

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI, BENCH IV**  
**COMPANY PETITION NO.IB-2135/ND/2019**

*[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. A2 INTERIORS PRODUCTS PVT. LTD.**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**M/S. AHLUWALIA CONTRACTS INDIA LTD.**

**...RESPONDENT/CORPORATE DEBTOR**

**ORDER PRONOUNCED ON: 05.05.2021**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITAPURKAYASTHA**

**HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**M/S. A2 INTERIORS PRODUCTS PVT. LTD.**

A-1/21-22, Birla Farm,  
Chattarpur Extension,  
New Delhi-110074

**...APPLICANT/OPERATIONAL CREDITOR**

**Versus**

**M/S. AHLUWALIA CONTRACTS (INDIA) LTD.**

Having registered office at: -  
A-177, Ohka Industrial Area,  
Phase -I, New Delhi-110020

**...RESPONDENT/ CORPORATE DEBTOR**

**FOR THE APPLICANT** :Mr. SudhnashuBatra, Sr. Adv.

Mr. Manisha Sharma, Adv.

Mr. NinadDogra, Adv.

**FOR THE RESPONDENT:** Mr. SatishRai

**ORDER**  
**Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Jatin Pasricha being the Authorized representative of M/s. A2 Interiors Products Pvt. Ltd. (for brevity 'Applicant') authorized vide board resolution dated 28.06.2019 with a prayer to initiate the Corporate Insolvency process against M/s Ahluwalia Contracts (India) Ltd. (for brevity ('Corporate Debtor')).
2. The Applicant is a company limited by shares registered with Registrar of Companies - Delhi, incorporated on 28.11.2015 under the provision of Companies Act, 2013 bearing CIN: U45400DL2014OPC273632 having its registered office at B 5/5, Vasant Vihar New Delhi DL-110057. It is involved in the business of construction works.
3. The Corporate Debtor is a company limited by shares, registered with Registrar of Companies - Delhi, incorporated on 02.06.1979 under the provisions of Companies Act, 1956 bearing CIN: L45101DL1979PLC009654 having its registered office at A-177, Okhla Industrial Area, Phase- I South Delhi, New Delhi DL-110044. The corporate debtor is one of the leading civil contractors in the construction industry.
4. The applicant submits that the corporate debtor engaged the applicant for performing interior, furnishing and allied civil and electrical works at various project sites. Accordingly, materials were supplied to the corporate debtor as part of various work orders issued for six projects at different locations in the country.

5. The various work orders issued by the corporate debtor are detailed as follows:

- a) On 04.05.2016 work order was issued for construction of PNB Building at Sector- 10, Dwarka, New Delhi. The applicant submits that the work order contained the clause with respect to retention of money for defect liability period, which only 1 year. The corporate debtor defaulted in payment of retention money after the work was completed in December 2017 and the DLP had expired. The retention amount of is due and payable.
- b) On 25.10.2016 work order was issued for fixing at IIIT Delhi, the said order was completed in December 2018 and thereafter the final bill duly signed and stamped by the Corporate Debtor. The corporate debtor has defaulted in payment of unpaid dues along with interest @ 18% p.a.as per the invoices raised.
- c) The work order was issued for interior, furnishing works for administrative cum academic building at state Bank Institute of Management (SBIM-I) and Executive & Hostel Block at State Bank Institute of Management (SBIM-II) located at plot no. IIF/2 in action area-II New Town, Rajarhat, Kolkata, West Bengal, on 06.12.2016 and 10.04.2017 respectively. The outstanding debt arises from the part dues payable against services rendered and retention amount refundable by Corporate debtor.
- d) On 06.11.2017 work order was issued for carrying out interior work at Delhi Gymkhana Club. The applicant states that work has been completed and the final bill has been raised and approved even though the entire bill has been approved. However, the amount towards making of pergola for the corporate debtor is due and payable.
- e) On 20.02.2018 work order was issued for carrying out providing and fixing in position of modular types wardrobes at NATGRID, Andheria Mor, New

Delhi. The corporate debtor is liable to pay the partly unpaid dues pending against various invoices.

- f) On 08.10.2018 work order was issued for interior work at ICCP (Bihar). The work was duly completed however the corporate debtor failed to release the retention money; the debt arises from outstanding retention amount payable by the corporate debtor. It is contention of the applicant that though no condition under the work order for retention of security amount was there but it was mutually agreed the retention period was 1 year. The amount was unilaterally retained the corporate debtor for a period of 3 years.

