

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **30.10.2025** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/185(CHE)/2024
NAME OF THE PETITIONER(S) : SBI Capital Markets Ltd
NAME OF THE RESPONDENTS : Ramalingam Construction Company Pvt Ltd
UNDER SECTION : Sec 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Ms. Susmithaa for the Petitioner.

Ld. Counsel Shri. Sriraman for the Respondent.

Vide separate order pronounced in Open Court, petition is admitted.
CIRP is initiated against Ramalingam Construction Company Pvt Ltd.
Radhakrishnan Gopal is appointed as the IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Date: 30.10.2025

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/185/(CHE)/2024

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

In the matter of M/s. Ramalingam Construction Company Pvt. Ltd.

SBI Capital Markets Ltd.,

Represented by its Senior Vice President Mrs. Sudha

Radhakrishnan,

Having its Registered Office at:

No. 202, Maker Tower, E, 20th Floor,

Cuffe Parade, Colaba,

Mumbai-400 005

... Petitioner/Operational Creditor

Vs

Ramalingam Construction Company Pvt. Ltd.,

NR Tower, No. 175/2,

South State Bank Nagar,

Chettipalayam,

Erode,

Tamil Nadu-

638 002

... Respondent / Corporate Debtor

Present:

*For Petitioner : Ld. Counsels Pranava Charan M.G., Kathiravan N,
Vasuki P.K. and Sangeetha M*

For Respondent : Shri. AR. Ramanathan, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 30th October, 2025

ORDER
(Heard Through Hybrid Mode)

This petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 {"**IBC**"}) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by SBI Capital Markets Ltd. (hereinafter referred to as "**Petitioner / Operational Creditor**") against **Ramalingam Construction Company Pvt. Ltd.** (hereinafter referred to as ("**Respondent / Corporate Debtor**") for initiating Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor.

2. **Part-I** of the petition sets out the details of the Petitioner i.e. SBI Capital Markets Ltd. It has its Registered Office at No. 202, Maker Tower, E, 20th Floor, Cuffe Parade, Colaba, Mumbai-400 005 and also at 1501, A&B Wing, Parinee Crescenzo, G-Block Rd, G-Block BKC, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra-400051.

3. **Part-II** of the petition sets out the particulars of the Corporate Debtor i.e. Ramalingam Construction Company Pvt. Ltd. It was incorporated on 21.11.2008 with Authorised Capital of Rs.1,000,000,000/-- and Paid-up Share capital of Rs.1,000,000,000/-. Its Registered Office is at NR Tower, No. 175/2, South State Bank Nagar, Chettipalayam, Erode, Tamil Nadu- 638 002.

4. In **Part-III** of the petition, the Petitioner has not proposed the name of the Interim Resolution Professional.

5. **Part-IV** of the petition provides the particulars of the operational debt as Rs.3,39,84,000/-. The amount in default is stated as Rs.3,39,84,000/- along with interest accrued @ 12% per annum from 13.04.2023 and date of default is stated as 28.03.2023.

6. **Part-V** of the petition provides the operational debt and list of documents attached with the petition to prove the existence of operational debt and the amount in default.

List of documents enclosed are as under:

- a. Invoice dated 28.03.2023.
- b. Reply mail dated 19.09.2023 from Corporate Debtor to cancel the invoice.
- c. Legal Notice dated 14.02.2024 sent to Corporate Debtor.
- d. Reply to Legal Notice dated 25.03.2024 sent by Corporate Debtor.
- e. Rejoinder to reply dated 17.04.2024.
- f. Notice under Form 3 issued on Corporate debtor on 28.05.2024
- g. Reply to Form 3 Notice by Corporate Debtor on 08.07.2024

7. Submissions by petitioner

7.1. **Ramalingam Construction Company Pvt. Ltd. (RCCL)** (Corporate Debtor) engaged the **SBI Capital Markets Ltd (SCM)** (Petitioner) for providing M&A consultancy services to look for prospective buyers of their SPV. It is stated that the Petitioner approached various

parties, engaged in number of negotiations and ultimately found a prospective buyer. The Corporate Debtor also agreed to pay consultancy charges by 27th March, 2023. However, after the deal with the prospective buyer failed, the Corporate Debtor backed out and did not pay the consultancy charges, but insisted on finding further purchasers of the SPV.

