

vi. It is further submitted that there are pre-existing disputes in the matter prior to the issuance of the Demand Notice under section 8 of the Code. The Respondent Company was not satisfied with the services rendered by the Applicant as the same did not meet the quality standard that was desired by the Respondent Company. Because of deficiency of service on the part of the Applicant, the Respondent Company suffered huge financial losses and the intangible loss of reputation, for which the Applicant is liable to indemnify the Respondent Company. Accordingly, the claim of the Applicant is not maintainable in light of pre-existing disputes.

vii. It is furthermore submitted that the Applicant is trying to take undue advantage of the Code and seeking to institute a frivolous petition based on frivolous claims. It is further stated that in case, CIRP is initiated against the Respondent Company, it would cause grave prejudice to the Respondent Company and shall definitely defeat the true scope and intent of the Code.

Initiation of CIRP against the Respondent Company will only facilitate the whims and fancies of the Operational Creditor who, as a matter of fact, has suppressed and concealed various vital facts in order to mislead this Tribunal.

viii. It is also submitted that, the Applicant, by way of filing the said application, has jeopardized the existence of the people who are directly/indirectly dependent on the working of the Respondent Company. Besides, a lot of the business counterparties will also be adversely affected. Apparently, the Respondent Company is being dragged for liquidation by the Applicant. This would result in grave injustice and irretrievable loss and injury to the Respondent Company and any proposed CIRP will



endanger and damage the confidence of the foreign/Indian investors of the company and further, will damage the finances of the Respondent Company.

4. In Rejoinder, the Operational Creditor submitted that on account of repeated assurances made by the Corporate Debtor to clear the payments, the Operational Creditor kept its commitments, completed the work assigned to him and kept delivering the same to the corporate debtor. However, the payments against the same were never timely cleared and made in parts only. The final work of the projects were handed over by the Operational Creditor in the year 2014 and thereafter bills were raised and the corporate debtor made part payment of the debt due till the same time. Thereafter no payments have been received so far. Further, the final bills raised by the Operational Creditor after accumulating the taxes, were raised and delivered in the office of the Corporate Debtor on 21.11.2019. It is pertinent to mention herein that all 4 Invoices/Bills were duly accepted and received by the Corporate Debtor, without any dispute or denial. As the reason of the same, the defaulted debt has been accepted by the Corporate Debtor. The Operational Creditor in consonance to the work contracts so executed between the parties have completed the work as was allocated and duly delivered the same to the corporate debtor timely. The Corporate Debtor has neither disputed nor denied the fact that the work was completed and delivered to him as per the work contract executed between the parties. Rather on the contrary, the Corporate Debtor has allegedly raised issues with regards to alleged losses suffered, but nothing has been adduced to prove the same. On the other hand, it is submitted that the Operational Creditor made his case of defaulted Operational debt before this Tribunal with exemplary evidence against the Corporate Debtor, which again has not been disputed in its reply by the Corporate Debtor.



5. **Analysis and Findings**

- i.** We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
- ii.** We find it relevant to mention that the bills on the basis of which this Insolvency Petition is filed, are not raised in the name of the Corporate Debtor (Refer: Bills at Page Nos. 62, 75, 77 and 78 of Insolvency Petition). The name of the Corporate Debtor in the present Petition is M/s. Sushil Ansal Foundation having CIN No. U93000DL2010NPL211736 while the bills have been raised in the name of Ansal API. It is submitted that Ansal API Infrastructure Limited is a completely different entity and has a completely different CIN Number U45200DL2008PLC179003. The Contract also mentions another Company, M/s. Ansal Properties & Infrastructure Limited is a Group Company with a completely different CIN Number L45101DL1967PLC004759. All these Companies are distinct legal entities.

Hence, we are of the considered view that the conduct of the Operational Creditor to raise invoices other than in the name of the Corporate Debtor is fatal and thus this Adjudicating Authority is of the view that the present application is liable to be dismissed as the raising of an invoice in the name of the Corporate Debtor is an essential prerequisite for filing a Section 9 application under the Code.

- iii.** Further, the main dispute in this application is whether the present application is within the Limitation period to initiate the CIRP against the Corporate Debtor or not.
- iv.** It is noted that the last Invoice No. 986 (provisional) was raised by the Operational Creditor on 09.12.2015 for the amount of Rs. 17,17,500/- and the date of receipt of Invoice No. 986 (provisional) by the Corporate Debtor is 09.12.2015 which is an admitted fact. Thereafter, no such evidence is produced on record by the Operational Creditor to show that the Corporate Debtor either acknowledged the debt within the period of three



years from the date of default of the outstanding amount in terms of Section 18 of the Limitation Act, 1963 or paid any amount to the Operational Creditor within the period of three years in terms of Section 19 of the Limitation Act, 1963 which can enhance the limitation period to initiate the CIRP against the Corporate Debtor as laid down by the Hon'ble Supreme Court in **C. Shivakumar Reddy and Anr. Vs. Dena Bank (now Bank of Baroda)** Civil Appeal No. 1650 of 2020.

Article 137 of the Limitation Act, 1963 prescribes a limitation period of three years. Thus, if such period is calculated from the date of the last Invoice No. 986 (provisional) dated 09.12.2015, its limitation expires on 08.12.2018, but the present application was filed on 29.11.2019.

In view of the above, we are of the considered view that the present claim under Section 9 of the Code is barred by the limitation period and is not maintainable.

- v. Thus, the present application is legally untenable even after the argument of the Applicant is taken into consideration.

We do not find any cogent reason to entertain this application, which is liable to be dismissed on the grounds mentioned in the preceding paragraphs.

6. Order

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i. The Application bearing **IB-343/ND/2020** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.



- ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**