



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT - IV**

**Item No. 102**  
**Transfer Petition/15/ND/2022 in**  
**CP IB/38/9/JPR/2021**

**IN THE MATTER OF:**

M/s NS Rolling Steel Private Limited	...	Applicant
Versus		
Ircon International Limited	...	Respondent

**Order under Section 9 of IBC, 2016.**

**Order pronounced on 19.10.2023**

**CORAM:**

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,**  
**HON'BLE MEMBER (JUDICIAL)**  
**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets.

**Transfer Petition/15/ND/2022 in CP IB/38/9/JPR/2021 stands dismissed.**

**Sd/-**

**DR. BINOD KUMAR SINHA**  
**MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV**

**TRANSFER PETITION/15/ND/2022**

**IN**

**COMPANY PETITION NO.(IB)-38/9/JPR/2021**

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

**IN THE MATTER OF:**

M/s. NS ROLLING STEEL PRIVATE LIMITED

**.... Applicant/ Operational Creditor**

**Vs.**

M/s. IRCON INTERNATIONAL LIMITED

**.... Corporate Debtor**

**Order Pronounced on: 19.10.2023**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER  
(JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

The instant application is filed by M/s. NS Rolling Steel Private Company, a private limited Company bearing CIN: U27106MH2008PTC187009 (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate



Corporate Insolvency Resolution Process in respect of M/s. IRCON International Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.1,52,51,811/- (Rupees One Crore Fifty Two Lacs Fifty One Thousand Eight Hundred Eleven Only) which includes principal amount of Rs.1,19,38,529/- and interest amount @24% p.a. amounting Rs.33,04,246/- .

2. The Respondent Company M/s. Ircon International Limited having CIN: L45203DL1976GOI008171 incorporated under the provisions of the Companies Act, 1956 is having its registered office situated at Plot No. C - 4, District Centre Saket, South Delhi, Delhi-110017. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

### **AVERMENTS BY THE APPLICANT**

3. Succinctly stated facts of the present case as averred by the applicant are that the Corporate Debtor being a Government of India owned Railway construction company had allotted a contract work to the Applicant having the original contract value of Rs.5,74,28,000/-, in pursuance of the Tender issued by the Corporate Debtor and issued the work order dated 13.02.2018. Furthermore, the applicant had completed the work assigned to them on 12.06.2018 which is certified/approved by the site engineers as appointed by the Corporate Debtor.
4. The Applicant further submitted that the work was successfully completed by the Applicant in an effective and professional manner within the schedule time, therefore, the Applicant was awarded further contract work for an enhanced value of contract of Rs.9,37,81,874/-. The Applicant had



completed the total eligible gross work of Rs.9,37,81,874/- and the same has been approved and accepted by the Corporate Debtor which is also reflected in the Measurement Book of the Corporate Debtor and a letter dated 18.02.2020 was also issued by the DGM of the Corporate Debtor, acknowledging the same.

5. The Applicant submitted that the Applicant has received payment of Rs.7,94,33,018/- and Rs.76,50,694/- against the total work of Rs.9,37,81,874/-, thereby having an outstanding amount of Rs. 1,19,38,529/-. Also, the Corporate Debtor had after physical verification of the work done by the Applicant as per contract, had issued a completion certificate dated 05.02.2019.
6. It is also submitted that the Applicant had issued demand for the outstanding debt several times and also issued legal notices, however the outstanding amount was not paid by the Corporate Debtor despite the fact that the project was successfully completed by the Applicant. The Applicant had issued the Statutory Demand Notice dated 14.12.2020 under Section 8(1) of the Code, 2016 demanding the outstanding amount of Rs.1,52,51,811/- inclusive of an interest @ 24% p.a.. The Corporate Debtor in reply to the Demand Notice dated 14.12.2020 had raised the issue that the work is not completed by the Applicant, though in fact work is completed by the Applicant and the same is evidenced from the Completion Certificate issued by the Corporate Debtor after verification.

**REPLY BY THE CORPORATE DEBTOR**

7. On notice by this Adjudicating Authority, the Corporate Debtor had filed its reply and submitted that the Corporate Debtor is an undertaking of the Government of India incorporated under the Companies Act, 1956 and is



a leading turnkey construction company in the Public Sector, specializing in railway and highway constructions.

