



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-204
IB-309/ND/2022

IN THE MATTER OF:

M/s. Redpro Construction Pvt. Ltd.

....Applicant

Vs.

M/s Skyline Infratech Pvt. Ltd.

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 16.10.2023

CORAM:

**SHRI P.S.N PRASAD,
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. IB-309/ND/2022 stands **dismissed**.

**Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)**

**Sd/-
(P.S.N PRASAD)
MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

CP IB NO. 309/(ND)/2022

An Application 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 Redpro Construction Pvt. Ltd.
8233, Rani Jhansi Road,
Near Filmistan Cinema,
Delhi – 110006

...Operational Creditor

Versus

M/s Skyline Infratech Pvt. Ltd.
Sh. Anil Kumar Vaswani (Director),
A-14, Basement, Kailash Colony,
New Delhi-110048

...Corporate Debtor

Order Delivered on: 16.10.2023

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

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

APPEARANCE:

For the Applicant : Mr. Humraz Bir Singh, Adv

For the Respondent : Raghav Agarwal, Advocate



ORDER

PER: P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. This is an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Redpro Construction Pvt. Ltd. (*‘Operational Creditor’*)** through its Authorized Representative Mr. Parmod Kumar Vasta for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **M/s Skyline Infratech Pvt. Ltd. (*‘Corporate Debtor’*)**.
2. **M/s Redpro Constructions Pvt. Ltd.** (Operational Creditor) is a Company registered under the Companies Act, 1956 [CIN- U45200DL2006PTC155648] having its registered office at 8233, 1st Floor, L.R. Complex, Filmistan Rani Jhansi Road Delhi- 110006. **M/s Skyline Infratech Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U74210DL1999PTC102058], having its registered office at A-14, Basement, Kailash Colony, New Delh- 110048. The Corporate Debtor has Authorized Share Capital of Rs. 2,00,00,000/- (Rupees Two Crore) and Paid-Up Share Capital of Rs 84,00,000/- (Rupees Eighty-Four Lakh).
3. The present Application was filed on 21.02.2022 before this Adjudicating Authority by Mr. Parmod Kumar Vasta, the Authorised Representative of the Operational Creditor, duly authorized to initiate Corporate Insolvency Resolution Process (***‘CIRP’***) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘Code’***). The total amount due as on 10.05.2022 is claimed to be Rs 1,40,96,295/- (Rupees One Crore Forty Lacs Ninety-Six Thousand Two Hundred and Ninety-Five Only). The ***date of default*** is not expressly mentioned in Part IV of the petition, However, it is mentioned in the present application, that the debt became due and payable as on 10.05.2020, date of last invoice.
4. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***



- a)** M/s Redpro Constructions Private Limited (hereinafter referred to as the “Operational Creditor”) is a private limited Company incorporated under the provisions of Companies Act, 1956 having its Registered Office at 8233, Rani Jhansi Road, Near Filmistan Cinema, Delhi-110006 and is engaged in the business of carrying out construction and civil work of the buildings.
- b)** M/s Skyline Infratech Pvt. Ltd. (hereinafter referred to as the "Corporate Debtor") is a private limited Company incorporated on 20.10.1999 under the provisions of the Companies Act, 1956 having its registered office at A-14, Basement, Kailash Colony, New Delhi-110048. The Corporate Debtor has been carrying out work on the projects of M/s Jaiprakash Associates Limited, and had entered into three separate agreements dated 29.09.2017 for Civil Work, dated 11.11.2017 for Electrical Work and dated 17.11.2017 for Plumbing Work with M/s Jaiprakash Associates Limited, Noida for carrying out electrical, plumbing and other civil work at the project Kensington Boulevard, Noida for Towers No. 7, 12, 14, 19, 20, 21 and 22.
- c)** Since the Corporate Debtor was incapable of executing the said work on its own, the Corporate Debtor approached the Operational Creditor/Applicant for financial & working assistance, to which the Operational Creditor agreed. So, pursuant to an understanding with the Operational Creditor the Corporate Debtor on 25.08.2017 vide three Agreements, all dated 25.08.2017 for Electrical, Plumbing and Civil Works, placed work order with Operational Creditor at the project Kensington Boulevard, Noida for Towers No. 7, 12, 14, 19, 20, 21 and 22 on the following terms and conditions:
- “The Work shall be executed by (‘RPC’) on back to back basis on the following terms and conditions:*
- 1. ‘RCP’ shall execute all works as per the BOQ signed between ‘SIPL’ and ‘JAL’.*
 - 2. ‘RCP’ shall raise/submit all bills to ‘JAL’ on behalf of ‘SIPL’.*
 - 3. ‘RCP’ shall be responsible for all the works at site.*
 - 4. ‘RCP’ shall adhere to all the terms and conditions and guidelines of ‘JAL’.*
- d)** Right after the Agreements dated 25.08.2017 for Electrical, Plumbing and Civil works respectively from the first day, Operational Creditor has been performing its work



