

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins) No. 1155 of 2024**  
**& I.A. No. 4134, 4135, 4136 of 2024**

**(Arising out of the Order dated 26.04.2024 passed by the National Company Law Tribunal, Division Bench, Court No II, Kolkata in Company Petition (IB) No 2/KB/2021)**

**IN THE MATTER OF:**

**Ahluwalia Contracts (India) Limited**

Office At : A-177, Okhla Industrial Area Phase-I,  
New Delhi-110020

**...Appellant**

**Versus**

**Shristi Infrastructure Development Corporation Limited**

Plot No X-1,2 & 3, Block- EP, Sector-V, Salt Lake  
City, K.olkata-700091  
West Bengal

**...Respondent**

**Present**

**For Appellant:**

Mr. Anil K. Airi, Sr. Advocate along with Mr. Sunil Mund, Mr. Abhishek Taneja, Mr. Mritunjya K. Singh, Mr. Jagjeet Singh, Mr. Vedant Mund & Mr. Uttkarsh Gupta.

**For Respondent:**

Mr. Rishav Banerjee, Ms. Anoushka Dey & Ms. Prerna Shaha, Advocates

**J U D G E M E N T**

**(04 .09.2025)**

**NARESH SALECHA, MEMBER (TECHNICAL)**

1. The present appeal has been filed by the Appellant i.e. Ahluwalia Contracts (India) Ltd. under Section 61 of the Insolvency and Bankruptcy Code, 2016

(‘**Code**’) against the Impugned Order dated 26.04.2024 passed by the National Company Law Tribunal, Division Bench, Court No II, Kolkata (‘**Adjudicating Authority**’) in Company Petition (IB) No 2/KB/2021.

Shristi Infrastructure Development Corporation Limited, who is the Corporate Debtor, is the Respondent herein.

2. The Appellant submitted that on 25.04.2012, it entered into an agreement with the Respondent based on a letter of acceptance dated 07.02.2012, for executing balance civil works for piling, RCC basement, superstructure, and associated works for a Five Star Hotel in New Town at Rajarhat, with a contract value of Rs. 85,00,00,000/-. The Appellant contended that it accepted the work relying on the Respondent's assurances of timely payments, and that under Clause 60.11 of the General Conditions of Contract, the Respondent was obligated to pay the final bill within 75 days of submission.

3. The Appellant submitted that the work was successfully completed on 31.08.2015 within the stipulated extended time, to the satisfaction of the Respondent. The Appellant further submitted that it submitted the final bill for Rs. 3,61,18,255/- on 13.07.2016, and that the Respondent issued a completion certificate dated 07.11.2016, certifying completion on 31.08.2015 without any mention of delay or liquidated damages.

4. The Appellant contended that more than one year after the completion certificate, on 13.11.2017, the Respondent certified the total work value at Rs. 91,70,78,214/- excluding security deposit and held amounts. The Appellant

submitted that from August 2015 to August 2017 (defect liability period), it rectified all defects and deficiencies pointed out by the Respondent.

5. The Appellant submitted that despite repeated reminders and meetings with the Respondent's officials for release of balance dues, no payments were made. The Appellant further submitted that on 25.03.2019, the Respondent released the security deposit of Rs. 2,90,04,920/- and discharged the Appellant's bank guarantee.

6. The Appellant contended that, as an afterthought nearly four years after completion and final bill submission, the Respondent's agent (Currie & Browne (India) Limited) demanded a letter of Extension of Time (EOT) via email dated 18.07.2019, despite the issuance of the completion certificate without reference to delay or liquidated damages. The Appellant submitted that in response, vide letter dated 25.07.2019, it explained that such demand was uncalled for, as the extension was deemed granted by the completion certificate, and levy of liquidated damages was untenable; however it submitted the EOT letter attributing delays to the Respondent and demanded release of Rs. 4,13,76,946/-.

7. The Appellant contended that the Respondent unambiguously admitted liability vide letter dated 19.06.2020, confirming a payable amount of Rs. 2,87,44,710/- and stating that non-confirmation within 15 days would treat the balance as correct. The Appellant submitted that, as the total outstanding was Rs. 3,62,67,257/-, it clarified this aspect vide letter dated 30.06.2020, requesting

correction in the Respondent's books and warning of legal remedies if payments were delayed further.

