

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III, NEW DELHI
(IB)-126(ND)/2023

Order 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. AIRTECH AIRCONDITIONING

Through Mr. Arshad Shah, Proprietor
Ashiana Building, adjoining Daryacha Building,
Hauz Khas Village New Delhi 110016

... Applicant/Operational Creditor

Versus

M/s. PARNIKA COMMERCIAL & ESTATE PRIVATE LIMITED

Having its registered office at:
D-64, 6th Floor Himalaya House,
23 KG Marg
New Delhi- 110001

... Respondent/Corporate Debtor

Order Pronounced On: 18.12.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For Applicant : Mr. Virendra Ganda Sr. Adv., Mr. Vipul Ganda, Ms. Abhipsa Mohanty, Mr. Ayandeb Mitra Advs.

For Respondent : Mr. Bhupen Narula

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The instant Application is being preferred by M/s. Airtech Air conditioning, the Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process in respect of M/s. Parnika Commercial Estate Private Limited (Corporate Debtor), who has failed to pay the operational debt amounting to Rs. Rs.10,19,80,054 (Rupees Ten Crore Nineteen Lakh Eighty Thousand Fifty-Four) being aggregate of the total amount of debt i.e. Rs. 8,23,72,560/- (Rupees Eight Crores Twenty-Three Lakhs Seventy-two Thousand Five Hundred Sixty) and interest thereon at the rate of 18% per annum as agreed between the parties as on December 31, 2022.
2. The Applicant, namely M/s. Airtech Air Conditioners (Operational Creditor) is a proprietorship firm incorporated on 1997 and is in the business of providing Firefighting and Heating, Ventilation and Air Conditioning ("HVAC") services to different entities on contractual basis having its office at Ashiana Building, adjoining Daryacha Building, Hauz Khas Village New Delhi 110016.

3. The Respondent Company namely M/s. Parnika Commercial & Estate Private Limited (Corporate Debtor) is a private limited company incorporated under Companies Act, 1956 on 1st November 1989, engaged in the business of construction of buildings. [CIN-U74899DL1989PTC038223], having its registered office D-64, 6th Floor Himalaya House, 23, KG Marg, New Delhi- 10001. The Corporate Debtor has Authorised Capital of Rs. 5,00,00,000 (Rupees Five Crores Only) and Paid-up Capital of Rs. 4,50,00,000 (Rupees Four Crores Fifty Lakh).
4. The **total debt** is Rs.10,19,80,054 (Rupees Ten Crore Nineteen Lakh Eighty Thousand Fifty-Four) which includes Principal amount of Rs. 8,23,72,560/- (Rupees Eight Crores Twenty-Three Lakhs Seventy-Two Thousand Five Hundred Sixty) and interest thereon at the rate of 18% per annum as agreed between the parties as on December 31, 2022. The **date of default** is not expressly mentioned in Part IV of the Petition. The Operational Creditor had send a Demand Notice dated 21.10.2022 to the Corporate Debtor. The Corporate Debtor on 31.10.2022 sent a reply to the demand notice.

5. **Submissions of the Operational Creditor**

- i. In the year 2018, the Corporate Debtor approached the Operational Creditor for providing Firefighting and Heat, Ventilation and Air Conditioning (HVAC) services in three of its projects situated at Vanijya Bhavan, Delhi; DRDO, Delhi and IIT Bombay, Mumbai as per the table below:

S. No.	Name of Project	Location
1.	Vanijya Bhavan	Delhi

2.	DRDO	Delhi
3.	IIT Bombay	Mumbai

The Corporate Debtor issued the following work orders with respect to the 3 projects: -

VANIJYA BHAWAN: Work Order

<u>DATE</u>	<u>PARTICULARS</u>
September 19, 2019	The Corporate Debtor issued a work order for Vanijya Bhawan bearing no. PARNIKA/HVAC+FF/WO/19-20/35 for an amount of Rs.9,58,00,000/- (Rupees Nine Crore Fifty Eight Lakh Only)

