



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
19-02-2025 AT 11:00 AM**

CP(IB) No. 173/9/HDB/2023
u/s. 9 of IBC, 2016

IN THE MATTER OF:

M/s. RKM Land Promoters Pvt Ltd

...Operational Creditor

AND

M/s NCL Holdings (A&S) Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in CP(IB) No. 173/9/HDB/2023 pronounced. In the result this company petition is hereby *rejected*. No orders as to costs.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD**

C.P. (IB) No. 173/9/HDB/2023

(Under Section 9 of 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. NCL HOLDINGS (A & S) LIMITED

BETWEEN:

M/s. RKM Land Promoters Pvt. Ltd.,

Represented by its Director, Mr. R. Krishnamurthy,

No.01, RK Illam, RK Nagar,

Anaikadu, Uthukuli Road,

Tiruppur-641607.

.... Operational Creditor

AND

M/s. NCL holdings (A & S) Limited,

10-3-162, 4th floor, NCL Pearl,

Sarojini Devi Road, East Maredpally,

Secunderabad, Telangana -500026.

..... Corporate Debtor

Date of order: 19.02.2025

CORAM:

**DR. VENKATA RAMAKRISHNA BADRINATH NANDULA, HON'BLE
MEMBER JUDICIAL**

SHRI. CHARAN SINGH, HON'BLE MEMBER TECHNICAL.

Appearance:

For Petitioner : Mr. B. Raveendra Babu, Counsel.

For Corporate Debtor : Mr. D. Gopala Krishna, Counsel.



PER BENCH

ORDER

1. This petition is filed by M/s. RKM Land Promoters Pvt. Ltd. (hereinafter also referred as 'Operational Creditor') under Section 9 of 'The Insolvency and Bankruptcy Code, 2016', (hereinafter to be referred as 'IBC'), read with Rule 6 of Application to Adjudicating Authority Rules, 2016, *inter alia* seeking initiation of 'Corporate Insolvency Resolution Process' ('CIRP') of M/s. NCL Holdings (A & S) Ltd. (hereinafter referred as 'Corporate Debtor') contending that the Corporate Debtor defaulted in the payment of the operational debt of Rs. 9,10,00,000/-.

2. BRIEF OF CASE OF THE OPERATIONAL CREDITOR:

- 2.1. It is averred that the Operational Creditor is a company with diverse interest of promoting lands, dealing with property developments, layout sites etc. That the Corporate Debtor is a company registered under the Companies Act, 2013. The Corporate Debtor along with two other companies viz., M/s. NCL Home Limited and M/s. NCL Buildtek Limited owned land to an extent of **30.40 Acres** situated at Achittipalli village, Krishnagiri. In the said land, the Corporate Debtor formed G Square Pristine layout and on 03.08.2022, the Corporate Debtor entered into



agreement of sale with possession with the Operational Creditor to sell an area of 2,87,894 sq.ft, for the sum of Rs. 24,47,09,900/-.

- 2.2. It is averred that the Operational Creditor had paid a sum of Rs.24,47,09,900/- through various transactions from January, 2021 to July, 2022. Subsequently, on 27.07.2022, the Operational Creditor paid an advance of Rs.9,10,00,000/- by way of RTGS with an understanding to enter into an agreement of sale with the Corporate Debtor for conveyance of the above said land. Despite the receipt of the said amount, the Corporate Debtor did not come forward to enter into an agreement for sale nor returned the amount received from the Operational Creditor.
- 2.3. It is averred that thereafter, the Corporate Debtor sold the said property to third party without the knowledge of the Operational Creditor and also continued to hold the sum of Rs.9,10,00,000/- belonging to Operational Creditor paid on 27.07.2022 by way of RTGS. Thus, the **date of default of Corporate Debtor was arrived to be 27.07.2022** and the outstanding default amount by the Corporate Debtor was arrived at Rs.10,85,66,830/- (including Rs.1,75,66,830 of interest calculated @24% per annum).
- 2.4. It is averred that on 14.02.2023 a legal notice was issued to Corporate Debtor demanding the repayment of unpaid operational debt to which the Corporate Debtor issued a Reply dated 15.03.2023 denying the liability. Subsequently, the Operational Creditor issued a **Form-3 Demand Notice**



dated 14.04.2023 under Section 8 of IBC demanding the Corporate Debtor for the payment of the operational debt. That the Corporate Debtor issued a Reply vide letter dated **26.04.2023 denying** the liability towards the Operational Creditor.