diligently on behalf of Corporate Debtor for the above said project of M/s Jaiprakash Associates Limited and further raised bills for the said work. Further, the Operational Creditor has been flexible and adjusting with the payment terms with an endeavor to maintain healthy and good business relationships and for this purpose the amount as received from the Corporate Debtor were being adjusted with the past due invoices and hence a running and recurring account was initiated and is subsisting in the books of accounts of the Operational Creditor in the name of the Corporate Debtor.

- e)** Accordingly, the last payment received from the Corporate Debtor was a sum of Rs. 9,16,000/- (Nine Lakhs Sixteen Thousand Only) on 15.10.2019 which was adjusted against the much pending outstanding invoices. Despite repeated reminders and admissions on behalf of the Corporate Debtor of the outstanding dues, the Corporate Debtor still is liable to pay an operational debt of Rs. 1,40,96,295/- (Rupees One Crore Forty Lacs Ninety-Six Thousand Two Hundred and Ninety-Five Only) plus interest towards unpaid Bills, Retention Money and TDS, to Operational Creditor.
- f)** Even after regular following up via email, personal meetings, and telephonic conversations the Corporate Debtor has evaded all such requests for payment for the services so rendered by the Operational Creditor. The Operational Creditor inter-alia issued various individual invoices towards the services rendered by the Operational Creditor as a part of business transactions with the Corporate Debtor/Respondent Company which were duly received and accepted by the Corporate Debtor.
- g)** As per the records maintained, the Corporate Debtor started to default in the payment of the invoices since the financial year 2017-2018. The Operational Creditor in an endeavor to recover their outstanding dues of a sum of Rs 1,40,96,295/- issued a demand notice dated 16.09.2021. Despite multiple conversations and reminders to reconcile and make clear the outstanding accounts the Corporate debtor has miserably failed to clear the pending dues towards the invoices issued since 2017 till 2019 as detailed in Part IV of the present application by the Operational Creditor wherein an amount of Rs.1,40,96,295/- (Rupees One Crore Forty Lakhs Ninety Six Lacks Two Hundred and Ninety Five Only) as on 16.09.2021, remained due,



outstanding and is claimed under the present petition against the supplies effected by the Applicant herein.

- h)** That the Operational Creditor made numerous follow ups with the Corporate Debtor vide exchange of Emails, Whatsapp messages physical meetings and telephonic conversation from 2017-2020 wherein the Corporate Debtor admitted to the outstanding debt both orally and in writing but on some pretext or the other by making bogus excuses evaded making the dues clear. The Operational Creditor has adjusted the amounts as received from the Corporate Debtor from time to time against the past dues from the running account and the sum outstanding after making all adjustments is Rs 1,40,96,295/- which is being claimed vide the present application by the Operational Creditor.
- i)** The Corporate Debtor till date has not replied to nor disputed the said Demand Notice dated 16.09.2021 sent by the Operational Creditor, which has duly been received by the Corporate Debtor vide email dated 27.09.2021. As the Corporate Debtor despite the receipt of abovementioned notice has not paid the aforementioned amount to the Operational Creditor. Therefore, the Operational Creditor has filed this Petition under the IBC, 2016.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a)** It is submitted on behalf of the Corporate Debtor that the present application is nothing but a bundle of lies cooked with concocted story and is also filed by a person who firstly used the identity of the respondent in good faith for dealing of the work, and after misused his identity and cheated the respondent company, in collusion with the applicant company, thereby causing huge loss to the respondent company.
- b)** That the Applicant failed to work on the prescribed criteria and conditions of M/s Jaiprakash Associated Limited and worked with low quality and poor efficiency. M/s Jaiprakash Associates Ltd. made several complaints against the unwarranted poor working of the Applicant via emails which has been placed on record. That the Respondent suffered huge loss of Rs. 4,14,43,170/- due to uncalled for and unjustified working and acts of the applicant. That the Applicant further failed to



disclose the fact before this Adjudicating Authority that they are in possession of materials and T & P of Respondent which amounts to Rs. 1,71,28,736/-.

