

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI
CP(IB)/50(CHE)/2023**

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 6 of the
Insolvency and Bankruptcy Rules, 2016)*

In the matter of Sungbo Engineering India Private Limited

SAMAL INFRA PROJECTS PRIVATE LIMITED,
Represented by its Director, Mr. Minaketan Samal,
Regd. Office - F-47, Delta - 1,
Greater Noida – 201 308.

**... Petitioner/ Operational Creditor
V/s**

SUNGBO ENGINEERING INDIA PRIVATE LIMITED,
Plot No. 824, Sri Selva Vinayagar B Nagar,
7th street, Azhinjivakkam, Redhills, Chennai – 600 052.

... Respondent/ Corporate Debtor

Order pronounced on 22.08.2025

CORAM:

Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Applicant: Mr.Suvendra Kumar Panda & Mr. T. Sundaranathan, Advocates

For Respondent: Mr. Vijay Shankar Dubey, Advocate

ORDER

(Heard through Hybrid Mode)

This Application under Section 9 of IBC has been filed by **Samal Infra Projects Private Limited**, represented by its Director, Mr. Minaketan Samal, Petitioner/ Operational Creditor herein against **Sungbo**

Engineering India Private Limited, Respondent / Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. SUBMISSIONS OF THE APPLICANT

2.1. Part I of the Application contains the particulars of the Applicant Samal Infra Projects Private Limited represented by its Director, Mr. Minaketan Samal. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 16.02.2017 with paid up share capital of Rs. 50,00,000/- and address at Plot No. 824, Sri Selva Vinayagar B Nagar, 7th street, Azhinjivakkam, Redhills, Chennai – 600 052, within the jurisdiction of this Tribunal. In Part III of the application, the Operational Creditor has not proposed anyone as the IRP. Part IV of the application sets out the details of the debt being Rs.1,55,98,628/- (Rupees one crore fifty five lakhs ninety eight thousand six twenty eight only) plus interest @ 18% on account of the services rendered and work undertaken with date of default as 01.11.2018. This application has been filed on 09.01.2023.

2.2. It is submitted that the Applicant, Samal Infra Projects Pvt. Ltd., had entered into an arrangement with the Corporate Debtor pursuant to a Letter of Intent dated 11.01.2018, whereby the Applicant was engaged to

supply materials and labour for execution of civil and mechanical works at the Samsung Electronics India's facility located in Noida.

2.3. Pursuant to the said engagement, the Applicant undertook substantial work and supplied high-quality materials and skilled labour until September 2018. A cheque bearing No. 542360 dated 11.01.2018 for an amount of Rs.1,30,00,000/- drawn on Oriental Bank of Commerce, Branch – Gamma I, Greater Noida, was issued by the Operational Creditor in favour of the Corporate Debtor as a security towards advance payment.

2.4. It is submitted that the Corporate Debtor acknowledged the Applicant's pricing and computation of profit margin at 15% vide email communication dated 11.01.2018. While the Corporate Debtor initially made certain part-payments including a final payment of Rs.40,00,000/- on 01.10.2018 and cumulative payments totalling Rs.21,45,95,114/-, a sum of Rs.1,54,31,802/- remained outstanding and unpaid as on 01.11.2018. An additional sum of Rs.1,66,826/- was also due on account of TDS default, thereby aggregating the total due to Rs.1,55,98,628/-.

2.5. Despite issuance of a request letter dated 09.11.2018 for return of the undated security cheque and a further intimation dated 07.12.2018 instructing "stop payment", the said cheque was not returned. On the

contrary, the Corporate Debtor deposited the cheque for encashment on 24.01.2019.

2.6. It is submitted that the act of depositing the security cheque was malafide and amounts to a fraudulent intent to misuse the same. It is further submitted that the Corporate Debtor, without any justification, issued a debit note dated 01.12.2018 for Rs.1,54,31,744/- which was neither received nor accepted by the Applicant and is stated to be concocted and untenable.

2.7. It is further submitted that the Applicant thereafter issued a demand notice dated 28.01.2019 under Section 8 of the Code, demanding the unpaid amount along with interest, which was met with a legal notice under Section 138 of the Negotiable Instruments Act from the Corporate Debtor. A reply dated 16.02.2019 was sent by the Applicant denying all allegations and reiterating that the cheque was issued only as security and had been previously instructed to be withheld from payment. Despite such communications, multiple letters, reminders, and verbal follow-ups, the Corporate Debtor failed to clear the outstanding dues.

2.8. It is submitted that the date of default is 01.11.2018. Although an earlier application was filed before this Hon'ble Tribunal (Court I) in

CP/IBA/844/(CHE)2019, the same was dismissed due to certain pagination discrepancies, with liberty granted to refile the petition, which has culminated in the filing of the present application.