7.2. It is stated that the petitioner in its email dated 16.10.2023 addressed to the Corporate Debtor, listed out the works performed by the petitioner based on the agreement for consultancy services entered into with the Corporate Debtor:

- a. Preparation of a detailed financial model & Information Memorandum of the Project for onward sharing with prospective Investors.
- b. SBICAPS initiated discussions with prospective Investors viz. Cube Highways (Cube), Adani Road Transport Ltd, Sekura Roads Pvt Ltd, NIIF, INDINFRAVIT, Maple Highways & others
- c. Based on multiple discussions with Investors, Cube showed interest in evaluating the asset acquisition proposal.
- d. SBICAPS assisted RCCL in preparing & sharing information for pre-investment due diligence by Cube.
- e. Multiple meetings/ site-visits/ discussions were held for the same, in person and through virtual mode.

- f. Post the initial due diligence, Cube submitted a draft Non-Binding Offer (NBO), on October 13, 2022, for acquisition of the road asset. Cube initially made an offer of Rs.145 Crore towards Equity Value of the asset, subject to detailed due diligence. SBICAPS assisted RCCL in negotiating the terms of NBO and improving the value offered by Cube. Subsequently, Cube improved the offer to Rs.160 crore and NBO was executed on November 21, 2022.
- g. Post the execution of NBO, Cube started the detailed due diligence (DD) process and appointed multiple external consultants for Financial, Tax, Legal, ESG, Technical Due Diligence & Traffic Study.
- h. SBICAPS was constantly in discussion with Cube and its consultants for providing all the requisite information in coordination with RCCL. SBICAPS also assisted the company in setting up a Virtual Data Room (VDR) for smooth flow of information.
- i. SBICAPS assisted the company management in several in-person meetings with Cube/ external consultants at their office in Bangalore, during the process of due diligence.
- j. SBICAPS officials assisted the external consultants during various site/ company visits made by them. Cube conducted an extensive due diligence process that went through several

rounds of discussions and extensive data sharing. SBICAPS assisted the company through the entire process.

k. Based on the progress of DD, on March 1, 2023, Cube requested company to initiate the following as part of the Condition Precedent ("CP") for the transaction:

-NOC under section 281 of Income Tax Act

-Approval for Change in Ownership from Lenders along with Refinancing Approval

-Approval for Change in Ownership from Authority

l. Further, on March 8, 2023, Cube shared draft Share Purchase Agreement (SPA) for comments of RCCL.

m. RCCL appointed M/s Saraf & Partners Law Office for vetting of the draft transaction documents shared by Cube.

7.3. The Addendum to the Letter of Offer was signed by both the parties on 24.03.2023. The addendum clearly laid out the intention of the parties to pay the Advisory fees either on signing of Share Purchase Agreement or March 27, 2023 whichever is earlier. The term "whichever is earlier" is significant and further the addendum also crystallised the advisory fee payable by stating that the total consideration would be Rs. 160 crores.

7.4. In the case of **Bangalore Electricity Supply Company Limited Vs. E.S. Solar Power Pvt. Ltd. and Ors. [(2021) 6 SCC 718]** it was held:

"16. The duty of the Court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say v. Seth Takhatmal and Anr. expressed intentions (Smt. Kamala Devi MANU/SC/0300/1963 : 1964 (2) SCR 152). In seeking to construe a Clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that Clause is ambiguous, and that it has two possible meanings."

7.5. The terms of the contract should be read in simple meaning of the language used and the addendum to the letter of offer clearly states signing of Share Purchase Agreement or March 27, 2023, whichever is earlier. Therefore, Respondent is liable to pay Rs. 3,39,84,000 inclusive of GST i.e. 2% of Equity Value Rs. 160 crores as per the Addendum Letter of Offer. The Value of Rs. 160 crore was crystallised when the parties entered into the Addendum and the Respondent could not contradict its obligations in the Letter of Offer. The Corporate Debtor did not deny the execution of the addendum as well. Therefore, it is deemed that it is binding on the parties.

7.6. It is stated that the letter of offer and its addendum are deemed to be an enforceable contract satisfying all the requisites under the Contract Act. Further it is stated that CD has entered into the letter of

offer and addendum with free consent and without any coercion. There is no existence of disputes between the parties. It is stated that mere replying to demand notice did not show existence of dispute It is stated that, the pleading of respondent about existence of dispute is denied and it is merely spurious and illusory dispute.