8. The Corporate Debtor submitted that on 30.01.2019, vide letter No. NSRS/LH/18-19/220, the Applicant had requested for issuance of work completion certificate ("Work done certificate") for the purpose of submitting it to the Ministry of Road Transport and Highway, Government of India ("MOR&TH") for participation in their tender process. It is pertinent to note that the work had not been completed at this stage. Accordingly, on 05.02.2019, 'Work done certificate' was issued by the Corporate Debtor vide Letter No. IRCON/1034/BPHP/NH-15/82, specifically mentioning that the work was in progress in the extended period. Further, it was mentioned that the Work done certificate was issued upon a specific request of the Applicant for purpose of participation in the tender only process and have no obligations under any contract conditions under the above-mentioned contract agreement. This certificate was not issued in terms of Clause-65 of the General Conditions of the Contract ("GCC") and the Contractor had also not requested to issue completion certificate in terms of the said clause as the work was not completed till that time.
9. The Corporate Debtor further submitted that the Applicant has deliberately attempted to mislead, by claiming the 'work done certificate' to be the work 'completion certificate'. The correct fact is that completion certificate has to be issued as per Clause-65 of the GCC, whereas, till date the Applicant has not even submitted the application/notice for issuance of the Work Completion Certificate as per Clause-65 of the GCC. Further, Clause-65.1 and 65.2, clearly stipulate that, "if any kind of deficiencies/ defects are noticed in the work carried out by the Contractor, then the same shall have to be rectified by the Contractor and further in the event of default by the Contractor in carrying the rectification works, then



IRCON shall be entitled to recover any money due to the contractor under the contract, including the performance security amount or any money payable to the Contractor.”

10. Furthermore, it was submitted that the Corporate Debtor had duly communicated various defects / deficiencies in the work, which has not been rectified till date. Also, the Applicant had sent a legal notice dated 21.01.2020, to which the Corporate Debtor had replied vide its response dated 19.02.2020, which clearly shows that there exists a pre-existing dispute between the parties, with regard to the alleged outstanding amount, claimed by the applicant. Also, the alleged due amount is not at all due and payable to the Applicant and therefore, cannot be construed to be an operational debt in the eyes of law and consequently, no default can be alleged against the Corporate Debtor.

### **ANALYSIS AND FINDING**

11. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.

12. Adverting to the facts of the present case, IRCON International Limited awarded tender No. IRCON/1034/BPHP/TN/ NITET-139/WBM/CB/159 to the Contractor for "Providing, Supplying, Erecting and Fixing in Position "W" Beam Metal crash barrier system single sided/single row including fish tail Single Terminal unit as per MORT&H specifications and the work was to be completed within four (4) months, i.e., by 12.06.2018. However, the Applicant on 19.06.2019, vide Letter NSRS/LH/19-072, had requested for an extension of time for further one month to complete balance work without penalty.



13. From the records as placed before this Adjudicating Authority, we observe that a meeting was also held between parties on 29.06.2019 wherein the following issues i.e., (i) Progress of Work, (ii) extension of time for Balance Works, (iii) Delay in getting payment against bill, (iv) Release of withheld amount, (v) Completion of Punch list items and (vi) Execution of concrete foundation work were discussed between the parties. The relevant extract from the minutes of the meeting dated 29.06.2019 is reproduced below:-

S.N.	ISSUES DISCUSSED IN MEETING	ACTION
1	<b>Progress of Work:</b> IRCON expressed concern over non completion of work by agency. The Director Mr. RN Singh, representing M/s NS Rolling Steel Pvt. Ltd., has reported completion of MBCB works under original scope 25 kms and additional work for 13.568 kms by 31 <sup>st</sup> May'2019. Later they have withdrawn the resources for want of Payment from IRCON and work could not be completed within last extended time considered upto 31 <sup>st</sup> July'19. He also assured their interest to complete balance scope for 4.132 Kms and rectification/damages etc by 31 <sup>st</sup> Jan'20 but upon release of their payment.	M/s IRCON & M/s NS Rolling Steel
2	<b>Extension of time for Balance Works:</b> IRCON expressed that Extension may be given upto Jan'20 under the terms of contract. If this contract is to foreclose, it may attract further LD & Penalties under the terms of contract agreement as per applicability.	M/s NS Rolling Steel
3	<b>Payment &amp; Release of Withheld Amount:</b> The agency expressed that due to delay in release of payments for the last two bills resulted in shortage of funds leading to financial crisis & affected procurement of raw material and completion of balance work. M/s NS Rolling requested to release withheld amount for rectification of defective work etc., During meeting IRCON Informed that due payment against Interim Bill no. 09 & 10 have already been released. Any further payment is subject to rectification of defective work and verification of measurement else affect recoveries	M/s IRCON & M/s NS Rolling Steel
	It was clarified to M/s NS Rolling that major portion of withheld amount pertains to SD & PBG, which is an equivalent to 10 % of Contract Value. The Retention Money can be released only after completion of Defect liability Period. The Sum against PBG can be released after completion of all works & after issue of Completion Certificate under Contract provisions only.  Besides this M/s NS rolling pointed out that Rs. 42.00 Lacs are withheld on different account of rectification, concrete foundation, line-level, etc., which may please be released to start the work. IRCON expressed that after instant joint site verification, it is witnessed by all that without corrective action for defective work & foundations, no amount can be released. Rather, this amount is subject to recover upon final measurements recording and not due payable to the agency until defective work is corrected and accepted by IRCON.	
4	<b>Completion of Punch list Items:</b> IRCON expressed its concern over non completion of listed lengths and advised to expedite the work to complete the balance length of MBCB. This contract has already been imposed with LD for Rs. 3.44 lacs for delays attributable to Agency.	M/s NS Rolling Steel
5	<b>Execution of Concrete foundation work:</b> IRCON expressed deep concern after joint inspection for sub-standard execution of concrete foundation work for fixing MBCB at site and advises M/s NSRSPL to carry out necessary rectification and then put-up their bill for considering release of further any payment else, it is to be adjusted/ recovered from agency.	M/s IRCON & M/s NS Rolling Steel
6	Vote of Thanks conveyed to meeting by CGM/IRCON.	Info.