**8.** The Appellant contended that due to the Respondent's failure to pay the operational debt despite demands, it issued a demand notice under Section 8 of the Code dated 26.09.2020. The Appellant submitted that the Respondent's reply dated 08.10.2020 was evasive and attempted to deny its prior admission of liability to Rs. 2,87,44,710/- and certification of work value.

**9.** The Appellant submitted that, in view of the Respondent's clear admission of liability on 19.06.2020, the Adjudicating Authority's view of pre-existing disputes based on prior communications is unjust and untenable. The Appellant further contended that the Respondent's levy of liquidated damages four years after completion and issuance of the completion certificate is frivolous, illusory, and an afterthought to concoct a defense.

**10.** The Appellant submitted that the Adjudicating Authority failed to consider the acknowledgment of debt dated 19.06.2020 admitting Rs. 2,87,44,710/-. The Appellant contended that this unilateral balance confirmation letter reflects the Respondent's own books and being undisputed, negates any pre-existing dispute; non-payment thereof suffices to allow the Section 9 petition.

**11.** Concluding its arguments, the Appellant request this Appellate Tribunal to set aside the Impugned order and to allow this appeal.

**12.** Per contra, the Respondent denied all the averments made by the Appellant as misleading and baseless.

**13.** The Respondent contended that it is settled law that a specific authorisation is required to initiate the Corporate Insolvency Resolution Process (CIRP) against the Respondent, and in absence of a specific authorisation, the CIRP cannot be initiated against the Respondent. The Respondent submitted that, in the instant case at hand, the Appellant has not disclosed a truly specific authorisation authorising Mr. Jagjeet Singh to file this Appeal to dismiss the impugned order and initiate CIRP against the Respondent herein, and on this ground alone this instant application/Application is liable to be dismissed.

**14.** The Respondent submitted that the purported demand notice dated 26.09.2020 issued by the Appellant is not in accordance with the Rules and Regulations framed under the Code and the Appeal is therefore liable to be dismissed.

**15.** The Respondent submitted that it replied vide letter dated 08.10.2020 to the demand notice dated 26.09.2020 to the Appellant.

**16.** The Respondent asserted that the Appellant caused significant and unwarranted delays in fulfilling its contractual obligations to complete specified construction works to the Respondent's full satisfaction within the stipulated timeframe, ensuring a defect-free outcome. It is also case of the Respondent that the Appellant caused numerous defects in the executed works, which were promptly and thoroughly communicated to the Appellant from time to time vide several e-mails. On several instances, the Appellant neglected to address these defects adequately, compelling the Respondent to hire external contractors for

rectification at additional cost. Furthermore, the Appellant repeatedly failed to provide essential documents in a timely and thorough manner to both the Respondent and the third-party cost evaluators, Currie & Brown (India) Limited, responsible for overseeing project expenses for the hotel complex, despite multiple email reminders aimed at verifying the Appellant's claimed final bill.

**17.** The Respondent highlighted the presence of numerous pre-existing disputes between the parties, which were duly notified to the Appellant well before receiving the demand notice.

**18.** The Respondent contended that the Letter of Acceptance, forming a constituent part of the Contract, stipulated that the work commencement date was 1st March, 2012, and paragraph numbered 1 of the Addendum/Corrigendum No. 2 specified that “the 12th month from 1st March, 2012, i.e., March 2013, shall be considered for the completion of all activities/entire works.” The Respondent submitted that the Appellant and the Respondent had expressly agreed that time was of the essence of the contract, and the Appellant was liable to pay Liquidated Damages to the Respondent in the event of failure or delay in completing the work within the timeframe fixed by the Contract. The Respondent submitted that this delay constituted a breach of the contractual terms, rendering the Appellant liable for liquidated damages as specified in the contract.

**19.** The Respondent submitted that the contract value was Rs. 95,98,44,943. The Respondent contended that it was contractually incumbent on the Appellant to rectify any and all defects or defect liabilities present in the works and

structures during the Defect Liability Period following the completion of the works to the Respondent's satisfaction. The Respondent further submitted that the Appellant's failure to rectify such defects within a reasonable time necessitated the Respondent to take all necessary steps to have the defects rectified at the Appellant's cost and expense.