- 2.5. Therefore, as the Corporate Debtor failed to make the payment towards the satisfaction of its liability within 10 days from the date of receipt of Demand Notice, the Operational Creditor preferred the instant petition seeking initiation of CIRP of the Corporate Debtor.

3. BRIEF OF COUNTER FILED BY THE CORPORATE DEBTOR:

- 3.1. Denying the allegations of Operational Creditor, it was submitted that the present Petition was filed with ulterior motives and hence, this petition should be dismissed.
- 3.2. It is stated that the claim of Operational Creditor was denied by the Corporate Debtor in the reply to the Form-3 Demand Notice. Before issuance of Form-3 Demand Notice, the Operational Creditor sent a legal notice on 14.02.2023 with the same allegations, to which the Corporate Debtor replied on 15.03.2023. That the issues in both the notices are civil in nature. That if there was any dissatisfaction with the response of the Corporate Debtor, the Operational Creditor must approach a civil court for specific performance.



- 3.3. It is averred that the claim of Operational Creditor does not qualify as an operational debt or fall within the scope of IBC. The alleged breach of understanding between the Operational Creditor and the Corporate Debtor cannot be the grounds for triggering CIRP, as there exists no valid contract relating to the supply of goods or services. The purported understanding is not a legally enforceable contract under The Indian Contract Act, 1872.
- 3.4. The petition does not specify the terms of the alleged breach or provide evidence of an advance payment made by the Operational Creditor for the land purchase. According to IBC, the alleged debt arising out of an oral understanding can neither be a financial debt or an operational debt and the petition should be dismissed on this basis alone. The Operational Creditor demanded Rs.14,20,62,186/- vide notice dated 14.02.2023 from multiple parties, but filed the present Petition solely against the Corporate Debtor.
- 3.5. It is submitted the Operational Creditor was floated by one Mr. R. Krishnamurthy and that the family of Mr. R. Krishnamurthy holds 100% shares of the Operational Creditor. That Mr. R. Krishnamurthy used to deal with the parties in the individual capacity and also in the capacity of Managing Director while entering into transactions, thereby giving an impression that the Operational Creditor and Mr. R. Krishnamurthy are one and same. That the Corporate Debtor also maintained the accounts of Operational Creditor and Mr. R. Krishnamurthy as a single account.



- 3.6. It is submitted that on 01.12.2021, the Managing Director of Operational Creditor executed a Deed of Assignment transferring entire property to M/s. G.Square Realtors Pvt. Ltd. and hence, there cannot be a question of Operational Creditor entering into agreement of sale. It is further submitted that the properties mentioned in the legal notices issued by Operational Creditor are part of a suit vide O.S. No. 128/2023 on the file of the District Munsif Court, Hosur, Tamil Nadu, filed by M/s. G.Square Realtors Pvt. Ltd.
- 3.7. That the reply notice dated 15.03.2023 confirms a due amount of Rs. 2,35,99,000/- crores owed by the Operational Creditor. The Operational Creditor received this reply but did not deny the claim of the Corporate Debtor. It is to avoid this claim of the Corporate Debtor, the Operational Creditor filed the present Petition.

4. BRIEF OF REJOINDER OF THE OPERATIONAL CREDITOR:

- 4.1. Denying the contentions of the Corporate Debtor and reiterating the contents of the petition the Operational Creditor submitted that the Corporate Debtor did not deny the documents annexed as II G and II H (Pg.No.29 to 113 of the petition) pertaining to the land transactions.
- 4.2. It is stated that the definition of ‘debt’ under the IBC encompasses all types of transactions that result in a claim for money. That the claim is related to



an advance payment for real estate inventory by a real estate company, making it an Operational Debt. While the Corporate Debtor denies the payment made was for the land, the Corporate Debtor failed to clarify the nature of the transaction, which is solely related to the real estate deal between the parties herein.

- 4.3. It is stated that the Corporate Debtor and its group companies entered into a land conveyance agreement, with payments made by the Operational Creditor for the agreed land transfer. That the claim of operational debt in question is specifically sought for the repayment of the advance amount paid by the Operational Creditor, as the Corporate Debtor failed to deliver the property that was agreed to be sold. That the suit vide O.S.No.128/2023 was filed by a third party and has nothing to do with the present Petition.

