IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-IV

COMPANY PETITION IB (IBC)/177 (ND)2024

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:

GREEN FACADE SOLUTIONS PVT. LTD.

.... Operational Creditor/Applicant

Versus

IREO PRIVATE LIMITED

.... Corporate Debtor/Respondent

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 21.08.2025

PRESENT:

For the Applicant	**:**	Mr. Priyam Kamra, Mr. Pratik Malik, Advocates
For the Respondent	**:**	Mr. Saurabh Kalia, Ms. Tannu Rana, Advocates

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This instant application was filed by **GREEN FACADE SOLUTIONS PVT. LTD.** (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of **IREO PRIVATE LIMITED** (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of total amounting to Rs. **10,48,60,971/-** (Rupees Ten Crores Forty-Eight Lakhs Sixty Thousand Nine Hundred) which comprises of (a) Principal Amount of Rs. 5,91,43,830/- + (b) Retention of Rs.1,40,00,000/- (c) Bank Guarantee of Rs. 55,57,960/- (d) Interest of (a), (b) and (c) @ 18% of Rs. 2,61,59,181/- and to be calculated from the date of default i.e. 26.12.2021 till 31.10.2023)

2. The Respondent Company **IREO PRIVATE LIMITED** having CIN: U70101DL2004PTC125163, incorporated on 15.03.2004 under the provisions of the Companies Act, 1956, is having its registered office situated at C-4, 1st Floor Malviya Nagar, South Delhi, New Delhi, Delhi, India, 110017. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -

a) That the Applicant was engaged by the Respondent to provide façade works at the project site namely *IREO Gurgaon Hills Project* situated at Sector 2, Gurgaon, Haryana ("said Property"), pursuant to Work Order bearing No. WO/Gurgaon Hills/14-15/424(B) dated 22.01.2015 ("said Agreement"). The terms and conditions governing the services to be rendered, including the consideration payable therefor, were mutually agreed upon by the parties and duly recorded in the said Agreement.

b) That the Applicant had duly obtained all requisite statutory and regulatory compliance certificates, including GST registration, BOCW, CLRA for execution of the said work. The Applicant had further furnished all necessary bank guarantees as required by the Corporate Debtor in accordance with the terms of the Work Order/said Agreement. In respect of the portions of work completed, the Applicant duly raised its Running Account Bills ("RA Bills"), and the Corporate Debtor was contractually obligated to make payment against such invoices strictly in accordance with the terms of the Work Order/said Agreement.

c) That the Applicant, in furtherance of the said Agreement, engaged additional manpower and incurred substantial expenditure, time, and effort towards site mobilisation, relying upon the confirmed Work Order and repeated assurances from the Corporate Debtor that the project would proceed without interruption. However, the works at the project site remained suspended for over two and a half years owing to the internal issues of the Corporate Debtor, resulting in only partial completion of the Applicant's scope of work. In order to execute the said works, the Applicant had availed loans and advances from banks; however, due to the prolonged suspension of works by the Corporate Debtor, the Applicant suffered severe financial hardship, including liability towards additional interest.

d) That the Applicant made repeated follow-ups with the Corporate Debtor seeking a definitive schedule for release of payments towards material already supplied and work completed, so as to enable the Applicant to meet its financial obligations to its bankers. The Applicant remained fully committed to the execution of the Work Order; however, delays on the part of the Corporate Debtor in providing essential site support, including electricity and lift facilities, adversely affected the Applicant's ability to render its services. Despite repeated assurances, the work did not recommence, resulting in the lapse of the stipulated completion period, whereupon the Applicant sought an extension of time. The Corporate Debtor, from time to time, instructed the Applicant to remain prepared to commence work, but no actual progress ensued. Thereafter, multiple rounds of email correspondence took place between the parties, and ultimately, the Corporate Debtor requested and was furnished with the Applicant's Final Bill under the Work Order, both via email dated 06.12.2021 and in hard copy on 08.12.2021.

e) That the Applicant categorically informed the Corporate Debtor that, with 99% of the work completed and the remaining 1% pending solely due to delays attributable to the Corporate Debtor, the work stood completed and the Applicant was entitled to full payment. The Applicant further conveyed that any remaining work could only be undertaken pursuant to a fresh Purchase Order/Work Order. Despite several meetings and extensive email correspondence seeking release of the final payment, no action was taken. During such meetings, officials of the Corporate Debtor repeatedly assured the Applicant to overlook its losses, promising larger future work orders/projects from which the Applicant could recover the same; however, no such subsequent work was ever awarded.

f) That the Applicant submitted that the bank guarantees furnished by the Applicant in terms of the work order remain with the Corporate Debtor and are liable to be released, as the work stands completed. The retention money withheld by the Corporate Debtor also remains unpaid, despite the fact that the suspension of work was solely attributable to the Corporate Debtor and not to any delay or default on the part of the Applicant. Left with no alternative, the Applicant issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 10.11.2023, seeking payment of the unpaid operational debt, which was duly received by the Corporate Debtor on 13.11.2023.