2.9. It is submitted that the Applicant has annexed requisite documents including invoices, demand notice, GST returns, Form 26AS, bank statements, and relevant correspondence in support of its claim.

3. SUBMISSIONS OF THE RESPONDENT

3.1. The Respondent/ Corporate Debtor, M/s Sungbo Engineering India Pvt. Ltd., submitted that the present petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not only maintainable either in law or on facts and is liable to be dismissed at the threshold but also filed with malafide intent, to unjustly enrich the Operational Creditor.

3.2. It is contended that there exists no legally recoverable operational debt, and the petition is an abuse of process intended to exert undue pressure amidst pending litigation between the parties. The Corporate Debtor asserts that there is a pre-existing dispute, which bars the admission of this application.

3.3. It is contended that the Operational Creditor was engaged to supply labour and materials for civil and mechanical works related to the SIEL-

P(N) Expansion Project at Samsung India's plant in Noida, and it was agreed that the Operational Creditor would be entitled to 6% profit on the invoice value, and not 15% as falsely claimed. Between December 2017 and September 2018, the Operational Creditor supplied goods and manpower worth Rs.23,02,68,578.74, as per its own ledger. However, it is alleged that the materials were of inferior quality and the labour was delayed and unskilled, causing significant project delays and loss to the Corporate Debtor, who had to import skilled labour from Korea to rectify and complete the works at additional cost, the details of which are evidenced through records annexed to the reply.

3.4. It is further submitted that the Operational Creditor raised invoices at inflated rates without prior approval, and despite several communications, failed to correct them. The Corporate Debtor, however, released cumulative payments of Rs.21,45,95,113.94, and the Operational Creditor had acknowledged the receipt of full and final settlement on its letterhead dated 01.10.2018. The Corporate Debtor also issued a debit note for Rs.1,54,31,744/- for damages and raised concerns regarding non-deposit of GST. A legal notice dated 21.12.2018 was issued in this regard, following which the GST was belatedly deposited by the Operational Creditor.

3.5. It is further submitted that after an internal audit, total losses and damages were quantified at Rs.4,62,43,593/- on account of delay, defective materials, and inflated billing. The Operational Creditor, according to the Respondent, admitted to part liability and issued a cheque dated 22.01.2019 for Rs.1,30,00,000/- towards partial settlement. However, the said cheque was dishonoured upon presentation due to "stop payment" instructions. A legal notice under Section 138 of the NI Act was issued, and a criminal complaint was filed before the Hon'ble Patiala House Court, where summons have been duly issued to the Operational Creditor. The Respondent has also initiated parallel insolvency proceedings before the NCLT, Allahabad Bench (Company Petition No. IB/300/ALD/2019), which is pending adjudication.

3.6. It is also submitted that the present petition is barred by limitation, as it is founded upon a demand notice dated 28.01.2019, and no fresh demand notice was issued after the earlier petition, CP/IBA/844/(CHE)2019, was dismissed on 25.11.2022 due to procedural defects.

3.7. Hence, the petition suffers from a lack of fresh cause of action and is also hit by Section 10A of the Code. The Respondent argues that the

Operational Creditor has failed to establish the existence of a legally recoverable operational debt as defined under Section 5(21) of the Code, and that the present petition is nothing but a counterblast to the proceedings initiated by the Corporate Debtor.

4. SUBMISSIONS OF THE APPLICANT IN REJOINER

4.1. The Applicant/ Operational Creditor reiterated the averments made in the main petition and denied the allegations raised by the Respondent/ Corporate Debtor.

4.2. It was submitted that the claim of a pre-existing dispute is baseless and manufactured to evade payment of an admitted operational debt. The Applicant contended that it was engaged under a Letter of Intent dated 11.01.2018 for carrying out specific construction and installation works at the Samsung SIEL-P(N) Expansion Project, and that the agreed profit margin was 15% on invoice value and not 6% as wrongly claimed by the Respondent.

4.3. The Applicant denied allegations of supplying inferior materials or delayed services and asserted that the work was executed as per the Corporate Debtor's requirements, with no objections raised during execution.

4.4. It was further submitted that the value of work completed amounted to Rs.23.02 crores, substantially exceeding the contracted value of Rs.12.95 crores, which disproves the allegations of underperformance. The Applicant claimed only the admitted and unpaid sum of Rs.1,54,32,570/-, duly reflected in the books of the Corporate Debtor.

4.5. The contention of full and final settlement based on a payment of Rs.40,00,000/- on 01.10.2018 was denied, with the Applicant clarifying that the receipt was issued only towards labour charges and not in discharge of the entire liability. Also, that the Corporate Debtor had agreed to issue appropriate acknowledgment notes admitting its remaining liability but subsequently failed to do so. The plea of full and final settlement is stated to be fraudulent, unsupported by any credit or adjustment notes or other instruments.