7.7. It is stated that respondent breached the terms of contract by defaulting payment in the invoice raised by the petitioner. It is stated that when the Respondent failed to fulfil its obligation as per the Letter of Offer dated 24.03.2024 by not making payment to the Petitioner for the services, having reciprocal promises, the Respondent can not claim that Petitioner breached the contract. The Respondent by defaulting its payment failed to perform its promise and can not plead that Petitioner breached the contract. The Respondent can not be permitted to avail the benefit of the letter of offer by compelling the Petitioner to find a prospective purchaser as the Respondent is denying the contract as signed without free consent and induced. The Respondent had to take a proper stand of whether they are accepting the validity of contract or denying it.

7.8. The Hon'ble Apex Court in case of **Union of India (UOI) and Ors. vs. N. Murugesan and Ors MANU/SC/0809/2021** has held;

27.A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped

from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This Rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience”

7.9. It is stated that for the reasons aforesaid the Respondent defaulted in its payment towards the Operational Creditor/Petitioner and the Tribunal may be pleased to admit the present Petition.

8. Response by Respondents

8.1. The respondent had floated two Special Purpose Vehicles. The respondent wanted to sell the majority shareholding in these SPVs. The Petitioner offered to provide consultancy services for the aforesaid sale of the respondent's majority shareholding vide Offer Letter for providing M& A Advisory Services dated 01.08.2022. The Offer Letter was notionally accepted by the respondent on 19.09.2022 subject to the scope of services being fulfilled, which inter-alia included execution of Share Purchase Agreement with successful purchaser.

8.2. It is stated that the respondent paid an inception fee of Rs 10 lakhs + GST as "one time commitment fee" on 23.11.2022 to the Petitioner and the Petitioner introduced **Cube Highways & Infrastructure V Pte Ltd.**, as proposed purchaser. Thereafter after

negotiations, the proposed purchaser M/s Cube Highways & Infrastructure V Pte Ltd., ["Cube Highways"] entered into a **non-binding offer** dt 21.11.2022 for SPV I for an amount of **Rs. 160 crores** with the Respondent and they also promised that the whole transaction would be completed within a few days of the non-binding offer, i.e. within a few days from 21.11.2022. The petitioner induced the Respondent by the said non-binding offer and forced the Respondent to sign an addendum to the letter of offer on 24.03.2023.

8.3. The petitioner after inducing the respondent to sign the addendum , unilaterally raised an invoice dated 28.03.2023 for a sum of Rs.3,39,84,000/- comprising of 90% of the alleged advisory fee of Rs.3.20 crores, i.e., Rs.2.88 crores plus 18% GST (Rs.51.84 lakhs). It is stated that the advisory fee was fixed at 2% of the sale consideration and the petitioner calculated 2% on Rs. 160 crores i.e., non-binding offer by Cube Highways amounting to Rs.3.20 crores. It was in huge haste, the Petitioner raised an invoice, without even working to complete the closure of the deal culminating in signing of Share Purchase Agreement and the Respondent receiving sale consideration from Cube Highway. The Respondent has not received any money leave alone Rs 160 crore, as the deal did not materialize.

8.4. It is stated that on the failure of the petitioner to pursue the deal further, M/s Cube Highways did not evince any further interest and the proposed transaction failed on 14.06.2023. In result, the petitioner did not identify any prospective purchaser who could complete the

deal and take over the Special Purpose Vehicle of the Respondent. The Respondent sent an email dated 19.09.2023 requesting to cancel the said invoice.

8.5. It is stated that the Petitioner sent a Legal Notice dated 14.02.2024 for recovery of a sum of Rs.3.39 crores, claimed allegedly towards 90% of the advisory fee upon 2% of the aborted non-binding offer of Rs. 160 crores made by Cube Highways (Rs 3.2 Crores) along with GST at 18%. The Respondent through its counsel sent a detailed reply dated 25.03.2024, inter alia, disputing and denying the alleged claim made by the Petitioner.

8.6. It is stated that the petitioner issued Form 3 Notice on 28.5.2024 under the IBC. The respondent sent a detailed reply dated 08.07.2024, inter alia, stating that no Share Purchase Agreement was signed and as such no claim had arisen for them to make payment and in any event since the petitioner has not fulfilled its obligations, it is not entitled to the amount claimed in Form 3.

