

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**MUMBAI BENCH-I**

**CP (IB) 3253/MB/C-I/2019**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**A2Z Infraservices Limited**

**[CIN: U74140HR2008PLC037820]**

O-116, DLF Shopping Mall, Arjun Marg, DLF PH-1, Gurgaon, Haryana - 122002

...Operational Creditor

Versus

**Reliance Realty Limited**

**[CIN: U45300MH1993PLC173775]**

H-Block, 1<sup>st</sup> Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, Maharashtra - 400710

... Corporate Debtor

**Order Delivered on 09.02.2023**

***Coram:***

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

***Appearances:***

For the Operational Creditor : Mr. Ravish Mishra, Advocate

For the Corporate Debtor : Mr. Prateek Seksaria, Advocate a/w  
Mr. Tushad Kakalia, Advocate and  
Ms. Raghavi Sharma, Advocate i/b  
Mulla and Mulla & CBC

**ORDER**

*Per: Justice P.N. Deshmukh, Member (Judicial)*

1. The present Company Petition is filed by Mr. Raman Kaushik, on behalf of **A2Z Infraservices Limited** (hereinafter referred to as the “**Operational Creditor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against **Reliance Realty Limited** (hereinafter referred to as the “Corporate Debtor”).
2. The Corporate Debtor is company incorporated under the Companies Act, 1956 and has its registered office at H-Block, 1<sup>st</sup> Floor, Dhirubhai Ambani Knowledge City, Navi Mumbai, Maharashtra - 400710. Its Company Identification Number (CIN) is **U45300MH1993PLC173775**. Therefore, this Bench has the jurisdiction to entertain this Petition.
3. The **total amount of debt** claimed is **Rs.4,09,00,215 /-** (Rupees Four Crore Nine Lakh Two Hundred and Fifteen Only), which includes Rs.3,24,16,401/- as Principal amount and Rs.84,83,814/- as interest @18% per annum and till date of realization. The **date of default is 31.05.2016**.

**Submissions made by the Ld. Counsel of the Operational Creditor by the way of Petition:**

4. The Operational Creditor is a Non-Banking Financial Company. The primary business of the Operational Creditor is an engineering, procurement and construction company.

5. The Corporate Debtor apart from separate assignments issued following Work Orders bearing no.:

- I. Work Order bearing No. XB7/4500038962, dated 01.08.2016
- II. Work Order bearing No. XB7/4500039890, dated 24.08.2016
- III. Work Order bearing No. XB7/4500042548, dated 02.11.2016
- IV. Work Order bearing No. XB7/4500042805, dated 09.11.2016
- V. Work Order bearing No. XB7/4500042960 dated 12.11.2016
- VI. Work Order bearing No. XB7/4500044580, dated 26.12.2016
- VII. Work Order bearing No. XB7/4500045184 dared 16.06.2017
- VIII. Work Order bearing No. XB7/4500046055, dated 07.02.2017
- IX. Work order bearing No. XB7/4500016066, dated 07.02.2017

in favor of the Operational Creditor for providing Housekeeping and support services along with other miscellaneous work at its offices situated at DAKC, Kopakhairne, Navi-Mumbai as per the terms and conditions mentioned in the said respective work orders. A copy of the work orders are annexed as Annexure 4 (Colly) to the Petition.

6. In terms of the abovementioned Misc, works and Work Orders the Operational Creditor rendered its services and had accordingly raised the invoices against the work done/services provided. The debt has fallen due, under the invoices. A copy of the invoices are annexed herewith as Annexure No.5 (Colly).
7. As per the terms of the work orders, complete payment was to be made by the Corporate Debtor to the Operational Creditor within thirty days (30 Days) from the date of submission of monthly bill.
8. The Operational Creditor vide withdrawal notice email dated 31.03.2017 and 01.04.2017 withdrew from the services of the Corporate Debtor.
9. The Corporate Debtor vide email dated 07.04.2017 acknowledged to receive the pending invoices of the Operational Creditor. However, it failed to clear the dues till date.
10. There has been a delay on part of Corporate Debtor in making the complete payment to the Operational Creditor against the invoices raised. A copy of the Bill wise pending detail is annexed as Annexure 6 to the Petition.
11. The default on the part of Corporate Debtor entitles the Operational Creditor to claim the defaulted invoices amount together interest @18%p.a. from the date of default, till the date of realization.