4. Reply on behalf of the Corporate Debtor

a) The Respondent in its reply submitted that the Applicant has not approached this Tribunal with clean hands, inasmuch as the present petition is based on wholly concocted, misleading, and misconceived averments.

a) That the Applicant was engaged by the Respondents, vide Work Order dated 22.01.2015, for execution of aluminium doors, windows, glazing, and landscaping works for the project titled *Gurgaon Hills*. The said works were to be completed within 24 months from the date of execution of the contract, i.e., on or before 21.01.2017. It further submitted that notwithstanding the crystallised timelines stipulated under the aforesaid Work Order, the Applicant failed to adhere thereto. Owing to the Applicant's lackadaisical approach, the Respondents have suffered losses amounting to Rs. 25,01,15,334/-.

b) That the Applicant has, till date, failed to honour the terms of the Work Order, compelling the Respondents to undertake completion of the pending works through petty contractors. Clause 8 of the Agreement/Special Conditions of Contract and Technical Specifications executed between the parties expressly stipulates the provision for liquidated damages payable by either party for delays caused.

c) That the work executed by the Applicant was of substandard quality, prompting the Respondents to raise serious objections and disputes in this regard. The Respondents, through various emails, repeatedly highlighted issues concerning construction quality, incomplete works, and other deficiencies, all of which arose well prior to the issuance of the legal notice by the Applicant. Relevant excerpts from such emails are reproduced hereinbelow for ready reference.

"

i. Email dated 23.11.2017: *"There is no work going on site onward 22nd floor due to unavailability of Manpower. Material is lying in* *idle condition at site since last three days. Please take immediate action in this regard and deploy manpower at site tomorrow.....".*

ii. Email dated 24.11.2017: *"that Company is reminding you following issues needs to be taken up at your end to gear up the work for larger interest of Gurgaon Hill Project. Several times Ireo has spoken with you and you assured us to take up these issues on the highest priority. However till date no outcome has been found. .... ".*

iii. Email dated 04.12.2017: *"There is no activity is going on 22nd Floor onward in Tower D despite front is available for working. Neither you are sending balance material at site nor increasing the manpower and works is getting delay day by day ....".*

iv. Email dated 23.01.2018, Company informed and stated: "You are requested to confirm the supply of the following materials .... ".

v. Yet again on 30.01.2018: "The Progress of work is very slow 22nd Floor onward in Tower-D. Only three workers are doing the glazing work 22nd Floor onwards but we need minimum 10 nos. Worker for 22nd floor onward. You are requested to increase the manpower immediately at site. As payment was made to you 15 days back and you were given the commitment to complete the supply of balance material within one week after getting the payment but still we are awaiting for the pending supplies.

vi. Email dated 20.06.2022 company: *"With reference to your mail, your statement is not true regarding payment. As on date there is no payment due of M/s. GFS to M/s. Ireo Pvt. Ltd. M/s. GFS* *submitted their full and final bill on 12th December 2021. However, GFS representative not coming at site for chhing their bill ....* ".

vii. Email dated 28.09.2022: *"In continuation of our previous mails once again we would like to inform you that neither GFS doing their pending/ defective works nor closing their final."*

d) That the Respondent submitted that due to the Applicant's negligence and use of inferior quality materials, the Respondents were compelled to undertake multiple alternative arrangements for repairs. All such defaults occurred within the Defect Liability Period (DLP), thereby obligating the Respondents to have the same rectified. The substandard work executed by the Applicant has caused substantial financial and reputational loss to the Respondents, entitling them to deduct the requisite amounts and forfeit the security deposit towards compensation for the damages suffered. Further, the Respondent contended that the Applicant, in RA Bill dated 31.12.2016, has themselves admitted non-compliance, wherein payment to the extent of 4% of the billed amount was withheld on account of such default.

