

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 368 of 2022

[Arising out of order dated 14th March, 2022 passed by Adjudicating Authority, National Company Law Tribunal, New Delhi, Bench-VI in CP(IB)-370(ND)/2020]

IN THE MATTER OF:

Harinder Bashista,

S/o Late Sh. G.N. Bashista,
R/o E-5, Lajpat Nagar-III,
New Delhi

.. Appellant

Versus

1. M/s Luxmi Electrical & Engineering Works,

Through its Sole Proprietor Varinder Arora
1D/98, N.I.T., Faridabad,
Haryana- 121001

.. Respondent No. 1

2. Yogesh Kumar Gupta,

Interim Resolution Professional of
SNG Techno Build Pvt. Ltd.
Appointed vide order dated 14/03/2022
Residing at C-17B Basement, Kalkaji
New Delhi- 110019

.. Respondent No. 2

Present:

Appellant: Mr. Sambit Nanda, Advocate

Respondents: Mr. Kushagra Bansal, Advocate for R-1
Mr. Rachit Ranjan, Mr. Hashim Malik, Advocates
for R-2/IRP

O R D E R
[Date: 21.9.2023]

[Per. Dr. Alok Srivastava, Member (Technical)]

This appeal – Company Appeal (AT)(Insolvency) No. 368 of 2022- has been filed by Shri Harinder Bashista, who is an Ex-Director and shareholder/promotor of SNG Techno Build Private Limited. The Appellant being a person aggrieved, has preferred the appeal under Section 61 of Insolvency and Bankruptcy Code, 2016 (in short 'IBC') assailing order dated 14.03.2022 in CP(IB)-370(ND)/2020 (in short 'Impugned order")

2. The facts of the case, as stated by the Appellant, are that a Work Order relating to electrical works was issued on 25.07.2021 by the Corporate Debtor- SNG Vardhman Techno Build Pvt. Ltd. in favour of operational creditor M/s Luxmi Electrical & Engineering Works – Respondent No. 1 (in short 'Luxmi Electrical') and the Scope of Work related to electrical fittings and fixtures in the SNG Plaza located at Greater Noida (UP). The Appellant has further stated that between 2012-2015, work on the project was at a standstill even though the Work Order gave a strict time period of Four months for completion of the work. He has further stated that the Operational Creditor claimed to have received an e-mail on 11.09.2015 from the Corporate Debtor to submit the final

Bill of the work done to make the required payment. Thereafter, the Operational Creditor sent the final bill dated 24.03.2018 for an amount of Rs. 14,84,805.80 but the Appellant has stated that it was sent to a Third Party – Vardhman Estates & Developers Pvt. Ltd. which is not the Corporate Debtor.

3. The Appellant has further stated that Demand Notice in Form-3 was sent to the Corporate Debtor vide letter dated 03.06.2019 but no invoices were attached therewith and upon request of the Corporate Debtor, the Operational Creditor supplied the relevant Invoices to the Corporate Debtor. The Appellant has further stated that the Corporate Debtor sent reply to the Demand Notice vide letter dated 26.07.2019 wherein it stated that the signatures on the documents, which are considered for admission of the operational debt, are on behalf of Third Party, namely SNG Developers Ltd but not of the Corporate Debtor and also that the 'operational debt' is time barred since it relates to Work Order dated 25.07.2011. He has further stated that the Operational Creditor filed petition under Section 9 of IBC against the Corporate Debtor, wherein during the consideration of the said petition, the Operational Creditor filed an affidavit on 10.02.2020 to bring on record 1st, 2nd and 3rd RA bills, a certificate of payment issued by SNG Developers Ltd dated 28.01.2012 and two e-mails dated 05.07.2012 and 11.09.2015 which were actually sent by Third Party and not the Corporate Debtor. On the basis of the documents submitted, Section 9

Petition was admitted by the Adjudicating Authority and the Appellant, being aggrieved by the Impugned Order dated 14.03.2022, has filed this appeal.

4. Two questions that are pertinent to the adjudication of this appeal are (i) whether the certificate of payment issued by SNG Developers Ltd. dated 28.01.2012, e-mail dated 05.07.2012 received by Operational Creditor purportedly sent by the Corporate Debtor and another e-mail dated 11.09.2015 sent by SNG Developers Ltd which are claimed to be sent by a Third Party, would amount to admission of 'Operational Debt' by the Corporate Debtor? and (ii) whether the 'Operational Debt' is time barred?

