IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT - IV

C.P. (IB) No. 896/MB/2023

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016]

In the matter of

M/s. SA Engineering (Through its Sole Proprietor – Shahin Contractor)
(PAN: AMBPB9776M)
…Operational Creditor

V/s.

M/s. Shapoorji Pallonji & Co. Pvt. Ltd.
(PAN: AAACS6994C)
…Corporate Debtor

Pronounced: 23.11.2026

***CORAM*:**

ANIL RAJ CHELLAN
HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

Appearances	***:***	***Hybrid***
For Applicant	**:**	Adv. S. Narendra Kumar.
For Corporate Debtor	**:**	Adv. Amir Arsiwala *a/w.* Adv. Ahmed Padela *i/b.* The Law point.

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) by SA Engineering, through its Sole Proprietor Shahin Ahamed Barbhuiya, the Operational Creditor, seeking initiation of Corporate Insolvency Resolution Process (CIRP) by this Adjudicating Authority (AA) in respect of Shapoorji Pallonji and Company Pvt. Ltd., the Corporate Debtor, for an alleged default of Rs.1,23,67,423/- (One Crore Twenty-Three Lakh Sixty-Seven Thousand Four Hundred and Twenty-Three Rupees). The Operational Creditor has specified three Dates of Default, in Part-IV of the present Application, viz., 01.12.2017, 24.11.2022 and 02.01.2023.

2. SUBMISSIONS OF OPERATIONAL CREDITOR

2.1. The Applicant/Operational Creditor states that it is engaged in Fabrication and Erecting Structural Steel and has received work orders from various clients, including the Corporate Debtor. The scope of work given by the Corporate Debtor to the Operational Creditor is "Rate work contract for providing, fabricating, and Erecting Structural Steel" for the Corporate Debtor, as per which the Corporate Debtor withholds 5% of the invoice value as retention money on each bill until the defects liability period is completed. The Corporate Debtor issued work orders starting on 12.09.2018 for projects in Karnataka and Andhra Pradesh.

2.2. The Operational Creditor submits that it has to receive outstanding amounts and retention money pertaining to various projects in Karnataka and Andhra Pradesh. Consequently, the Operational Creditor was constrained to issue a Notice under Section 8 of the Code on 15.02.2023. In response, the Corporate Debtor issued a Reply dated 07.03.2023, in which it disputed the claims made by the Operational Creditor.

2.3. The Operational Creditor submits that the Corporate Debtor has failed to submit any evidence concerning the quality issues or defects alleged by the Corporate Debtor regarding the work carried out by the Operational Creditor. Thus, the Corporate Debtor has not met any of the conditions mentioned in Section 5(6) of the Code.

2.4. The Operational Creditor has further placed reliance on the judgements of the Hon'ble Apex Court in *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd*. [(2018) 1 SCC 353], to substantiate the contours of the examination to be carried out by this AA while dealing with an Application under Section 9 of the Code.

2.5. The Operational Creditor, therefore, submits that there exists an operational debt exceeding One Crore Rupees due from the Corporate Debtor, who is in default, and therefore prays that CIRP may be ordered in respect of the Corporate Debtor.

3. REPLY BY CORPORATE DEBTOR

3.1. The records reflect that the Corporate Debtor has filed its Affidavit-in-Reply dated 14.12.2023. The Corporate Debtor submits that it is engaged in the business of providing construction and infrastructure development services, and had approached the Operational Creditor with certain work orders.

3.2. The Corporate Debtor contends that the Operational Creditor has clubbed work orders with respect to different projects in different locations across the States of Karnataka and Andhra Pradesh. It is stated that this was done to cross the statutory threshold of One Crore Rupees as required under Section 4 of the Code. The Corporate Debtor asserts that different work orders placed for completely different projects, with their own independent terms and conditions, different scopes of work, periods of completion, amounts and payment terms, defect liability periods, and dates of default (if any), cannot be clubbed together.

3.3. The Corporate Debtor has disputed the contents of the Demand Notice dated 15.02.2023, and contends that the same is bereft of correct facts of the

transactions between the Operational Creditor and the Corporate Debtor with respect to payment commitments and communications between them.