12. The Operational Creditor in terms of the provisions of the Insolvency and Bankruptcy Code, 2016, in Form-3 (Clause (a) of sub-rule (1) of Rule 5) served a Demand Notice/Invoice demanding payment in respect of operational debt, dated 29.08.2018, on the Corporate Debtor, therein specifically demanding the defaulted payment of Rs. 4,09,00,215/- (Rupees Four Crore Nine Lakhs Two Hundred Fifteen Only). A copy of the Demand Notice/Invoice demanding payment in respect of operational debt, dated 29.08.2018 is annexed along with the proof of dispatch and is annexed as Annexure 7 (Colly) to the Petition.
13. The Corporate Debtor failed to reply to the demand notice dated 29.08.2018.
14. Therefore, the Operational Creditor has prayed that this Tribunal shall initiate the 'Corporate Insolvency Resolution Process' in respect of the Corporate Debtor.

**Submissions filed by the Corporate Debtor by the way of Affidavit in Reply:**

**I. The Operational Creditor is not entitled to monies claimed**

15. The Corporate Debtor contends that majority of the invoices and/or the principle amount forming basis of the Petition and annexed to the Petition from pages 91 to 139 have been paid by the Corporate Debtor and the Operational Creditor by filing this Petition has shown his

malafide and is not entitled to reliefs by this Tribunal on this ground itself.

16. Invoices with reference numbers 2016/09/0747, 2016/11/0502, 2016/11/0504, 2016/12/0050, 2016/12/0054, 2016/12/0056, 2016/12/0057, 2016/12/0061, 2016/12/0591, 2016/12/0592, 2016/12/0593, 2016/12/0594, 2016/12/0595, 2017/02/0027, 2017/02/0028, MV/M/16-17/03/0015, MV/M/16-17/03/0016, MV/M/16-17/03/0017, MV/M/16-17/03/0018, MV/M/16-17/03/0019, 2017/03/0537, 2017/03/0536, 2017/03/0535, 2017/03/0534, 2017/03/0533, 2017/03/0548, 2017/03/0550, 2017/03/0552 have been contemporaneously cleared by the Corporate Debtor and therefore, does not constitute a debt due and payable to the Operational Creditor. A tabulated statement showing the above payments and dates of payments has been annexed herewith and marked as Exhibit 'A'.
17. Many invoices forming part of the Operational Debt were never contemporaneously received by the Operational Creditor and only, for the first time, have been annexed to the Petition. The Corporate Debtor was never in receipt of these invoices and is proof that the Operational Creditor has only filed the present Petition as a way to arm twist the Corporate Debtor to receive monies in a summary manner without

going through the rigors to prove that the amounts are actually due and payable. A tabulated statement showing the above invoices has been annexed herewith and marked as Exhibit 'B'.

18. Therefore, this Petition deserves to be rejected.

## **II. The present Petition is bad for misjoinder of causes of action**

19. The Operational Debt admittedly comprises amounts due under several invoices which admittedly pertain to various, distinct Purchase/Work Orders.

