

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT III**

**C.P. No. 922/IBC/MB/2020**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule, 2016

*In the matter of*

**AB & Co Global Private Limited**

CIN: U67190MH1997PTC111176

Address: 30, Gopal Bhuvan, 2<sup>nd</sup> Floor, 199 Princess Street, Mumbai MH - 400002

**...Operational Creditor  
Verses**

**Cowtown Infotech Services Private Limited**

CIN: U70100MH1985PTC038213

Address: 412, Floor - 4, 17G Vardhaman Chamber, Cawasji Patel Road, Horiman Circle, Fort, Mumbai MH - 400001

**.....Corporate Debtor**

**Reserved for order on: 18.04.2023**

**Order Pronounced on: 06.06.2023**

**Coram:**

**Hon'ble Shri H.V. Subba Rao, Member (Judicial)**

**Hon'ble Smt. Madhu Sinha, Member (Technical)**

**For the Petitioner:** Mr. Amir Arsiwala a/w Mr. Amey Hadwale and

Adv. Geeta Lundwani, Advocate

**For the Respondent:** Mr. Rohit Gupta, Advocate a/w Mr. Prashansa  
Agarwal and Mr. Himanshi Mishra, Advocate

**Per:** *Madhu Sinha, Member (Technical)*

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1. This Company petition is filed by *AB & Co Global Private Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Cowtown Infotech Services Private Limited* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a sum of Rs. 1,91,88,571.57/- (One Crore Ninety One Lakh Eighty Eight Thousand Five Hundred Seventy One and Fifty Seven Paise only) [Principal Rs. 1,22,30,256.57/- (One Crore Twenty Two Lakhs Thirty Thousand Two Hundred Fifty Six and Fifty Seven Paise only) along with interest of Rs. 69,58,315/- (Sixty Nine Lakhs Fifty Eight Thousand Three Hundred Fifteen only)] being an Operational Debt due and payable by the Corporate Debtor.

2. The brief facts of the case are as follows:

- i. AB&CO Global Private Limited herein the Operational Creditor is in the business of carrying out construction services (Herein referred to as the services provided by the operational creditor). Cowtown Infotech Services Private Limited herein the Corporate Debtor came into business with Operational Creditor for the services provided by the Operational Creditor.
- ii. The Operational Creditor had performed all its duties and obligations in supplying the goods and construction services and an amount of Rs. 1,91,88,571.57/- [Indian Rupees One

Crore Ninety One Lakh Eighty Eight Thousand Five Hundred Seventy One and Fifty Seven Paisa only] which is a total of principal amount of debt of INR 1,22,30,256.57/- [Indian Rupees One Crore Twenty Two Lakh Thirty Thousand Two Hundred Fifty Six and Fifty Seven Paisa) which in turn is a total of consolidated invoice amount of all the previous transactions of Corporate Debtor in different named entities along with an amounts of INR 69,58,315/- [Indian Rupees Sixty Nine Lakh Fifty Eight Thousand Three Hundred and Fifteen only] of retention amount for which invoices has been raised timely.

- iii. That the Operational Creditor first started its business activities with an entity known as Sahajanand Hi Tech Construction Private Limited. Through an email dated 24.07.2014 the Corporate Debtor informed the Operational Creditor stating the novation process of all the work, advances, cheques, work flow from Sahajanand Hi Tech Construction Private Limited (Previous name of Operational Creditor) to Hi-build Construction and Precast Private Limited (Previous name of Operational Creditor).
- iv. Further, the Corporate Debtor through an email dated 27.08.2016 informed the operational creditor annexing an Incorporation Certificate and Master Data for the change of name of Hi-build Construction and Precast Private Limited to Capacity Projects Private Limited.
- v. That further the Operational Creditor came to know that the Corporate Debtor changed its name from Capacity Projects Private Limited to Muzcovite Constructions Private Limited.
- vi. On later dates, Muzcovite Constructions Private Limited merged into the present named company as Cowtown Infotech Services Private Limited which is a part of Lodha Group. Thus, this notice with consolidated amounts was sent

to the Lodha Group of Corporate Debtor under in its present name Cowtown Infotech Services Private Limited.

vii. Thereafter, the Operational Debtor issued Notice under Section 8 of Insolvency and Bankruptcy Code, 2016 on 20.02.2020.

viii. That the Corporate Debtor sent a reply on 04.03.2020 for the said Demand Notice but no payments were made by the Corporate Debtor.

ix. Hence this petition was filed on 08.07.2020 before this Tribunal to initiate Corporate Insolvency Resolution Process (CIRP) against Cowtown Infotech Services Private Limited being the Corporate Debtor herein for the unpaid operational debt amount as per the invoices raised for the transportation services rendered by AB&CO Global Private Limited being the Operational Creditor under Section 9 of the IBC, 2016.

3. The Corporate Debtor filed an affidavit in reply dated 02.12.2021 with usual routine pleas. The main contention raised by the Corporate Debtor in its defence is with respect to limitation and pre-existing disputes.

4. The Counsel for the Corporate Debtor submits that the claim in the present case is not on the basis of balance on the foot of the account. The claim is on the basis of invoices. The same is clear from a bare perusal of Part IV of the Petition where it is stated that an amount of Rs. 1,22,30,256.57/- is due as per the invoices raised. In fact, the demand notice issued in Form 3 as well as Form 4 clearly indicates that the Petitioner is claiming on the basis of invoices. However, completely contrary to the pleadings, the Petitioner is contending for the first time by way of oral arguments that the claim is based on final balance of the running account. Even in that case, no final Running Account Bill as stipulated under Clause 1.11 of work order has been submitted by the Petitioner to the Respondent. The last bill at Pg. 24 of the

Petition is not for aggregate consideration but is only for Rs. 26,86,537/- (Rupees Twenty Six Lacs Eighty Six Thousand Five Hundred and Thirty Seven only).