5. BRIEF OF WRITTEN SUBMISSIONS FILED BY THE OPERATIONAL CREDITOR:

- 5.1. It is submitted that both the Operational Creditor and Corporate Debtor are real estate companies. The asset in question is the inventory of Corporate Debtor, which consists of plots in a land. The sale of these plots is not a simple land transaction but a part of business dealings of the company which shall be treated as inventory. Thus, the advance payment made by



Operational Creditor is an Operational Debt and the same was not refunded even after the property was sold by the Corporate Debtor to a third party.

- 5.2. In support to this contention, the Operational Creditor stated that the term “Debt” arising out of a “claim” is defined in IBC in the widest terms including various types of transactions that result in monetary claims. That Section 3(6) and 3(11) of IBC outline that a “claim” includes any right to payment or remedy for breach of contract, and “debt” refers to liabilities related to claims.
- 5.3. That the ledger extract (Annexure II-D of the Petition) shows the transactions of Operational Creditor with the Corporate Debtor. The fourth entry dated 27.07.2022 shows an **advance payment of Rs. 9,10,00,000/- which is undisputed and has not been refunded or forfeited by the Corporate Debtor.** That the Operational Creditor provided supporting bank statements reflecting the said transaction (Annexure II-E). Despite the said transaction, the Corporate Debtor later sold the property to a third party instead of transferring it to the Operational Creditor.
- 5.4. In support of the submissions put forth, the Operational Creditor relied on ***Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions***



Pvt. Ltd. [(2022) 7 SCC 164] wherein The Hon'ble Supreme Court held that an advance payment constitutes Operational Debt as under:

“Held: A debt which arises out of advance payment made to a corporate debtor for supply of goods or services by it, held would be considered as an operational debt”

“Para 52....the advance payment gave rise to an operational debt in favour of the appellant, which now remains unpaid. Hence, the appellant is an operational creditor under section 5(20) IBC.....”

5.5. It is submitted that the receipt of money is undisputed, and the MOU between three group companies of Corporate Debtor regarding land payments is also acknowledged. The amount paid by the Operational Creditor is a debt owed by the Corporate Debtor and qualifies as an Operational Debt. Despite notice and demand in Form 3, the payment has not been made, resulting in default. Further, the Operational Creditor is not seeking specific performance but a refund of the advance paid for the land that was not conveyed. The land is part of the inventory of Corporate Debtor and this transaction clearly constitutes a ‘debt’ and ‘default’. The claim of Corporate Debtor regarding a pre-existing dispute is incorrect. The suit filed vide O.S. No. 128 of 2023 before Ld. District Munsif cum Judicial Magistrate, Hosur relates to a different issue where the Corporate Debtor was one of the defendants. The said suit was filed well after the



FORM-3 Demand Notice and involves a third party, not the Operational Creditor.

6. BRIEF OF WRITTEN SUBMISSIONS FILED BY THE CORPORATE DEBTOR

6.1. The Corporate Debtors filed Written submissions reiterating the oral submissions and relied on the following rulings:

- I. *Harrish Khurana v. One World Realtech., Hon'ble NCLAT, Company Appeal (AT)(Ins)No.11000 of 2019 November 30, 2021;* has held that in the absence of privity of contract between the Operational Creditor and Corporate Debtor, their relationship as Operational Creditor and Corporate Debtor was not established.
- II. *Mobilox Innovations Pvt Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353,* at para 33, 38 and 51 held that a genuine pre-existing dispute precludes the Operational Creditor from invoking Section 9 proceedings.
- III. *Sabarmati Gas Ltd. v. Shah Alloys Ltd., (2023) 3 SCC 229,* at para 49 and 50 emphasized that a *bona fide* dispute by way of exchange of notice bars the initiation of CIRP.
- IV. *Philips India Limited v. Goodwill Hospitals., 2017 SCC Online NCLAT 18,* at Para 18 held that a genuine dispute raised prior to the Section 8 notice makes a Section 9 petition unsustainable.

7. Therefore, in the light of the contest put forth as above by both the parties, the points that emerge for our consideration are:



- I. **Whether an operational debt for sum of Rs.9,10,00,000/- crores due and payable by the Respondent/Corporate Debtor to the petitioner herein exists? If so, whether the Respondent/Corporate Debtor has *defaulted* in repayment of same?**
- II. **Whether a pre-existing dispute between the Operational Creditor and the Corporate Debtor in respect of the claim raised in the present petition exists? If so, whether the present petition is maintainable?**

8. We have heard Mr. B. Raveendra Babu Learned Counsel for Operational Creditor and Mr. D. Gopala Krishna Ld. Counsel for Corporate Debtor, perused the record and the submissions.

