

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 108/9/JPR/2020**

*(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:**

**Kapil Sinigal Proprietor, M/s Halcyon Technologies,**

C/o 140/22 & 23, Basement No.3,  
The Foresta Apartment, Behind  
Indian Oil Petrol Pump, Shipra Path,  
Mansarovar, Jaipur, Rajasthan,  
India-302020

**...Applicant / Operational Creditor**

**VERSUS**

**Radhegovindkripa Developers Private Limited**

**CIN: U45201RJ2007PTC024975**

Reg. Add: Plot No. 2055, II nd Floor,  
Ramlalla Ji Ka Rasta, Johari Bazar  
Jaipur, Rajasthan-302003

**...Respondent / Corporate Debtor**

**For Petitioner (s) : Mr. Nitesh Shrivastava, Adv.**

**For Respondent (s) : Mr. Nikhil Jain, Adv.**

**ORDER PRONOUNCED ON: 19.10.2022**

## **ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by Mr. Kapil Singhal Proprietor of M/s Halcyon Technologies ('Operational Creditor'/'Applicant') seeking to initiate the Corporate Insolvency Resolution Process ('CIRP') of M/s Radhegovinndkripa Developers Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The proprietorship firm of the Applicant, M/s Halcyon Technologies, is registered with Micro, Small & Medium Enterprises ('MSME') under the category of "Small Enterprises" and the registered office of the same is situated at B-2, 140/23-A, Foresta Apartment, Shipra Path, Mansarovar, Jaipur, Rajasthan. The Applicant is engaged in the business of providing Air Conditioning Works including its Supply, Installation, Testing and Commissioning of Entire Works.
3. The Applicant has alleged default on the part of the Respondent for the non-payment of operational dues amounting to Rs. 2,75,13,282/- (Rs. Two Crore Seventy-Five Lakhs Thirteen Thousand Two Hundred and Eighty-Two Only) including interest calculated till 10.06.2020. The aforesaid amount includes the principal debt of Rs. 1,71,04,379/- (Rupees One Crore Seventy-One Lakh Four Thousand Three Hundred and Seventy-Nine Only) and

interest calculated till 10.06.2020 i.e. Rs. 1,04,08,903/- (Rupees One Crore Four Lakhs Eight Thousand Nine Hundred Three Only).

4. The Corporate Debtor was incorporated under the Companies Act, 1956 on 11.09.2007 holding CIN: U45201RJ2007PTC024975 and is engaged in business of construction, running hotels, resort, spas, and other related activities. The Corporate Debtor has an Authorised Share Capital of Rs. 13,20,00,000/- (Rs. Thirteen Crore Twenty Lakhs Only) and Paid-Up Share Capital of Rs. 12,50,56,310/- (Rs. Twelve Crore Fifty Lakhs Fifty-Six Thousand Three Hundred Ten Only).
5. The Applicant has filed the present Application under Section 9 of the IBC, 2016 alleging the following set of facts:
  - a) The Corporate Debtor floated a tender on 17.05.2013 through Au Fait International Engineering Studio, New Delhi (Apostle Design Studios) (hereinafter referred to as the “MEP Consultants”) for supply, installation, testing, and commissioning of HV AC System at one of its hotel namely Jaisalmer Marriot Resorts & Spa situated at Jaisalmer. The Corporate Debtor and MEP Consultants appointed SAN Engineers & Consultants Pvt. Ltd. as their Project Management Consultant (hereinafter referred to as “PMC”) for verification and approval of the invoices which would be raised by tender holder i.e. the Applicant herein. Copy of the tender document is annexed as Annexure-3 of the Application.

- b) The Applicant participated in the tender process and eventually the tender was awarded to the Applicant. Subsequently, a work order dated 05.09.2013 was issued to the Applicant by the Corporate Debtor. The said work order contained terms and conditions which are to be read with the tender document to commission the said services for the Corporate Debtor in accordance with specifications as envisaged by MEP Consultants.
- c) The Applicant handed over the complete work to the Corporate Debtor on 08.09.2016 and executed some extra work for which the Applicant took due approval from MEP consultants and shared the list of extra work executed via e-mail dated 19.09.2015. Further, a Warranty Certificate was issued for a period of one year from 08.09.2016 to 07.09.2017 towards any defects arising due to defective material or workmanship along with all the test certificates/product details and operation & maintenance manual to the Corporate Debtor.
- d) The Applicant raised multiple invoices during the period of work being done, and later a final invoice was raised on 04.04.2017. As per Clause 3 of the Work Order, the Corporate Debtor is under obligation to make payment within 90 days from the date of receipt of the bills. After the issuance of the invoices, the Applicant vide emails dated 30.01.2017, 18.04.2017 and 20.04.2017, repetitively reminded the Corporate Debtor to make the payment. Later, the Applicant was

informed vide E-mail dated 19.07.2017 that a new PMC has been appointed from 20.03.2017 in the place of SAN Engineers & Consultants Pvt. Ltd.