DRDO, DELHI: Work Order

<u>DATE</u>	<u>PARTICULARS</u>
June 26, 2019	The Corporate Debtor issued a work order for DRDO, Delhi bearing no. PCEPL/HO/MA/FF/19-20/00 I for an amount of Rs.2,94,00,332/- (Rupees Two Crore Ninety-Four Lakh Three Hundred Thirty-Two)

IIT, BOMBAY: Work Order

<u>DATE</u>	<u>PARTICULARS</u>

<p>March 27, 2019 -July 3, 2019</p>	<p>The Corporate Debtor issued following 6 working orders bearing no. with respect to the IIT Bombay project:</p> <ul style="list-style-type: none"> i. PCEPL/HO/IITB/SINE/ELEC/18-19/001 of Rs.2,46,64,734 (Rupees Two Crore Forty-Six Thousand Sixty-Four Seven Hundred Thirty-Four) ii. PCEPL/HO/IITB/HOS/ELEC/18-19/002 of 1,89,32,442 (Rupees One Crore Eighty-Nine Thirty-two Thousand Four Hundred Forty-Two) iii. PCEPL/HO/IITB/RP/ELEC/18-19/003 of Rs.2,60,02,945 (Rupees Two Crore Sixty-Two Thousand Nine Hundred Five) iv. PCEPL/HO/IITB/SINE/L V /19-20/004 of 78, 10,712 (Rupees Seventy-Eight Lakh Ten Thousand Seven Hundred Twelve) v. PCEPL/HO/IITB/HOS/L V /19-20/005 of Rs.1,69,45,234 (Rupees One Crore Sixty-Nine Lakh Forty-Five Thousand Two Hundred Thirty-Four) vi. PCEPL/HO/IITB/RP/LV /19-20/006 of Rs.2,24,87,257 (Rupees Two Crore Twenty-Four Thousand Eighty-seven Thousand Two Fifty Seven)
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vii. The Operational Creditor raised invoices to the Corporate Debtor and the amount became due and payable within 15 days of the receipt of the payment by the Corporate Debtor from their respective clients. The details of the said invoices are as under:

Invoice No.	Date of Default	Amount (Rs.)
Vanijya Bhawan, Delhi		
25/202 1- 2022	April 14, 2022	1,41,82,896
04/2022- 2023	July 29, 2022	1,07,29,601
Less: 12,19,002 Partly received amount for the invoice		12,19,002
Total (A)		2,36,93,495
DRDO, Delhi		
80/2020- 2021	November 6, 2020	52,25,707
108/202 0-202 1	March 3, 2021	78,56,000
Less: Partly received amount for invoices		47,79,499
Total (B)		83,02,208
IIT Bombay		
88/2020- 2021		56,86,017
87/2020- 2021		8,92,2 16
Less: Partly received amount for invoices		40, 12,884
Total (C)		25,65,349
Total Claim amount (A+B+C)		3,45,61,052

viii. In addition to the work mentioned in the invoices, the Operational Creditor also provided other services to the Corporate Debtor. However, in relation to such extra work, invoices have never been raised or billed to the Corporate Debtor. The simple reason for not billing the Corporate Debtor

was only to avoid incurring the amount of GST payable in respect of the such work, as the Corporate Debtor has not been paying the invoices raised by the Operational Creditor, whilst availing the input credit, thereby causing a loss to the Operational Creditor without being reimbursed by the Corporate Debtor. The table for the unbilled amount is as under:

Vanijya Bhawan, Delhi (A)	
Unbilled Amount	1,51,18,815.16
DRDO, New Delhi (B)	
Unbilled Amount	66,73,344
IIT, Bombay (C)	
Unbilled Amount	2,60,18,449.14
Total (A+B+C)	4,78,10,608.74