20. By claiming amounts which are said to have arisen under such diverse Work Orders, the Operational Creditor has combined multiple claims arising out of different agreements and therefore seeks to pursue multiple causes of action, which is impermissible under the Code, as is well settled by the judgment of the NCLAT in *International Road Dynamics South Asia Pvt. Ltd. v. Reliance Infrastructure Ltd.*

## **III. The Operational Creditor has claimed interest contrary to provisions of the Work Orders**

21. It is submitted that, the amount of debt must be crystallized and based on the terms of the agreement arrived at between the parties. The Applicant has claimed interest at the rate of 18% over and above the

principal amount of alleged debt. The Work orders do not provide for payment of any interest in the event of default of payment of invoices raised thereunder. Therefore, whether or not the Applicant is entitled to any interest is a matter of trial and requires evidence to be led therefore. The determination of entitlement of Applicant to any interest amount would therefore fall within the jurisdiction of Civil Courts. The same is settled in the judgment of NCLAT in *Krishna Enterprises v Gammon India Ltd.*

22. The Corporate Debtor, therefore submits that the Petition is not maintainable and thus defective.

**IV. The present Petition is incomplete:**

23. Under Section 10(4) (a) of the Insolvency & Bankruptcy Code, 2016 ("Code") the Tribunal can admit a Petition filed under Section 9 of the Code only upon being satisfied that such Petition is complete.
24. The Operational Creditor has failed to annex the Operational Creditor's bank statements of the relevant time period. These Bank statements are important to prove that the amounts claimed by the Operational Creditor in the present Petition have already been received by the Operational Creditor. It is settled law that a litigant that comes to court with dirty hands ought not to receive any reliefs from the court.

25. The Corporate Debtor submits that the Petition is not maintainable and the same sought to be dismissed with cost.

**Rebuttal by the Operational Creditor by the way of Affidavit in Rejoinder:**

26. The Operational Creditor submits that the Corporate Debtor has failed to produce a single document on record which shows that the invoices at Page No. 91 to 139 annexed to the Petition has been paid by the Corporate Debtor.

27. The invoices referred to by the Corporate Debtor in his Reply, have not been cleared by the Corporate Debtor. Few invoices have been cleared in part by the Corporate Debtor. The balance to be paid are mentioned below:

Sr. No. of the Invoices partly paid	Balance Amount to be paid (In Rupees)
4.	1,347/-
8.	6,469/-
9.	5,750/-
10.	5,750/-
11.	7141/-
12.	7,187/-

28. Apart from the above, no other payment as mentioned in Exhibit-A of the Reply have been received by the Petitioner. The amounts claimed in

the Petition are after deducting the payments made by the Corporate Debtor. Hence, under no stretch of imagination the Corporate Debtor can claim that they have cleared the payments of the invoices mentioned in Exhibit-A to the Reply.

29. The Operational Creditor further submits that the invoices were in the knowledge of the Corporate Debtor as against the contention of the Corporate Debtor that many of the invoices were annexed to the Petition for the first time. Mr. Sachin Bhole, an authorised representative of the Operational Creditor, had addressed an email dated 06.04.2017 to Mr. Nitin Nazar, representative of the Corporate Debtor, wherein soft copies of all invoices and proforma invoices pending upto 31.03.2017 in respect of DAKC sites were attached. A copy of the email dated 06.04.2017 is annexed as Exhibit A to the Affidavit in Rejoinder.
30. On the receipt of the email dated 06.04.2017, Mr. Nitin Nazar, representative of the Corporate Debtor had addressed an email dated 07.04.2017 to Mr. Sachin Bhole, authorised representative of the Operational Creditor stating that, **“We are unable to process invoices on soft copies, request you to share hard copies of the invoices along with compliance and relevant documents”**. It was further stated that, **“We have received the hard copies of the DAKC main bill for Nov 16 to March 17 without compliance documents. We will not be able to**

**process the same without compliance documents as state above.”** A copy of email dated 07.04.2017 is marked as Exhibit B to the Affidavit in Rejoinder. From the email correspondences it is crystal clear that the Corporate Debtor is in receipt of the invoices as mentioned in the Petition.

31. The Operational Creditor submits that the several invoices mentioned in the Petition comprise of the same project. The judgement of *International Road Dynamics South Asia Pvt Ltd v Reliance Infrastructure Ltd* passed by Hon'ble NCLAT as relied upon by the Corporate Debtor does not apply to the present case as in *International Road Dynamics South Asia Pvt Ltd v Reliance Infrastructure Ltd*, the dues from Corporate Debtor were with regards to three different projects arising out of three separate work orders, unlike the captioned petition. Hence, the judgement does not apply to the present case.