- e) The Applicant approached the newly appointed PMC and placed its invoices which were due to be cleared by the Corporate Debtor before the new PMC. However, in response to the same, a summary was received, by the Applicant according to which the claim and payment of the Applicant were rejected. Also, in response a claim of Rs. 2,17,60,742/- (Rupees Two Crores Seventeen Lakhs Sixty Thousand Seven Forty-Two Only) was raised against the Applicant by the Corporate Debtor.
- f) Since the Corporate Debtor failed to clear the invoices issued by the Applicant, the Applicant preferred a Demand Notice under Section 8 of the Code dated 10.06.2020, whereby the Corporate Debtor was requested to make payment of Rs. 2,76,13,642/- (Rupees Two Crores Seventy-Six Lakhs Thirteen Thousand Six Hundred and Forty-Two Only). The Corporate Debtor in reply to Demand Notice vide letter dated 10.06.2020 stated that the work done by the Applicant is not as per the Tender and the bills of the work order were verified and approved by the earlier PMC through illegal means.
- g) The Applicant has submitted that the Corporate Debtor never raised a dispute regarding the quality of the material. The objection to quality

was raised by the Corporate Debtor only after the Applicant demanded the due payment vide Demand Notice dated 10.06.2020.

- h) The Applicant has submitted that when invoices numbered RA 1 to RA 15 were raised along with the final invoice amounting to Rs. 6,38,04,289/- (Six Crores Thirty-Eight Lakhs Four Thousand Two Hundred Eighty-Nine Only); the same were duly verified and approved by earlier PMC and payment to the tune of Rs. 4,66,99,910/- (Rupees Four Crores Sixty-Six Lakhs Ninety-Nine Thousand Nine Hundred Ten Only) was released. Accordingly, a sum of Rs. 1,71,04,379/- (Rupees One Crores Seventy-One Lakhs Four Thousand Three Hundred Seventy-Nine Only) is pending till date, the details of which are enumerated in Part-IV of the Application:

**Part IV**  
**PARTICULARS OF OPERATIONAL DEBT**

1.	Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.	Rs. 2,75,13,282/- (Rs. Two Crore Seventy-Five Lakhs Thirteen Thousand Two Hundred and Eighty-Two Only)	
		<i><b>Particulars</b></i>	<i><b>Amount (in Rs)</b></i>
		Outstanding Invoices (Running account & Supply of HV AC System)	Rs. 1,71,04,379/-
		Interest due @ 18% (till 10.06.2020)	Rs. 1,04,08,903/-
		Total:	2,75,13,282/-

2.	Amount claimed to be in default and the date on which the default occurred	<p>Rs. 2,75,13,282/- (Rs. Two Crore Seventy-Five Lakhs Thirteen Thousand Two Hundred and Eighty-Two Only)</p> <p>Date of defaults:</p> <table border="1"> <thead> <tr> <th data-bbox="794 405 1007 450"><i>Date</i></th> <th data-bbox="1007 405 1402 450"><i>Particular</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="794 450 1007 495">04.04.2017</td> <td data-bbox="1007 450 1402 495">Last invoice issued</td> </tr> <tr> <td data-bbox="794 495 1007 622">03.07.2017</td> <td data-bbox="1007 495 1402 622">Being 90 days from the date of submission of final bill.</td> </tr> <tr> <td data-bbox="794 622 1007 797">08.09.2017</td> <td data-bbox="1007 622 1402 797">Being 07.09.2017 as expiry of defect liability period as per clause 3 of the Work Order.</td> </tr> </tbody> </table>	<i>Date</i>	<i>Particular</i>	04.04.2017	Last invoice issued	03.07.2017	Being 90 days from the date of submission of final bill.	08.09.2017	Being 07.09.2017 as expiry of defect liability period as per clause 3 of the Work Order.
<i>Date</i>	<i>Particular</i>									
04.04.2017	Last invoice issued									
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08.09.2017	Being 07.09.2017 as expiry of defect liability period as per clause 3 of the Work Order.									

6. The Respondent, in its reply, filed *vide* Diary No. 2368/2021 dated 15.11.2021, has submitted the following:

- a) The Corporate Debtor submitted that there is a pre-existing dispute between the parties regarding the same subject matter and hence this Application is not maintainable. To strengthen its submission, the Corporate Debtor has relied on the Judgement of NCLT, Principal Bench, New Delhi in “*OPGS Power Gujrat Private Limited Vs. R. L Steel & Energy Limited, IB492(ND)/2017 dated 03.04.2018*”
- b) The Corporate Debtor submits that two different affidavits are required to be filed by the Applicant i.e. one verifying the application under Form 5 of Adjudicating Authority Rules, 2016 and another affidavit under section 9(3)(b) of IBC, 2016 for no dispute of the unpaid

operational debt prior to issuance of demand notice but the same has not been done.

