IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II

CP (IB) No.470/MB/2024

[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]

IN THE MATTER OF:

UNITON INFRA PRIVATE LIMITED

[CIN: U45309TG2017PTC119147]

Registered Office: 8-2-416, Flat No. C-27

Stone Valley, Road No. 4, Banjara Hills,

Hyderabad-500034, Telangana.

...Operational Creditor

Versus

SHAPOORJI PALLONJI AND

COMPANY PRIVATE LIMITED

[CIN: U45200MH1943PTC003812]

Registered Office: 70, Nagindas Master Road, Fort

Mumbai-400023, Maharashtra.

...Corporate Debtor

PRONOUNCED ON: 23.09.2026

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI BANWARI LAL MEENA, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Ranit Basu a/w Adv. Sakshi Telavane i/b Adv. Florence Reddy Sobrinho

Corporate Debtor: Adv. Amir Arsiwala

ORDER

Per: SHRI ASHISH KALIA, MEMBER (JUDICIAL)

1. BACKGROUND

1.1 This CP(IB) No. 470/MB/2024 (Petition) was filed on 18.05.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Uniton Infra Private Limited, the Operational Creditor (hereinafter referred to as "Petitioner/Operational Creditor") through Mr. Prathipati Naga Venkata Kiran Kumar, Executive of the Operational Creditor, authorised *vide* Board Resolution dated 14.05.2024 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Shapoorji Pallonji and Company Private Limited, the Corporate Debtor (Hereinafter referred to as "Respondent/Corporate Debtor").

1.2 The total amount of default alleged is Rs. 4,31,16,154 (Four Crores Thirty-One Lakhs Sixteen Thousand One Hundred Fifty-Four Rupees). The alleged default amount is based on the default in payment of the two invoices bearing Invoice Nos. RKI/SPCPL 2020-21-01 dated 15.09.2020 and RKI/SPCPL 2021-22-01 dated 15.05.2021, issued by RKI Builders Private Limited (hereinafter referred to as "RKI") in lieu of providing services to the Corporate Debtor regarding resurfacing of damaged cement concrete roads. It is further submitted that the RKI had not only sub-contracted the task of completing the project of resurfacing cement road to the Operational Creditor. Later, RKI had assigned the debts arising out of the outstanding invoices to the Petitioner Company vide Assignment of Debt Deed dated 10.04.2022.

1.3 The Operational Creditor has not provided a single date of default in the Part-IV of the Petition. However, it is submitted that the due date of outstanding invoices issued by RKI was the date of invoice issued, i.e., 15.09.2020 and 15.05.2021.

2. AVERMENTS OF OPERATIONAL CREDITOR

2.1 The Petitioner Company is engaged in the business of Real Estate, property acquisition for development, construction and selling of commercial & residential complexes as well as investing in the infrastructure and construction projects while the Corporate Debtor is engaged in the engineering and construction business.

2.2 It is submitted that the Public Health and Municipal Engineering Department (hereinafter referred to as "PHMED") through Nellore Municipal Corporation, Andhra Pradesh (hereinafter referred to as "NMC") had invited tenders for resurfacing damaged cement concrete roads due to laying of sewer lines and water supply lines with cement concrete surface in various divisions including Yadava street and Kapadi Palem. The Corporate Debtor submitted its tender to NMC and the said tender work (hereinafter referred to as “Project”) was awarded to the Corporate Debtor.

2.3 Pursuant to the receipt of the tender work, the Corporate Debtor sub-contracted the execution of certain part of the project work to the amount of Rs. 8,25,37,441/- in favour of RKI *vide* a sub-contract agreement dated 12.03.2019 (hereinafter referred to as “SCA-1”).

2.4 The Ld. Counsel for the Petitioner/Operational Creditor submitted that the Paragraph 4 of the SCA-1 provides that payments in respect of work shall be released to RKI within 10 (ten) working days of receipt of corresponding payment of running account bills from the PHMED, in line with the payment terms of contract between PHMED and the Corporate Debtor.

2.5 It is further submitted that the PHMED has released the funds to the Corporate Debtor, and the same was recorded in its memo dated 02.03.2021. The said memo records that the Corporate Debtor has completed the work for which the tender was granted by NMC. PHMED had already paid Rs.10.08 Crores to the Corporate Debtor and *vide* the said memo, PHMED directed the release of Rs.72.30 crores in favour of the Corporate Debtor for works already executed under the tender which was awarded to the Corporate Debtor.