**(Extract from the minutes of the meeting dated 29.06.2019)**



14.A perusal of the minutes of the meeting dated 29.06.2019 held between the parties, clearly shows that the Corporate Debtor had raised concern over the non-completion of the work within the extant timeline and also highlighted the deficiencies in the work of the Applicant. Also, the Corporate Debtor had placed on record their letter dated 16.12.2019 issued by the Corporate Debtor to the Applicant wherein the Applicant was informed that the full depth foundation concrete had not been executed and was advised to carry out the foundation rectifications as per drawing & specification, so that after verification, the payment, if eligible, would be released. The Corporate Debtor had placed on record the letters dated 27.02.2020, 06.03.2020, 12.03.2020, 01.06.2020, and 09.06.2020 wherein the claims and demand of the Applicant were disputed and denied by the Corporate Debtor on account of delay in completion of works within original Completion time as well as the failure in rectification of the deficiencies as raised by the Corporate Debtor.

15. With regard to the Work Done Certificate dated 05.02.2019 as relied upon by the Applicant, we observe that the work done certificate dated 05.02.2019, was issued by Corporate Debtor vide Letter No. IRCON/1034/BPHP/NH-15/82, wherein, against the point no.8 for denoting the 'Actual Completion Date', it was specifically mentioned that, "the work was in progress in the extended period" and that the 'Work done certificate' was issued upon a specific request of the Applicant for the purpose of participation in the tender and without any obligation of the Corporate Debtor.

16. Further, it is the contention of the Corporate Debtor, that the Work Completion Certificate as per Clause-65 of the GCC, could be issued only after rectification of deficiencies and removal of defects by the Operational Creditor, however from the material placed on record, we observe that the



applicant had failed to rectify the defect/deficiencies in the work which has been communicated to the Applicant by the Corporate Debtor. Accordingly, this Adjudicating Authority is of the view that the 'Work Done Certificate' dated 05.02.2019 as relied upon by the Applicant cannot be considered as conclusive evidence of either the factum of satisfactory completion of work by Corporate Debtor or for establishing that there exists no pre-existing dispute between the parties, particularly in the absence of a 'work completion certificate' issued in terms of clauses 65.1 & 65.2 of GCC.

17. It is pertinent to note that this Adjudicating Authority must not be oblivious to the limited nature of examination of the case of the Corporate Debtor projecting a pre-existing dispute and shall not overlook the boundaries of this Adjudicating Authority's jurisdiction while determining the question of existence of pre-existing dispute between the parties.

18. In the instant case, the Corporate Debtor has brought on record by way of its reply to the instant application, material to indicate pre-existence of dispute and we are of the considered view that there is sufficient evidence on record to exhibit a 'Pre-Existing Dispute' between the parties prior to the issuance of the Demand Notice under Section 8 (1), IBC, 2016.

19. Further, the defence of the Corporate Debtor is not spurious, mere bluster, plainly frivolous or vexatious. It is also important to note that the Hon'ble Supreme Court in **Rajratan Babulal Agarwal vs Solartex India Pvt. Ltd. & Ors. [Civil Appeal No. 2199 of 2021]** had observed that when we speak about evidence of pre-existing dispute, we must not overlook the law laid down in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [(2018) 1 SCC 353]** wherein it was observed that, "*the court need not be satisfied that the defence is likely to succeed. The standard, in other words, with reference to which a case of a*



*pre-existing dispute under the IBC must be employed cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit.”*

20. In the same judgement in **Mobilox (supra)**, Hon'ble Supreme Court have categorically laid down the following criteria for determination of admissibility of a Section 9 Application in Para 34 as under:

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

21. Since, we have already held hereinabove that there exists a ‘pre-Existing Dispute’ between the Applicant and the Corporate Debtor, the instant application is liable to be rejected.

22. Accordingly, the instant petition Transfer Petition/15/ND/2022 in C.P. No./38/9/JPR/2021 stands **dismissed** with no order to costs.

Let copy of the order be served to the parties.  
Consign the file to the record room.

**Sd/-**

**(DR.BINOD KUMAR SINHA)  
MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)  
MEMBER (J)**

**TRANSFER PETITION/15/ND/2022**

**IN**

**COMPANY PETITION NO.(IB)-38/9/JPR/2021**

**NS Rolling Steel Private Limited v. Ircon International Limited**

**Date of Order: 19.10.2023**