8.7. It is stated that the petitioner without completing the services to the respondent as obligated under the Offer letter dated 19.09.22, claimed the alleged operational dues of Rs.3.39 Crores. The respondent paid "one time commitment fee" of Rs.10 Lakhs as an inception fee, as mentioned in the offer letter. With respect to the advisory fees, it was originally calculated on the basis of the equity value and considering that there existed no equity value (no consideration received by the Respondent), since the entire deal fell

through, the claim of the Petitioner did not exist. Even assuming that the addendum to the offer letter mentioned that the payment to be made on signing of share purchase agreement i.e. 90% of the advisory fee, the rest 10% of the advisory fee was still to be calculated and to be paid only when the equity share consideration came to the hands of the respondent. When the prospective purchaser failed to close the deal and the Respondent not having received any money from the said Share Purchase Agreement, the Petitioner can not claim the same. The tabular column with respect to the advisory fee in the addendum to the offer letter dated 24.03.2023 should be read as whole and not in part.

8.8. It is stated that there was no final term sheet or Share Purchase Agreement entered into between the Respondent and the Prospective Purchaser. Hence no part of the advisory fee became due to the Petitioner. The payment was only to be made when the closure of the transaction is completed and it could not be before the closure. The Petitioner has not performed as per the scope, hence, is not entitled to the advisory fee of Rs. 3.39 crores.

8.9. Following are the grounds taken by the respondent:

(I) Amount claimed is non-est and there is no debt / operational debt or default.

(II) Form 5 is not maintainable as pre-existing disputes and denial have been more than sufficiently communicated much before to the Petitioner;

(III) No claim can be made without the Petitioner performing/ fulfilling its services as per scope of work and such claim is prohibited inter-alia under Sec 54 of Contract Act, 1872;

(IV) Identification of Prospective Purchaser is must

(V) Respondent is in a sound financial position

(VI) No Cause of Action

8.10. Hon'ble Supreme Court dated 15.07.2022 in **M/s. S. S. Engineers Vs. Hindustan Petroleum Corporation Limited** has categorically held in Para Nos. 30 & 31 that the Court cannot adjudicate whether there exists a dispute between the parties and determine whether any amount was due from the Appellant to the Respondents or vice-versa. The Hon'ble Apex court in the very same judgment held that the NCLT cannot be a debt collection forum and that Companies cannot be penalized for non-payment of disputed dues.

8.11. **In the reply to the demand notice** it was stated that the said agreement (Addendum) was signed on the representation that the transaction between respondent and M/s. Cube Highways would be closed for the amount agreed in the non-binding offer. The delay in closing the deal and further communication in that aspect -reflected the real intention behind the acceptance of addendum. Finally, the

transaction failed on 14.06.2023 where the proposed purchaser declared that they would not go by the rate accepted in the non-binding offer and respondent had no other option but to disagree with the same as the difference was huge and unreasonable.

8.12. It is stated that **petitioner was requested to cancel the invoice which was raised on 28.03.2023 for the purpose of inflating the turnover** and also informed that the GST amount paid by petitioner was not claimed by respondent. It is stated that the said mail dated 19.09.2023 was given pursuant to the discussion with petitioner and also for the reason, the invoice was pending for quite a long time and about to reach maximum time for availing input credit.

8.13. **It is further stated that acceptance to the addendum to the offer was only on misrepresentation and further the value of transaction was also uncertain.** It is stated that on the date of invoice there was no binding agreement for the proposed amount nor share purchase agreement was signed by both parties. The act of M/s. Cube Highways was not acceptable as the decision to reduce the offer was after the draft share purchase agreement.

8.14. It is stated that in the present case, when the dues were heavily disputed and also communicated to the petitioner in every stage, the **Form 5** does not have any legs to stand.

9. Analysis and findings

9.1. Heard the submissions of the parties and perused the pleadings, documents submitted and written submissions placed on record.

9.2. It is seen that the Corporate Debtor had engaged the petitioner for providing M&A consultancy services to look for prospective buyers of their SPVs, based on which the petitioner approached various parties, engaged in number of negotiations and ultimately found a prospective buyer. Based on the **offer letter dated 01.08.2022 accepted by CD on 19.09.2022** and addendum dated 24.03.2023, the petitioner raised a Tax Invoice dated 28.03.2023 for Rs. 3,39,84,000/- which has not been paid by the Corporate Debtor . Section 9 of IBC has been filed on the basis of the default of the Corporate Debtor to pay this amount.