The applicant states that on 08.10.2018, vide email communication exchanged between the parties the corporate debtor in its trail of email dated 08.10.2018, had stated that:

*“The total amount payable as per ACIL is 8.40,000/- which is 5% retention amount on total work done of Rs. 1,67,99,998/- & this amount is to be release after completion of DLP period of 3 years or against submission of BG of equal amount.”*

In response to the said email the applicant sent another email recording the following:

*“The DLP period decided with us was one year and the retention amount was to be released against the postdated cheque.”*

6. The applicant submits that on 06.06.2018, the corporate debtor approached the applicant to carry out “extra item work”, at SBIM project in Kolkata which was also completed by the applicant. On 06.08.2018 communication was issued by the project architect, which provides for completion of work. The communication dated 06.08.2018 has been annexed.
7. The applicant submits that against each work order invoices were raised, sent and duly received by the corporate debtor. However, the corporate debtor failed to release the full payment. Hence 09.05.2019 the applicant

sent a demand notice under Section 8 of the code calling upon the corporate debtor to pay the total amount of Rs.12,54,61,722.42/- [as on 08.05.2019] along with interest @ 18% p.a. calculated from the date of non-payment of dues i.e., the respective completion date. The notice was duly served upon at the registered office of the corporate debtor. The applicant states that corporate debtor on 19.05.2019 replied to the said notice which was vague and ambiguous. The corporate debtor in reply to the Section 8 notice raised dispute and stated that no amount as stated by the applicant is due and payable. Further also stated that the notice is just a tactic to extract money and the notice under Section 8 is not maintainable in terms of provisions of the code. As the same bears mentioning of numerous work orders with no clarity under the individual work orders and as such the rules and provisions of the I & B code cannot be clubbed in one cause of action. The corporate debtor further stated that the interest so charged by the applicant had never been agreed upon between the parties. The corporate debtor also stated that certain amount was recoverable from the applicant with regards the Excise duty, VAT, and retention money with regard the various projects. Hence a counter claim ought to be raised.

8. The applicant states that though there was no condition under the work order to retain any amount of security, however it was agreed that the security would be retained for a period of 1 year but the corporate debtor retained the security amount unilaterally for a period of 3 years. It is further stated that corporate debtor has admitted the retention of security amount vide its email dated 08.10.2018. The work was completed at PNB Dwarka, the defect Liability period as per the work order was only 1 year and the work was completed in December 2017. However, even after 1.5 years from the completion date the security amount has not been released by the Corporate Debtor. It is the contention of the applicant that all the work orders were completed by December 2017. It is further stated that the

factum of the completion of the projects is evident from the fact that partial payments has been released by the corporate debtor. The applicant states that for the work carried out and completed for the project at ICCP Patna and PNB Dwarka, the outstanding dues are only towards the security deposits retained by the corporate debtor illegally and unlawfully in violation of the contractual terms.

9. The applicant states that an outstanding balance of Rs.14,10,77,658.86/- (Rupees Fourteen Crores Ten Lacs Seventy-Seven Thousand Six Hundred and Eighty-Five and Eighty-Six Paisa only) is still pending. The corporate debtor has failed and refused to clear the pending dues despite having admitted the same on several occasions.
10. The applicant filed an application under Section 9 and as per Form V, the total outstanding debt is Rs.14,10,77,658.86/- (Rupees Fourteen Crores Ten Lacs Seventy-Seven Thousand Six Hundred and Eighty-Five and Eighty-Six Paisa only), is due and payable by the corporate debtor to the applicant.
11. The corporate debtor filed reply raising the following objections:
  - a) That the application is not maintainable, on the grounds that it is arising out of different work orders, which cannot be claimed under one single application and of different service in nature and each contract gives rise to separate alleged debt. Further, clubbing different work orders under a single cause of action is not permissible under the law and is a settled law as per the judgment of Hon'ble NCLAT in *International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Limited, Comp AT (Ins) 72/2017*.
  - b) That certain facts and documents have been concealed by the applicant. It is the contention of the corporate debtor that applicant through

vague, frivolous and alleged illegal advocate's notice dated 23.04.2019 issued by the applicant for recovery of Rs. 10,81,78,984/-. The corporate debtor vide letter 17.05.2019, replied to the said notice highlighting the illegalities. Thereafter on 17.05.2019 a letter dated 01.05.2019, was received by the corporate debtor, stating that the applicant withdraws the notice dated 23.04.2019, as the same was issued inadvertently by its counsel.