5. We heard the arguments of the Learned Counsels for both the parties and went through the records with their able assistance.

6. The Learned Counsel for the Appellant has submitted in oral argument that the Work Order dated 25.07.2011 was issued by Corporate Debtor SNG Vardhman Techno Build Pvt. Ltd. in favour of Operational Creditor Luxmi Electrical & Engineering Works whereas the purported admission as claimed by Operational Creditor regarding the 'operational debt' which are given in the Certificate of Payment dated 28.01.2012 were issued by SNG Developers Ltd, which is a Third Party and not Corporate Debtor i.e., SNG Techno Build Pvt. Ltd. (which was formerly SNG Vardhman Techno Build Pvt. Ltd.). He has further argued that similarly, e-mails dated 05.07.2012 and 11.09.2015 were also sent

by Third Party- SNG Developers Ltd which is not Corporate Debtor and therefore, these cannot be considered as admission of the 'operational debt' by the Corporate Debtor. He has further submitted that even though the Work Order was issued on 25.07.2011 which had a time period for completion of work of four months, the Operational Creditor did not complete the work in time and submitted final bill by e-mail dated 24.03.2018 and therefore the said claim of 'Operational Debt' is hopelessly time barred. Therefore, the said order of the admission of Section 9 Application is bad in law and should be set aside.

7. The Learned Counsel for the Respondent No. 1 has claimed that in the ledger account maintained by Corporate Debtor, an amount of Rs. 8,54,593/- has been shown in the balance sheet for the year ending 31.3.2016 of the Corporate Debtor having entries of Trade Payable to the operational trade for the years ending on 31.03.2015 and 31.03.2016 which amounts to admission of the 'Operational Debt' on 31.03.2015 and 31.03.2016. Thus, from the last payment date of 4.1.2012 of Rs. 7 lakhs, the admission through Trade Payable amount as on 31.03.2015 in the balance sheet for Financial Year 2015-16 is within three years and the final bill submitted vide e-mail dated 24.03.2018 is again within three years of the previous admission through balance dated 31.03.2015. Even otherwise, the admission in the ledger account dated 1.10.2012 shows the debt due as Rs. 8,54,593/- and the acknowledgment by the Trade Payable balance of the same amount as on 31.3.15 is within 3 years of

1.10.2012. He has argued that for the final bill of work, submitted vide e-mail dated 24.03.2018 is acknowledgment of the operational debt which is within 3 years of 31.3.2015. Thus, by virtue of admission made by the Corporate Debtor, the said 'Operational Debt' is within the required limitation. Further, the limitation of the operational debt gets extended to 23.3.2021 and then Section 9 Application was filed within this date i.e. on 15.11.2019.

8. On the issue of admission made by a Third Party, SNG Developers Pvt. Ltd. through certification of payment dated 28.01.2012 through e-mails dated 05.07.2012 and 11.09.2015, the learned Counsel for the Respondent No. 1 has submitted that the Corporate Debtor Company, SNG Vardhman Techno Build Pvt. Ltd. later became SNG Techno Build Pvt. Ltd. It is clear from various communications that the management of SNG Developers Pvt. Ltd. was coordinating the work of SNG Plaza and therefore, any admission made by SNG Developers Pvt. Ltd should be considered as valid admission of the operational debt by the Corporate Debtor. In furtherance of this argument, he has pointed out that e-mail dated 01.02.2012 was sent to raj.singh@sng.in which is the same e-mail ID used by Raj Singh in e-mail dated 11.09.2015 on behalf of SNG Developers Ltd. He has emphatically argued that the entire correspondences and the bills relied to the same project namely SNG Plaza at Gr. Noida and therefore the e-mail, even if sent on behalf of SNG Developers Ltd should be considered as pertaining to the project and

work under question which is SNG Plaza and sent by the same person using the same e-mail ID of raj.singh@sng.in. Thus he has claimed that the argument that admission of 'Operational debt' as not being by Corporate Debtor but by a Third Party, namely, SNG Developers Ltd is just a flimsy argument put forward to avoid the liability of the operational debt

9. The Learned Counsel for the IRP (Respondent No. 2) has submitted that in accordance with the orders of this Tribunal, the Committee of Creditors has not been constituted and IRP shall abide by the order of this Tribunal in the Appeal.