9.3. **Dates and Events chart** is appended below:

SL No	Date	Event
1	19.09.2022	Offer Letter of OC to CD for providing M&A Advisory services dated 01 st August 2022 to sell majority stake in the SPVs accepted by CD on 19.09.2022: i) Yelahanka AP Border Tollways Pvt Ltd ii) RCCL Expressway Pvt Ltd- a JV.
2	22.11.2022	Terms sheet for proposed acquisition

		executed between CD and Cube Highways and Infrastructure V Pte. Ltd.
3	24.11.2022	Inception fees of Rs.10 lakhs+ tax paid by CD
4	24.03.2023	Addendum to Letter of Offer signed by both parties
5	28.03.2023	Tax Invoice for Rs. 3,39,84,000 raised by OC on CD
6	14.06.2023	Transaction between CD and Cube Highways failed.
7	19.09.2023	E-mail sent by CD to OC to cancel the invoice
8	16.10.2023	Detailed email sent by OC to CD listing out various activities carried out by OC and how the invoice is justified.
9	14.02.2024	Legal notice sent by OC to CD
10	25.03.2024	Reply legal notice by CD
11	17.04.2024	Rejoinder legal notice sent by OC
12	28.05.2024	Notice under Form 3 of IBC sent to CD by OC
13	08.07.2024	Reply by OC to Demand Notice.
14	22.07.2024	Petition under Section 9 filed

9.4. It is observed that on 22.11.2022 a term sheet for a *non-binding offer* was signed between Cube Highways and Infrastructure V Pte. Ltd (a prospective buyer identified by petitioner) and the Corporate Debtor. Based on the term sheet, Cube Highways started the Due Diligence for the acquisition of SPV. Total consideration for the proposed transaction was Rs.160 crore. The agreement provided that buyer should endeavour to complete the due diligence within 90 days and execute definitive agreements on receipt of all information from seller. The agreement also provided that the closing should be achieved not later than March 31, 2023. (Page 54 of the Petition typeset.)

9.5. Payment terms as per the original contract dated 19.09.2022 regarding Advisory fees were as under:

Advisory Fees: The Advisory Fees payable to SBICAP towards the Services will be charged @2.00% *only of the equity value.

The Advisory Fees shall be payable as per the following schedule:

SL No	Milestone	Milestone Fees
1	Acceptance of Final Term Sheet	25% of the Advisory Fees
2	Signing of Share Purchase	55% of the

	Agreement	Advisory Fees
3	Release of first tranche of Funds	20% of the Advisory Fees

*In case the Investor(s) provides more than Rs.250 crore as the Total Equity Value of YAPBTPL, then fees payable will be 2.25% on Equity Value beyond Rs.250 crore.

The Advisory fee is a composite whole, and the break-up shown above is only for the purpose of convenience. In the event. any milestone is skipped/an activity is not required the amount indicated against the said milestone will be payable along with the immediately succeeding milestone or as may be advised by SBICAP. The above fee is exclusive of applicable taxes. The Fees paid by the Client are non-refundable.

9.6. On 24.03.2023, an **addendum to offer letter** dated 19.09.2022 was executed between the Operational Creditor and Corporate Debtor, mainly amending the Clause 2 of the offer i.e. Fee structure. The

amended Clause 2 as mentioned in Page 43 and 44 of Petition is reproduced as under:

In consideration of the Scope of Services mentioned, the Transaction Advisory Fee payable by the Client to SBICAP will be charged at 2.00% only of the Equity value.#

The Advisory fee shall be payable as per the following schedule:

a) Inception Fees: One Time Commitment Fees of Rs.10 Lakh (Rupees 10 Lakh only) payable at the time of acceptance of Offer Letter.

The Inception fees shall be adjusted against fees payable for the first milestone under Advisory Fees (Clause (b) (II) - Release of first tranche of Funds).

b) Advisory Fees: The Advisory Fees payable to SBICAP towards the Services will be charged @ 2.00% *only of the equity value.#

The Advisory Fee shall be payable as per the following schedule:

Sl No	Milestone	Milestone fees
1	Signing of Share purchase agreement or March 27,2023 whichever is earlier.	90% of Advisory fees
2	Release of First tranche of funds	10% of advisory fees

* In case the Investor(s) provides more than Rs.250 crore as the Total Equity Value of YAPBTPL, then fees payable will be 2.25% on Equity Value beyond Rs.250 crore.