**20.** The Respondent submitted that it issued a conditional and limited completion certificate on 07.11.2016, purely out of commercial courtesy following repeated requests by the Appellant. The Respondent contended that the certificate explicitly stipulated that the work commenced on the effective contract date of 01.03.2012 and was completed by the Appellant only on 31.08.2015. The Respondent further submitted that the completion certificate was issued subject to, inter alia, the Appellant's obligation to rectify all defects in the completed work to the Respondent's satisfaction within the Defect Liability Period commencing after the prima facie completion of the works.

**21.** The Respondent contended that the Appellant performed substandard work requiring rectification of multiple defects to meet the contractually contemplated standards and/or industry standards. The Respondent submitted that it discovered such defects and duly communicated them to the Appellant via multiple emails, some issued prior to the prima facie completion of the works on 31.08.2015 and others during the Defect Liability Period. The Respondent further submitted that it provided an indicative list of correspondence through which

these defects in the works performed or prima facie completed by the Appellant were diligently communicated to the Appellant, requiring rectification.

22. The Respondent contended that the Appellant has sufficient notice of all pre-existing disputes concerning the quality of the finished works, being the recipient of all relevant correspondence issued by the Respondent. The Respondent contended that the Appellant failed to rectify a number of defects, duly notified by the Respondent, and explicitly admitted its inability to comply with contractual obligations to rectify these defects during the Defect Liability Period, as evidenced in emailed replies to the Respondent's requests. The Respondent submitted that the Appellant's admitted failure and inability to rectify multiple defects, combined with its failure to address other issues to the Respondent's satisfaction, caused inordinate delays in achieving meaningful completion of the contracted works.

23. The Respondent contended that the Appellant's purported "Final Bill" for July 2016 was submitted before the Defect Liability Period ended, during which the Appellant admittedly failed to rectify defects, compelling the Respondent to incur considerable costs for rectification, which the Appellant was contractually liable to bear. The Respondent submitted that certification of the "Final Bill" could only occur meaningfully after the Appellant submitted all required documents for verification by the Respondent and/or Currie & Brown (India) Ltd., the Defect Liability Period concluded, and rectification costs were fully assessed. The Respondent further submitted that the Defect Liability Period ran



for 730 days from 31.08.2015, and the Appellant's failure to promptly comply with multiple email requests for documents and reconciliatory works, extending into July 2019, delayed the certification process. The Respondent contended that the Appellant failed to provide any document evidencing an Extension of Time until 31.08.2015, despite reliance on the conditional completion certificate dated 07.11.2016, as evidenced by email correspondence dated 18.04.2017, 03.08.2017, 10.08.2017, 21.08.2017, 24.02.2018, 11.06.2018, 22.06.2018, 23.07.2018, and 18.07.2019.

**24.** The Respondent submitted that the third-party costs assessor, Currie & Brown (India) Limited, deemed it appropriate to impose Liquidated Damages on the Appellant at a rate of 5% of the contract value, totaling Rs.4,79,92,247/- as documented in the final Certified Outstanding Payment (COP) document. The Respondent contended that this imposition was due to the Appellant's inordinate delay in achieving prima facie completion of the contracted works for the hotel complex project, which was only realized on 31.08.2015, and the Appellant's failure to produce any document evidencing an EOT granted by the Respondent until that date, as evident from the email dated 18.07.2019.

**25.** The Respondent submitted that, upon reconciliation of accounts and adjustments for debit notes and liquidated damages imposed on the Appellant, nothing remains due and payable by the Respondent to the Appellant, and conversely, the Respondent is entitled to receive Rs. 2,34,60,761/- from the Appellant.

**26.** The Respondent submitted that the project contract was governed by the pertinent agreement and general commercial conditions, under which the Appellant violated multiple obligations by rendering defective work and committing inordinate delays. These breaches caused inconvenience and losses to the Respondent, entitling it to liquidated damages. The Respondent denied the Appellant's claim of successful completion within the stipulated extended time and reiterated that the Appellant failed to produce documents evidencing EoT till 31.08.2015, as admitted in the Appellant's own letter dated 25.07.2019. This letter sought retrospective EoT, confirming the Appellant's admission of delay and breach of the time-essence clause. Multiple disputes regarding shoddy work quality were notified via email, which the Appellant suppressed, rendering the Section 9 application and demand notice an abuse of process. Defects during the Defect Liability Period required rectification by third-party contractors at the Respondent's cost, further justifying liquidated damages.