2.6 Later, RKI approached the Petitioner Company for financial support pursuant to which both the parties executed the Memorandum of Understanding dated 25.03.2019 (hereinafter referred to as “MOU”) along with the escrow agreement wherein the Petitioner would finance RKI by making payments on behalf of RKI for procuring materials and human resources. As per the said MOU, RKI also agreed to pay interest of 18% p.a. upon the invested amount and additional 8% on turnover of 20 (twenty) crores. In order to complete the project work sub-contracted by the Corporate Debtor, RKI subcontracted the said project work to the Petitioner *vide* sub-contract agreement dated 20.04.2019 (hereinafter referred to as "SCA-2").

2.7 Upon completion of the project, RKI had raised an invoice dated 30.03.2019, bearing invoice no. RKI/AP/056/2018-19, for the amount of Rs. 3,41,56,134.88/- to the Corporate Debtor and duly accepted by the Corporate Debtor. However, the said invoice was not entered by RKI on the goods and services tax portal because it was not sure whether the Corporate Debtor would pay within time or delay the payment, and therefore that invoice was later treated as invalid. Before treating it as invalid, RKI issued a demand notice dated 16.03.2020, calling for payment of Rs.3,41,56,135/- from the Corporate Debtor arising out of the invoice dated 30.03.2019. On account of the said invoice being later treated as invalid by RKI, the copy of the said invoice was not annexed in the present Petition.

2.8 The Petitioner raised the invoice dated 03.09.2020 bearing Invoice No. UI/AP/2020-21/001, for an amount of Rs. 2,80,84,183/-, upon RKI for work completed by it. RKI had also raised its invoice upon the Corporate Debtor on 15.09.2020 bearing invoice no. RKI/SPCPL-2020-21-01 for an amount of Rs. 3,41,56,154/-. Later, the RKI addressed the letter dated 09.10.2020 to the Corporate Debtor, calling for payment of outstanding dues under invoice dated 15.09.2020.

2.9 The Petitioner issued second invoice dated 14.06.2021, bearing invoice no. UI/AP/001, for an amount of Rs.62,55,924/- to RKI. RKI also raised its invoice dated 15.05.2021, bearing invoice no. RKI/SPCPL-2021-22-01, for an amount of Rs. 89,60,000/- to the Corporate Debtor. On 12.07.2021, RKI issued a notice to the Corporate Debtor, calling upon the Corporate Debtor to pay the amounts owed under invoices dated 15.09.2020 and 15.05.2021.

2.10 Being aggrieved by delay in payment of outstanding dues owed by the Corporate Debtor to RKI, RKI assigned its debt to Uniton Infra Private Limited, i.e., the Petitioner/Operational Creditor *vide* Assignment of Debt Deed dated 10.04.2022. Thus, RKI assigned the debt of Rs.4,31,16,154/- which was owed by the Corporate Debtor to RKI against invoices dated 15.09.2020 and 15.05.2021.

2.11 Pursuant to non-payment of outstanding dues, the Operational Creditor issued the demand notice dated 22.05.2023, under Section 8 of the Code in Form-3, wherein the Corporate Debtor was called upon to pay the amount of Rs. 4,31,16,154/- arising out of invoices dated 15.09.2020 and 15.05.2021. The Corporate Debtor, by its reply notice dated 07.06.2023, denied the Operational Creditor’s claims on the ground of failure to provide documentary evidence for substantiating the claims and non-release of corresponding payment by the NMC.

2.12 It is submitted that from the date of execution of SCA-1, i.e., 12.03.2019, the Corporate Debtor has never raised any dispute with respect to the quality or quantity of project work so completed by RKI through the Petitioner. The Petitioner also contended that the Corporate Debtor's claim about its inability to pay RKI on account of non-release of funds by the NMC is incorrect since a bare perusal of the memo dated 02.03.2021 establishes that the Corporate Debtor has received funds from NMC.

2.13 In view of the foregoing, the Operational Creditor prays that CIRP may be initiated in respect of the Corporate Debtor.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 It is submitted that the Present Petition is not maintainable as the alleged outstanding amount of Rs. 4,31,16,154/- is not due and payable by the Corporate Debtor.