#As per accepted Term Sheet for proposed Acquisition of Road Concession, the Total Consideration amount is INR 160 Crore.

Any change in the Total Consideration amount resulting into change in Total fees payable, shall be adjusted against the final

milestone under Advisory Fees (Clause (b) (11) Release of first tranche of Funds)

9.7. On 28.03.2023, a tax Invoice for Rs. 3,39,84,000 was raised by Operational Creditor on Corporate Debtor based on the addendum dated 24.03.2023 and the same was not paid by the Corporate Debtor.

9.8. On 14.06.2023, **the deal** between Corporate Debtor and Cube Highways **fell through** due to valuation difference between the parties.

9.9. On 19.09.2023, Corporate Debtor sent an e-mail request for cancellation of invoice, as the deal with Cube Highways did not fructify. After that there were exchange of mails, legal notice and reply to legal notice between the parties. Form 3 under IBC was issued by Operational Creditor on 28.05.2024 and the Corporate Debtor replied the same on 08.07.2024.

9.10. **Operational Creditor contends** that it raised the invoice based on the addendum signed between the parties on 24.03.2023, signing of which is not denied by the Corporate Debtor. The addendum provides for milestone payment of 90% of Advisory fees on **“Signing of Share purchase agreement or March 27, 2023 whichever is earlier”**. It raised the invoice on 28th March 2023 stating that it is eligible to raise invoice based on ‘whichever is earlier’ clause. It is

stated that as per offer letter, the transaction is undertaken by Operational Creditor on *best effort basis*. The relevant portion as mentioned in the offer letter para 1.2. (ii) is reproduced below:

“This Transaction is being undertaken only on a ‘best effort basis’ and would depend upon the willingness, reputation and financial strength of the Client, Project structure, prevailing market conditions and capacity, other relevant conditions etc. that may affect the execution of this Transaction”.

9.11. Operational Creditor states that it had taken all efforts for culmination of the deal. Operational creditor vide its email dated 16.10.2023 listed out all the activities carried out by it to fulfil its commitment towards the M&A agreement.

Dispute raised by Corporate Debtor

9.12. Corporate Debtor contends that the Operational Creditor after inducing the respondent to sign the addendum , unilaterally raised an invoice dated 28.03.2023 for a sum of Rs.3,39,84,000/- comprising of 90% of the alleged advisory fee of Rs.3.20 crores i.e., Rs.2.88 crores plus 18% GST (Rs.51.84 lakhs). It is stated that it was in huge haste the petitioner raised the invoice, without even working for to complete the closure of the deal culminating in signing of Share Purchase Agreement and the Respondent receiving sale consideration from Cube Highway. It is stated that Respondent did

not receive any money, leave alone Rs 160 crore, as the deal did not materialize.

9.13. It is further stated that the petitioner without completing the services to the Respondent as obligated under the Offer letter dated 19.09.22, claimed the alleged operational dues of Rs.3.39 Crores. Since the entire deal fell through, considering that there exists no equity value (no consideration received by the Respondent), the claim of the Petitioner did not exist. Even assuming that the addendum to the offer letter mentioned that the payment to be made on signing of share purchase agreement i.e. 90% of the advisory fee, the rest 10% of the advisory fee was still to be calculated and paid only when the equity share consideration came into the hands of the respondent. The prospective purchaser failed to close the deal and the Respondent did not receive any money from the said Share Purchase Agreement. Hence the petitioner can not claim the same. The tabular column with respect to the advisory fee in the addendum to the offer letter dated 24.03.2023 should be read as whole and not in part.

Our analysis

9.14. It is observed that the *entire dispute revolves around the interpretation of the terms of the 'Fees structure' as mentioned in the Offer letter followed by the addendum.*

9.15. The Hon'ble Supreme Court in the case of *Annaya Kocha Shetty (Dead) through Lrs Vs Laxmibai Narayan Satose since deceased through Lrs & Others (Civil Appeal No.84 Of 2019)* has formulated the following guide to the construction of deeds;

“17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:

17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.