**27.** The Respondent submitted that the Appellant's letter dated 25.07.2019 admits to the absence of EoT till 31.08.2015 and disputes the levying of liquidated damages and other deductions, thereby acknowledging the existence of pre-existing disputes prior to the demand notice. The certification process by Currie & Browne (India) Limited, culminating around 18.07.2019, extended due to the Appellant's delays, negating any allegation of the Respondent's failure to pay.

**28.** The Respondent submitted that without admitting the contents of the purported letter dated 19.06.2020, that it cannot be construed as an

acknowledgment or admission of liability for Rs. 2,87,44,710/- or any part thereof. The Respondent clarified that the said letter merely indicates a preliminary step for finalization of accounts, not a final statement admitting payment liability. The Respondent submitted that the Appellant never countersigned or confirmed the purported accounts, rendering them forged and fabricated, and incapable of constituting an acknowledgment. The Appellant was aware of the imposition of liquidated damages by Currie & Browne (India) Limited during 2018-2019, and the right to set off such damages remains intact. The mischaracterization of this letter indicates a fishing expedition by the Appellant for unjust enrichment, despite its knowledge of delays and lack of EoT documentation.

**29.** The Respondent submitted that the Appellant's purported "Final Bill" was submitted around 13th July 2016, before the Defect Liability Period ended, during which the Appellant failed to rectify defects, necessitating third-party intervention at the Respondent's cost. Certification was impossible until all documents were submitted, the period ended, and rectification costs were assessed.

**30.** The Respondent submits that the Adjudicating Authority did not erred in appreciating the absence of admission, default, or acknowledgment and also correctly held that there were pre-existing disputes and therefore, the Appeal is not bona fide.

31. Concluding his arguments, the Respondent request this Appellate Tribunal to dismiss this appeal.

### **Findings**

32. We note that contract to execute works for construction of a Five Star Hotel in New Town at Rajarhat was awarded to the Appellant on 25.04.2012 by the Respondent and the work was completed on 31.08.2015 and consequently the Completion Certificate was issued on 07.11.2016. We note that on 13.07.2016, the Appellant submitted final bill for Rs. 3,61,81,255/- to the Respondent and the Respondent has stated to have certified the entire amount of work done by the Appellant at Rs. 91,71,78,217/- excluding security deposit. The security deposit of Rs. 2,90,04,920/- was also released on 25.03.2019, however, the final bill of Rs. 3,61,81,255/- was withheld by the Respondent.

33. It has been brought out that an independent cost accessor, as an agent of Respondent, i.e., Currie & Browne (India) Limited called for letter of EOT and raised issues about imposition of liquidator damages alleging delay in completion of projects vide their letter dated 25.07.2019. The Appellant brought to our notice that to avoid any complication and in order for seeking quick payment of its legal dues, the Appellant submitted the EOT letter however, clarified that delay was due to reasons solely attributable to the Respondent.

34. It is the case of the Appellant that since no payment was received by the Appellant, the Appellant issued Demand Notice under Section 8 of the Code on

26.09.2020 which was replied by the Respondent on 08.10.2020 raising issue of imposition of liquidated damages due to alleged delay in completion of work and also raised issue regarding pre-existing disputes. Unsatisfied with the reply of the Respondent, the Appellant filed Section 9 Application before the Adjudicating Authority on 22.12.2020 which was rejected by the Adjudicating Authority vide its Impugned Order dated 24.04.2024.

35. The Impugned Order has dealt three issues i.e., liquidated damages against the Appellant, issue of the completion certificate issued by the Respondent and pre-existing disputes between the Appellant and the Respondent.

36. We note that the Adjudicating Authority has gone through the aspect of liquidated damages and concluded that the issue of liquidated damages cannot be dealt under summary trial under the Code. The relevant para of the Adjudicating Authority on issue of liquidated damages, reads as under :-

*“39.\*\*\*Thus, we are of the considered opinion that the veracity of statement that there has been deduction on account of Liquidated Damages as per the terms of the contract executed between the parties cannot be tried by this Adjudicating Authority as the I&B Code only contemplates a summary proceeding.”*

*(Emphasis Supplied)*

37. Since, the Adjudicating Authority has held that liquidated damages issue cannot be decided in summary proceedings which seems logical. We do not find any error in the Impugned Order on this issue.