**Rebuttal by the Corporate Debtor by the way of Affidavit in Sur Rejoinder:**

32. The Corporate Debtor submits that the Operational Creditor has failed to discharge the burden of proving that the subject invoices were duly received by the Corporate Debtor and/or remain unpaid.
33. Under Clause 5 of the Work Orders issued by the Corporate Debtor, payment was liable to be made to the Operational Creditor, upon receipt

by the Corporate Debtor of the Operational Creditor's monthly bill, duly certified by the Corporate Debtor's concerned engineer.

34. The Operational Creditor had on multiple occasions failed to make payment to its sub-vendors and employees. This led to the Operational Creditor's sub vendors and employees making claims upon the Corporate Debtor and refusing to work at the Corporate Debtor's premises. The letters received from Operational Creditor's sub-vendors are annexed in B-1, B-2 and B-3 to the Sur Rejoinder. The Corporate Debtor called upon the Operational Creditor to pay its sub-vendors and employees, failing which the Corporate Debtor would make payment to such sub-vendors and employees and deduct the same from the Operational Creditor's invoices with interest and penalty. The Operational Creditor failed to comply with the requisitions contained in the Corporate Debtor's letters dated 20th April 2017 and 29th April 2017. Copies of the Corporate Debtor's letters dated 20th April 2017 and 29th April 2017 are annexed as Exhibit 'C' (Colly) to the Sur Rejoinder.
35. The Operational Creditor has failed to show that the invoices which have been claimed in the Petition are towards work actually done by it, duly certified by the Corporate Debtor's concerned engineer. The facts set out above show that the Corporate Debtor was in fact constrained to pay the Operational Creditor's sub-vendors and employees on account

of the Operational Creditor's failure to do so. The Operational Creditor is therefore not entitled to payment of the subject invoices. In any event and without prejudice to the above, the correspondence referred to above irrefutably demonstrates the existence of disputes between the parties in relation to the subject transaction.

36. The timing of the Petition is deliberate and suspicious. The Corporate Debtor is a wholly-owned subsidiary of Reliance Communications Limited ("RCom"). This Tribunal had, by orders dated 15.05.2018 and 18" May 2018 ordered the commencement of the Corporate Insolvency Resolution Process ("CIRP") against RCom and appointed the Interim Resolution Professional to take charge of its management.
37. The Operational Creditor chose to address a demand notice dated 29.08.2018 in respect of invoices raised between 31.05.2016 (i.e, over two years prior to the date of the demand notice) and 31.03.2017, shortly subsequent to the commencement of CIRP against RCom. The Operational Creditor is fully aware that the Corporate Debtor has faced high employee turnover since CIRP was ordered against RCom. The Operational Creditor is also fully aware of the fact that its invoices have been raised without the contractually required certification from the Corporate Debtor's engineer. The timing of the present Petition thus demonstrates that the Operational Creditor has, seeking to take

advantage of the ongoing CIRP of the Corporate Debtor's parent company, chosen to pursue the present proceedings shortly after the date of commencement of CIRP against RCom in the hope of receiving payment against invoices which have not been properly raised.

38. The Corporate Debtor has raised the plea that the captioned petition is barred by limitation. The Corporate Debtor has relied on the judgement of the Hon'ble NCLAT in the matter of Next Education India Pvt. Ltd. V. K12 Techno Services Pvt. Ltd., wherein it was held as follows:

