

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
COURT-I, MUMBAI BENCH**

**C.P. No. 1247/IBC/MB/2022**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016  
*In the matter of*

**SONAL ENTERPRISES PRIVATE LIMITED  
CIN: U51909DL2005PTC141259**

Having registered office at:  
K-60B, 2<sup>nd</sup> FLOOR, LAJPAT NAGAR-II,  
NEW DELHI – 110 024.

.... Operational Creditor/Petitioner

Vs

**PAI KHOT INFRA PRIVATE LIMITED**

(CIN: U45200GA2010PTC006437)

Registered office at:  
GROUND FLOOR, D S RESIDENCY MURIDA,  
FATORDA, MARGAO-SOUTH, GOA 403 602.

..... Corporate Debtor/Respondent

**Order delivered on: 27.10.2023**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance :-**

For the Operational Creditor : Mr. Dhruv Gupta, Learned Counsel

For the Corporate Debtor : Mr. Navin Arora, Learned Counsel

**ORDER**

*[Per: Justice (Retd.) V. G. Bisht, Member (J)]*

1. This is an application filed by Operational Creditor/Applicant under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IB Code" for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Resolution Process ("CIRP" for short).

**Brief facts:-**

2. The Operational Creditor is private limited company and is engaged in the supply and installation of security/CCTV surveillance systems on PAN India and International level. Similarly, the Corporate Debtor is also a Private Limited Company and is involved in the business of real-estate.
3. The Corporate Debtor approached the Operational Creditor Company for the supply, installation, testing and commissioning of CCTV surveillance systems in May, 2018. Accordingly, the Operational Creditor started supplying goods and providing services as required by the Corporate Debtor.
4. According to the Operational Creditor, the Corporate Debtor Company first made payment of Rs. 4,00,000/- on 25.07.2018. Where after, the Operational Creditor started raising invoices against the goods supplied and the services provided. Subsequently, the Corporate Debtor also issued purchase order bearing number SEPL/PO/2018-19/01 dated 05.10.2018 for a total amount of Rs. 3,07,13,971/- to the Operational Creditor (Annexure A-4).
5. The Operational Creditor alleges that the Corporate Debtor started default and delaying the payments, yet upon his several assurances and promises it kept supplying the goods i.e. CCTV surveillance system and also provided services for the installation, testing and commissioning of the said system.
6. The last payment was received from the Corporate Debtor on 17.02.2020 for sum of Rs. 2,00,000/- leaving a total principal amount, against the invoices raised, for a sum of Rs 1,09,09,017/-

including a sum of Rs. 10,217/- as the TDS refundable by the Corporate Debtor Company.

7. As despite several reminders and requests, the Corporate Debtor failed to clear the outstanding operational debt and balances, the Operational Creditor sent a demand notice dated 26.10.2022 through speed post and e-mail dated 27.10.2022 to the Corporate Debtor under Section 8 of the Insolvency & Bankruptcy Code, 2016 in the requisite Form 3 & 4 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding an amount of Rs. 1,61,91,970/- along with interest. However, Corporate Debtor once again failed to reply to the demand notice dated 26.10.2022 within statutory period of ten days.
8. On the contrary, the Corporate Debtor issued reply dated 12.11.2022 which was duly replied by the Operational Creditor. Thus, there being clear default on the part of the Corporate Debtor, the present petition.
9. The Corporate Debtor, on its part, resisted the Petition and raised preliminary objections on the ground of limitation by contending that alleged default under section 9 of the Code with respect to the projects occurred between the period of September, 2018 and hence the limitation period for the repayment, if any, ended in the year 2021.
10. The demand notice of default was issued by the Operational Creditor on 26.10.2022 that is after period of eight months that is after the end of period of limitation. Therefore, the present petition is time barred.
11. The next submission of Corporate Debtor is that there is already pre-existing dispute between the parties. According to it in the

month of March, 2018, Goa Tourism Development Corporate floated one tender i.e. work of upgradation/beautification of touristic interest in Goa under Swadesh Darshan Scheme, Phase II. The Corporate Debtor came to be awarded with said tender. The Operational Creditor was appointed as a “sub-contractor” to perform work of upgradation/beautification of touristic interest in Goa under Swadesh Darshan Scheme which included supplying, installing, testing and commissioning of CCTV work. The entire cost of said tender was of Rs. 6,74,97,349/-. The Director of the Operational Creditor namely Mr. Deepakjeet Singh sent an email with one format purchase order dated 18.09.2018 to the Corporate Debtor and it was supposed to be issued by letter. After making certain changes to the purchase order the Corporate Debtor printed the same on Company’s letter head and forwarded to Mr. Deepakjeet Singh for confirmation on 04.10.2018. However, the said format was not final and confirmed by the Corporate Debtor.