- c) That applicant has not disclosed all work orders executed between the parties thereby adopting pick and choose technique. Hence, the application is liable to be dismissed on this ground also. Further it is highlighted that there is a pre-existing dispute between the parties, as the claim amount as stated by the applicant is disputed, since no description as to how the said amount has been arrived at has been provided. Further it is contested that the applicant has charged a substantive amount on interest, in the absence of any interest clause mentioned in any of the work orders. Moreover, work order annexed with the application with respect to SBIM Kolkata, Part-I and SBIM Part-II, it has been specifically mentioned under Clause 1 of the Commercial that the operational creditor shall not be entitled to claim any interest on the delayed payments.
- d) The corporate debtor states work orders were on back-to-back basis, with the main client, which implies that the measurement and certification of the work order was to be finally done by the main client. However, the applicant did not provide any certified bill or completion certificate or any document showing the demanded amount. Hence no documents reflecting any liability exists. Further it is also stated that no certified bills pertaining to the aforesaid work orders as mentioned has been annexed with the application or the demand notice. It is highlighted that different bills have been raised by the applicant during the pre-GST period and post - GST period, which has been concealed by



the applicant. The corporate debtor states that the bills were raised in accordance with new laws and were duly paid with GST and not the other taxes so applicable. The corporate debtor states that the issue was intimated to the applicant and refund of Rs.1,89,19,275/- was sought vide letters dated 22.08.2019 and 16.10.2019. The corporate debtor submits that a legal notice dated 20.11.2019 claiming the said amount has also been served upon the applicant. A copy of the said notice is annexed.

- e) That as per clause 6 of commercials/work orders, retention money to the tune of 10% on back-to-back payment basis was to be retained till the completion of the Defect Liability period, it was required to be considered from the date of obtaining completion certificate, which was never provided by the applicant. Further the corporate debtor states that no retention money was deducted. Moreover, the applicant has failed to abide by the terms and has also not submitted any indemnity bond along with final Bill as per the clause 7 of the Commercials which is in clear violation of the terms of the work order.
- f) It is stated that the work order dated 06.11.2017, for construction works at Delhi Gymkhana Club, New Delhi mentioned in the present application, was never executed between the parties. Further the corporate debtor submits that the applicant has provided services directly to its clients on conditional basis for which bills of INR 25,10,386/- was raised by the applicant and the same is also disputed. It is further stated that with respect to the LOI/NO.ACIL/PNB/Proj/14-19 dated 04.05.2016, annexed with the application, pertaining to the construction of PNB Building at Sector -10, Dwarka, New Delhi. In terms of the Clause 8, the work was supposed to be completed within 40 days from the date of Letters of Intent. However, the work was completed in December, 2017 which was way beyond the promised timeline and due to which the corporate debtor suffered losses. It is

highlighted that the applicant vide its letter dated 01.10.2018, has acknowledged that the work was completed in December 2017.

- g) That under the work order ACIL/ICC/WO/20174/443, for services of the applicant at international Convention Centre, Patna, demand was raised by the applicant of Rs. 76,33,096/- and Rs.3,74,218/- towards outstanding amount and retention money respectively and the corporate debtor vide email dated 08.10.2018 intimated to the applicant that the demand is arbitrary and incorrect. It was further stated that the retention money shall be released to the applicant on 28.01.2021 i.e.: after completion of Defect Liability period of 3 years or after submission of bank guarantee of equal amount.
- h) The corporate debtor has raised a counter claim against the applicant for an amount of Rs. 1,89,19,275/- towards VAT liability with respect to the SBIM-I project and SBIM-II project located at Kolkata.
- i) That the application under Section 9 is contrary to the object and Scheme of I & B code. The corporate debtor has relied upon the observations of Hon'ble Supreme Court in the case of *Paramjit Singh Patheja*. The corporate debtor states that in the case of *Ms. India Design Worx Infrastructure Pvt. Ltd. Vs. M/s Premier Restaurant Private Limited*, NCLT, New Delhi it was held that the provisions of code cannot be used for recovery of debt.