**38.** Now we will take up the issue regarding pre-existing disputes between the parties prior to issue of demand notice under Section 8 of the Code on 26.09.2020. We observe that dispute is not mere denial and dispute should be in accordance with the Section 5(6) of the Code.

**39.** At this stage, we would like to observe that in the Section 7 (5) (a) of the Code the word ‘may’ has been used in contrast to the word ‘shall’ in Section 9 (5) (a) of the Code which clearly indicates legislative intention i.e., discretion has been given to the Adjudicating Authority in case of Section 7 application whereas Section 9 application, no such discretion has been given to the Adjudicating Authority. The application filed by the Operational Creditor/Appellant for initiation of CIRP is required to be admitted by the Adjudicating Authority, if the application is complete in all respect. What is to be proved is that there is non-payment of unpaid operational debt without any pre-existing disputes. It may be pointed out that financial debt is usually secured and backed by due documentation whereas the operational debts are usually unsecured and for shorter period. Thus, the Adjudicating Authority is required to admit the CIRP application under Section 9(2) of the Code, if the application is complete and there is no payment of unpaid operational debt, invoices have been delivered, no notice of disputes has been received by the Operational Creditor or there is no record of dispute in the information utility.

40. At this stage, we take into consideration the relevant portion of the Impugned Order which deal with the issue of pre-existing dispute which reads as under :-

*“40. Mr. Rishav Baneijee, Ld. Counsel for the Respondent has brought to our notice that there is a plethora of disputes which have been raised prior to receipt of the statutory notice of demand under Section 8 of the Code on 26.09.2020. he has furnished a list mentioned in Para 26 of this Order, concerning those disputes raised prior to receipt of statutory demand notice dated 26.09.2020 as well as the disputes raised post issuance of completion certificate dated 07.11.2016. We have perused the corresponding communications and emails from which it would be evident that since 2015, the Respondent has raised several defects in the contractual work of the Applicant.*

*44. Thus, from the factual position and decisions enumerated supra, it would be apparent that there existed a pre-existing dispute concerning the contractual work between the parties prior to the receipt of the statutory notice of demand under Section 8 of the Code. Thus, being a non-recovery forum, this Adjudicating Authority having the legislative intent not to prosecute the debtor rather to resolute it's business by putting it into corporate insolvency resolution process when the “debt” and “default” is established.”*

*(Emphasis Supplied)*

41. We note that in para 41 to 43 (not reproduced above), the Adjudicating Authority has referred to the judgment passed by the Hon'ble Supreme Court of

India in the matter of ***Innoventive Industries Ltd. vs. ICICI Bank and Ors.*** [(2018) 1 SCC 407]; ***Umesh Saraf vs. Tech India Engineers Pvt. Ltd.*** [MANU/NL/0385/2020]; and one judgment passed by this Appellate Tribunal which Adjudicating Authority has referred in their impugned order passed in ***M/s Kuntal Construction Pvt. Ltd. vs. M/s Bharat Hotels Ltd.*** [(2020) ibclaw.in 69 NCLAT] justifying that the pre-existing dispute of any nature are not required to be adjudicated by the Adjudicating Authority. The Adjudicating Authority is only required to satisfy himself whether pre-existing dispute existed or not.

**42.** As noted earlier that demand notice under Section 8 of the Code was issued on 26.09.2020, which was replied by the Respondent on 08.10.2020. In the reply the Respondent stated that there are several disputes prior to the receipt of the demand notice dated 26.09.2020.

**43.** At this stage, we would like to reproduce para 4 of the reply by the Respondent dated 08.10.2020, which reads as under :-



4. 12 SIDCL hereby provides an indicative list of correspondence via which the following corresponding defects in the said works performed/prima facie completed by ACIL had been duly and diligently communicated to ACIL:-

| Sl. No. | Dates of E-mail sent by SIDCL to ACIL (along with trailing response, if any) | Defect in the said Works performed by ACIL communicated by corresponding E-mail                                     | Remarks |
|---------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|---------|
| 1.      | 25.09.2013, 21.09.2013, 18.09.2013,                                          | Housekeeping, deshuttering and rectification at various locations Tower 1 & 2 NT area                               |         |
| 2.      | 13.10.2015, 07.10.2015, 06.10.2015, 06.10.2015<br>(Along with photographs)   | Leakage in LBF Engineering Area, basement submerged in water (water seepage in Engineering Rooms in Lower Basement) |         |
| 3.      | 14.05.2015, 10.09.2014, 10.09.2014.                                          | Improperly done "outside brick wall pointing".                                                                      |         |
| 4.      | 03.05.2016<br>26.04.2016                                                     | Entire pool area undulated RCC work done by other agencies with                                                     |         |