10. The first issue for our consideration is whether the SNG Developers Ltd., which has sent certain e-mails and admitted to certain payments is a proxy of the Corporate Debtor. We consider the contention of the Appellant that SNG Techno Build Pvt. Ltd. (which is the Corporate Debtor and was earlier known as SNG Vardhman Techno Build Pvt. Ltd.) and SNG Developers Ltd. are two separate Corporate entities and therefore, whether any admission or communication sent by SNG Developers Ltd. can be considered as being sent by Corporate Debtor SNG Techno Build Pvt. Ltd.

11. With regard to the first issue we note the fact that the Work Order No. SNG/GM(C)/Plaza/WO/11/460 dated 25.07.2011 was issued by SNG Vardhman Techno Build Pvt. Ltd., which later on became SNG Techno Build Pvt. Ltd. We further note that e-mail dated 01.02.2012

(attached at pg. 138-139 of the Appeal Paper Book) was sent by Grover addressed to raj.singh@sng.in along with many other addressees enclosing Minutes of Meeting held on 25.01.2012 relating to the progress of work in SNG Plaza. The list of members present in the meeting includes representatives of SNG, PMC (K K Consultant & Engineers), Vishesh Metal Industries, Airtech Airconditioning, Abett Consulting Engineers and Luxmi Electricals and thus the complete work relating to SNG Plaza Project and the progress of the work was reviewed in the meeting. Further we note that an e-mail dated 02.02.2012 sent by Varinder Arora of the Operational Creditor addressed to raj.singh@sng.in and three others (attached at Pg. 140-141 of the Appeal Paper Book) relates to an issue of payment to be made to Luxmi Electricals. Both these e-mails clearly show that SNG Plaza was an integrated Project of the SNG Group and various contractors/sub-contractors were taking care of different aspects of the Project. It is also quite clear that SNG Developers Ltd. which was represented by raj.singh@sng.in was coordinating various aspects of the Project. Further, all the e-mails and communications sent by SNG Group Company SNG Developers clearly mention the Work Order No. SNG/GM(C)PLAZA/wo/11/460

12. The various e-mails relating to the same project SNG Plaza, for instance e-mail dated 12.06.2012 (attached at Pg. 148-149 of the Appeal Paper Book) from Varinder Arora of Luxmi Electricals & Engineering Works sent to hardeep.vardhman@gmail.com and

Suresh.vardhman@gmail.com wherein Account Statement of the work done by Luxmi Electricals was sent to SNG Vardhman Techno Build Pvt. Ltd. We find that e-mail was addressed to raj.singh@sng.in . It is also evident from the e-mail dated 11.09.2015 sent by raj.singh@sng.in addressed to Varinder Arora that the progress of work relating to SNG Plaza was being reviewed and coordinated by R.N.P. Singh (e-mail ID raj.singh@sng.in) who was Sr. General Manager(C) of SNG Developers Ltd. Thus it is amply clear from the various communications and e-mails between the contractors/sub-contractors with the group companies of SNG Group that the use of the e-mail address or Letter head of SNG Developers Ltd was being used in loose sense and it would not be proper to draw any inference from such e-mails that SNG Developers Ltd did not possess any authority to communicate on behalf of the Corporate Debtor SNG Techno Build Pvt. Ltd. It is also significant that in every such e-mail or Minutes of Meeting the work of SNG Plaza has been clearly mentioned, and significantly, in the e-mail dated 11.09.2015 which calls upon Luxmi Electricals to submit the final bill of the work, the work relates to the Work Order No. SNG/GM(C)/Plaza/WO/11/460 dated 25.07.2011, which is the Work Order given by the Corporate Debtor SNG Techno Build Pvt. Ltd. to the Luxmi Electricals. Further, the invoices in relation to the R.A. Bills all relate to the same Work Order and the name of the site is clearly mentioned as “Electrical Works at SNG Plaza at Gr. Noida”. We, therefore, come to the safe and inescapable conclusion that the Work

Order dated 25.07.2011 is the genesis of the RA bills and the related operational debt.