- c)** That as per the understanding, Applicant should have made the respondent partners in the contract with M/s Jaiprakash Associates Limited, but they executed the tender directly in their name causing the Respondent loss of minimum 10% as profit, payable to the respondent. That more than 1.75 Crores of scaffolding/equipment have been given to the Operational Creditor by the Corporate Debtor, which till date are being used by them. The said material has not been accounted for adjustments against the claims made by the applicant.
- d)** That the legal notice was neither served at the office through speed post as the office of Corporate Debtor was sealed by NDMC in the year 2019 and nor any email communication could be traced out as there was no technical staff available to check the regular emails. The email of notice was not sent on email address contact@skylineinfratech.com which is specifically mentioned in the letter head of work order. It was the duty of the Operational Creditor to recover the amount from M/s Jai Prakash Associates Limited, but the Operational Creditor failed to get the same and is malafidely putting a false claim on the Corporate Debtor.
- e)** That the invoices were raised without approval and verification of the work done by M/s Jai Prakash Associates and the invoices raised were of excessive amount which M/s Jai Prakash Associates denied to pay and the Operational Creditor has approached this Adjudicating Authority on the basis of said excessive amount.
- f)** That there is no liability on the part of Corporate Debtor and there is preexisting dispute between the Operational Creditor and the Corporate Debtor as the Operational Creditor had defaulted in completing the work orders and the Corporate Debtor. Hence, the application is liable to be dismissed.

Analysis & Findings

- 6.** We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by both parties. Since the registered office of the respondent



Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

- 7.** It transpires that the ‘Operational Creditor’ had sent a demand notice dated 16.09.2021 to the ‘Corporate Debtor’ under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs 1,40,96,295/- (Rupees One Crore Forty Lacs Ninety-Six Thousand Two Hundred and Ninety-Five Only). Therefore, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, in terms of Section 4 of the Code. The Applicant has tabulated a total of 17 invoices included in its claim as mentioned in Part IV of the Application.
- 8.** However, on the perusal of the invoices containing claims in respect of outstanding amount for the Financial Years 2017-2018, 2018-2019 and 2019-2020 as claimed by the Operational Creditor, it is observed that out of the total no. of invoices for the above said period (i.e. 17), the default in respect of one invoice included therein has occurred during the excluded period as mentioned under Section 10A of the Code, i.e., from 25.03.2020 to 24.03.2021. Section 10A of the Code reads as follows:

“10A. Notwithstanding anything contained in Sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.



Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

9. It is observed that the present Application has been filed on the basis of ‘debt’ and ‘default’, part of which has occurred during the period in which initiation of CIRP process is suspended, i.e., the period mentioned under Section 10A of the Code. The invoice which was raised during the excluded period as covered under Section 10A is RA Bill No. 06 which was raised on 10.05.2020 and the said invoice is placed on record. The same is extracted below:

GSTIN - 09AADCR7171H1Z4
TAX INVOICE

Original for Recipient
Duplicate for Supplier

Reverse Charge: NO
Invoice No: RC/KBA/20-21/01
Project Name: Plasma Electric Work for Kensington Boulevard Apartments Cluster B-12
(Towers-KBA-19 20 21 22)
Invoice Date: 10.05.2020
Place of Supply: UTTAR PRADESH
State Code: 09
Details of Receiver: Billed to
Name: SKYLINE INFRA TECH PVT LTD
Address: NOIDA, SECTRO 128
GSTIN: 09AAFG3803D22L
State: UTTAR PRADESH
State Code: 09

Agreement No.: JAL/REPIEXB/213/1093 dated 29.09.2017
RA Bill No-06
Bill Period: 01.11.2018 to 20.09.2019

