

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,

KOLKATA

IA(IB)/No. 995/KB/2021

IN

C.P (IB) No.114/KB/2021

In the matter of

An application under section 4 and section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules,2016;

And

In the matter of:

Joyrath Projects Private Limited, a company registered under the provisions of Companies Act, 1956, having its office at 33,Sadananda Road, Kolkata-700026;

... Operational Creditor

Versus

In the matter of:

Simplex Infrastructure Limited, a company registered under the provisions of Companies Act,2013, having its registered office at 'Simplex House' 27, Shakespeare Sarani, Kolkata-700017.

...Corporate Debtor

Date of hearing :28/02/2022

Order Pronounced on : 09/03/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Aritra Basu,Adv.

] For Operational Creditor

1. Mr. Snehasish, Adv.] For Corporate Debtor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition has been filed by **Simplex Infrastructure Limited**, (the Corporate Debtor) under section 4 and section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules,2016.
3. It is submitted by the Corporate Debtor that the Operational Creditor has filed a petition being CP(IB)No.114/KB/2021 against the Corporate Debtor under Section 9 of the IBC.
4. It is further submitted that the petition is totally devoid of merits and has been filed in derogation of the provisions of the IBC. It is further submitted that the petition is ex-facie not maintainable in law or on facts and this Adjudicating Authority does not have the inherent jurisdiction to entertain such a petition.
5. It is submitted that by virtue of Notification dated March 24,2020 bearing No. S.O. 1205(E), the Central Government had specified the minimum amount of default for the purpose of Section 4 of IBC to be Rs.1 Crore (Rupee One Crore) and that after March 24, 2020 any application filed under sections 7,9 or 10 of the IBC has to be mandatorily in respect of a minimum default of Rs.1 Crore and if the default is less than Rs.1 Crore, no recourse is available under IBC.
6. It is further submitted that Section 5(11) of the Code provides that- 'initiation date' means the date on which a financial Creditor, corporate applicant or Operational Creditor as the case may be, makes an application to

the Adjudicating Authority for initiating corporate insolvency resolution process. It is stated that the 'date of filing' of an application has to be taken into account for initiating CIRP.

7. It is submitted that in the present case, the date of making the application under section 9 application is on or about 05.04.2021 and therefore, the said date being after the Notification dated 24th March, 2020, hence on that date, the threshold limit of Rs.1 Crore shall apply in the present case. The Corporate Debtor further submits that a bare perusal of C.P.(IB)No.114/KB/2021, it would be apparent that the amount claimed in default in the said application is Rs.8,61,580/- along with interest of Rs.6,89,200/- thereby totaling up to a sum of Rs.15,50,780/-. This amount therefore, does not meet the criteria under section 4 of the IBC for filing of an application for initiation of CIRP of the applicant-Corporate Debtor.

8. The Corporate Debtor has further submitted that it does not admit any part or portion of such claim and strictly without prejudice to its rights and contentions, the Corporate Debtor submits that the default being less than of Rs.1 Crore, the instant application under section 9 being ex-facie not maintainable, should be dismissed.

9. We have heard both the parties. On the one hand, the Ld. Counsel appearing for the Operational Creditor has insisted that the application is maintainable but on the other hand, the Corporate Debtor has successfully brought home the fact that the application is not maintainable. The Ld. Counsel has relied upon the decision of Hon'ble NCLAT in the matter of **Jumbo Paper Products Versus Hansraj Agrofresh Pvt.Ltd.(Paras 8,9, and 10)** wherein it has been held that:

"... It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs.1 crore. This threshold limit will be applicable for application filed under section 7 or 9 or after 24.3.2020 even if debt is of a date earlier than 24.3. 2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore, the threshold limit of Rs. 1 crore of debt will be applicable in the present case."

*The NCLAT also considered its judgment in the matter of **Madhusudan Tantia Vs. Amit Choraria & Anr. in CA(AT) (Ins) No. 557 of 2020** and distinguished the same by holding that “...In Madhusudan Tantia case (supra) shows that the demand notice under section 8 was issued on 31.7.2019 and the application under section 9 was filed on 5.9.2019.Both these dates are before 24.3.2020, and therefore threshold limit of the debt as per Law at the time the application under section 9 was filed was Rs.1 lakh.We, therefore, do not think the facts of the instant appeal are same as the facts in the Company Appeal (AT)(Ins) No. 557 of 2020...”*

*Reliance is also placed on the judgment of the Hon’ble NCLT, New Delhi, Principal Bench in the matter of **Hari Singh-vs- Dynamic Aura LLP** which held that retrospective effect or prospective effect is not an issue because date of enforcement of notification is the starting date for filing cases with 1 crores rupees threshold. The judgment also holds that the parties shall not remain under the notion that it is a vested right to file cases below the threshold limit even after the statutory right is not in existence.*

Considering the above, it is submitted that any application filed after the coming into force of the notification dated 24.03.2020, the threshold limit of Rs.1 crore shall apply irrespective of the fact that the date of default or issuance of demand notice is of a date prior to 24.3.2020. It is the date of filing of the application which is the relevant factor for considering the applicability of the threshold limit.”

10. After hearing the parties, we are of the view, that this IA (IB) No.995/KB/2021 would succeed because the main C.P. in this matter could not have been filed because the total operational debt being claimed by the Operational Creditor is Rs. 63,63,500/-

11. With these directions, the I.A.(IB) No. 995/KB/2021 stands allowed.In view of the orders passed in IA(IB)No. 995/KB/2021, CP (IB) No.114/KB/2021 is dismissed.

12. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 9th day of March, 2022

PJ.