Point I:

Whether an operational debt for sum of Rs.9,10,00,000/- crores due and payable by the Respondent/Corporate Debtor to the petitioner herein exists? If so, whether the Respondent/Corporate Debtor has *defaulted* in repayment of same?

The Submissions:

9. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has made an advance payment of Rs. 9.1 crore, to the Corporate Debtor which was not refunded by the Corporate Debtor despite the property has been sold to another party.



10. The Ld. Counsel further submitted that both the Operational Creditor and the Corporate Debtor being real estate companies, the asset in question may be treated as an inventory of Corporate Debtor and hence may be considered as an Operational Debt. In support of its contentions the Ld. Counsel for the Operational Creditor placed reliance on *Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd., (2022) 7 SCC 164*, wherein Hon'ble Supreme Court considers that the advance payments as operational debts.
11. *Per contra*, the Learned Counsel for the Corporate Debtor submitted that the legal notice issued by the Corporate Operational Creditor as well as Form-III demand notice as per the Section 8 of IBC are for a transaction which is of civil nature and therefore cannot be decided by this Tribunal.
12. The Ld. Counsel further submitted that as there was no enforceable contract between the Operational Creditor and the Corporate Debtor for the supply of goods or service, the claim of the Operational Creditor does not qualify to be operational debt under IBC. Ld. Counsel further submitted that the Corporate Debtor has not filed any evidence of advance payment and the alleged debt arising from an oral understanding cannot be a valid financial debt or operational debt.



Our observations and findings:

13. On perusal of records, we find that this petition dated 03.07.2023 was originally filed against M/s. NCL Green habitats Pvt Ltd by M/s. RKM Land Promoters Pvt. Ltd. represented by its director Mr. R. Krishnamurthy. We further observe from the *neat copy* filed by the Operational Creditor on 12.02.2024 of the amended petition dated 03.07.2023, the name of Corporate Debtor as M/s. NCL holdings (A & S) Limited in place of *M/s. NCL Green habitats Pvt Ltd.*
14. On perusal of Form-5 (application by Operational Creditor for initiation of Corporate Insolvency Resolution process, we at Part-2-point no.6 i.e., name, address and authority of person submitting application on behalf of Operational Creditor, it is shown as *Mr. Bikki Raveendra Babu and others and not Mr. R. Krishnamurthy who has filed this application.*
15. At the outset we refer to the definition of ‘operational creditor’ under Section 5(20) and ‘operational debt’ under Section 5(21) of IBC as mentioned below:

“Section 5(20) “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.”

Section 5(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.”



16. Thus, it clear that in order to qualify as an Operational Creditor, the debt alleged to have been existing *must be traceable from the said contract*. Therefore, the advance amount stated to have been paid must be for the in the case on hand shall arises out of the contract between the Corporate Debtor for supply of goods or service in order to consider the same as an operational debt.
17. On perusal of the records, we find that a General Power of Attorney dated 29.04.2022 was executed by M/s. NCL Homes ltd, M/s. NCL Buildtek limited and M/s.NCL Green Habitat Pvt limited renamed as M/s. NCL Holdings (A & S) limited (Corporate Debtor herein) in favour of Mr. R. Krishnamurthy to sell Ac.30.40 cents land on behalf of the M/s. NCL Group companies as mentioned above. We further perused an agreement for sale with possession dated 03.08.2022 between the above-mentioned M/s. NCL Group companies and Mr. R. Krishnamurthy thereby transferring the land admeasuring Ac.30.40 cents to Mr. R. Krishnamurthy against the consideration of Rs.24,47,09,900/- which was received by the Corporate Debtor being one of the transferrer company. The Corporate Debtor in their submissions written as well as oral has not denied signing of the above documents. However, they specifically denied the alleged transaction of Rs.9,10,00,000/- crores for which this petition has been filed. We observe that petitioner has also not filed any documents substantiating any sort of contract between the Operational Creditor and the Corporate Debtor in respect of the alleged transaction of



Rs.9,10,00,000/- crores on the basis of which this petition has been filed. Indisputably, the Operational Creditor is not a party to the aforesaid documents i.e., General Power of Attorney dated 29.04.2022 and the sale agreement dated 03.08.2022, filed with the petition. As already stated these documents were signed by Mr. R. Krishnamurthy in his personal capacity and not as an authorised representative of the Operational Creditor. we also find that the said sale agreement was unregistered.