*“5. Succinctly put, the facts in brief are that the Appellant (herein after referred to as the 'Operational Creditor') and the Respondent (herein after Company Appeal (AT) (Insolvency) No. 98 of 2019 referred to as the 'Corporate Debtor') entered into a Master Licence Agreement dated 03.01.2011 for providing Digital Classroom Solutions to the 'Corporate Debtor', which is engaged in the business of Educational Development. It is stated that the 'Operational Creditor' manages and provides services to Gowtham Model Schools and the 'Corporate Debtor' approached the 'Operational Creditor' to provide Digital Classroom Solutions in its effort to provide better Teaching and Coaching facilities to the students. It is stated that the 'Operational Creditor' agreed to provide Hardware, Content and Maintenance Services to the 'Corporate Debtor' as per the terms and conditions of the Master Agreement. During the course of their transactions, the 'Operational*

*Creditor' raised 187 invoices during the period March 12, 2011 and June 30, 2017 for total amount of Rs. 2,39,85,521.35 which remained unpaid.*

...

*8. The Learned Counsel appearing for the Operational Creditor further contended that the earliest invoice in the three years preceeding 26.10.2017 is dated 02.04.2015 and the latest invoice is dated 30.06.2017 hence the question of the Application being barred by limitation does not arise, as even if we take the period between 02.04.2015 and 30.06.2017, there is an Company Appeal (AT) (Insolvency) No. 98 of 2019 unpaid debt of Rs. 36.8/- Lakhs which is above the threshold of Rs. 1/- Lakh required for triggering the CIRP Process. Submissions of the Corporate Debtor.*

...

*12. At the outset, we first address ourselves to the issue whether the Application filed under Section 9 of the Code, is barred by limitation. Admittedly, the invoices (reflected in pages 399 to 406 of Volume II), pertain to the period from 12.03.2011 to 30.06.2017. It is vehemently contended by Company Appeal (AT) (Insolvency) No. 98 of 2019 the Learned Counsel for the 'Operational Creditor' that even if invoices are taken into consideration, from 04.02.2015 onwards, (page 402 Volume II) till the last invoice of 30.06.2017, the total amount claimed to be 'due and payable' by the 'Operational Creditor' is Rs. 36.8/- Lakhs which is beyond*

*the threshold of Rs. 1/- Lakh prescribed under [Section 4](#) of 'IBC' for triggering CIRP Process.*

...

*17. In the aforementioned Judgement it is clearly observed that the period of limitation for an Application seeking initiation of CIRP under Section 7 of the Code is governed by [Article 137](#) of the [Limitation Act](#) and is, therefore three years from the date when the 'Right to Apply' accrues. In the instant case, the material on record and the admitted invoices, (pages 399 to 406 of Volume II) evidence that the first unpaid debt is dated 12.03.2011. Page 402 is relevant as the Learned Counsel for the Appellant sought to rely on the debt for the period from 02.04.2015 upto 30.06.2017 (page 406).*

...

*20. As the Code mandates, [Section 9](#) Application is filed after the issuance of Demand Notice under [Section 8\(1\)](#) which contains the details of unpaid Operational Debt. It is also interesting to note that Part IV of the Application under [Section 9](#) mentions the 'date of default' as 'June 30, 2017'; for an amount of Rs. 2,39,85,521.35/-. It is seen from the record that the date of first default is March 2011 and the cumulative amount claimed is Rs. 2,39,85,521.35/- . [Section 9](#) Application emanates from the Demand Notice under [Section 8\(1\)](#). Both have to be read conjointly and the date of Company Appeal (AT) (Insolvency) No. 98 of 2019 default cannot be construed to be different merely*

*because it is differently mentioned as '2011' in Section 8 Notice and '2017' in Application under [Section 9](#).*

...

*21. As can be seen from [Section 8](#), reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the 'Operational Creditor'. Form III gives the details of the invoices. In the instant case, the 'Operational Creditor' has given the details of invoices from (pages 399 to 406 of Volume II) and has also crystallized the amount at Rs. 2,39,85,521.35/- , which is unpaid from 2011. Therefore, the argument of the Learned Counsel for the 'Operational Creditor' that the period should be confined only from 2015 to 2017 cannot be sustained. The Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the amount of Rs. 2,39,85,521.35/- in the Demand Notice under [Section 8](#). We are of the view that the Tribunal does not have Jurisdiction in these Insolvency Proceedings to cut-short the invoices which would cause recurring dates of cause of action as it is not a suit for recovery.*

...

