

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. IV)  
Company Petition No. IB-193/ND/2018**

*[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. Kintech Synergy Private Limited**

**...Applicant/Operational Creditor**

**Versus**

**M/s. RRB Energy Limited**

**...Respondent/ Corporate Debtor**

**ORDER PRONOUNCED ON :15.03.2021**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA**

**HON'BLE MEMBER (TECHNICAL)**

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*M/s Kintech Synergy Private Limited Vs. M/s RRB Energy Limited*

**MEMO OF PARTIES**

**M/s. Kintech Synergy Private Limited**

Kintech House, No.8-9 Shivalik Plaza,  
Opp. AMA, IIM Road,  
Ahmadabad - 380015

**...Applicant/Operational Creditor**

**Versus**

**M/s. RRB Energy Limited**

GA-1/B-1 Extension  
Mohan Co-operative Industrial Estate,  
Mathura Road,  
New Delhi – 110044

**ALSO AT:**

Corporate office Cum Works  
182/2, Bypass Road, Poonamalle  
Chennai – 600056, Tamil Nadu

**AND AT**

Corporate Office  
17, Vembuliamman Koli Street  
KK Nagar (West)  
Chennai – 600078, Tamil Nadu

**...Respondent/ Corporate Debtor**

**FOR THE APPLICANT : Mr. Anshul Rawat, Adv.**  
**FOR THE RESPONDENT : Mr. Palzer Moktan, Adv.**

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*M/s Kintech Synergy Private Limited Vs. M/s RRB Energy Limited*

**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 Mr. Maunesh Shah being the Authorized representative of Kintech Synergy Private Limited (for brevity 'Applicant') authorized vide board resolution dated 07.12.2017 with a prayer to initiate the Corporate Insolvency process against RRB Energy Limited (for brevity ('Corporate Debtor')).
2. The Applicant is a company limited by shares, registered with ROC-Ahmadabad incorporated on 14.08.1995 bearing CIN: U29120GJ1995PTC027101 under the provision of Companies Act 1956. The applicant has its registered office at Kintech House, 8-9, Shivalik Plaza, opp. AMA, IIM Road, Ahmadabad, Gujarat -380015 India.
3. The Corporate Debtor is a company limited by shares, registered with Registrar of Companies, Delhi, incorporated on 01.12.1987 under the provisions of Companies Act, 2013 bearing CIN: U29299DL1987PLC029949 with its registered office at GA-1/ B-1 Extension Mohan Co-operative Industrial Estate, Mathura Road, New Delhi- 110044.
4. The applicant submits that the corporate debtor engaged the corporate debtor to carry out works in relation to wind farm project in Gujarat mainly for the purpose of operation and maintenance of substation and line maintenance in Surajbari, road patchwork for road leading upto project site and construction of SCADA (Supervisory Control and Data Acquisition) Building at project site. Accordingly, on 05.09.2008, work order was issued by the corporate debtor for the contract of annual maintenance of their 33KV

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*M/s Kintech Synergy Private Limited Vs. M/s RRB Energy Limited*

internal wind farm transmission line, at chandrodi village. The scope of work, terms and conditions were elaborated in the contract and the same was accepted by the applicant. ✓

5. The applicant states that pursuant to the contract, a letter dated 26.02.2009 was sent to the corporate debtor which provided the estimated value for construction of SCADA cum store and office for the corporate debtor as Rs. 30,00,000.00 (Rupees Thirty Lakhs Only). In furtherance of this letter, on 16.06.2009, the corporate debtor paid an advance amount of Rs 4,00,000/- to the applicant. The applicant after completion of construction vide letter dated 06.07.2009 informed the corporate debtor. Thereafter again on 01.08.2009 informed the corporate debtor that the earthing of building was complete ✓
6. The applicant submits that on vide letter dated 26.08.2009, the corporate debtor had provided information regarding the shifting of their corporate office from Madurai to Chennai.
7. A meeting was held on 31.01.2010 between the applicant and corporate debtor at Surajbhari site to finalize the commercial terms of operations and maintenance contracts and minutes of the meeting were duly recorded. Accordingly, a new work order dated 08.03.2010 was issued by the corporate debtor for operation and maintenance contracts. ✓
8. The applicant states that on 10.09.2010, a quotation was sent to the corporate debtor for road repair and patch work at chandrodi. An email communication in this regards was also sent on 11.09.2010 by the corporate debtor requesting the said quotation. ✓
9. The applicant submits that in 2012, the corporate debtor vide letter dated 09.06.2012, intimated the applicant about the corporate debt restructuring ✓

scheme (hereinafter referred to as "CDR") of RRB Energy Limited and sought consent of the applicant. The applicant on 12.06.2012 duly replied to the audit confirmation letter, denying the pending payment as stated by the corporate debtor and submitted the relevant balance sheet mentioning the amount due. Thereafter several letters addressing the issue of the outstanding amount was sent by the applicant. However no response was received.