Sr. No	HSN	Name of Product / Service	UOM	Qty	Rate	Total Value of Services Rs	Less: Discount	Taxable Value	CGST Rate	CGST Amount	SGST Rate	SGST Amount	Total
	954	Composite supply of work contract				1,52,087		1,52,087	9%	13,688	9%	13,688	1,79,463
Total						1,52,087		1,52,087		13,688		13,688	1,79,463
								(a)	Total Amount Before Tax				1,52,087
								(b)	Add: CGST				13,688
								(c)	Add: SGST				13,688
								(d)	Total Amount including GST (1+a+c)				1,79,463
Adjustment of Advance (including GST)								2					
Net Amount Payable								3	3=(1d-2)				1,79,463
Bank Details								GST Payable on Reverse Charge: No					
Bank Account Number (Account)								Certified that the particulars given above are true and correct. For, Redroo Constructions Pvt Ltd Authorized Signatory					
Bank Branch (IFSC (IFSC CODE))													
Terms and Conditions:													
(Seal)													

10. It is evident that the said invoice was raised during the period between 25.03.2020 to 24.03.2021, which is the excluded period as mentioned in Section 10A of IBC.



Moreover, the Operational Creditor has itself stated in the demand notice that the amounts under the composite debt of Rs 1,40,96,295/- (Rupees One Crore Forty Lacs Ninety-Six Thousand Two Hundred and Ninety-Five Only) fell due on the respective dates when the invoices were issued by the Operational Creditor to the Corporate Debtor. Therefore, the 'Date of Default' in respect of one invoice falls within the excluded period under Section 10A of the Code. Therefore, the present case entails the situation whereby the debt amount contains default, part of which has occurred during the period excluded under Section 10A from the purview of insolvency regime.

11. In the case of **Ramesh Kymal v. M/s Siemens Gamesa Renewable Power Pvt. Ltd., Civil Appeal No. 4050 of 2020**, the Hon'ble Supreme Court considered the applicability of the provisions of Section 10A in respect of defaults occurring after 25 March, 2020 wherein, an application u/s 9 was filed prior to the date on which the provision came into force i.e., 5 June, 2020. It was held by the Hon'ble Apex Court that it was in view of the object of the Code (revival of the corporate debtor) that the provisions of Section 10A were introduced in the Insolvency regime and therefore, irrespective of the date of filing of an application, no application shall be accepted for the defaults occurring from 25th March, 2020 to 24th March, 2021. At the same time, it was also made clear that for the benefit to be claimed under Section 10A, there must be a clear default occurring during the prohibited period.
12. After analyzing the relevant provisions of the Code, the Hon'ble Apex Court held that the expression **"no application shall ever be filed"** occurring within the proviso of section 10A indicates a bar on the institution of any application for the commencement of CIRP in respect of any default committed during the said prohibited period and that the substantive part of the provision is to be harmoniously construed with its proviso and the explanation. This has also been reiterated by the Hon'ble NCLAT in its decision in **B Sreekala v. M/s. Al Sadiq Sweets & Anr., Company Appeal (AT) (Ins.) No. 55 of 2021**, wherein it was held that a blanket ban was imposed against initiation of CIRP under Section 10A.



13. Once the basic principle as judicially clarified by the Hon'ble Supreme Court in Ramesh Kymal (supra), i.e., that on the basis of a harmonious construction of the substantive provisions along with the proviso as well as the explanation included in Section 10A, no application can ever be filed in respect of any default occurring during the prohibited period is accepted, the instant application filed u/s 9 cannot be held to be maintainable due to the following reasons:

- i. **Invalidity of Section 8 notice:** First and foremost, the total claim made in the statutory demand notice served on the Corporate Debtor u/s 8 is intrinsically linked to and is based on defaults which, without a doubt, occurred during the period excluded u/s 10A. It is trite, that service of a valid notice u/s 8 is a sine qua non for filing application u/s 9. Further, in view of the judgment of Hon'ble Supreme Court in Ramesh Kymal (supra), it is also well settled now that provisions of section 10A create a complete bar on initiation of CIRP, in respect of any default that has occurred during the period of suspension of the provisions of the Code by virtue of insertion of section 10A. Since, the defaults occurring during the period of suspension of the Code make a creditor/applicant ineligible to initiate CIRP in respect of such default, any notice issued u/s 8 communicating a claim which is intrinsically linked to and based on such default occurring during the excluded/suspended/prohibited period cannot be deemed to be valid. Consequently, any application filed u/s 9 of the Code based on such a notice served upon the Corporate Debtor which is intrinsically linked to and based on defaults occurring during the period of suspension of Sections 7, 9 and 10 by virtue of insertion of Section 10A cannot be considered to be maintainable and is, therefore, liable to be dismissed.
- ii. **Segregation of claim not possible after filing of Application u/s 9:** Secondly, the scheme of the Code in respect of initiation of CIRP u/s 9 of the Code has 3 distinct but interlinked phases:
 - a) Delivery of notice in prescribed Form 3 or 4 by the operational creditor of its total claim based on the debts and default occurring on various dates as narrated in the notice u/s 8(1),