*22. To reiterate, once the default takes place, the Right to file Application accrues as provided under [Article 137](#) of the [Limitation Act](#), 1963. In the instant case, we are of the considered view that the 'Right to Application' first accrued within three*

*years of 12.03.2011, which limitation ends on 12.03.2014. If the argument of the Counsel for the Operational Creditor is accepted, then there would be several dates of default 2011, 2012, 2015 etc. It is not the discretion of the Tribunal to accept one date or the other. The date of default is fixed and hence a crucial date and cannot be shifted and hence Company Appeal (AT) (Insolvency) No. 98 of 2019 we are of the considered opinion that the first date of default in the instant case is 12.03.2011.*

...

*31. In the result this Appeal is dismissed as we find no illegality or infirmity in the Order of the Learned Adjudicating Authority in so far as the same relates to finding on issue of limitation. For all the aforementioned reasons, this Appeal is dismissed. No Order as to costs.*

39. This is reiterated by the Hon'ble Supreme Court in the case of Naharlal Verma v. Disct. Coop. Central Bank Ltd., where the Hon'ble Court made the following observations:

*“32. Now, limitation goes to the root of the matter. If a suit, appeal or application is barred by limitation, a Court or an Adjudicating Authority has no jurisdiction, power or authority to entertain such suit, appeal or application and to decide it on merits.”*

*“33. Sub-section (1) of Section 3 of the Limitation Act, 1963 reads as under;*

*“3 Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.” (emphasis supplied)*

***Bare reading of the aforesaid provision leaves no room for doubt that if a suit is instituted, appeal is preferred or application is made after the prescribed period, it has to be dismissed even though no such plea has been raised or defence has been set up. In other words, even in absence of such plea by the defendant, respondent or opponent, the Court or Authority must dismiss such suit, appeal or application, if it is satisfied that the suit, appeal or application is barred by limitation.***

**Findings:**

40. We have heard both the parties and perused the records.
41. We find it important to first decide the maintainability of this Petition on basis of limitation. The Corporate Debtor has relied on the judgement of the Hon’ble NCLAT in the matter of *Next Education India Pvt. Ltd. V. K12 Techno Services Pvt. Ltd*, supra., wherein it is held that where the final debt amount is a result of multiple consolidated invoices, once the default takes place, the right to file an application accrues as provided under Article 137 of the Limitation Act, 1963.

42. In the captioned Petition, as per the terms of the work order, complete payment was to be made by the Corporate Debtor to the Operational Creditor within thirty days (30 Days) from the date of submission of monthly bill. The first bill mentioned by the Operational Creditor in the Petition is dated 31.05.2016. Thus, the payment of invoice was to be completed by 31.06.2016, however the same was defaulted by the Corporate Debtor. Thus, the 'Right to Application' first accrued within three years from 31.06.2016. Accordingly, the period of limitation expired on 31.06.2019. However, the present petition has been filed on 30.08.2019 and not on 09.05.2019 as claimed by the Operational Creditor.
43. Without going into the merits, we find this petition to be barred by limitation, as there is a delay of 113 days in filing the Petition. Hence, this Authority has no jurisdiction to entertain the present petition.
44. It is, accordingly, hereby ordered as follows: -

The petition bearing **CP (IB) 3253/MB/2019** filed by Mr. Raman Kaushik, the Authorised Representative of **A2Z Infraservices Limited**, the Financial Creditors, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH-I

CP (IB) 3253/MB/C-I/2019

Insolvency Resolution Process (CIRP) against **Reliance Realty Limited**, Corporate Debtor is hereby **rejected**.

**Sd/-**

**SHYAM BABU GAUTAM**

**Member (Technical)**

09.02.2023

DSB

**Sd/-**

**JUSTICE P.N. DESHMUKH**

**Member (Judicial)**