3.4. The Corporate Debtor submits that certain claims of the Operational Creditor are *ex-facie* time-barred as detailed below:

Particulars of Invoices	**Date on which debt fell due**	**Default Amount (Rs.)**
Invoice No. 121 dated 30.10.2017 (Lily Pashmina Project)	30.11.2017	1,96,995
Invoice No. 122 dated 30.10.2017 (Lily Pashmina Project)	30.11.2017	55,224
Invoice No. 60 dated 30.04.2019 (APGC Project)	30.05.2019	6,23,896
Invoice No. 61 dated 30.04.2019 (APGC Project)	30.05.2019	1,95,229
Invoice No. 65 dated 30.05.2019 (APGC Project)	30.06.2019	16,77,907
Invoice No. 58 dated 25.04.2019 (APGC Project)	25.05.2019	89,603
Invoice No. 64 dated 30.05.2019 (APGC Project)	30.06.2019	30.,420
Invoice No. 62 dated 30.04.2019 (AP High Court Project)	30.05.2019	1,355
Invoice No. 69 dated 30.06.2019 (AP High Court Project)	30.07.2019	1,39,519
Invoice No. 66 dated 31.05.2019 (AP High Court Project)	30.06.2019	5,05,781
Invoice No. 59 dated 25.04.2019 (Happynest Project)	25.05.2019	65,624
Invoice No. 63 dated 30.05.2019 (Happynest Project)	30.06.2019	6,09,721

Retention Money relating to old bills in Brigade Cosmopolis Phase 1	Undated	8,38,508
Retention Money relating to old bills in Brigade Cosmopolis Phase 2	Undated	5,12,725
Retention Money relating to old bills in RMZ Eco World C-7 Project	Undated	1,48,640
Retention Money relating to old bills in Oracle India Project	Undated	1,04,113
Retention Money relating to old bills in Syngene Int Ltd. Project	Undated	4,78,025
Retention Money relating to old bills in Intel SRR4 Project	Undated	46,323
Retention Money relating to old bills in AP Secretariat Project	Undated	1,03,177
Total		**65,33,740**

It is submitted that an amount of Rs. 65,33,740/- out of the alleged debt of Rs.1,23,67,423/- is time-barred, and the remaining amount of Rs. 58,33,683/- is less than the threshold limit of Rs. 1 Crore.

3.5. The Corporate Debtor states that after the receipt of the said Demand Notice, there have been two part-payments, *viz*., Rs. 2,96,510/- which the Operational Creditor has taken into consideration while filing the present Application, and another payment of Rs. 3,97,012/- in three tranches on 23.03.2023, 19.04.2023 and 16.05.2023, which has not been accounted by the Operational Creditor in the present Application.

3.6. The Corporate Debtor submits that the Operational Creditor has demanded 'Retention Money', which is contractually due and payable only after the end of the defect liability period. In support of the same, the Corporate Debtor has cited the relevant provisions of the Work Order dated 10.05.2022 for a certain project, which is similar to other work orders for different projects under which the defect liability period is either 12 months or 24 months, as extracted hereunder:

> "***9. RETENTION:***
>
> *5% of the certified value of work done shall be retained as retention money from all the certified running bills, till the virtual Completion of the work. The retention money held will be released after 24 months from the date of completion of works/final bill. This retention money held will not bear any kind of interest.*
>
> ***10. DEFECTS LIABILITY PERIOD:***
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> *Defects Liability Period will be 24 (Twenty-Four) months after the issue of virtual completion certificate of the employer. During this defect liability period any defects found will be repaired/replaced free of cost.*"

3.7. It is stated that the works assigned to the Operational Creditor under several projects have not been completed except for the project – Brigade Cosmopolis Phase 1 and II. Thus, retention money is payable only in respect of the said project. Additionally, in order to claim retention money in any project, it is mandatory that the vendor, i.e., Operational Creditor, shall return all tools and excess materials received from the respective stores at each project site and that ESI and PF Challans and other ID Cards are required to be returned to the Corporate Debtor in order to obtain No Dues Certificates. The Corporate Debtor submits that without submission of No Dues Certificates and the Virtual Completion Certificate, along with other statutory documents, Retention Money will not become due and payable. The Corporate Debtor submits that the Operational Creditor has not enclosed any No Dues Certificate or Virtual Completion Certificate, except for only one project, viz., 'Lily Pashmina'.

3.8. The Corporate Debtor submits that the defect liability period varies from 12 to 24 months and begins only after completion of the scope of work. The Operational Creditor has not produced any proof of completion of the scope of work under any projects, except for projects named 'Brigade Cosmopolis Phase I and II'. The Operational Creditor has also not produced any virtual completion certificates or no-due certificates issued by the respective project managers. It is stated that in the absence of the said documents, and in view of the fact that the defect liability period has not completed in many projects such as 'Godrej

Indiranagar', 'Purva Atmosphere' and 'WMI Factory Construction', no Retention Money is due or payable to the Operational Creditor. This is further evident from the fact that the Operational Creditor has left the respective columns for the alleged default of Retention Money blank.