- b)** Reply by the Corporate Debtor within a period of 10 days stating its case with reference to the claim, whether no amount as claimed is payable or the claimed amount has already been paid or alternatively stating pre-existence of a dispute as to the claim made in the statutory notice; and
- c)** Filing of application u/s 9 in Form 5 initiating the CIRP of the Corporate Debtor after taking into account, the reply received/not received.

It is clear from the above scheme of the Code that the operational creditor gets a chance to revise its claim based on the reply received from the Corporate Debtor before filing Form 5, but once a claim has been made by submitting the Form 5 with this Adjudicating Authority, there is no provision in the Code, which enables the operational creditor to segregate the claims into valid and invalid claims during the proceedings before the Adjudicating Authority and to plead that only valid claims may be considered for calculation of pecuniary threshold. This is so, because the proceedings under the IB Code, 2016 are not recovery proceedings which require determination of individual claims by the Adjudicating Authority. In fact, the Adjudicating Authority under the Code is only having a summary jurisdiction to decide the maintainability or non-maintainability of the Application filed and if the application is found maintainable and gets admitted, it is the duty of the Resolution Professional to collate the individual claims based on the record of the Corporate Debtor and/or relevant evidence furnished by the claimant/operational creditor. Therefore, the Adjudicating Authority cannot be burdened with segregation of valid and invalid invoices to calculate the pecuniary threshold.

In the case of **Yatra Online Ltd. Vs. Ezeego One Travel and Tours Ltd. Through Resolution Professional, Company Appeal (AT) (Ins.) No. 387 of 2023**, the Hon'ble NCLAT have also laid down the principle that the amount claimed under default in the Section 8 notice and in the application u/s 9 cannot be revised during the proceedings before the Adjudicating Authority to avoid the effects of S.10 A.



iii. Duty of applicant to file an application based on valid claims only: From the discussion above, it follows that it is the duty of the applicant to be alert and vigilant both at the time of issuing the statutory notice u/s 8 as well as at the time of filing the Application u/s 9 that only valid claims are included. Otherwise, even if only one of the invoices is claimed to have been due and payable and defaulted within the prohibited period u/s 10A, it shall invalidate the statutory notice u/s 8 as well as the Application filed u/s 9 in view of the judicial interpretation and guidance available in Ramesh Kymal (supra) that on the basis of a harmonious construction of the substantive provisions along with the proviso as well as the explanation included in Section 10A, no application can ever be filed in respect of any default occurring during the prohibited period. Since the applicant herein, has failed in its duty and has based both the statutory notice as well as application on defaults occurring during the prohibited period, and no segregation is possible under the provisions of the Code after filing the application as discussed above, the entire claim is liable to be discarded for the purposes of initiation of CIRP. Suffice it to say that Section 10A does not bar any other action that may be available to the applicant under law, except initiation of CIRP under the IB Code, 2016.

Accordingly, in our considered view the instant application filed u/s 9 which is based on default occurring within the prohibited period u/s 10A is not maintainable and is liable to be dismissed.

- 14.** In the light of the abovementioned principle, we are of the considered view that since the Demand notice issued in terms of Section 8(1) of I&B Code as well as the present Application filed under Section 9 of I&B Code is based on the invoice pertaining to the suspended period for initiation of CIRP, in other words, which was raised during the period excluded under Section 10A, the present petition is liable to be dismissed.
- 15.** It is, accordingly, hereby ordered that the application bearing CP (IB) No. 309/ND/2022 filed by, **M/s Redpro Construction Pvt. Ltd**, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s**



Skyline Infratech Pvt. Ltd. (Corporate Debtor), is not maintainable and therefore stands **dismissed without costs**. The petitioner can prosecute his claims before the appropriate courts/other legal forums, as per the law in force.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(Dr. Binod Kumar Sinha)
Member (Technical)

Sd/-
(P.S.N. Prasad)
Member (Judicial)