18. It is pertinent to note that the only purported proof which the Operational Creditor has submitted is the statement of account of the Operational Creditor which shows a payment of Rs.9,10,00,000/- crores to the M/s. NCL Green Habitate Pvt Limited on 27.07.2022. But in view of the absence of any contract/agreement etc., it cannot be deemed as an advance payment for purchasing land or as a business transaction qualifying it to be for goods and services. We do not find even a single document showing any type of contract or agreement between the Operational Creditor and Corporate Debtor. In view of the same we hold that Operational Creditor has failed to produce any document/evidence substantiating that an amount of debt of Rs.9,10,00,000/- crores is owed by Corporate Debtor to Operational Creditor. Since there is no debt there cannot be any default committed by the Corporate Debtor.



19. In the above backdrop, we decide that operational creditor has failed to prove existence of any operational debt and default thereon committed by the Corporate Debtor. In lieu of the same, there cannot be any cause of action accruing in favour of the Operational Creditor so as to bring the present Petition before this Tribunal against the Corporate Debtor.

Hence this point is answered accordingly.

Point II:

Whether a pre-existing dispute existed between the Operational Creditor and the Corporate Debtor prior to the issuance of the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code concerning the claim raised in the present petition?

20. Considering the submissions made by the parties it is relevant to mention that once an Operational Creditor delivers a demand notice of unpaid operational debt, the Corporate Debtor is under an obligation to bring to the notice of the Operational Creditor any payment of unpaid debt as per Section 8 (2)(b) or existence of dispute between the parties as per Section 8(2)(a) within a period of 10 days of the receipt of notice or copy of invoice.

21. It is to be noted that whenever there is a real dispute, the IBC provisions under Section 9 cannot be invoked. It would be appropriate to refer the *Mobilox*



Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353, wherein the Hon'ble Supreme Court held as under:

“45. The expression “existence” has been understood as follows:

Shorter Oxford English Dictionary gives the following meaning of the word “existence”:

(a) Reality, as opp. to appearance.

(b) The fact or state of existing; actual possession of being. Continued being as a living creature, life, esp. under adverse conditions.

Something that exists; an entity, a being. All that exists. (P. 894, Oxford English Dictionary)”

“51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and **that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.**

22. In the present case, on perusal of the reply of Corporate Debtor dated 26.04.2023, to the demand notice under section 8 sent by the Operational Creditor, it is evident that the Corporate Debtor denied the subject claim but did not provide any information regarding pre-existence of dispute. However,



the corporate debtor for the first time brought to the notice of this Tribunal through counter submission dated 28.08.2023, that there is a pre-existing dispute, for which OS.No.128/2023 is pending before the Ld. District and Munsif cum Judicial magistrate Court, Hosur. The Operational Creditor did not deny the existence of dispute but stated, that the said dispute was not with regard to the subject claim in this petition. We also find that in the said suit, the managing director of the Operational Creditor i.e., Mr. R. Krishnamurthy and the Corporate Debtor were impleaded as Respondents.

23. We further find that the subject matter of the suit which has been referred is a deed of assignment dated 01.12.2021 in respect of 30.55 Acres of land, which is the same parcel of land for which an agreement of sale dated 03.08.2022 was entered into between Mr. R. Krishnamurthy and the Corporate Debtor. On perusal of the records, we find that the above said suit was filed on 14.07.2023 which is much beyond the date of demand notice i.e., 14.04.2023 and also it was filed post filing of this petition on 09.07.2023. Therefore, we decide that filing of the suit post filing of this present petition cannot be considered as a pre-existing dispute.

Accordingly, point 2 is decided.



24. Therefore, in the light of the findings on the points above, this Tribunal hold that this petition is not maintainable and it is liable to be *rejected* as operational creditor could not prove the existence of debt and default.

Accordingly, this petition is hereby *rejected* with no order as to costs.

Sd

Sd

Charan Singh

Dr. Venkata Ramakrishna Badarinath Nandula

Member (Technical)

Member (Judicial)

Lavanya