BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAIBENCH

CP (IB) NO. 2398 OF 2019

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to adjudicatingAuthority) Rules, 2016)

In the matter of

M/s SorilInfra Resources Ltd
Address :M62 & 63,1st Floor,
Connaught Place,
New Delhi, – 110 001.

……**Operational Creditor**

Versus

New Consolidated Construction Company Limited.
Registered Office :Rahimtola House,
7 Homji Street Fort Mumbai,
MH - 400001.

…….Corporate Debtor

Order delivered on: 07.10.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

Appearance:

For the Petitioner: Mr. Vishesh Kalra

For the Respondent: Mr. Nikhil Mishra

Per:Shri H.V. Subba Rao, (Judicial Member)

ORDER

1. This Company Petition is filed by M/s Soril Infra Resources Ltd, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against New Consolidated Construction Company Limited(hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. **The brief facts of the petition are stated hereinbelow:**
   a. The Soril Infra Resources Ltd (Operational Creditor) is a company with registered office at M62 & 63, 1st Floor, Connaught Place, New Delhi – 110001 and where the Respondent (Corporate Debtor), New Consolidated Construction Co. Ltd. is a Company with registered office at RahimTola House, 7 Homji Street, Fort, Mumbai - 400001.
   b. The Corporate Debtor approached the Operational Creditor seeking the quotations with respect to works pertaiing to the installation and operation and maintenance of the captive Ready-Mix Concrete (RMC) plant supply of RMC for the project of construction of residential building at Chennai for Embassy Residency.
   c. The Corporate Debtor issued two work orders dated 30th October 2012 and 21st January 2013 for the works of RMC. The Operational Creditor completed all the work on time and subsequently raised invoices for the payment of the same. However, the Corporate Debtor failed to clear of the dues even after the completion of the work. The Corporate

Debtor has accepted dues amounting to Rs. 47,54,401.49/- and hence is liable to pay the same. The Operational Creditor also issued a Form 3 notice dated 23rd March 2019. The Corporate Debtor has not replied to the said notice till date. In view of thereof the Operational Creditor has filed the present application.

3. **Submission of the Corporate Debtor herein as below:**

a. At the outset, the Operational Creditor has not set out true and correct facts in the instant matter thereby misled this Hon'ble Tribunal and is therefore, guilty of *suppressoveri* and *suggestion falsi.* I deny each and every allegation, contention and insinuation as contained in the present application which are contrary to and inconsistent with what is stated hereafter. Nothing contained in the Insolvency Application shall be deemed to be admitted by the Corporate Debtor for want of specific traverse, unless the same is admitted by me herein. I repeat, reiterate and confirm the contents of the correspondences and letters address by and on behalf of the Corporate Debtor as if the same is set-out herein *verbatim* and the same shall be treated as a part of the present affidavit.

b. The Corporate Debtor has never admitted to pay the alleged claim amount to the Operational Creditor. In fact by mere perusal of the emails relied upon by the Operational Creditor; it becomes amply clear that the Corporate Debtor has never agreed to make the purported payments to the Operational Creditor. Therefore, the instant application is liable to be dismissed.

c. The sum/monies claimed by the Operational Creditor on account of diesel for non-production quantity was never agreed upon and was always disputed by the Corporate. A reference can be made to the email dated 16thAugust, 2016. There is not proof much less documents produced by the Operational Creditor to substantiate the alleged claim for diesel on non-production quantity. In addition thereto, there was also a minimum quantity for billing which was agreed by the parties. The Running Account bills have not been produced by Operational Debtor and the same are concealed by the Operational Creditor from this Hon'ble Tribunal.

d. In the premise aforesaid, Operational Creditor is legally not an Operational Creditor, therefore., on this ground alone this application deserves to be dismissed.

e. New Consolidated Construction Co. Limited ('NCCCL') is a construction company since more than 7 decades. It has approximately 1200 employees pan India. Having offices at Mumbai, Chennai, Bangalore etc. NCCCL has done some major and recognized constructions across the Country.

4. Heard both sides and perused the record. In the light of the above pleadings and the submissions made by the counsel appearing on both sides, the only issue that falls for consideration in the above company petition is;

Whether there is any pre-existing dispute between the parties?

5. Before deciding the above issue, it is important to mention here that the Operational Creditor has issued a demand notice dated

23.03.2019 calling upon the corporate debtor to pay the outstanding amount claimed by the Operational Creditor. The Corporate Debtor after receiving the said Demand Notice addressed a letter dated 26.04.2019 to the Operational Creditor acknowledging the receipt of the Demand Notice and reserved their right to issue a detailed reply after verifying the ledger of Operational Creditor in their books of accounts. It is an admitted fact from the record that the said letter was addressed by the Corporate Debtor to the Operational Creditor beyond the statutory time of 10 days. Subsequent to the above referred letter, the Corporate Debtor did not issue any reply bringing to the notice of the Operational Creditor.

a. *existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*
b. *the [payment] of unpaid operational debt-*
i. *by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*
ii. *by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

6. Unless the Corporate Debtor complies the above statutory requirement, any subsequent plea of the Corporate Debtor in the company petition by way of reply cannot be considered by this adjudicating authority.
7. Counsel appearing for the Operational Creditor invited the attention of this bench to emails dated 16.08.2016 at page No. 117 and email dated 06.10.2016 exchanged between the parties to prove that the Corporate Debtor has admitted the liability.
8. The entire reply filed by the Corporate Debtor in the above company petition is totally silent with regard to non-issuance of reply by the Corporate Debtor, after receiving the Demand Notice from the Operational Creditor.
9. Under these circumstances the burden of proof lies on the Corporate Debtor to establish the pre-existence of dispute before this tribunal. As rightly pointed out by the counsel appearing for the Operational Creditor, in the minutes of the meeting dated 16.08.2016 which was annexed at page No. 117 it was clearly mentioned that the Corporate Debtor has assured to clear the outstanding amount of Rs. 46.5 Lacs as full and final settlement in three equal instalments that too by end of September 2016.

10. The subsequent email dated 06.10.2016 annexed at page No. 124 also clearly proves that the Corporate Debtor has assured clearance of the pending dues of the Operational Creditor which was withheld by the Corporate Debtor due to some technical quarries raised by their Higher Officers.

11. Under the above referred facts and circumstances this bench has no hesitation in holding that the Corporate Debtor has miserably failed to prove and demonstrate the existence of any pre-existing disputes between the parties and no presumption of pre-existence of disputes can be inferred from the reply filed by the Corporate Debtor in the present company petition. Unless this tribunal after applying its mind comes to the conclusion that the plea of pre-existence of disputes raised by the Corporate Debtor is not a palpable defence and requires some investigation, the plea of pre-existence cannot be accepted. The contention of the respondent that the emals relied upon by the Operational Creditor strengthens the existence of disputes is not legally sustainable as no such presumption of disputes can be inferred from the above emails.

12. In the light of the above observations and findings this bench is of the considered opinion that there is an Operational Debt due and payable, by Corporate Debtor and the Corporate

Debtor has committed default in paying the same. When once these two legal requirements are established, this bench has no option except to admit the above petition filed U/sec. 9 of the Insolvency and Bankruptcy Code, 2016.

Accordingly, the above company petition admitted by passing the following:

ORDER

(a) The above Company Petition No. (IB) -2398(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against New Consolidated Construction Company Limited.

(b) Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Pramod Kumar Dokania** (ippramod.dokania@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01994/2020-2021/13062as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) The Operational Creditor shall deposit an amount of Rs. 2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(d) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(g) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

(j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	Sd/-
CHANDRA BHAN SINGH	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**