3.9. It is further stated that out of the total amount of alleged debt due, i.e. Rs.1,23,67,423/-, the Operational Creditor has claimed Rs. 58,33,986/- towards Retention Money. It is stated that out of the said amount of Retention Monies, Rs. 13,51,233/- is claimed as Retention Money under the Projects – Brigade Cosmopolis Phase I and II, and that the differential amount of Rs. 44,82,753/- is neither due nor defaulted as the defect liability period for the remaining projects is (i) either not completed, or (ii) the Operational Creditor has not finished the necessary compliance post the defect liability period. The Corporate Debtor therefore states that the Operational Creditor has claimed Rs.65,33,740/- towards old invoices/ old retention monies, which are *ex facie* time-barred. It is therefore stated that the present Application does not satisfy the threshold limit of Rs. 1 Crore, and that it is liable to be dismissed on this ground alone.

3.10. The Corporate Debtor has disputed the veracity of the Account Summary issued by the Corporate Debtor, which has been relied upon by the Operational Creditor, and states that such account summary was never issued by the Corporate Debtor to the Operational Creditor, and is further not signed by any authorised representative or officer of the Corporate Debtor. The Corporate Debtor has further raised the issue of GST non-compliance by the Operational Creditor, which has caused losses to the Corporate Debtor as it was unable to take input credit for the invoice amounts, and therefore states that the present Application has been filed for the sole purpose of purported recovery rather than resolution, and that in view of the aforesaid, the present Application deserves to be dismissed.

4. REJOINDER BY OPERATIONAL CREDITOR

4.1. The Operational Creditor has controverted the submissions made by the

Corporate Debtor, by its Affidavit-in-Rejoinder dated 09.07.2025. The Operational Creditor submits that although the Corporate Debtor had issued different work orders relating to different projects in different States, the Corporate Debtor has only one Unique Identification Number (UIN) and no separate UIN for each project and would file only one income tax return; similarly, the Applicant has clubbed all the outstanding receivables from the Corporate Debtor into one bundle.

4.2. As regards the limitation and minimum threshold, the Operational Creditor submits that the Corporate Debtor makes payment on an account basis and not invoice-wise. Accordingly, the Operational Creditor can set off any amounts due to it. In support of this contention, the Operational Creditor relies on Section 19 of the Limitation Act, 1963, read with Section 60 of the Indian Contract Act, 1872. Therefore, the amount of Rs. 65,33,740/- is within the limitation period.

4.3. It is stated that the Corporate Debtor has not raised any dispute or defect in the work done or carried out by the Operational Creditor. It is stated that it has not received any notice or record of dispute, that the Operational Creditor sent numerous reminders to the Corporate Debtor to clear its payments, and that the Corporate Debtor raised all objections only after issuance of the Demand Notice on 15.02.2023.

4.4. The Operational Creditor submits that the Corporate Debtor has not paid the retention money even in respect of ‘Brigade Cosmopolis’ Phase 1 and II for which the Defect Liability Period is admittedly over. It is further submitted that the Operational Creditor has submitted the completion certificates for all projects, except those in the case of A.P. Government and A.P. High Court. The Operational Creditor states that it submitted additional documents containing 235 invoices on 13.08.2025 in support of the Application. These invoices are issued project-wise and indicate the amount due and default committed. The bifurcation of amounts is as under:

	Outstanding Bill amount	Retention amount	Holding amount	Total
In the state of Karnataka	14,86,309	32,13,383	-	46,99,692
In the state of Andhra Pradesh	44,80,081	26,20,532	8,95,743	79,96,356
	59,66,390	58,33,915	8,95,743	1,26,96,048

4.5. The Operational Creditor has reiterated that the Corporate Debtor has not produced any proof of quality issues raised by it, and has further denied any non-completion qua any of the projects it was engaged in. The Operational Creditor states that the Corporate Debtor cannot raise quality issues after the retention/defect period is almost over, and relies on *Mobilox Innovations* (supra) in support of the same. It is stated that the Operational Creditor has furnished completion certificates in respect of almost all the projects undertaken by it.