17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.

17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.”

9.16. It is observed that the terms used in the offer letter and addendum are the normal terms used in any commercial contract and hence they are to be interpreted in its plain, ordinary and literal meaning.

9.17. Issue to be decided is ‘Whether the invoice raised by the petitioner is legally tenable and whether dispute raised by Corporate Debtor is pre-existing dispute or a genuine dispute or a moonshine defence?’

9.18. It is observed that the payment terms were amended in the addendum dated 24.03.2023 as follows:

Sl No	Milestone	Milestone fees
1	Signing of Share purchase agreement or March 27, 2023 whichever is earlier.	90% of Advisory fees
2	Release of First tranche of funds	10% of advisory fees

9.19. Based on the addendum, invoice was raised by Operational Creditor on 28.03.2023. It is observed that Operational Creditor relied on the clause “ **Signing of Share purchase agreement or March 27, 2023 whichever is earlier**” to raise the invoice for milestone payment of 90% of Advisory fees, as the milestone of 27.03.2023 has been achieved.

9.20. Per contra the Corporate Debtor contends that:

- i) ‘The tabular column with respect to the advisory fee in the addendum to the offer letter dated 24.03.2023 should be read as whole and not in part’.

- ii) The Transaction Advisory Fee payable by the Client to SBICAP will be charged at 2.00% only of the Equity value.
- iii) Since the deal failed, respondent did not receive any money and there is no 'Equity Value' of Rs.160 crore as no money was received as provided in the addendum.

9.21. It is observed that on the date of raising of invoice, the deal was still there. The deal fell through only on 14.06.2023 as there was no consensus on the valuation of the SPV.

9.22. As per the terms of the offer letter dated 22.11.2022, any bill raised has to be paid within 15 days by the respondent. The relevant clause of the offer letter is reproduced below:

2.4 Payment

(1) The Advisor's bills/claims for fees shall be sent to the designated official of the Client as intimated by the Client and the Client shall make payment within a period of 15 days of the date of the bill/claim.

If the payment is not received within due date, the Advisor reserves the right to initiate appropriate actions to safe guard its interest. All fees paid to the Advisor are non-refundable.

9.23. As per the above terms , the *due date of payment* would be 12.04.2023 as the invoice was raised on 28.03.2023. The deal with Cube Highways fell through only on 14.06.2023. The Corporate

Debtor relies on an incident which happened subsequently on 14.06.2023, for non-payment of invoice which as per contract became payable on 12.04.2023.

9.24. If we examine the addendum terms which were signed on 24.03.2023, we observe that addendum provides that payment of 90% of advisory fees becomes due on signing of the Share Purchase Agreement or 27th March 2023 **whichever is earlier**. Further 'equity value' for calculation of advisory fees is defined as "As per accepted Term Sheet for proposed Acquisition of Road Concession, the Total Consideration amount is **INR 160 Crore**'.

9.25. The answer to the questions as to whether the operational creditor can raise the invoice for 90% of advisory fees based on the addendum and whether there is a default committed by the Corporate Debtor **is affirmative based on the above facts**. The invoice raised by the Operational Creditor is legally tenable.

Whether the dispute raised by Corporate Debtor is a pre-existing dispute or a genuine dispute or a moonshine defence?

9.26. **Section 5(6) of IBC** which defines the term 'dispute' is reproduced herein below-

"dispute includes a suit or arbitration proceedings relating to-

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty.”

9.27. In **Mobilox Innovations v. Kirusa Software Pvt. Ltd.**, [\(2017\) ibclaw.in 01 SC](#) , Hon’ble Supreme Court has elaborately dealt with dispute as under:

“It is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.”

9.28. Australian Court in the case of **Greenwood Manor Pty Ltd v Woodlock (1994) 48 FCR 229**, wherein the Federal Court of Australia explained what a **“genuine dispute”** means in legal terms. The Court noted that for a dispute **to be considered “genuine,” it must be real** and not just made up to delay or avoid payment.