3.2 It is further submitted that there is no Privity of Contract between the Operational Creditor and the Corporate Debtor. It is stated that a Sub-contract Agreement was executed on 12.03.2019 between the Corporate Debtor and R.K.I. Builders Private Limited. Additionally, it is important to note that the Tax Invoice, particularly relating to two invoices dated 15.09.2020 amounting to Rs.3,41,56,154/- and dated 15.05.2021 amounting to Rs.89,60,000/-, which were allegedly the Operational Debt, were raised by RKI Builders upon the Respondent. Thus, there is no contract executed between the Operational Creditor and the Corporate

Debtor. Therefore, no rights or obligations are enforceable between the parties in the present Company Petition.

3.3 It is submitted that the pre-exiting Dispute previously between RKI Builders and the Operational Debtor. A Demand Notice dated 12.07.2021 was issued by RKI Builders upon the Respondent, demanding payment in respect of the unpaid Operational Debt due from the Respondent under the Code. The said Demand Notice pertained to the alleged outstanding amounts under the Subject Invoices dated 15.09.2020 and 15.05.2021. The Corporate Debtor replied to the said Demand Notice stating that there is no amount due or payable to RKI Builders. The reply dated 16.08.2021 was sent by the Respondent to RKI Builders.

3.4 It is further submitted that RKI Builders filed a Company Petition before this Tribunal with respect to the same Operational Debt, i.e. the alleged outstanding dues under the Subject Invoices dated 15.09.2020 and 15.05.2021 mentioned in the present Company Petition. The same was intimated by the RKI Builders to the Respondent *vide* service email dated 06.09.2021.

3.5 It is further submitted that the Deed of Assignment executed between RKI Builders and the Petitioner is illegal and not tenable in law and non-binding upon the Respondent/Corporate Debtor. The Respondent was neither aware of any such Deed of Assignment nor was or is a consenting Party to the Deed of Assignment dated 10.04.2022 executed between RKI Builders and the Petitioner. Furthermore, Clause 1.4 of the said Deed of Assignment states that the *Assignor, viz. RKI Builders "will continue to* *pursue legal remedies against SPCPL (Corporate Debtor), by way of initiating appropriate legal remedies for recovery of debt amounts...."* Therefore, even assuming without admitting that the Deed of Assignment is legally valid, the Petitioner herein has no locus to file the present Company Petition.

3.6 It is further submitted that the payment terms stipulated in the Sub-contract agreement clearly state that Respondent is not liable to release any payment unless the corresponding payments are released by the principal employer, i.e. Nellore Municipal Corporation/NMC to the Respondent. The same is reproduced as under:

> *"4. Payments: with respect to the works executed shall be released within 10 days of receipt of the Corresponding payment of running account bills from the Client."*

3.7 It is further submitted that as the measurements have not yet been certified by NMC, no payments have been released by NMC to Respondent. Therefore, no amount is due and payable by the Corporate Debtor to RKI Builder or the Petitioner.

3.8 It is further submitted that the Company Petition ought to be dismissed on the ground that one of the subject Invoices, i.e. the Invoice dated 15.09.2020 in the amount of Rs. 3,41,56,154/-, was raised during the COVID-19 period, which has been excluded under Section 10A of the Code. Section 10A clearly states that an Application for initiation of CIRP of a Corporate Debtor cannot be filed for any default arising between 25.03.2020 and 24.03.2021. A bare perusal of the Demand Notice dated 22.05.2023 and the Company Petition under reply and the alleged list of additional documents attached with the Petition under reply indicates that the Petitioner's claim is *inter alia* in respect of the Subject Invoice dated 15.09.2020. To substantiate its contention, the Ld. Counsel for the Respondent relied upon the decision of Hon'ble NCLAT in ***Sushma Paranjpe v. Rohan Developers Pvt. Ltd.,*** [2023 SCC Online NCLAT 2290] as well as decisions of NCLT Mumbai, in ***Decor Paper Mills Ltd. v. Mahashakti Plasto Pvt. Ltd.,*** [CP (IB) 50/MB/2024] and ***Royal Construction v. Gannon Dunkerley and Co. Ltd.,*** [2025 SCC Online NCLT 302].

3.9 As stated above, the Subject Invoice dated 15.09.2020 in the amount of Rs.3,41,56,154/- was raised and the alleged default occurred during the excluded period of Section 10A of the Code i.e., 25.03.2020 to 25.03.2021. Therefore, the present petition is not sustainable *qua* the alleged debt of Rs.3,41,56,154/-. Furthermore, the remaining default amount of Rs.89,60,000/- as per the Operational Creditor's invoice dated 15.05.2021 is less than the threshold amount of Rs. 1,00,00,000/- as per Section 4 of the Code. Thus, the present Petition is not maintainable on ground of not meeting the criteria of Section 4 as well as barred under Section 10A of the Code.