10. The applicant states, they submitted its claim as an unsecured creditor to the tune of Rs. 64,48,227/- in the CDR scheme of the corporate debtor. The scheme was initiated pursuant to the order of Hon'ble High Court of Delhi dated 17.07.2012 and the Creditors meeting was held on 27.08.2012 at the registered office of the corporate debtor. The applicant submits that as per the direction of the Hon'ble Delhi High Court a notice regarding meeting of unsecured creditor for approval of scheme was issued. The applicant participated in the meeting by filing a proxy form dated 16.08.2012, which was later declared invalid. Accordingly, the claim of the applicant remained undetermined and the corporate debtor has failed to communicate the outcome of the meeting. However, the applicant had been pursuing the CDR of the corporate debtor, but the details of the corporate debtor are not known to the corporate debtor as there has been no communication in this regard by the respondent to the applicant or through publication.

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11. The applicant sent demand notice under Section 8 of the code on 12.12.2017 calling upon the corporate debtor to pay the total amount of Rs.64,48,227/-. The said notice had been duly served upon at the registered office. On 23.12.2017, the corporate debtor filed reply and stated that the claims raised by the applicant are barred by limitation. The invoices as annexed in the notice are of the year 2009 to 2011. Further also stated that there exists a pre-existing dispute among the parties.

12. The applicant filed an application under Section 9 and as per Form V, the total debt outstanding is Rs.64,48,277/- (Rupees Sixty Four Lakhs Forty Eight Thousand Two Hundred Seventy Seven Only) is due and payable by the corporate debtor to the applicant. This is the same amount for which the applicant had filed its claim as unsecured creditor.
13. The applicant filed an application annexing synopsis detailing the nature of transactions between the applicant and the corporate debtor, in compliance of order dated 22.02.2018.
14. The corporate debtor filed reply to the said application making submissions and raising objections as follows :
  - a) The preliminary objection is that claim of the applicant is barred by limitation. The claim pertains to the period of 2009 to 2011 and has been raised after a considerable delay of 5 years from the due date of the alleged debt.
  - b) The corporate debtor submits that there is a pre-existing dispute among the parties with regards the quality of services. An email dated 30.04.2011 addressed to the applicant was sent by the corporate debtor elucidating the poor quality of construction and specifying various deficiencies in the work. The corporate debtor states that the dispute was raised prior to issue of Section 8 notice.

The corporate debtor has relying upon the case of *Mobilox Innovations Private Limited Vs. Kirusa Software private Limited (2018) 1 SCC 353* stated as per the law expounded in the aforementioned case, the application under Section 9 filed by the applicant must be dismissed.
  - c) The corporate debtor states that on 08.07.2009 a meeting was held for handing over the building, by the applicant to the corporate debtor but it was found that the building is not complete and there are certain defects. The work observations were made and recorded in writing and the work completion certificate was issued with the condition that the

applicant shall remove defects and complete the construction in phases by 12.07.2009 and 15.07.2009 accordingly. The minutes of the meeting are annexed. It is further stated that the applicant failed to complete the work and communication were also sent to the applicant in this regard.

- d) The applicant issued letter dated 28.11.2009, enclosing invoice dated 21.11.2009 for an amount to the tune of Rs. 31,65,456/- towards construction charges. The corporate debtor states that the said invoice was not accepted on account of unsatisfactory specification and quality of construction.
- e) The corporate debtor states that vide letter dated the 21.09.2010 the work order No. 2110011307 dated 15.09.2010 was cancelled. Accordingly, the invoices claimed in the present application are invalid, as dishonestly claimed. The copy of letter dated 21.09.2010 is annexed. The corporate debtor further states that again on 30.04.2011 an email elaborating the poor quality work was sent to the applicant, the copy of email dated 30.04.2011 is annexed. Hence, the dispute was raised well before the demand notice dated 12.12.2017.
- f) The corporate debtor further states that the claims of the applicant were also disputed in the reply dated 23.12.2017 to the demand notice of the applicant.

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

- a) It is stated that the Insolvency and Bankruptcy code, 2016 was amended on 17.08.2018 and the present application was filed prior to implementation of the said limitation.

Further relying upon the case of *B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates* stated that the limitation will apply and liberty to filed application under Section of Limitation act will apply to IBC proceedings with the exception that in IBC cases the threshold of applicability can also be condoned.

- b) The applicant stated that the participation in the CDR process, makes the applicability of limitation afresh and the same continues as the corporate debtor has failed to file response to the claim of applicant.
- c) The applicant states with regards the cancellation of the work order, that it was never cancelled. However, was mutually revised and the rates for the said work order were crystallized. The same was recorded vide email dated 30.04.2011, a copy of the email is annexed.
- d) The applicant states that the dispute raised is a moonshine defense and there exists no dispute with regards the SCADA building. Further submitted that with regards the additional patch road may give up the claim in respect to the invoices raised.
- e) It is also stated that the various allegation regarding quality of construction were never raised prior to initiation of this proceedings. The work order had been completed by the by them and the corporate debtor has failed to fulfill its contractual obligation.