4.6. The Corporate Debtor's allegations regarding GST non-payment were also denied, and it was asserted that the GST dues were cleared on 06.11.2018 and filed the requisite GSTR-3B forms, in line with an email confirmation from the Respondent dated 01.11.2018. The allegation that the GST was not paid until December 2018 was denied as false and concocted to avoid liability.

4.7. The Applicant submitted that the cheque bearing No. 542360 for Rs.1,30,00,000/- was issued as a security instrument in January 2018 and was wrongfully deposited by the Corporate Debtor in January 2019 to create a false narrative of part-settlement. The Applicant termed the Respondent's initiation of NI Act proceedings and counter-insolvency petition as retaliatory and an abuse of process. It was finally submitted that the debt is undisputed, due, and acknowledged, and that the present petition be admitted in the interest of justice.

4.8. It is further submitted that all post-dated ledger entries and debit notes created after 30.09.2018 were fabricated with the mala fide intent to manufacture a dispute. It was submitted that the Corporate Debtor's own confirmation of outstanding dues in the email dated 01.11.2018 renders its subsequent claims of losses and damages untenable. The filing of the counter-petition before NCLT, Allahabad and criminal complaint under NI Act were submitted to be retaliatory and aimed at evading the settled liabilities.

5. FINDINGS OF THE TRIBUNAL

5.1. We have heard the Learned Counsel appearing for both parties and perused the pleadings, documents, rejoinder, synopsis, and subsequent memo filed in compliance with this Tribunal's directions.

5.2. The Applicant/ Operational Creditor has approached this Tribunal under Section 9 of the IBC, 2016 seeking initiation of the Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor for an alleged default in payment of an operational debt amounting to Rs.1,60,02,568/-, being the outstanding principal sum of Rs.1,54,32,570/- along with interest at 18% per annum. It is the case of the Applicant that the said amount pertains to materials and manpower supplied pursuant to a Letter of Intent dated 11.01.2018 issued by the Corporate Debtor in connection with the SIEL-P(N) Expansion Project of Samsung.

5.3. The Corporate Debtor, on the other hand, has strongly opposed the maintainability of the application by raising the ground of pre-existing dispute, absence of operational debt, and limitation, further contending that the Applicant had already received full and final settlement. The Respondent also relies on a dishonoured cheque for Rs.1.30 Crores, alleged to have been issued by the Applicant in part-settlement of damages, and proceedings initiated under Section 138 of the NI Act.

5.4. It is also pointed out that the Corporate Debtor had earlier moved a Company Petition No. 300/ALD/2019 before NCLT, Allahabad, and that the present petition is a counterblast to such proceedings.

5.5. It is also observed that the Respondent has been set exparte by this Tribunal vide order dated 26.08.2024, for non-appearance.

5.6. Upon consideration of the material on record, we find that the Operational Creditor has established, through invoices, calculation sheets, and correspondence, that it had executed work and supplied manpower and materials valued at over Rs.23.02 Crores, against which payments totalling Rs.21.45 Crores have been received. The Applicant has produced communication dated 01.11.2018 from the Corporate Debtor acknowledging the liability, which remained unpaid despite repeated follow-ups. The claim that the payment of Rs.40 Lakhs on 01.10.2018 amounted to full and final settlement is not supported by any discharge voucher or express written acknowledgment from the Applicant, and the said receipt refers only to part-payment against labour dues.

5.7. On perusal of the invoices, ledger accounts, and correspondence including the email dated 01.11.2018 issued by the Corporate Debtor, acknowledging the balance pending subject to GST compliance, it becomes evident that a sum of Rs.1.54 crores remained unpaid. The Corporate Debtor has not denied the execution of the work or receipt of supplies. The debit note dated 01.12.2018 relied on by the Corporate Debtor appears to

be unilateral, without any acceptance or acknowledgment from the Applicant. In the absence of corroborating evidence that the same was ever communicated or accepted, it cannot qualify as a valid set-off.

5.8. The cheque allegedly issued in part settlement has also been clarified by the Applicant as a security instrument. The stop payment instructions issued on 07.12.2018, and the surrounding correspondence, lend credibility to the Applicant's explanation. The pendency of NI Act proceedings arising out of said cheque does not, by itself, negate the existence of the operational debt or the occurrence of default.

5.9. Hence, the Tribunal is satisfied that an operational debt exists under Section 5(21), and the default occurred on 15.11.2018, as confirmed by the Applicant in its memo dated 24.01.2025.