- c) The Corporate Debtor also contended that the Applicant has neither handed over the complete work nor issued any Warranty Certificate. It is also stated that the alleged extra work undertaken by the Corporate Debtor was without any proper authorisation.
- d) As per the Corporate Debtor, the consideration for the work order was fixed at Rs. 4,71,00,000/- (Rupees Four Crore Seventy-One Lakh Only) whereas the Applicant raised a final invoice for Rs. 6,02,83,154/- (Rupees Six Crores Two Lakhs Eighty-Three Thousand One Fifty-Four Only). The invoices raised by the Applicant exceed the total consideration as agreed between the parties which raises suspicion.
- e) The Corporate Debtor also mentions that the Applicant has concealed the fact that a legal notice dated 13.05.2017 was served on the Corporate Debtor with respect to same subject matter. The Corporate Debtor replied to the same and raised the dispute regarding the work done i.e. the work done was not as per the prescribed terms of the tender. The Corporate Debtor also mentioned that the extra-work which was undertaken, was done without any authorization of the Corporate Debtor. Copy of the said legal notice dated 13.05.2017 and subsequent

reply by the Corporate Debtor are attached as Annexures R-5 and R-6 respectively of the reply.

- f) The Corporate Debtor further contends that the Applicant had filed a complaint before the Micro & Small Enterprises Facilitation Council, Rajasthan ('MSEFC') claiming an amount of Rs. 2,16,59,366/- (Rupees Two Crores Sixteen Lakhs Fifty-Nine Thousand Three Hundred Sixty-Six Thousand Only) in relation to the same subject matter.
- g) The Corporate Debtor submitted that in the E-mail dated 21.04.2017, the dispute/objection to the bills raised by the Applicant was duly conveyed to the Applicant. The grounds as mentioned by the Corporate Debtor in its e-mail for rejection of the bills raised by the Applicant are as follows:
- i. No commissioning of the system. The Corporate Debtor must employ an independent technical team for commissioning and rectification of the system which amounted to additional cost to Corporate Debtor. No support was provided from the Applicant.
  - ii. No handing over of the complete system installed by the Applicant.
  - iii. Non-Submission of few Test-reports of the system.
  - iv. Few equipment which was billed but has not been delivered at site. There is a difference in quantity in the bills and challans.

- v. Certain claims which lack documentary proof making it false claims etc
  - h) The Corporate Debtor has relied upon the judgment of the Hon'ble Supreme Court in *Mobilox Innovation Private Limited Vs Kirusa Software Private Limited (2018) 1 SCC 353* to support its claim and submits that the claim of the Applicant.
7. The Applicant has filed its written submission vide Diary No. 2815/2022 dated 20.09.2022 whereby it reiterated that (i) the dispute as mentioned by the Corporate Debtor cannot be considered a real and pre-existing dispute; (ii) the counterclaim which is made by the Corporate Debtor is in the nature of liquidated damages, hence cannot be termed as a dispute and (iii) the Applicant relied on the judgment of the Hon'ble NCLAT in *iValue Advisors Pvt. Ltd. Vs Srinagar Banighal Expressway Ltd. Company Appeal(AT)(Ins) No. 1142 of 2019 dated 13.01.2020* and judgment of the Hon'ble Supreme Court in *Mobilox Innovation Private Limited Vs Kirusa Software Private Limited (2018) 1 SCC 353*.
8. The Corporate Debtor filed its written submission vide Diary No. 2808/2022 dated 20.09.2022 reiterating the same as mentioned in its reply. Additionally, the Corporate Debtor has relied on the following set of judgements:
- i. *M/s S.S. Engineers Vs Hindustan Petroleum Corporation Ltd. & Ors.*  
-*Supreme Court Civil Appeal No. 4583 of 2022 [Reportable]*

ii. *Mobilox Innovation Private Limited Vs Kirusa Software Private Limited (2018) 1 SCC 353*

iii. *Henan Boom Gelatin Co. Ltd. Vs Sunil Healthcare Limited -NCLAT, New Delhi on 17 November 2021.*

9. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, written submissions, and all the documents enclosed with the application.
10. The Registered Office of the Respondent is situated in Jaipur; therefore, Adjudicating Authority has jurisdiction to entertain and try this Application. As the date of default mentioned in part IV is 03.07.2017 and the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020* had extended the limitation period from 15.03.2020 to 28.02.2022; the petition filed by the Application is well within limitation as the Application was filed on 24.07.2020.
11. Before we delve into the facts of the case, it is important to mention that as per Section 8(2)(a) of the Code, '*(2) The Corporate Debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring 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 invoices in relation to such dispute;*'. This section is restrictive in nature for filing an application under Section 9 of the Code i.e. if a valid existence of dispute or

record of pendency of suit or arbitration proceedings which existed before the issuance of demand notice, is shared with the Operational Creditor, within 10 days, it is presumed that there exists a pre-existing dispute between the parties with respect to the goods or services rendered by the Creditor.