9.29. The Court stated that the dispute must actually exist in fact and be based on real grounds — not something imaginary, baseless, or purely technical. The court held that,

- *The dispute should have prima facie bona fide and exists naturally in a given fact;*
- *The grounds for alleging the existence of a dispute should not be spurious, hypothetical, illusory or misconceived;*
- *The existence of a dispute need not require further to be proved;*
- *The dispute should be natural and not a made to believe dispute.*

9.30. **The breach of contract** covers not only the terms and conditions or agreed upon points; it covers quality issues, not meeting the specifications, non-delivery within the timeframe, non-compliance of purchase order conditions as Purchase order per se is a contract, etc. Thus, any non-compliance of an agreement or any other document which can be placed as agreement under the law results in dispute and being expressed prior to the receipt of demand notice, it becomes a pre-existing dispute.

9.31. The “**moonshine defense**” refers to situations where corporate debtors raise false, illusory, or sham disputes to avoid or delay admission of insolvency applications especially under [Section 9](#), which pertains to operational creditors.

9.32. Hon’ble Supreme Court in *Mobilox case (supra)* further elaborates about disputes being raised as below:

40. 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 defence 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.”

9.33. In light of the above legal provisions , we have to examine the dispute raised by the Corporate Debtor.

9.34. The Corporate Debtor maintained that as the deal with Cube Highways fell through in June 2023, it would not pay the invoice raised on March 2023. It is observed that the invoice was raised on reaching the stipulated milestone in compliance with the terms of the addendum signed by the Corporate Debtor and Operational Creditor. Further, it is observed that Operational Creditor, as per the offer letter, had to carry out the transaction on a best effort basis. The deal with Cube Highways fell through due to valuation differences. So the ground raised by the Corporate Debtor for non-payment of invoice is not on the basis of the terms of the offer letter and addendum signed by both the parties. As per Section 5 (6) of IBC dispute can be raised on (a) the existence of the amount of debt; or (b) the quality of goods or service; or (c) the breach of a representation or warranty." The Corporate Debtor has not produced any material to show that there is breach of warranty or representation. *The dispute raised by Corporate Debtor does not fit in any of the above parameters. The dispute raised seems to be extraneous and misconceived and not as per the terms agreed.* Hence the dispute raised by the Corporate Debtor for non- payment of invoice appears to be not a genuine dispute but a moonshine defence.

10. Conclusion

10.1. IBC aims to maintain balance between creditor's rights and corporate protection. For a section 9 petition under IBC filed by Operational Creditor, a **test of Four Ds** has to be applied. The four Ds are Debt, Due, Default and Dispute. Let us examine each of them:

a) **Debt:** The invoice dated 28.03.2023 raised by the Operational Creditor on Corporate Debtor based on accepted offer letter and addendum constitutes a valid debt.

b) **Due:** As per the offer letter, any invoice raised should be paid within fifteen days. In the current case, 15 days ended on 12.04.2025 and from that date, debt became due.

c) **Default:** The debt due as mentioned above has not been paid by the Corporate Debtor and hence there is default.

d) **Dispute:** Dispute raised should be a pre-existing dispute and the dispute should be a genuine dispute and not a moonshine defence. In the present case even though dispute is a pre-existing dispute but it is not a genuine dispute. It is only a moonshine dispute as explained earlier.

10.02 In view of the above, the Section 9 Petition filed by the Operational creditor against the Corporate Debtor is allowed. **Ramalingam Construction Company Limited, the Corporate Debtor is admitted to Corporate Insolvency Resolution Process.**

10.03. Directions for appointment of IRP as below:

i) For the foregoing reasons, we admit the petition, initiating CIRP against the Corporate Debtor **Ramalingam Construction Company Limited**.

ii) The Operational Creditor has not proposed any name for the appointment of Interim Resolution Professional (“IRP”). We therefore appoint **Mr. Radhakrishnan Gopal, with IBBI registration IBBI/IPA-001/IP-P-02650/2022-2023/14070 e-mail ID: gopal.radhakrishnan.yahoo.com** as the Interim Resolution Professional from the List of Panel Resolution Professionals where the Authorization for Assignment is valid till 31.12.2025. The IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Guarantor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

iii) The Operational Creditor is directed to pay a sum of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** to the Interim Resolution Professional to meet out the expenses and to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of

India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

iv) As a consequence of the petition being **admitted** in terms of Section 9 of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

v) However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Guarantor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not

be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

vi) The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have

effect from the date of such approval or Liquidation Order, as the case may be.

vii) Based on the above terms, the petition **CP(IB)/185(CHE)/2024** stands **admitted** in terms of Section 9 of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order be also forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)