- ix. The Operational Creditor in respect of the outstanding dues pertaining to the IIT Bombay project, issued a letter dated February 20, 2021, to the General Manager of the Corporate Debtor, whereby the Operational Creditor informed about the delay in releasing the payment of the project, due to which the Operational Creditor accrued huge loss and was unable to pay the vendors for the raw material utilized in the completion of the project. However, the Corporate Debtor never replied to the aforementioned letter and did not release any amount against the outstanding operational debt.
- x. The Operational Creditor issued a Snack List Report in respect of the Vanjiya Bhawan project to the General Manager of the Corporate Debtor vide letter dated August 8, 2022, whereby the Operational Creditor

submitted the final handover report which was duly received by the General Manager of the Corporate Debtor.

- xi. That as per the payment terms mentioned in the work orders, the Operational creditor had to maintain a running account of the Corporate Debtor and had to raise invoices from time to time. The Corporate Debtor had to release the payment within 15 days after the said payment was made by its clients.
- xii. The Operation Creditor raised various RA bills during the years 2019 to 2021 which were duly received and acknowledged by the Corporate Debtor, pursuant to which the Operational Creditor raised invoices with respect to the acknowledgement and approval of the Corporate Debtor. Furthermore, the Operational Creditor incurred additional expenditure with respect to the aforementioned projects in order to give quality services to the Corporate Debtor.
- xiii. That in the year 2020-2022, the Corporate Debtor started to make defaults in the payment of the invoices duly raised by the Operational Creditor. The Operational Creditor contacted the Corporate Debtor several times but the Corporate Debtor avoided to release the payment on one pretext or other.
- xiv. The Operational Creditor, thereafter, on October 21, 2022, served a demand notice in Form 3 along with the invoices ("Demand Notice") and other relevant documents as contemplated under section 8 of the Insolvency and Bankruptcy Code, 2016 demanding Rs. 8,23,72,560 (Rupees Eight Crores Twenty-Three Lakhs Seventy-Two Thousand Five Hundred Sixty) along with 18% interest. The Corporate Debtor on October 31, 2022 sent a reply to the demand notice ("Reply to Demand Notice") and raised baseless and frivolous grounds whereby twisting the actual facts of the case is as follows:

- xv. It is stated that the Corporate Debtor is in default and an amount of Rs.10,19,80,054 (Rupees Ten Crore Nineteen Lakh Eighty Thousand Fifty-Four) is payable to the Operational Creditor by the Corporate Debtor.

6. Submissions of the Corporate Debtor

- i. It is stated that Application has not been filed by an authorized person as prescribed under the law. The Affidavit of Sole Proprietor for the Application cannot bypass the fact that the Application ought to be have been filed under the name of Sole Proprietor and not in the name of Proprietorship Firm.
- ii. It is submitted that Corporate Debtor issued demand notice 19.10.2022 to Operational Creditor on basis of excess payment made to Operational Creditor of Rs. 1,43,95,438/-. The Operational Creditor, instead of replying to the same, as a counterblast, issued the fake, frivolous and fraudulent counter notice of demand on 21.10.2022 to Corporate Debtor under the IBC. It is submitted that the demand notice raised disputed issues between parties hence are liable to be adjudicated before appropriate forum/Court by leading evidence.
- iii. It is submitted that tax invoices and RAR's (Revenue accounting and reporting) as relied by Operational Creditor contains no signature of Corporate Debtor. The Corporate Debtor has not admitted the liability. That all tax invoices/RAR's, have been manufactured by Operational Creditor to manipulate, to play fraud, arbitrarily, without proving any calculations. It is the case of Corporate Debtor that Operational Creditor has failed to complete the work at sites and left the work in the middle.

Hence these invoices and RAR as relied by Operational Creditor are under dispute. The dispute need to be adjudicated before appropriate forum/court.