12. It alleges that M/s. Sonal Enterprises Pvt. Ltd. (Operational Creditor) forged the said draft of purchase order as final one and acted upon it. Because of the cordial relations between both the parties the Corporate Debtor Company did not object to the performance of work of tender i.e., work of upgradation/beautification of tourist spots at Goa in Phase II which was required to be completed within period of 240 days (from the date of execution of agreement).
13. The Corporate Debtor further alleges that the Operational Creditor failed to provide the surveillance system as agreed between the parties and completed only 22 locations on 6 beaches out of 48 locations on 8 beaches. It also failed to performs its part of the

obligation and has raised invoices on the Corporate Debtor without completing the oral agreement as per agreed terms. Further, the Corporate Debtor time and again raised various disputes. However, the Corporate Debtor has paid all the charges as per the agreed terms as and when the invoices were raised by the Operational Creditor.

14. Thus, there exists bona fide dispute between the parties regarding the work done much before the Operational Creditor decided to approach this Tribunal.
15. By way of rejoinder the Operational Creditor has denied that petition is barred by limitation and reiterates that petition is well within period of three years from the date of the last payment made by the Operational Creditor to it in the sum of Rs. 2 Lakhs in the running account on 17.02.2022.
16. As far as the defense of pre-existing dispute raised by the Corporate Debtor is concerned, it is denied that there was agreement between the parties for the Operational Creditor to fulfill the legal formalities to perform as a “sub-contractor” for the works assigned to the Operational Creditor by the Corporate Debtor.
17. It is also vehemently denied by the Operational Creditor that it forged the purchase order dated 05.10.2018 as is alleged by the Corporate Debtor.
18. Lastly, the Operational Creditor contends that there are no pre-existing disputes and all the frivolous defenses raised by the Corporate Debtor are moonshine and baseless.

**FINDINGS**

19. Mr. Dhruv Gupta, Learned Counsel for the Operational Creditor, has filed written submissions along with list of judgments relied on by him. Perused.
20. Mr. Navin Arora, Learned Counsel for the Corporate Debtor, has mainly emphasised on the aspect of pre-existing dispute between the parties in consonance with pleadings raised by Corporate Debtor.
21. We have given our anxious consideration to the material on record.
22. We note that the Operational Creditor has come before us with a very specific case that on 05.10.2018 the Corporate Debtor issued purchase order bearing number SEPL/PO/2018-19/01 for total amount of Rs. 3,07,13,971/- to it for supplying installation, testing and Commissioning of CCTV Surveillance Systems. This is quite apparent from (Annexure A-4 Page no. 45) of the petition.
23. As against this, the defense of the Corporate Debtor is that as the Corporate Debtor was awarded a tender that is work of upgradation/beautification of places of touristic interest in Goa under Swadesh Darshan Scheme by Goa Tourism Development Corporation but consortium company refused to work in the said consortium and entire burden fell upon the respondent company to perform entire tender work. In such circumstances it took advise of Mr. Deepakjeet Singh, Director of Petitioner Company who in turn offered the help of his company i.e. M/s. Sonal Enterprises Pvt. Ltd. Accordingly, the Operational Creditor was appointed as “sub-contractor” to perform the tender work so allotted to the Corporate Debtor. Pertinently enough we may point out here that this aspect of “Sub-contractorship” is outrightly and specifically

denied by the Operational Creditor in his rejoinder to the reply of the Corporate Debtor. This is not the end of the matter.

24. According to the Corporate Debtor, Mr. Deepakjeet Singh on 18.09.2018 sent an e-mail with one format purchase order which was supposed to be issued by the Respondent herein subject to confirmation by the Corporate Debtor. The Corporate Debtor further alleges that the Operational Creditor forged the said draft of the purchase order as final one and had acted upon the same.
25. It is also relevant to note here that the said claim of the agreement as to sub-contractorship was an oral agreement between the parties. Thus, except mere words on the factum of sub-contractorship and for forging of purchase order dated 05.10.2018 there is no material on record to substantiate and clinch the allegation levied by the Corporate Debtor.
26. Be that as it may, the purchase order dated 05.10.2018 issued by the Corporate Debtor in favour of Operational Creditor is here to stay. There are other invoices also (Annexure A-5, at pages 46-52) collectively raised by the Operational Creditor. Then there is extract of ledger account (Annexure A-11) at page no. 120 showing certain amount received by the Operational Creditor.
27. According to the Operational Creditor, the Corporate Debtor started defaulting in delaying payment despite several assurances given by letter. The last payment received from the Corporate Debtor was in the sum of Rs. 2 Lakhs on 17.02.2020 in the running account of the Operational Creditor as the Operational Creditor and Corporate Debtor maintained the mutual and running account where none of payment made by the Corporate Debtor to the Operational Creditor

were invoice based. This aspect is nowhere controverted or challenged by the Corporate Debtor. Herein comes the question of limitation as raised through the pleadings by the Corporate Debtor. According to the Corporate Debtor, since the alleged default was committed in the year 2018 the limitation period for the repayment, if any, had come to an end in the year 2021. We have already pointed out that there is no dispute to the fact that the parties maintained a mutual running account where none of the payments by the Corporate Debtor to the Operational Creditor were invoice based. This is also clear from the bank statement filed on record at page no. 122 by the Operational Creditor.