5. Rejoinder on behalf of Applicant

a) It is pertinent to note that the alleged email relied upon by the Respondent as evidence of a purported pre-existing dispute has been annexed only in part, whereas the complete trail was already placed on record by the Applicant. The Respondent, being guilty of *suppressio veri* and *suggestio falsi*, has deliberately produced incomplete communication, omitting the Applicant's replies confirming availability to assist. Such correspondence does not establish any pre-existing dispute as claimed. The Respondent's selective disclosure is a clear attempt to distort facts and fabricate a defence for its failure to release the agreed payments despite successful completion of work.

b) That the Respondent is seeking to take advantage of its own wrong, as the delay of several years in completion of the work was solely due to its own faults and lapses. Notwithstanding the absence of timely payments, despite express commitments the Applicant continued to work at the site. The Respondent, while failing to provide basic requirements such as electricity, repeatedly extended timelines and withheld quantification of work, yet seeks to shift the burden onto the Applicant. This Tribunal ought to take note of such conduct and reject the Respondent's false defence, which is nothing more than an attempt to benefit from its own default.

c) It is submitted that the delay in completion of the project is solely attributable to the Respondent, as work at the site remained suspended for over 2.5 years due to the Respondent's internal issues. It is denied that the Respondent suffered any loss; on the contrary, the Applicant had to secure loans and advances from financial institutions to execute the project and, owing to the prolonged suspension of work, incurred interest and penalties on such borrowings.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Applicant/Operational Creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, Rejoinder by the Applicant. Since, the registered office of the

Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority 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.

7. On perusal of the Case file, it is observed that the Operational Creditor has sent the demand notice dated 10.11.2023 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth **Rs. 10,48,60,971/-** (Rupees Ten Crores Forty-Eight Lakhs Sixty Thousand Nine Hundred Seventy-One Only).

8. On a perusal of Part-IV of Form 5 giving particulars of the operational debt claimed by the applicant in the instant, we notice that the applicant has claimed an amount totalling to Rs. **10,48,60,971/-** (Rupees Ten Crores Forty-Eight Lakhs Sixty Thousand Nine Hundred) which comprises of (a) Principal Amount of Rs. 5,91,43,830/- + (b) Retention of Rs.1,40,00,000/- (c) Bank Guarantee of Rs. 55,57,960/- (d) Interest of (a), (b) and (c) @ 18% of Rs. 2,61,59,181/- and to be calculated from the date of default i.e. 26.12.2021 till 31.10.2023)

9. For admission of the Section 9 application, one of the principal requirements is that there should not be any pre-existing dispute between the Operational Creditor and the Corporate Debtor before issue of the Section 8(1) notice.

10. The **Hon'ble Supreme Court** in its judgement related to **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (Civil Appeal No. 9405 Of 2017)** passed on **21.09.2017** has held:

> *"We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists 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."*

11. The abovementioned judgment has again been reiterated by the **Hon'ble Supreme Court** in its judgement delivered on January 04, 2023 in the matter of **Sabarmati Gas Limited vs. Shah Alloys Limited (Civil Appeal No. 1669 of 2020)** where it has been held:

> *"It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of*

adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a 'pre-existing dispute' between the parties before the receipt of demand notice under Section 8, IBC. In other words, the dismissal of the application under Section 9, IBC on the ground of 'pre-existing dispute' cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression 'pre-existing dispute' is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as 'pre-existing dispute'. In that view of the matter once we find that the Tribunals have rightfully held that there existed a 'pre-existing dispute' between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC."

12. Upon perusal of the case record, it is observed that the Applicant was engaged to execute façade works at the site namely *IREO Gurgaon Hills Project*, Sector 2, Gurgaon, Haryana, pursuant to Work Order bearing No. WO/Gurgaon Hills/14-15/424(B) dated 22.01.2015. In terms of the said Work Order, the works were stipulated to be completed within 24 months from the date of execution of the contract, i.e., on or before 21.01.2017.

13. The Corporate Debtor, through various email communications, has raised serious objections regarding the non-completion of pending works as well as defects in the works executed. Such disputes were specifically communicated vide emails dated 23.11.2017, 24.11.2017, 04.12.2017, 23.01.2018, 30.01.2018, 20.06.2022, and 28.09.2022.

14. Taking consideration of the pleadings, documents, and submissions made by both parties, it emerges that there exists substantial and documented disputes between the Applicant and the Respondent.

15. In the light of the positions thus settled in ***Mobilox Innovations (P) Ltd. (supra) and Sabarmati Gas Limited (supra)***, we have examined the question whether there was a 'pre-existing dispute' between the parties, warranting dismissal of the application for initiation of CIRP filed by the Applicant. Keeping in mind the judgement passed in Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, we are of the opinion that the pre-existing disputes in the instant case are not mere feeble arguments. There appears that the disputes truly exist and the same is not hypothetical.

16. However, this order shall not preclude the Applicant from seeking remedies, if so advised, under other laws that may be applicable in the facts of the case. The parties are at liberty to approach the civil court or any other appropriate forum and may explore other legal remedies available as per law.

17. In the light of the above findings, we are of the considered view that the petitioner has not made out a case for initiation of CIRP under Section 9 of the Insolvency and Bankruptcy Code, 2016, therefore, present Section 9 petition is **dismissed, however without cost**

Sd/-	**Sd/-**
ATUL CHATURVEDI	**MANNI SANKARIAH SHANMUGA SUNDARAM**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**