3.10 The Operational Creditor is misusing the mechanism provided under Code only to recover money. On perusal of the present Petition and the documents brought on record, it is evident that the intent of the Operational Creditor is to invoke the provisions of Code to enforce recovery against the Corporate Debtor. It is well settled that a Petition under Section 7 and 9 of the Code is not an alternative for recovery of dues. To substantiate the contention regarding non-invocation of the Code for money recovery purposes, the Ld. Counsel for the Respondent/Corporate Debtor relied upon the decision of the Hon'ble Supreme Court in ***M/s Invent Asset Securitisation and Reconstruction Pvt. Ltd. v. M/s Girnar Fibres Ltd*.,** **[**Civil Appeal No. 3033 of 2022] wherein has held that the provisions of the Code are essentially intended to bring the Corporate Debtor to its feet and are not for money recovery proceedings.

4. ANALYSIS AND FINDINGS

4.1 We have duly considered the averments of the Petitioner as well as the Respondent along with the materials on record. Heard the submissions of the Ld. Counsel for the parties at length and perused the record and appreciated the legal submissions.

4.2 The issues raised in this Petition are (i) whether the present petition filed by the Operational Creditor pursuant to the assignment deed is valid in the eyes of law or not? (ii) whether the present petition is barred under the Section 10A period or not? and (iii) whether the payment of outstanding debt is due and payable in order to the Operational Creditor.

4.3 Regarding the issue of validity of the Assignment of Debt deed for filing the present Petition, the Ld. Counsel for the Petitioner submitted that the outstanding debts under SCA-1 and SCA-2 were assigned by RKI to the Operational Creditor vide Assignment of Debt Deed dated 10.04.2022. As per Clause (j) of the said Assignment of Debt Deed, the content of the assignment was as follows:

> *"J. By virtue of the execution of the MOU and the Escrow Agreement, since the finance, materials and resources have been invested by the Assignee and the Project has been implemented under the supervision of the Assignee, the Assignor is desirous of assigning the debt arising under the Sub-Contract Agreement as mentioned in the Schedule, in favour of Assignee."*

4.4 However, the Ld. Counsel for the Respondent, Mr. Amir Arsiwala submits that, as per the agreement terms of the contract, this sub-contract agreement cannot be further assigned without prior permission of the Corporate Debtor under the present contract. Thus, the said assignment Deed is non-binding upon the Corporate Debtor since the Corporate Debtor was not a party to it and also the SCA-1 did not conferred any power on RKI to assign its invoices. The Ld. Counsel for the Respondent relied upon a judgment passed by the Hon'ble Supreme Court in ***Khardah Company Ltd. v. Raymon & Co. (India) Pvt. Ltd.,*** [1962 SCC OnLine SC] and ***Kapilaben v. Ashok Kumar Jayantilal Sheth,*** [(2020) 20 SCC 648].

4.5 However, on perusal of the assignment deed, it transpired that the assignment of debt was executed by RKI Builders Private Limited, the subcontractor of the Corporate Debtor in favour of the Petitioner/Operational Creditor. For assignment of any debt, no payment can be required from the Debtor by the Creditor. The Hon'ble Apex Court decisions cited by the Ld. Counsel for the Respondent nowhere says that prior permission from the debtor is required for assigning the debt and thus, are not applicable in the present matter. The Assignment of the debt is envisaged in the law. Thus, we decide the point in favour of the Petitioner that Assignment of debt is valid and the present petition could be filed by the assignor. This is our settled position of law. Thus, on this point, the assignment is valid and hence, the issue (i) is decided in favour of the Operational Creditor.

4.6 As regards the second issue over applicability of Section 10A upon the present Petition, the Ld. Counsel for the Respondent/Corporate Debtor submitted that one of the two invoices raised by the Petitioner Company, i.e., the Invoice No. RKI/SPCPL 2020-21-01 dated 15.09.2020 was barred under the Section 10A period since it was filed during the Section 10A period, and Section 10A of the Code clearly stated that no application under Section 7, 9 and 10 of the Code can be filed for any default arising in the period of 25.03.2020 to 25.03.2021. Upon perusal of the said invoice, it was found that the outstanding invoice dated 15.09.2020 for the amount of Rs. 3,41,56,134/- was issued on 15.09.2020 which is clearly within Section 10A period. So, the default amount arising out of the invoice issued during Section 10A period cannot be considered for the purpose of adjudication by this Tribunal. Furthermore, the remaining default amount of Rs. 89,60,000/- arising out of the Operational Creditor's invoice dated

15.09.2021 bearing Invoice No. RKI/SPCPL 2021-22-01 is much below the threshold limit of Rs. 1 Crore as per Section 4 of the Code.