28. Various judgments are cited by Learned Counsel for the Operational Creditor viz. ***Gaurav Dilipraj Panwar, Company Appeal (AT) Insolvency No. 1466 of 2019 dated 20.04.2022*** & ***S. M. Ghoghai Vs. Schedulers Logistics India Pvt. Ltd., Company Appeal (AT) Insolvency No. 281 of 2022 dated 23.05.2022***, wherein Hon'ble NCLAT has held that where there is a current account and running account between the parties, the application could have been filed within three years from the date of last payment. In the instant case also, the last payment was made by the Corporate Debtor on 17.02.2022 and the petition came to be filed on 14.12.2022. Therefore, the petition is well within the period of limitation. The point of limitation in this regard raised by the Corporate Debtor is therefore non-maintainable.
29. Since the Corporate Debtor failed to clear the outstanding operational debt and balance, the Operational Creditor issued a demand notice dated 26.10.2022 through speed post and e-mail dated 27.10.2022 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 in the requisite Form 3 &

- 4 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding an amount of Rs.1,61,91,970/- including the interest due and payable. The Corporate Debtor replied the said notice quite belatedly that is on 12.11.2022 (Annexure A-14) and it raised the issue of “sub-contractorship” which is elaborated in its reply.
30. We have already noted and at the costs of repetition again state that except bald statements noting is on record to substantiate the same. Rather various whatsapp messages shared between the parties raise question on the conduct of Corporate Debtor. The extract of the whatsapp are filed at page nos. 667, 668, 669, 670, 671, 672, 675, 676, 677 and 683 from these various messages it is quite clear that not only the Corporate Debtor raised his problem in liquidity but also transferred an amount of Rs. 20 Lakhs with an assurance that remaining amount will be transferred soon. Even the Corporate Debtor admitted the bill and non-payment of balance amount and always requested for more time to clear the balance amount. This in itself goes to show that the Corporate Debtor had failed to clear the dues on its part owned by it to Operational Creditor in time. There is no element of pre-existing dispute qua theory forth by the Operational Creditor. The defense so raised by the Corporate Debtor does not satisfy the various parameters and the guidelines as expounded by the Hon’ble Apex Court in ***Mobilox Innovation Private Limited Vs. Kirusa Software Private Limited in Civil Appeal No. 9405 of 2017 dated 21.09.2017.***
31. Before parting with the order, we also note that the Corporate Debtor has also contested the claim of interest raised by the Operational Creditor by contending that the same is outside the purview of the Insolvency Bankruptcy Code.

32. On the other hand, the Operational Creditor has claimed the interest as per Section 16 of the MSME Act, 2006 which states that the Operational Creditor is ought to receive the interest at 3 times of the bank rate notified by the Reserve Bank of India. Even if we keep aside the interest amount claimed by the Operational Creditor then also it does not affect the present proceeding as principal amount outstanding is much more than the minimum threshold limit of Rs. 1 Crore as prescribed under Section 4 of the IB Code. Therefore, this defense also goes away.
33. We, therefore, of the considered view that present petition under section 9 of the code filed by the operational creditor to initiate CIRP in the matter of the corporate debtor deserves consideration and accordingly stands **admitted** under section 9(5)(I) of the I & B Code.
34. We therefore pass the following order.

**ORDER**

This Application being C.P.(IB) No. 1247/2022 filed under Section 9 of the I & B Code, 2016, filed by **Sonal Enterprises Private Limited**, Operational Creditor/applicant against **Pai Khot Infra Private Limited** Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I & B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I & B Code shall not apply to
- a. Such transactions as may be notified by the Central Government in consultation with any operational sector regulator;
  - b. A surety in a contract of guarantee to a corporate debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I & B Code or passes an order for the liquidation of the corporate debtor under section 33 of I & B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of I & B Code.
- VI. That this Bench hereby appoints **Mr. Rakesh Kumar Tulsyan**, a registered insolvency resolution professional having **Registration number- IBBI/IPA-001/IP-P01144/2018-2019/11970** and Email ID- **tulsyanrk@gmail.com** as Interim Resolution Professional to carry out the functions as mentioned under I & B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The operational creditor shall deposit a Sum of Rs. 5,00,000/- (Rupees Five Lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC). The Remuneration of Interim Resolution Professional shall be Rs. 1,00,000/- p.m. till the constitution of CoC and decision of CoC in relation to remuneration of IRP/RP, in case it is not fixed by the operational creditor so far.
- VIII. A copy of this order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the corporate debtor.

- IX. The Registry is directed to immediately communicate this order to the operational creditor, the corporate debtor and the interim resolution professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**JUSTICE VIRENDRASINGH BISHT**  
**MEMBER (JUDICIAL)**

*Sapna*