12. The applicant filed rejoinder reiterating the averments of the application, and denying the contentions of the corporate debtor, stated the following:

- a) The applicant submitted that the corporate debtor is trying to create a dispute and has admitted the outstanding dues and has failed to clear dues, hence the present application must be allowed. Further also submits that the corporate has failed to consider their own communication, wherein the dispute raised was duly given up vide various communications and was accepted to be wrong.

- b) The corporate debtor with the mala fide intention issued frivolous communications dated 22.08.2019, 16.10.2019 and notice dated 20.11.2019, after service of notice.
- c) That a counter claim, raised by corporate debtor has not been supported with any evidentiary documents. However, the applicant discharged all VAT liabilities and thus corporate debtor is not entitled to raise any such claim. The objection with regards the authorized representative, who is not authorized to file reply hence the reply must be struck off. (on what grounds)
- d) That the corporate debtor has specifically admitted the existence of amount outstanding, due and payable to the applicant.
- e) The applicant states that the legal notice dated 23.04.2019 was issued erroneously and without authorization by the applicant's lawyer and the same was therefore withdrawn. However, immediately, thereafter a proper notice under Section 8 dated was duly served upon the corporate debtor. The applicant states that withdrawal of the notice shall not be construed to imply that there were no dues outstanding towards the applicant.
- f) The applicant states that clause 1 of the SBIM – Kolkata, as per the agreement the payment of the said project was on back-to-back basis. The corporate debtor in spite of receiving payments from the principal contractor did not clear dues of the applicant. Further the applicant states that the defects deficiencies were never raised by the corporate debtor prior to the present proceedings. Also, no evidence to substantiate the alleged defects and deficiencies has been placed on record.
- g) The applicant has stated that the Corporate debtor has admitted of retaining a sum of Rs. 5,59,669/- as retention money for the defect liability period, which admittedly to be due and outstanding towards the

applicant and has also admittedly failed/ refused to pay the same and thus the present application is liable to be allowed on this ground.

h) The applicant states that the corporate debtor, in its reply to notice under section 9 had admitted that a sum of Rs. 8,40,000/- is outstanding, which is due and payable. As per the corporate debtor, vide communication dated 08.10.2018, it was stated that the retention money was to be released on 28.01.2021 i.e.: after completion of Defect Liability period of 3 years or after submission of bank guarantee of equal amount to the applicant towards work order ICC-Patna. It is further stated that the work was duly completed and the final bill was raised in Feb 2018 and the work order at no place prescribed for a defect liability period. However, the corporate debtor to deny the legitimate dues of applicant has unilaterally come up with the DLP period of 3 years as defect liability period, even though the DLP was agreed as 1 year.

13. The applicant filed written submissions supporting its contentions and stated the following:

a)

Name of Project	Amount Due and Payable	Date of Default
PNB Building Sector-10, Dwarka New Delhi	Rs.5,59,669/- (5% of the total bill i.e., Rs. 1,11,93,394/-)	01.08.2018
IIIT Delhi	of Rs. 33,65,516/- [principal amount of Rs. 30,04,925/- and Rs. 3,60,591/- as interest]	Dec 2018 onwards
NATGRID, ANDHERIA MOR, NEW DELHI	16,789/-	08.09.2018
SBIM -Part 1 & 2	Rs.13,31,95,213/-	29.06.2019
ICCP- Patna, Bihar	8,40,000/- (5% retention amount of the total work done of R. 1,67,99,998/-)	28.02.2019
Delhi Gymkhana Club	Rs. 25,10,386/-	31.12.2017

- b) That the applicant is a sub-contractor of corporate debtor in projects, and the corporate debtor is a Principal Contractor.
- c) That the work orders for 6 projects have been executed among the parties pursuant to which respective Letter of intents have been issued. Further also stated that the work executed by the applicant is duly certified and in certain cases virtual certificates are also issued.
- d) That despite certification of works and bills, payment has not made to the applicant.
- e) No notice of dispute was raised by the corporate debtor prior to the notice of demand issued by the operational creditor on 09.05.2019 under Section 8 of IBC.
- f) The corporate debtor has raised technical objection in view of observation passed in “*International Road Dynamics South Asia Pvt. Ltd. Vs. DA Toll Road Pvt. Ltd.*” wherein it is stated that different claims arising out of different agreement or work order, having different amount and different date of default, cannot be clubbed together.