5. The Counsel further submits that on one hand it is contended that the Petitioner was entitled to raise final bill and therefore from the date of final bill the claim is within limitation at the same time there is no final bill. Therefore, since the claim is on the basis of invoices, any payment made towards a specific invoice or a transaction cannot be treated as acknowledgment of debt for payment of other outstanding transactions/ invoices. Assuming without admitting that there is some invoice due and payable by the Respondent to the Petitioner, the Petitioner has to show that there was part payment under the same invoice. The Petitioner cannot by clubbing the claim of multiple invoices seek extension of time on the basis of part payment made in some other invoice.
6. The Counsel for the Corporate Debtor further submits that, it is pertinent to note that there were several quality defects in the services provided by the Petitioner. Therefore, the Respondent had raised several debit notes amounting to Rs.1,51,15,559/- against the invoices which have thus been cleared. Therefore, the amount of Rs. 1,91,88,571.57/- as demanded by the Petitioner by way of demand notice dated 20.02.2020 which does not take into account the debit notes is highly inflated.
7. Therefore, in response to the demand notice dated 4th March 2020, the Corporate Debtor duly stated that there were debit notes to the tune of Rs.1,51,15,559/- raised by the Respondent against the invoices and that the amount of Rs. 1,91,88,571.57/- is not due at all. It is also pertinent to note that though the invoices start from the year 2013, there is not a single correspondence addressed by the Petitioner to the Respondent to recover the amounts which itself indicates the falsity of the claim of the Petitioner. It is therefore contended by the Corporate Debtor

that there exists a pre-existing dispute relating to defects as well as quantification of debt.

8. In response to the contentions raised by the Corporate Debtor, the Operational Creditor denies that the claim is either barred by limitation or that there were any pre-existing disputes.

9. The Counsel for the Operational Creditor shared the details of the Bills Raised by them in the following manner:

Sr. No.	Work Order	RA Bills	Completion Certificate	Final Bill	Limitation
1.	Tower 13	16.04.2013 to 17.03.2017 {pages 54-81, 108-119 and 120-127 of Petition}	10.01.2018 {page 3 of Additional Affidavit}	27.10.2017 {page 82 of Petition}	26.10.2020
2.	Tower 14	29.05.2014 to 17.03.2017 {pages 25-52, 128-149 of Petition}	10.01.2018 {page 5 of Additional Affidavit}	21.11.2017 {page 53 of Petition}	20.11.2020
3.	Tower 15	29.05.2014 to 17.03.2017 {pages 83-106, 150-166 of Petition}	16.03.2018 {page 4 of Additional Affidavit}	02.09.2018 {page 24 of Petition}	01.09.2021

The Counsel for the Operational Creditor further argued that in the above calculation of the period of limitation does not take into account the relaxation of periods of limitation granted by the Hon'ble Supreme Court of India during the COVID-19 pandemic. Further, the Corporate Debtor made part payments from time to time, the last part payment made on 03.10.2019 annexed at page no. 276 of the Petition, whereas the present petition was filed on 08.07.2020.

10. While arguing against the contention raised by the Corporate Debtor on the issue of pre-existing dispute, it is contented that the Corporate Debtor has not produced any correspondence prior to the Demand Notice showing pre-existence of any dispute relating to quality of services rendered by Operational Creditor.
11. The Counsel for the Operational Creditor further submits that the Demand Notice (annexed at page no. 253 of Petition) was issued on 20.02.2020. Instead of replying, the Corporate Debtor sent an email dated 13.03.2020 (annexed at page no. 1 of Compilation of Documents) admitting that invoices amounting to Rs. 19,35,99,420.75/- had been issued and received. However, the Corporate Debtor for the first time claimed that it is entitled to adjustment on account of Debit Notes amounting to Rs. 1,51,15,558.28/-, to which Corporate Debtor then sent a formal reply (annexed at page 263 of Petition) to Demand Notice on 04.03.2020. Only a bland assertion about debit notes being issued was made without any material particulars. Even in the reply the Corporate Debtor only provided a chart of purported Debit Notes without giving particulars as to each of them and the same were not annexed to the reply. Further, not even a single document had been brought on record showing that any debit note was actually issued to that any complaint about quality of services was actually made at any point of time prior to the Demand Notice dated 20.02.2020.
12. For the aforesaid reasons this Bench is of the considered opinion that the above defences raised by the Corporate Debtor in the present Company Petition are out and out falsehood invented only for the purpose of avoiding the liability regarding the issuance of the debit note is bogus as not even a single document was annexed to their reply or referred in front of this bench and no inference of “pre-existence of dispute” can be drawn from the above pleas raised by the Corporate Debtor. The bench is also of

the considered opinion that no further investigation or evidence is required to reject the above pleas of the Company Petition.

13. This bench notes that the Operational Creditor has successfully proved the existence of “debt” and “default” in this case. The above Company Petition being filed on 08.07.2020 is well within 3 (three) year from the date of subject matter of the invoices and is well within limitation. Therefore, in view of the above observations, this Bench is of the view that the above Company Petition satisfies all the legal requirements for admission and deserves to be admitted. Accordingly, this bench admits the above Company Petition by passing the following:

### **ORDER**

- a. The above Company Petition No. 922/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Cowtown Infotech Services Private Limited, under Section 9 of the IBC Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule, 2016.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Raj Kumar Dad**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00537/2017-2018/10962, having email: rajkdad@gmail.com and having phone no. (+91) 8879980072 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this

- Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
  - e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
  - f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
  - g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
  - h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
  - i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents

in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is **admitted**.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**SD/-**

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

**SD/-**

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**