15. The corporate debtor filed an additional affidavit in compliance of order dated 02.01.2019 of this bench, wherein it was directed to the place on record, the details of CDR or other process of restructuring of the corporate debtor. The corporate debtor submitted that an application bearing no. Co. App (M) No. 100 of 2012 was filed before the Hon'ble High Court of Delhi under the provisions of section 391 to 394 of the Companies Act, 1956 for obtaining sanction of proposed Scheme of Arrangement by and between the corporate debtor and its respective shareholders. Vide order dated 17.07.2012, the Hon'ble Delhi High Court directed the corporate debtor to convene separate meetings of the Secured Creditors and Unsecured Creditors on 27.08.2012. Accordingly disposed of the said petition.

The corporate debtor further states that during the meeting Mr. Jigar.J. Shah, the appointee on behalf of the applicant herein was considered invalid by the alternate chairperson appointed by the Hon'ble Delhi High Court, as

the applicant failed to file the Board Resolution of Mr. Jigar. J. Shah to vote or appoint proxy. The form of proxy is annexed.

The corporate debtor further states that the 3 out of total 4 secured creditors attended the meetings along with the authorization letters and the representative of the applicant being invalid could not vote for the resolution put forth. Hence, the scheme of arrangement could not be sanctioned.

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

- a) The applicant has relied upon the case of Gaurav Hargovind bhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr (19.09.2019), wherein it was held that an application under Section 7 of the code would fall under the residuary Article 137 of the Limitation Act, which provides for a period of limitation of three years from the time when the right to apply accrues. The court further held that the limitation period would run only from the date on which the right to sue accrued and not from the date of commencement of the code.
- b) Further stated that the NCLT in various cases had held that the limitation prescribed in the Companies (Removal of Difficulties) Fourth Order, 2016 has been crossed, the petitions were abated but never dismissed. The parties were given the right to the parties to file fresh petitions under the new code, establishing that the intent of the statute had always been never to impose limitation from the date of implementation of the code till the amendment dated 17.08.2018 was brought into force. The applicant states that the Hon'ble Apex Court and NCLT have rendered findings to the effect that the parties are within their rights to seek condonation of delay in the insolvency proceedings.
- c) The applicant relied upon the English case of Giles Vs. Rhind [EWCA Civ 118], wherein it is stated that

*“if the respondent has deliberately concealed a fact relevant to the claim, the court may find that the limitation period starts only from when the petitioner could have found out the facts in questions.”*

In the present case, the corporate debtor during the course of proceedings revealed that the CDR of the corporate debtor was still going on. Hence by virtue of applicant’s participation in the said CDR scheme, the limitation period has been kept alive and communication between the parties has been exchanged between the parties as late as 24.12.2018.

d) The applicant has also relied upon the case of Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (AIR 2017 SC 4532.

17. The corporate debtor filed written submissions, reiterating the contents of the reply filed and presented its arguments on two the major objections of :

**a) The application being barred by limitation:** The corporate debtor relied upon the case of *B. K. Education Services Pvt. Ltd. Vs. Parag Gupta and Associates*, 2018 SCC Online SC 1921, wherein it was held

*“.....“the right to sue”, therefore accrues when a default occurs. If the default has occurred over three years prior to the date of the filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in facts of the case, Section 5 of the limitation Act may be applied to condone the delay in such filing such application”*

The corporate debtor stated that even if it is presumed the default occurred, the said default extinguished after three years of the last invoice raised on 30.09.2011. Hence the present application is time barred. Further also stated that the applicant failed to plea or aver any reason or ground of “sufficient cause” as required under Section 5 of the limitation Act, 1963.

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**b) Existence of an actual dispute:** It is submitted that the application is also liable to be rejected on grounds of pre-existing dispute as there is a dispute with regards to the substandard quality services provided.

18. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

19. The present application is filed on the Form 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.

20. Considering the documents on records and submissions made, we are of confirmed view that the contention of the Corporate Debtor with regards to application being time barred, relying on the judgment of Supreme Court in *B.K. Education Services Pvt. Ltd. Vs. Parag Gupta and Associates, 2018 SCC 1921* is having force. Not only the date of default is time barred for the purpose of filing insolvency application based on the last invoice in the year 2011; but also even if the argument of applicant, placing reliance on the CDR pending before the Hon'ble Delhi High Court is considered, the same was also disposed off in the year 2012, which again supports the application beyond limitation. The applicant sought liberty to file an application for delay, but no application till date was filed.

Moreover, the claim of the present applicant was declared invalid as per the report of alternate chairperson. The copy of which is also annexed with the application. Hence the preliminary objection raised by the corporate debtor is upheld.

Over and above, the Corporate Debtor has further supported arguments with sufficient evidence to show that there was a pre-existing dispute making the application inadmissible.

In terms of above order the application fails and is rejected.

21. 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/-

**SUMITA PURKAYASTHA**  
**MEMBER (T)**

SD/-

**DR. DEEPTI MUKESH**  
**MEMBER (J)**