In response to the said technical objection the applicant states that the above-mentioned quote of NCLAT is an ‘obiter dictum’ and is not a binding precedent. The Hon’ble Supreme Court, remanding the matter back to NCLAT, observed that:

*“Parties are allowed to raise all their contentions before the adjudicating authority.... The observations made by this appellate (NCLAT) will not come in the way of adjudicating authority to decide the issue afresh.”*

The Hon’ble NCLAT later vide its order dated 11.12.2018, further remanded the matter to NCLT and clarified its previous order barring a single petition for claims arising under different contracts under Section 9 of the I & B code by observing that:

*“We agree to the submissions of the petitioner that claims arising out of a multiple agreement can be filed in a single petition under Section 9 of the I & B code and it cannot be rejected on this ground”*

The applicant has further relied upon the case of NCLT Mumbai, on the case of *Meridian Medals Vs. Gactel Turnkey Projects* (CP 159/(IB)/MB/2018), wherein it is held that that a single petition can be filed for claims arising out of separate work orders.

- g) The applicant has relied upon the case of Supreme Court in “*J.K. Jute Mills Mazdoor Vs. Juggi Lal Kamlapat Jute Mills Co.*” wherein it has been held that:

*“...procedure is handmaiden of justice and multiple cause of actions, despite separate dates of defaults; separate causes of action can be maintained in a composite section 9 petition.”*

- h) With respect to withholding of retention money the, the following case has been has relied upon:

- NCLT, New Delhi Bench order dated 31.10.2019 titled CTC vs. Hind Inns & Hotels Pvt. Ltd., and NCLAT order dated 12.02.2020 titled Aashish Mohan Gupta Vs. Hind and Hotels Ltd., the Hon’ble NCLAT in the said decision after quoting Section 5(21) i.e., definition of operational debt, observed as under: In the above mentioned it was held and observed that

*“23. Therefore, we are of the view that the respondent had not raised any dispute which is existing prior to issuance of Demand Notice. Further Section 3(2) of IBC defines Default. In view of the definition of debt and default, the retention money which is part of the main bill, comes under the definition of debt and default.”*

- Delhi High Court in the case of Delhi State Industrial Development Corporation Vs. Mohan Construction Company, vide order dated 02.09.2015 held:

*“Once the work is completed by the respondent, and in fact a final bill has also been released by petitioner to the respondent ...surely, the retention money which is retained by the petitioner has necessarily to be refunded to the respondent...petitioner is not entitled to retention of this amount for defective work and therefore tis claim no.1 has been rightly allowed by the Arbitrator.”*

- i) The applicant has relied upon the case of *RaghuvirBuildcon Private Limited Vs. Ketan Construction Limited* and *Mobilox Innovations Private Limited Vs. Kirusa Softwareon* whether the dispute is genuine or merely a dispute being moonshine in nature.

14. The corporate debtor filed written submissions and stated the following:

- a) The corporate debtor relying upon the case of NCLAT in *International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Limited*, states that it is well settled law that the debt arising out of different work orders of different locations. Where each work order is a different service provided cannot be joined as one cumulatively. Hence the present application is not maintainable.
- b) The corporate debtor states that demand notice in Form 3 is incomplete and accordingly on this ground the application is liable to be dismissed. It is the objection of the corporate debtor that the applicant did not annex the document reflecting any liability. Further the corporate debtor states that the said objection has been taken by the corporate debtor in its reply to notice under Section 8 and the same has not been denied by the applicant even in the application. Reference has been made upon the case of *Neeraj Jain, Director of Flipkart India Pvt. Ltd. Vs. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr.* The corporate debtor states that the Form III Column 1 shows only total sum without any details, which renders the demand notice defective.