|    |                                                                        |                                                                                                                          |  |
|----|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|--|
|    |                                                                        | necessary re-barring and RCC work at risk and cost of ACIL.                                                              |  |
| 5. | 06.02.2016,<br>02.02.2016,<br>02.09.2015,<br>06.01.2014,<br>11.12.2013 | Unsatisfactory state of landscape area towards Boundary wall side (mechanical compaction of backfilling done in DG area) |  |
| 6. | 23.08.2017,<br>23.08.2017                                              | Shaft is not plastered in multiple places. TMT bars are projected, painting not done at all places;                      |  |
| 7. | 10.11.2015,<br>21.11.2015,<br>18.03.2016                               | Podium slab waterproofing coating damage                                                                                 |  |
| 8. | 18.03.2015,<br>18.11.2013,<br>18.11.2013,<br>29.11.2013                | Rectification of existing concrete surface i Tower - 2                                                                   |  |
| 9. | 04.02.2016<br>16.01.2016                                               | Balance RCC slab closing activity, ACIL unable to cut off balance support.                                               |  |
| 10 | 20.07.2017                                                             | LBF - water                                                                                                              |  |

Infrastructure Development Corporation Ltd.

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|    |                                                                                                                                                        |                                                                                                                                                                                                                                                                                                 |                            |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
|    | 02.08.2016,<br>19.08.2015                                                                                                                              | accumulation at<br>around Lower<br>Basement Floor<br>above VDF,<br>improperly made<br>slopes; slopes not<br>properly guided<br>towards surface<br>drain.                                                                                                                                        | SHRISTI<br>WELCOME TO LIFE |
| 11 | 27.03.2017<br>27.03.2017<br>10.07.2015<br>02.09.2014<br>02.09.2014                                                                                     | Incomplete bore<br>packing - failure of<br>UBF BOH bore<br>packing; damages<br>in false ceiling;<br>water leakage<br>observed from drain<br>pipe bore packing at<br>LB BOH kitchen<br>cafeteria due to<br>improper bore<br>packing activity.                                                    |                            |
| 12 | 24.05.2017<br>29.12.2015<br>11.04.2015<br>30.09.2015<br>12.08.2015<br>12.06.2015<br>23.07.2015<br>28.07.2015<br>03.08.2015<br>09.04.2015<br>11.04.2015 | Window glazing in<br>commercial floor -<br>no manpower<br>engaged for window<br>side wall plastering<br>job from 3 <sup>rd</sup> floor -<br>11 <sup>th</sup> floor in Tower<br>1, Gap of 5 <sup>th</sup> & 6 <sup>th</sup><br>Floor Bay-B grid no.<br>(01-02) and (06-07)<br>not being closed ; |                            |

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E : contact@shristicorp.com www.shristicorp.com REGN. NO. : 65322WB/2009 CD49541



|    |                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | 29.12.2015                                                                                                                                                                                                                                                                                                                                   | hindrances in silicone at periphery of windows ; no masonry gang employed by ACIL in T1 windows side gap filling.                                                                                                                                                                                                                                                                                                                                                |
| 13 | 24.08.2017<br>19.08.2017<br>27.07.2017<br>18.01.2017<br>22.08.2016<br>22.08.2016<br>22.08.2016<br>09.08.2016<br>06.07.2016<br>15.06.2016<br>10.06.2016<br>06.06.2016<br>06.06.2016<br>06.06.2016<br>03.06.2016<br>03.06.2016<br>01.06.2016<br>01.06.2016<br>01.06.2016<br>21.05.2016<br>20.06.2016<br>17.05.2016<br>14.05.2016<br>14.05.2016 | Failure of expansion joint - Banquet area, UBF etc; water leakage damaged camera of SIDCL; water leakage at UB BOH Chocolate Room that damages the False Ceiling; leakage observed at LB BOH cafeteria area; water leakage from 2 <sup>nd</sup> floor meeting room, LB BOH service lobby 24, HK office etc leading to damage of false ceiling, lights and detectors, water leakage observed through true ceiling at liquor store, water leakage in various other |