4.6. The Operational Creditor states that, so far as computation and dispute of the debt payable by the Corporate Debtor is concerned, since the Corporate Debtor makes payment on account and not invoice-wise, the Operational Creditor is permitted to set off any of the outstanding amounts due to the Operational Creditor, and thus claims that the debt is not time-barred. The Operational Creditor therefore contends that the factual nexus is in its favour, and seeks admission of the present Application.

5. ANALYSIS AND FINDINGS

5.1 We have heard the Ld. Counsel for the Operational Creditor and the Corporate Debtor and perused the available records.

5.2 The Operational Creditor has filed the present Application, asserting default in payment of Rs. 1,23,67,423/- per detailed Part-IV of the Application, arising out of work orders issued by the Corporate Debtor, for works carried out qua different projects located in the States of Andhra Pradesh and Karnataka. As per the Application, the default is attributed in part to outstanding amounts under various invoices and in part to the failure to return the Retention Money to the Operational Creditor. On account of these defaults, the Operational Creditor issued a Demand Notice under Section 8 of the Code on 07.03.2023.

5.3 The Corporate Debtor has disputed the contents of the Demand Notice in its Reply dated 07.03.2023, raising various objections. It asserts that the Retention Monies pertain to several different contracts and are not presently due and payable as per the terms of the work order. Furthermore, the Operational Creditor has not addressed the defects nor complied with the defect liability provisions of the respective work order terms. The Corporate Debtor claims that the scope of work remains incomplete and that the Operational Creditor has abandoned work at many project locations. Additionally, it is contended that all invoices have received acknowledgement from authorised officers of the Corporate Debtor and there is mismatch in GST compliance. Moreover, the Corporate Debtor contends in the Reply that out of the amount of Rs.58,33,983/- claimed towards Retention Monies, Rs.13,51,233/- is claimed as Retention Money under the Projects – Brigade Cosmopolis Phase I and II, and that the differential amount of Rs. 44,82,753/- is neither due nor defaulted as the defect liability period for the remaining projects is (i) either not completed, or (ii) the Operational Creditor has not finished the necessary compliance post the defect liability period. Further, the Corporate Debtor states that the Operational Creditor has claimed Rs.65,33,740/- towards old invoices/old Retention Monies, which are *ex facie* time-barred. It is, therefore, contended that the present Application does not satisfy the threshold limit of Rs. 1 Crore and is liable to be dismissed on this ground alone.

5.4 Before dealing with the rival contentions, it is necessary to notice the components of the debt claimed in the Application. The defaulted debt comprises an outstanding amount of Rs.59,66,390/- in respect of the bills/invoices, Rs. 58,33,915/- in respect of the retention amount, and Rs.6,95,743/- towards the holding amount. Consequently, the primary issue arising for consideration before the AA is whether the documentary evidence furnished with the Application substantiates that these debts are due and payable and have not yet been paid. It has been observed that the Application as well as the Demand Notice dated 15.02.2023 are incomplete with regard to the commercial transactions between the parties, including the payment

obligations, communications, and work order terms. Furthermore, the Operational Creditor has not produced the Demand Notice dated 15.02.2023 in its entirety, as the Annexures referred to in the said Demand Notice have not been produced on record before this Tribunal. In the circumstances, we proceed to examine the documents as are available.

5.5 A significant portion of the debt claimed in the Application is admittedly fallen due three years before the date of filing of the present Application. Nevertheless, the Operational Creditor argues, invoking Section 19 of the Limitation Act, 1963, read with Section 60 of the Indian Contract Act, 1872, that where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it in its discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to limitation of suits when received from the Respondent. Given that certain payments were received from the Corporate Debtor within the three-year period, the debt remains within the limitation period. The Operational Creditor also relied on the judgment of the Hon'ble Supreme Court in *Shanti Conductors Pvt Ltd v. Assam State Electricity Board and Ors.,* [(2020) 2 SCC 677] and of the Coordinate Bench of NCLT, Kolkata in *M/s. SS Engineers v. M/s. HPCL Biotuels Ltd,* [C.P.(IB) No. 1422/KB/2018], to substantiate that any payment received may effectively extend the period of limitation under Section 19 of the Limitation Act, 1963.