- c) The corporate debtor submitted that the claims made under various work orders pertain to security deposit /retention money and therefore does not amount to operational debt within the meaning of Section 5(21) of the code.
- d) The corporate debtor has stated that there exists pre-existing dispute with regards the following:
- i. Notice dated 23<sup>rd</sup> April 2019 and withdrawal of the said notice vide letter dated 01.05.2019. It is stated that the prior to the demand notice, dated 09.05.2019, on the same cause of action a notice dated 23.04.2019 was served upon the corporate debtor, which was replied and denied extensively raising dispute. On the contrary, right after the response to the said notice the applicant withdrew the said notice in absolute terms vide letter dated 01.05.2019. Therefore, the legal notice dated 24<sup>th</sup> April 2019 and withdrawal letter dated 01.05.2019 along with the dispute raised amounts to pre-existing dispute. The corporate debtor states that on perusal of the reply of the said notice it is reflected that serious dispute qua the services had been raised.
  - ii. Disputes with respect to the SBIM-I and SBIM-II projects, the corporate debtor states that disputes regarding workmanship, defective work had already been raised, which is evident from the emails and letters exchanged between the parties much prior to the issue of demand notice. Further it is the contention of the corporate debtor that the dispute has also been raised in the reply to demand notice.
  - iii. Dispute with respect to difference in amount in relation to wooden paragola at Delhi Gymkhana Club, the amount as charged by the applicant is disputed. Further there also exists dispute with respect to the work performed at ICCP Patna in relation to the claim of retention money for which defect liability period was 3 years. The



corporate debtor has annexed the email dated 08.10.2019, wherein it has been conveyed by the corporate debtor that no amount is due and payable, which has been agreed by the applicant

e) The corporate debtor states that the applicant failed to discharge the first condition as mentioned in Mobilox Judgment, i.e., to show that there exists a debt. The corporate debtor relying upon the case of Krishna Enterprise Vs. Gammon India Limited, COMP AT (INS) No. 144/2018, wherein it has been held that no interest can be claimed as a part of the debt if the contract does not provide for it. In the present case, no clause of the contracts had provided for interest. On the contrary, the clause 1 of the commercial of the contact, bars the same explicitly. Therefore, no interest could have been sought for as an operational debt as the same is not due or payable.

15. Though there is no specific date of default mentioned but considering the various work orders and invoices against which the payment is due the date of default is varying from December 2017 to Feb 2019 and the present application is filed on 08.08.2019. Hence the application is not time barred and filed within the period of limitation.
16. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.

18. Considering the documents on records and submissions made, it is observed that there exists an operational debt which is due and payable by the corporate debtor. Further with respect to the maintainability of an application, with regards to the issue that whether for various claims arising out of separate work orders, single application can be filed by operational creditor. There are various judgments passed by the Hon'ble Supreme Court and Hon'ble NCLAT deciding the issue affirmatively that separate claims can be part of single application. The judgments are also relied by the applicant as referred above. The second issue to be dealt with is whether retention money is covered under the definition of debt under the provisions of IBC. We would also like to mention that this issue also dealt by Hon'ble NCLAT and decided in favour of the creditor, which is also referred above. Once the work is complete and final bill is raised, the retention money becomes due and payable. The corporate debtor vide email communication and in its reply to this application had categorically admitted that a sum of Rs. 8,40,000/- is outstanding due and payable to the applicant towards work order ICC-Patna. Though, the corporate debtor has raised dispute prior to issue of the Demand Notice with regards to non-completion of work on time, defective work and invoices raised, but has itself admitted that retention money is payable.

In our view, it the amount of a debt more than 1 Lakh, which in this case is admitted by the corporate debtor, and the said amount has become due as per their own statement in their email dated 08.10.2018, leaving no scope for any further adjudication. We are further strengthened by the law laid down by the Hon'ble Supreme Court in "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**" it is observed and held as follows: -

*"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due*

*and payable, which includes non-payment of even part thereof or an installment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”*

In view of the above discussion application is admitted.

19. The Applicant has not named an IRP, accordingly, this bench appoints Mr. Satish Kumar Chugh as IRP of the corporate debtor, who is registered vide registration number IBBI/IPA-003/IP-N00270/2020-21/13196, having email id:[schugh61@yahoo.com](mailto:schugh61@yahoo.com) and mobile no. 9818951890, subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been made.
20. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the

moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

21. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Satish Kumar Chugh to meet out the expenses and perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
22. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**Sd/-**  
**SUMITAPURKAYASTHA**  
**MEMBER (T)**

**Sd/-**  
**DR. DEEPTI MUKESH**  
**MEMBER (J)**

**Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (T) Ms. Sumita Purkayastha is not holding the court today.**

**Court Officer**  
**05.05.2021**