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|    |                                                                                                                                                                  |                                                                                                                                                                                                           |                            |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
|    | 14.05.2016,<br>13.05.2016,<br>21.05.2016,<br>25.02.2016,<br>09.09.2015,<br>02.09.2015,<br>18.08.2015,<br>11.08.2015,<br>05.08.2015,<br>20.07.2015,<br>10.07.2015 | areas; failure<br>expansion joint at<br>various areas;<br>SIDCL forced to use<br>its own<br>housekeeping gang<br>to clear area at risk<br>and cost of ACIL<br>due to lack of<br>timely action by<br>ACIL. | SHRISTI<br>WELCOME TO LIFE |
| 14 | 28.06.2017,<br>27.07.2017,<br>13.06.2017,<br>19.06.2017                                                                                                          | T2 Lift Shift<br>Verticality Test                                                                                                                                                                         |                            |
| 15 | 17.08.2017                                                                                                                                                       | Helipad slab<br>reinforcement<br>exposed                                                                                                                                                                  |                            |

SIDCL specifically reserves its rights to indicate and rely on additional correspondence in support of its assertion regarding intimation of various defects to ACIL made in this sub-paragraph should it be deemed necessary by it in any future proceedings. ACIL has sufficient notice of all such pre-





44. From above, it is quite clear that the Respondent has been constantly raising issue regarding quality of work which tantamount to pre-existing disputes. It may also be kept in view that the Adjudicating Authority is conducting summary proceedings and is not expected to go in detailed scrutiny of evidence. The Adjudicating Authority should look into whether the dispute tantamount to be substantial, genuine and bona-fide and not spurious, speculative, illusory or misconceived. The Adjudicating Authority at the stage of admission of CIRP is not expected to hold a full trial in the matter and it must be decided whether the ground appears to be substantial. It is also a settled law that if such operational debt are bona-fide disputed on substantial ground, the Adjudicating Authority ought to dismiss the petition and such parties are required to seek other alternative legal recourse.

45. In this connection, we will also refer to the judgment of the Hon'ble Supreme Court in the matter of ***Innoventive Industries Ltd. vs. ICICI Bank and Ors.*** reported in MANU/SC/ 1063/ 2017: (2018) 1 SCC 407 which reads as under:-

*“29. [...] Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment*

there is existence of such a dispute, the operational creditor gets out of the clutches of the Code. ”

*(Emphasis Supplied)*

Above clearly support the cause of the Respondent. The Impugned Order also draws full support from above judgement. We note that the Respondent has indeed sent as many as 89 emails raising several issues or defects, which clearly indicates pre-existing disputes.

**46.** By no statute of imaginations, the Adjudicating Authority is expected to look into 89 said e-mail sent by the Respondent to the Appellant, before demand notice by received by the Respondent. Thus, we do not find any error in the Impugned Order on the issue regarding pre-existing dispute.

**47.** Now, we will take up issue regarding the completion certificate issued by the Respondent and its implications. Although once, pre-existing dispute issue is decided in favour of the Corporate Debtor, then there is no need to go into any further as Section 9 application cannot be admitted.

**48.** We note that the Respondent has taken several caveats while issuing the completion certificate. The completion certificate reads as under :-



Dated: 07.11.2016

M/S. Ahluwalia Contracts (India) Ltd.,  
Regd. & Corporate Office: A-177, Okhla Industrial Area Phase-I,  
New Delhi-110020  
Email: mail@acilnet.com

Dear Sirs,

SUB: Completion Certificate for Work Under Work Order No. SIDCL/11-12/WO/LQI/HQ/0048 dated 07.03.2012 (Hereinafter referred to as Work Order). Subsequent to which an Agreement dated 25.04.2012, Executed (Hereinafter referred to as Agreement).

The Agreement was executed for Work Order, to complete the construction work within the scope defined therein, at Mouza Jatragachi, AA-II/CBD/2, Action Area -II, New Town, Rajarhat (West Bengal) (hereinafter referred to as "Site").

In response to your request for the completion certificate, we hereby issue the completion certificate subject to the following terms & conditions, for having successfully completed the scope of the work enshrined under the Work Order & Agreement. The work was started w.e.f 01.03.2012 and completed on 31.08.2015.