5.10. The Tribunal also takes note of the clarification filed by the Applicant in response to our earlier directions, which clearly states that the date of default is 15.11.2018, and that the earlier petition filed in 2019 (CP/IBA/844/2019) before this Hon'ble Tribunal Court – I, was dismissed on 25.11.2022 only on technical grounds without adjudication on merits and the order clearly permitted the Applicant liberty to refile the application. The invoices have now been placed on record in compliance

with the order dated 21.01.2025, and we find them to be consistent with the Applicant's ledger and supporting documents. The argument of the Corporate Debtor that the claim is barred by limitation is also unsustainable in light of the Applicant's continuous cause of action and filing of the present petition in continuation of the earlier one, originally filed in 2019.

5.11. Therefore, this petition is within the limitation period from the date of default, as the litigation is continuing and is maintainable. The protection under Section 10A of the IBC also does not apply, as the default occurred prior to the COVID-19 period.

5.12. The Corporate Debtor contended that there is a pre-existing dispute regarding quality of materials, delays, and inflated invoices. However, the Tribunal notes that no objections were raised contemporaneously during the execution of work, and no contemporaneous communication reflects any reservation regarding the quality or valuation of supplies.

5.13. The allegation that skilled Korean workers had to be engaged due to non-performance by the Applicant lacks supporting records. No independent inspection reports, quality audits, or third-party correspondence have been produced. Further, the Corporate Debtor

continued to engage some of the Applicant's workers for maintenance, indicating a continuing business relationship, inconsistent with the claim of substandard execution.

5.14. Additionally, the so-called dispute appears to have been raised only after the demand notice dated 28.01.2019 was issued by the Applicant. The Supreme Court in *Mobilox Innovations v. Kirusa Software Private Ltd.* has held that a dispute must not only be pre-existing but must be genuine and substantiated with evidence. In this case, the disputes are raised belatedly and without contemporaneous substantiation.

5.15. As regards the alleged debit note and GST non-payment, the record reveals that the Applicant had submitted GSTR-3B filings, and the Corporate Debtor had continued to raise no objections until post-completion of the project, indicating absence of a genuine contemporaneous dispute. The cheque for Rs.1.30 Crores is claimed by the Applicant to be a security instrument, and the conduct of the Corporate Debtor in depositing the same despite prior "Stop Payment" notices dated 09.11.2018 and 07.12.2018 lends credence to this version. We also find that the internal audit report stated to have given a finding of alleged losses of

Rs.4.62 Crores is not backed by any independent or third-party verification and appears to have been raised only after disputes began.

5.16. The pendency of a counter-insolvency petition filed by the Corporate Debtor before NCLT, Allahabad, cannot, by itself, be a bar to admission of this petition. There is no order of admission or moratorium in that matter. Similarly, pendency of Section 138 NI Act proceedings does not preclude the Tribunal from adjudicating upon the existence of operational debt and default under the Code.

5.17. We find that the Applicant has successfully discharged its burden under Section 9 of the Code by satisfying the procedural compliance, and that the Respondent has failed to prove the existence of a real and substantial dispute, as required under Section 8(2)(a) of the Code. The invocation of Section 138 NI Act proceedings and pendency of a parallel petition by the Corporate Debtor, in our view, does not bar the Applicant's claim, as neither establishes the absence of liability in the present matter. No proceedings under Section 10A of IBC are found applicable to the facts of this case.

5.18. The Tribunal is therefore of the considered opinion that the Operational Creditor has established:

- The existence of a legally recoverable operational debt;
- The occurrence of default on 15.11.2018;
- That the Corporate Debtor has failed to demonstrate any genuine pre-existing dispute;
- And that the application is complete, within limitation, and satisfies all the statutory preconditions under Section 9 of the Code.

5.19. Accordingly, this Tribunal admits the petition under Section 9 of the IBC, 2016 and initiates Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, M/s Sungbo Engineering India Pvt. Ltd.

5.20. In the present case, the Operational Creditor has not named the Insolvency Resolution Professional in Part – III of the Application. Hence, this Tribunal appoints Mr. Mathur Sabhapathy Viswanathan, having Registration No: IBBI/IPA-001/IP-P00674/2017-2018/11148, (email id: msv8200@gmail.com) who is having Authorization for Assignment till 31.12.2025 as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate

Debtor 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.

5.21. As a consequence of the Application being admitted in terms of Section 9 (5) 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;"

5.22. 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 Debtor 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.”

5.23. 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.”

5.24. The Operational Creditor is directed to pay a sum of Rs.2,00,000/- (Rupees Two lakh only) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5.25. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall 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 shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

6. Accordingly, **CP(IB)/50/(CHE)/2023** is **allowed**.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)