4.7 Thus, we are of the view that the present Petition is not liable to be filed *de hors* Section 10A period. On the first point, we decided against the Petitioner that the present petition hit by Section 10A period. Thus, the issue (ii) is decided against the Operational Creditor.

4.8 As far as the issue (iii) is concerned, the Ld. Counsel for the Petitioner has raised the issue before this Tribunal whether the debt is due or not; he has drawn our attention to Clause 4 of SCA-1 read as under:

> *"4. PAYMENT: - Payments in respect of the works executed shall be released to the subcontractor within 10 working days of receipt of corresponding payment of Running/Account Bills from the CLIENT or to his Authorised representatives, in line with the payment terms of the contract between client and SPCPL and subject to statutory and other deductions, including labour cess if any as deducted by client. 100% Payment shall be released based on the Cube & Core test report finalised by the department."*

4.9 On a bare reading of the clause, it transpires that on or after receipt of payment by the Corporate Debtor from their client i.e., NMC, the payment is due within a period of 10 working days.

4.10 In support of this, Ld. Counsel for the Petitioner has drawn our attention to Page No. 42 of the Petition wherein the memo dated 02.03.2021 issued by the PHMED stated that four agencies, namely M/s Larsen & Toubro Ltd., M/s NCC Ltd., M/s Megha Engineering and Infrastructure Ltd., M/s Shapoorji Pallonji and Co. Pvt. Ltd., proceedings nos.1, 2, 3, 4/APUF-

11030(34) 1, 2, 3, 4/2019 ENG-SEC-APUF1DC dated 07.02.2019. Out of which an amount of Rs.10.08 crore has been paid to M/s Shapoorji Pallonji & Co. Ltd., West Mumbai as LS1 and Part Bill.

4.11 The Ld. Counsel for the Petitioner further submits that as Shapoorji Pallonji & Co. Ltd has received this payment from the NMC, thus, their payment has become due within the period of 10 days of receipt of the same.

4.12 However, Ld. Counsel for the Respondent submits that the payments, which were received by them, are for the work done prior to 07.02.2019, whereas the invoices were raised by the Petitioner Company much thereafter, in the year after 2021-22.

4.13 Even otherwise, when we consider the point of debt due or not, the Petitioner Counsel has categorically admitted that the payment is due and payable as per the payment terms mentioned in Clause 4 of the SCA-1, within a period of 10 days in case of payment receipt by the Corporate Debtor from the NMC.

4.14 However, the Ld. Counsel for the Respondent has denied that they have ever received any payment from the NMC. On the other hand, the Petitioner has not placed on record any evidence that the Corporate Debtor has received the payment for work done by the Petitioner Company after verifying the same from the concerned department of the NMC.

4.15 Thus, we are of the considered view that, as per Section 9 of the Code, invoices so demanded shall be due for payment, and payment has not been made by the Corporate Debtor. Such payment is not due and payable unless the payment has been received from the Municipal Corporation by the Corporate Debtor. The Corporate Debtor denied the same on oath. In view of this, the present issue is also decided against the Petitioner Company. Thus, in our considered view, the Petition under Section 9 of the Code fails on its merits and the Petition is liable to be dismissed. Accordingly, the issue (iii) is decided against the Operational Creditor.

4.16 In view of the aforesaid discussion, we are of the considered view that there is no merit whatsoever in the present application. In view of the above, **CP(IB) No. 470/MB/2024**, filed by Uniton Infra Private Limited, the Operational Creditor, under Section 9 of the Code for initiating CIRP in respect of Shapoorji Pallonji and Company Private Limited, the Corporate Debtor is **rejected**.

4.17 However, we make it clear that any observations made in this order should not be construed as expressing an opinion on merits. The right of the Operational Creditor before any other judicial forum shall not be prejudiced on the ground of rejection of this Application.

Sd/-	**Sd/-**
BANWARI LAL MEENA **MEMBER (TECHNICAL)**	**ASHISH KALIA** **MEMBER (JUDICIAL)**

//Baabar/LRA-Tanmay//