- iv. It is submitted that invoices raised by Operational Creditor overbilled an amount of Rs. 30.53 Lakhs for March, 2022. That the said amounts were directly paid to Vendors on Operational Creditor's request.
- v. It is submitted that the Operational Creditor has issued an Invoice in March, 2022 without any RAR, without giving information to Corporate debtor and without even doing the work. Operational Creditor has issued two Invoices for the same work and overbilled the first one, whereas work was done only up to the value of one Invoice, which amount to duplicity of the invoices.
- vi. It is submitted that the Operational Creditor failed to complete the work and targets as were given to it for the sites: - (a). VANIJYA BHAWAN, (b). DRDO and (c). IIT BOMBAY.
- vii. It is submitted that, there were unexplained delays in the work. Various communications were made between parties addressing the same.
- viii. It is submitted that since Operational Creditor left the work midway. The Corporate Debtor had to get the work done at the sites from other contractors at a higher rate. The Corporate Debtor was forced to float fresh work orders to another contractor at higher rates just to save its reputation before the department.
- ix. That for IIT BOMBAY the Corporate debtor had to get the work done from other contractors therefore, the invoice was raised by them for the

execution of works at Hostel site. It is submitted that for VANIJYA BHAWAN, the Operational Creditor demanded extra payment, which were the terms and conditions of the work order. It is submitted that for DRDO and IIT BOMBAY, the Operational Creditor didn't complete the work at site and left the work midway and till the date completion certificate of the said work has not been issued by the department or Corporate Debtor. That since there was no completion of work, Operational Creditor cannot raise demand for payment or Final Bills as per Clause 9 of work order.

- x. It is submitted that the work order clearly stipulates about the dispute resolution mechanism. The Operational Creditor ought to have taken steps for resolving the disputes through arbitration proceedings. The Applicant failed to do so, even when there was an existing dispute.
- xi. It is submitted that since Operational Creditor has breached the agreement, the Corporate Debtor has right to claim amount under Clause I Clause 1.5. It is submitted for DRDO and IIT BOMBAY, The Operational Creditor also failed to submit performance guarantee of the work order value till the date hence such act of Operational Creditor amounts to breach of the terms and conditions of the work order.
- xii. The Corporate Debtor has duly issued a demand notice prior to the issuance of Section 8 notice to the Operational Creditor.
- xiii. Operational Creditor has failed to show that there is an operational debt as per the Code. It is submitted that the debt arises when payment is due on the goods or services provided by one party to another, however in this case no proper goods or services were provided by Operational

Creditor in terms of work order. The bills/invoices raised are disputed and Operational Creditor has failed to prove its case.

7. **Analysis and Findings**

- i. We have heard the Ld. Counsel appearing for both parties and also perused the records.
- ii. Admittedly the Corporate Debtor had issued demand notice dated 19.10.2022 claiming Rs. 1,43,95,438/- and had also raised complaints for the services and incomplete work done by the Operational Creditor, before the statutory demand notice dated 21.10.2022 u/s 8 of the IB Code, 2016 was issued by the Operational Creditor. The Corporate Debtor had made communications to the Operational Creditor via letter dated 31 December 2020 for pending slow work and incomplete services much before the demand notice of the Operational Creditor. The Corporate Debtor had sent letter dated 10.02.2021 mentioning that the work is delayed. Hence, we find that there is a pre-existing dispute between the Parties.
- iii. As per **Section 10A** of the IBC, 2016 and the MCA Notifications dated 24.09.2020 and 22.12.2020, no application for CIRP may be filed for defaults occurring between 25.03.2020 to 24.03.2021. The invoices based on which the present Application has been filed are dated 06.11.2020, 27.11.2020 and 03.03.2021. Therefore, the present Application is barred by Section 10A of the IBC, 2016.
- iv. In the light of the abovementioned discussion, we are of the considered view that the instant Application is based on various invoices that were raised during the period excluded under Section 10A, the instant petition is liable to be dismissed.

8. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fails to fulfill the criteria laid down under Section 9 of the Code and therefore, is inadmissible. It is accordingly, hereby ordered as follows: -

- i. The Application bearing **IB-126/ND/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)