13. In so far as issue of limitation of the 'Operational Debt' is concerned, we note that the Work Order was issued on 25.07.2011. Thereafter certain payments were made by the Corporate Debtor in connection with the Running Account Bills and admittedly the last payment of Rs. 7 lakhs was made on 04.1.2012. The pending payment amounting to Rs. 8,54,593/- appears in the ledger statement issued by Corporate Debtor for the period 01.4.2011 to 30.09.2012. The same amount is also reflected in the balance sheet of the Company for the year ending 31.03.2015 and 31.03.2016 (attached at Pg. 155-177 of the Appeal Paper Book). These details included in the 'Notes forming part of the Financial Statement' for the years ending 31.03.2015 and 31.03.2016 show the amount as 'Trade Payable' of Rs. 8,54,593/- due to the Operational Creditor. The same amount of Rs. 8,54,593/- appears in the ledger account of the Operational Creditor as mentioned by the Corporate Debtor (Pg. 349 of the Appeal Paper Book). It is thus clear that the dues payable between 01.10.2012 and 31.03.2015, remain at Rs. 8,54,593/- as no payments were made during this period. Thus, the operational debt gets limitation of three years from 1.10.2012, i.e., upto 30.09.2015. Within this period there is admission in Balance Sheet for the year ending 31.3.2016 wherein the due operational debt upto 31.3.2015 is included as Rs. 8,54,593/-.

14. We also find an e-mail dated 11.09.2015 sent by R N P Singh to Varinder (Pg. 204 of the Appeal Paper Book) which states that “*the management likes to close all the contracts which are abandoned since long. You are requested to submit the final bill of the work. You may intimate a suitable date for taking joint measurement so that management can depute its representative to be present at the time of final measurement*”. This e-mail was sent on behalf of SNG Developers Ltd but the same work given vide Work Order No. SNG/GM(C)/Plaza/WO/11/460 dated 25.7.2011. The final bill of work was submitted by the Operational Creditor vide Invoice dated 24.03.2018 (attached at Pg. 206 of Appeal Paper Book) which is within three years of 31.3.2015 when the debt was last admitted. We note that the work seemed to have been abandoned or stopped and upon a request by the Corporate Debtor vide e-mail dated 11.09.2015, the final bill was sought from the Operational Creditor. After the e-mail dated 11.09.2015, the final bill was submitted by the Operational Creditor on 24.03.2018. This final bill was granted approval by the Corporate Debtor vide e-mail dated 09.04.2018 (at Pg. 213 of the Appeal Paper Book) which is again admission of the operational debt by the Corporate Debtor. None of these facts have been controverted by the Corporate Debtor.

15. The Learned Counsel for Appellant has placed reliance on the judgment of Hon’ble Supreme court in the matter of **Reliance Asset**

Reconstruction Company Ltd. vs. Hotel Poonja International Private Limited [(2021) 7 Supreme Court Cases 352], wherein it is held that reliance ought not to be placed on the balance-sheet which was not signed before the expiry of the prescribed period of limitation. It is noted that in the present case, the issue about the date of signing of the balance-sheet has not been raised by the Appellant. Moreover, the entry for year ending 31st March, 2015 in the section of 'Traded Payables' in favour of the operational creditor is corroborated by the balance of rs.8,54,593/- in the Ledger account Statement dated 1.10.2012. Therefore, the judgment of Hon'ble Supreme Court in the **Reliance Asset Reconstruction Company Ltd.** case will not be applicable in the present case.

16. The Learned Counsel for Appellant has also referred to the judgment of Hon'ble Supreme Court in the matter of **Tech Sharp Engineers Pvt. Ltd. vs. Sanghvi Movers Limited [(2023) 2 Supreme court Cases 531]**, wherein it is held that while the claim may not be barred by limitation, but if the remedy for realization of the claim is barred by limitation, then the application for insolvency resolution may not be admitted. In the present case, the remedy for realization of the claim is through section 9 application and the Respondents have been able to make a case regarding the claim, section 9 application being within the limitation period and the operational debt is due and payable.

17. We further note that the limitation of operational debt due was upto 23.3.2021 (i.e. 3 years from the issue of Final Bill on 24.3.18). The Section 9 Application was filed within three years of the extended limitation of 23.3.2021. In such a situation, it is clear that the Section 9 Application was filed within limitation.

18. In view of the detailed discussion in the aforementioned paragraphs, we are of the view that the Impugned Order does not suffer from any error and we do not find any reason to interfere with it. The appeal is found to be devoid of merit and therefore dismissed. No order as to costs.

[Justice Rakesh Kumar]
Member(Judicial)

[Dr. Alok Srivastava]
Member(Technical)

New Delhi
21st September, 2023
Akc