5.6 Conversely, the Corporate Debtor has contested that the date of default must be determined with reference to each individual invoice, and that invoices falling beyond three years prior to the date of filing of the Section 9 Application are liable to be excluded from consideration, unless the period of limitation stands validly extended under Section 18 of the Limitation Act, 1963, by way of a clear and unequivocal acknowledgement of debt in writing, signed by the party against whom limitation is sought to be extended. In support of the above argument, reliance is placed on the judgement of the Hon'ble Supreme Court in *Next Education India Pvt Ltd v. K12 Techno Services Pvt Ltd,* [(2023) ibclaw

in 39 SC] and the judgement of the Coordinate Bench at Mumbai in *Laxmi Trading Corporation v. Hindustan Construction Company Limited* [2023 SCC Online NCLT 554].

5.7 We have carefully considered the rival contentions. The records show that the Operational Creditor has maintained separate project-wise ledger accounts, and the amount outstanding for each project is specifically stated. When the creditor maintains separate project-wise ledgers and makes payments accordingly, any payment credited to one project can extend limitation only in respect of that project, not for all projects of the Corporate Debtor undertaken by the Operational Creditor. It is also observed that payments have been received during the three-year period preceding the filing of the Application only in respect of Projects- WMI Factory, Godrej Project, Purva Atmosphere, APGC and Aptidco. Consequently, in respect of the following projects, no payments were made during the three-year limitation period prior to the filing of the Application:

Sl. No.	Project	Invoice Period	Amount claimed
1	High Court	29.11.2018 – 10.05.2020	911209
2	Hapynest	25.04.2019- 10.05.2020	980406
3	Brigade Cosmoplolis	30.04.2016- 28.02.2018	1361506
4	RMZ Warld	01.06.2016-25.08.2016	94725
5	Orakle Karbisnali	25.05.2016-13.10.2017	107636
6	Itel SRR$	28.03.2018-28.11.2018	46232
7	Secretariat HOD	27.08.2018-31.01.2019	105618
		Total	3607332

5.8 In *Next Education India* (supra), the Hon'ble Supreme Court observed that *"… the NCLT did not take into consideration the subsequent invoices at least preceding three years from the date of filing of Section 9 application, which ought to have been considered. Under the circumstances, the NCLT ought to*

have considered the invoices at least for the period preceding three years from the date of the application under Section 9, rather than considering the starting point of limitation as 12.03.2011". The judgement establishes that the date of default must be determined with reference to each invoice, and invoices which are beyond the period of three years from the date of filing are to be excluded unless the period of limitation is extended by way of acknowledgement. The Coordinate Bench at Mumbai has followed this ratio in *Laxmi Trading* (supra). Consequently, invoices that are *ex facie* time-barred do not constitute a "default" within the meaning of Section 3(12). After excluding Rs. 36,07,332, which pertains to invoices issued more than 3 years ago, and given that no payments were made within 3 years, the total debt falls below the Rs. 1 Crore threshold.

5.9 Another contention raised by the Corporate Debtor with respect to the testing of the threshold is that the 'Retention Money' is contractually due and payable only after the end of the defect liability period, and has cited the relevant provisions of the Work Order dated 10.05.2022 for a certain project, which is similar to other work orders for different projects under which the defect liability period is either 12 months or 24 months. Basis the above, the Corporate Debtor contends that out of the amount of Rs.58,33,983/- claimed towards Retention Monies, Rs. 13,51,233/- is claimed as Retention Money under the Projects – Brigade Cosmopolis Phase I and II, and that the differential amount of Rs. 44,82,753/- is neither due nor defaulted as the defect liability period for the remaining projects is (i) either not completed, or (ii) the Operational Creditor has not finished the necessary compliance post the defect liability period.

5.10 Upon reviewing the documents furnished by the Operational Creditor, it becomes evident that the Operational Creditor has not been able to prove that the defect liability period in respect of each of the projects has expired or that the requisite compliance for the release of retention amount has been fulfilled. In the absence of the aforesaid documents, there is insufficient evidence to arrive at a conclusion that the Retention Monies have fallen due. Without the

Retention Monies also, the present Application fails to meet the threshold limit of Rs. 1 Crore.

5.11 After careful consideration, we have already determined that the default does not meet the threshold stipulated under Section 4 of the Code. Consequently, it is unnecessary to examine other contentions raised by the Corporate Debtor. It is well-settled that the threshold under Section 4 of the Code is a jurisdictional prerequisite, and the Adjudicating Authority lacks jurisdiction to admit an application where the debt in default, properly computed, does not meet this threshold. The present Company Petition is therefore liable to be dismissed.

5.12 Accordingly, **CP (IB) No. 896/MB/2023** is **rejected.** However, it is made clear that this rejection is without prejudice to the Applicant's rights and remedies under any other law. File be consigned to records.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)