12. The Hon'ble Supreme Court, in the matter of '***Mobilox Innovative Private Limited v. Kirusa Software Private Limited***' (*supra*), held as follows:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

13. The word ‘dispute’ as defined under Code includes suit or arbitration proceedings relating to the existence of the amount of debt; the quality of goods or services; or the breach of a representation or warranty. It is true

that the definition must fit under the parameters as defined under the code but at the same time it must stand on a test as laid down in the recent judgment of the Hon'ble Supreme Court in *M/s S.S. Engineers Vs Hindustan Petroleum Corporation Ltd. & Ors., Civil Appeal No. 4583 of 2022* whereby the following has been held:

*“31. The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.*

*32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”*

14. Therefore, the Corporate Debtor is left with no option but to show that there exists a dispute with respect to the quality of goods or services before the issuance of the demand notice under Section 8 so as to ensure that CIRP is not initiated against it. Whereas the Operational Creditor is required to prove that the Corporate Debtor has not complied with Section 8(2)(a) of the Code, so as to succeed in its Application under Section 9 of the Code.

15. From the data produced before us, it is pertinent to mention these documents along with description to understand the correspondence between the parties to the case:

- (i) E-mail dated 30.01.2017 which was preferred by the Applicant to the Corporate Debtor requesting clearance of the invoices raised.
- (ii) E-mail dated 19.04.2017 which was preferred by the Corporate Debtor to the Applicant wherein the Corporate Debtor has complained regarding the poor quality of work and mentioned that new PMC has been appointed.
- (iii) E-mail dated 21.04.2017 preferred by the new PMC to the Applicant wherein the new PMC has stated that the claim being sought by the Applicant is false and has also mentioned the defaults in the work undertaken by the Applicant.
- (iv) Legal Notice dated 13.05.2017 preferred by the Applicant to the Corporate Debtor claiming the due amount.
- (v) Reply Legal Notice dated 28.05.2017 preferred by the Corporate Debtor to the Applicant, wherein the Corporate Debtor has raised a counter claim to the tune of Rs. 3,32,61,738/- (Three Crores Thirty-Two Lacs Sixty-One Lacs Seven Hundred and Thirty-Eight Only)
- (vi) Demand Notice dated 10.06.2020 preferred by the Applicant under Section 8 of the Code.

16. It is also pertinent to mention that the Corporate Debtor has placed on record a notice which was issued by the MSEFC addressed to the Corporate Debtor to appear before the Council on 01.07.2019. Bare perusal of the notice shows that the Supplier i.e. the Applicant herein was directed to supply certain copies of documents before the Council. It is seen that the complaint has been filed before the MSEFC, Rajasthan by the Applicant for the recovery of the same amount. From the website of MSEFC, it is seen that the matter is still pending before the said forum. The Respondent has contended that the Applicant filed the complaint before MSEFC, which in turn ordered the Applicant to submit relevant documents but the Applicant has failed to do so. It is clear that the Applicant had moved its complaint before that forum so as to recover the same amount for which the Applicant has moved before this forum as well.
17. From the aforementioned facts and documents, the present Application is a clear indicator of prior contentious issues. The amount being referred in the said complaint before MSEFC for the recovery, is the same amount against which default has been alleged in the present Application. It is evidently clear that there was a continuous correspondence between the parties to the case with respect to the due amount and the quality of goods or services rendered by the Applicant. Moreover, the dispute was of such a nature that the Applicant moved to MSEFC to recover the alleged dues and the

Corporate Debtor on the other hand has raised a counter claim with respect to the faulty goods & services provided by the Applicant. The actions of the Applicant reflect the motive for filling this application as a recovery suit.

18. Therefore, it is clear that there exists a pre-existing dispute between the parties. Hence, in the present matter at hand, the conditions laid down under Section 9 of the Code are not fulfilled in the present application. In light of the judgment of the Hon'ble Supreme Court in *M/s S. S. Engineers vs. Hindustan Petroleum Corporation Ltd. & Ors.(supra)* , this Adjudicating Authority is not inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC. The Applicant is free to pursue the remedies available to it under any other provisions of law.
19. Accordingly, CP No. (IB)- 108/9/JPR/2020 is dismissed.

DEEP  
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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**