

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II
KOLKATA**

CP (IB) No. 34/KB/2023

*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:

Ankur Transport Private Limited

...Operational Creditor

Versus

Simplex Infrastructures Limited
[CIN: L45209WB1924PLC004969]

...Corporate Debtor

Date of Hearing: 27/02/2023
Date of pronouncement: 17/08/2023

Coram:

Bidisha Banerjee : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Operational Creditor : Mr. Abhishek Sikdar, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 by Ankur Transport Private Limited, represented by **Shri Rajiv Gupta**, authorized *vide* a Board Resolution dated

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01.08.2022¹ seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Simplex Infrastructures Limited (“Corporate Debtor”).

3. It is submitted that Part –I of this petition contains particulars of the Operational Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. Part –IV of the Petition contains details of operational debt for an amount of Rs.2,17,51,791/- (Rupees Two Crore Seventeen Lakh Fifty One Thousand Seven Hundred Ninety One only) including interest @ 12% per annum till 21.09.2022.
5. The Corporate Debtor was incorporated on 19 December 1924, having CIN: L45209WB1924PLC004969. It’s registered office is at ‘Simplex House’, 27, Shakespeare Sarani, Kolkata-700017. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 15 December 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.2,17,51,791/- (Rupees Two Crore Seventeen Lakh Fifty One Thousand Seven Hundred Ninety One only) including interest @ 12% per annum till 21.09.2022.

Submission of learned Counsel appearing for the Operational Creditor

7. The learned Counsel submitted that the debt has arisen in connection with various work orders placed by the Corporate Debtor since 2011 for logistics and transportation services of goods to various construction sites of the Corporate Debtor. The Operational Creditor after executing the work orders so placed raised several; invoices which were received and accepted by the Corporate Debtor without any protest or demure.

¹ Page 35 of the Petition

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8. The Learned Counsel further submitted that the payments for the invoices so raised were made on ad-hoc basis and not bill to bill basis and the parties maintain a running and continuous account.
9. The Operational Creditor has reminded the Corporate Debtor several times verbally for the payment of the due amount, however, the Corporate Debtor remained silent and neglected to pay the outstanding dues even after allowing credit period of the respective invoices.
10. The Learned Counsel submitted that the sum has become due and payable since 27.12.2018 after which no payment has been made by the Corporate Debtor. The last freight invoice was raised on 10.10.2018 has 60 days of credit period for which the date of default is from 09.12.2018.
11. The Corporate Debtor on 28.07.2018 had informed the Operational Creditor that a TDS @ 2% has been deducted on an amount of Rs. 1,60,100/- against invoice number ATC 001/2018-19, the same happened after reconciliation of accounts which is evidenced by the letter dated 28.07.2018.²
12. The Operational Creditor on 19.02.2020 had sent a letter to the Corporate Debtor for approval/release of the due amount which was received by the Corporate Debtor. Again on 19.03.2020, a joint meeting was held at the office of the Corporate Debtor for reconciliation of accounts in which the Corporate Debtor provided the details of the payment made, rebate/reduction claimed and tax deducted at source by them.
13. Subsequently, the Operational Creditor was compelled to send a Demand Notice dated 22.09.2022³ under Section 8 of the Code for making payment

² Annexure-E, Page 372 to 373 of the Petition

³ Annexure-G, Pages 378 to 382 of the Petition

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of the due amount, the same was received on 24.09.2022, however, no reply was received from the Corporate Debtor

Analysis and Findings

14. Heard the learned Counsels appearing for the Operational Creditor and perused the records. No one appeared for the Corporate Debtor.
15. The date of default stated by the Operational Creditor in Part IV of the petition is 09.12.2018 i.e., including the 60 days of credit period after the last freight invoice dated 10.10.2018 was issued to the Corporate Debtor.
16. It is significant to note that limitation plays an important role while deciding a petition under the Code. We find at the very outset that the date of filing is way beyond the period of limitation. The last invoice which is the basis of the debt accrued was issued on 10.10.2018 and the petition was filed on 15.12.2022. Therefore, the petition was filed way beyond the 3 years of limitation period. Hence, **C.P. (I.B.) No. 34/KB/2023** stands **rejected** on this ground alone.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

This order is pronounced on the 17th day of August, 2023.