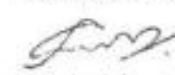
The completion certificate is subject to your abiding by all the contractual obligations emanated from the Work Order concomitantly Agreement, including but not limited to following:-

1. You shall renew all the bank guarantees, bonds, corporate guarantees and personal guarantees etc., as per agreed schedule with us, but prior to expiry thereof and its advance intimation to us.
2. You shall be responsible for the payment and settlement of all subcontractors and/or vendors and the applicable taxes, if, unpaid and/ or radiate in future.
3. You shall be wholly liable for all the workmen cases, compensation, claims or anything else, if arises in future.
4. You shall be bound to rectify all the defect liabilities to our satisfaction within the Defect Liability Period (DLP), failing which we shall get removed all such defects at your cost and expenses, which shall be paid by you on demand, for which you agree unequivocally.
5. You shall be liable and responsible for all the litigations & cases, if emit out from any of your deeds/ acts, negligence thereof.

This completion certificate is issued without prejudice to our rights and contentions.

Thanks & Regards,

For Shristi Infrastructure Development Corporation Ltd.,

  
Authorized Signatory 

Shristi Infrastructure Development Corporation Ltd.

Corporate Office : D-2, 5th Floor, Southern Park, Saket Place, Saket, New Delhi - 110 017, India. T : +91 11 6602 5600 F : +91 11 6607 5619  
Registered Office : Plot No X-1, 2 & 3, Block-EP, Sector-V, Salt Lake City, Kolkata-700 091, T : +91 33 4020 2020/4015 4646 F : +91 33 4020 2024  
E : contact@shristicorp.com www.shristicorp.com CIN : L65922WB1999PC049541

*True Copy*  
*De*



**49.** From above, it is seen that the completion certificate was issued subject to Appellant abiding to all the contractual obligations emanated from the work order including but not limited to renewal of bank guarantee, payment of settlement of subject contractors, composition of claims, rectification of defect liabilities other litigations. It is also important to note that the caveat regarding DLP has categorically stated that the Appellant is bound to rectify all the defect liabilities to Respondent's satisfaction within DLP, failing which of such defects will be removed by the Respondent at the cost and expenses of the Appellant to be paid on demand. We note that an independent cost accessor, namely, (Currie & Browne (India) Limited) (who has no relationship with the Corporate Debtor) has identified defects and has advised amount of Rs. 3,62,67,257/- regarding liquidator damage.

**50.** Looking into the completion certificate, we are conscious of the fact that completion of project in time, along with requisite quality, is the heart of the contract management. It can be no one's case that extra-ordinary delay which changes viability of the project can be simply brushed aside and should not be taken into consideration while deciding Section 9 application under the Code by the Adjudicating Authority. Simultaneously, we also need to acknowledge the fact that in commercial world, occasional delay may happen and may be attributable to both parties. We also need to factor into consideration, if finally, project was completed to satisfaction of the Corporate Debtor and whether the same was accepted by the Corporate Debtor without any caveats and

qualification. In the instant appeal we note carefully that the Corporate Debtor issued the completion certificate with many caveats. In such background, the alleged completion certificate, cannot be treated as acceptance of work to satisfaction the Corporate Debtor, ignoring 89 emails sent by the Respondent to Appellant on pre-existing dispute prior to receipt of Demand Notice. Thus, the above mentioned completion certificate cannot be treated as without any caveat or clear certification the work, as claimed by the Appellant and therefore, do not support cause of the Appellant.

51. On this aspect of completion certificate, the relevant portion of the Impugned Order reads as under :-

“48. Thus, we are of the view that the issuance of Work Completion Certificate would not bar the Corporate Debtor from raising any genuine disputes relating to the services rendered by the Operational Creditor, when, the Work Completion Certificate itself provides a specific clause that the issuance of Work Completion Certificate does not exempt the Operational Creditor its liability to rectify its defect and failing such, the defect would be removed at the cost and expenses of the Operational Creditor.

*(Emphasis Supplied)*

We do not find any error in above finding by the Adjudicating Authority.

52. Based on above detailed analysis, we do not find any error in the Impugned Order. The Appeal is devoid of any merit and stand rejected. No cost. I.A., if any, are closed

**[Justice Rakesh Kumar Jain]  
Member (Judicial)**

**[Justice Mohammad Faiz Alam Khan]  
Member (Judicial)**

**[Mr. Naresh Salecha]  
Member (Technical)**

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