



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing / VC Mode (Hybrid))

ITEM No.03
C.P. (IB) No.33/BB/2024

IN THE MATTER OF:

M/s. AKG Shuttering Pvt. Ltd.	...	Petitioner
Vs.		
M/s. APM Design Build Pvt. Ltd.	...	Respondent

Order under Section 9 of I&B Code, 2016

Order delivered on: 23.05.2025

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner	:	Shri Gusrat Singh
For the Respondent	:	None

ORDER

1. Ld. Counsel appearing for the Petitioner.
2. C.P.(IB)No.33/BB/2024 is admitted by IRP vide separate Order.
3. List the case on **01.07.2025**.

-Sd-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

Shruthi



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing/ VC Mode (Hybrid))

CP (IB) No. 33/BB/2024

U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

AKG SHUTTERINGS PRIVATE LIMITED

Khasra No. 1722/1282/1206,
Behrampur Road, Village,
Behrampur Khatola, Gurgaon

- Operational Creditor

Versus

APM DESIGN BUILD PRIVATE LIMITED

No.205, Naidu Layout, Arehalli,
Bengaluru, Karnataka - 560061,

- Corporate Debtor

Order delivered on: 23.05.2025

Last Date of hearing:29.04.2025

CORAM:

Hon'ble Shri Sunil Kumar Aggarwal , Member (Judicial)

Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

ORDER

1. The present petition was filed on 25.05.2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code"), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **AKG SHUTTERINGS PRIVATE LIMITED** ("Operational Creditor/ Petitioner") inter alia seeking to initiate Corporate Insolvency Resolution Professional Process ("CIRP") against **APM DESIGN BUILD PRIVATE LIMITED** (hereinafter referred as "Corporate Debtor/Respondent") on the ground that the Corporate Debt or has committed a default for a total outstanding amount of **Rs.**



3,84,61,102/- (Rupees Three Crores Eighty Four Lakhs Sixty-One Thousand One Hundred and Two only)

2. It is submitted that the Date of Default is on 30.07.2022 as per Part IV of Form No. 5 filed with the Petition. Further, the Affidavit regarding pre-existing Dispute U/s 9(3) (b) is placed at Page No. 31-36 of the petition, while Demand Notice under Section 8(1), Form 3 is attached at **Annexure - 7**.
3. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
 - a) The Petitioner/Operational Creditor is an entity incorporated on 13.05.2013 under the Companies Act by the name **AKG SHUTTERINGS PRIVATE LIMITED**, engaged in business of providing shuttering and scaffolding equipment at various construction sites throughout the territory of India and regularly contracts with several construction companies in furtherance of its business mandate and the Respondent/Corporate Debtor is an entity incorporated on 14.05.2019 under the Companies Act, 2013 by the name of **APM DESIGN BUILD PRIVATE LIMITED**. The copy of the Master Data of the Operational Creditor and the Corporate Debtor is annexed as **Annexures 1 & 2**.
 - b) The Operational Creditor and Corporate Debtor entered into an agreement pursuant to which work orders were issued for three of the Corporate Debtor's project sites. For each project site, a separate work order was issued for the supply of shuttering and scaffolding materials by the Operational Creditor on a hire basis. In accordance with the terms of the agreement and the respective work orders, the Operational Creditor commenced the supply of the shuttering and scaffolding materials at the designated project sites of the Corporate Debtor and raised monthly invoices for the period from 31.03.2022 to 01.03.2023.



- c) Initially, the business operations proceeded smoothly; however, over time, delays in payment from the Corporate Debtor led to a deterioration in the relationship. As a result, outstanding dues began to accumulate, eventually reaching a total sum of Rs.1,26,38,942/-, which is duly reflected in the ledger account of the Corporate Debtor maintained in the books of accounts of the Operational Creditor. Despite repeated follow-ups, the Operational Creditor has been unable to secure payment of the outstanding dues from the Corporate Debtor.
- d) Therefore, as on the date of filing this Petition before this Tribunal, a total sum of Rs. 3,73,40,540/- remains pending and unpaid across the three project sites of the Corporate Debtor. In addition to the outstanding monetary dues, shuttering and scaffolding materials supplied on a hire basis by the Operational Creditor continue to remain at the project sites and have not been returned by the Corporate Debtor. The value of the said unreturned materials amounts to Rs. 2,47,01,601/-, which is also due and payable by the Corporate Debtor. Accordingly, the total liability, comprising both the outstanding invoices and the cost of unreturned materials, is owed to the Operational Creditor. Despite several reminders and follow-ups, the Corporate Debtor has failed to discharge its liabilities. Moreover, interest on the outstanding dues continues to accrue and shall remain payable until the actual date of realization.
- e) Since the year 2022, the Corporate Debtor has made certain ad-hoc payments in response to ongoing communications and follow-ups from the Operational Creditor. However, despite these partial payments, the Corporate Debtor currently owes an outstanding operational debt of Rs. 3,73,40,540/- to the Operational Creditor. As per the policy of the Operational Creditor, any delay in clearing outstanding dues attracts interest at the rate of 18% per annum. Accordingly, an interest amount



of Rs. 11,20,559/-, calculated across seven project sites, has accrued and remains due and payable by the Corporate Debtor in addition to the principal amount.

- f) In light of the fact that the liabilities of the Corporate Debtor, as recorded in the books of the Operational Creditor, had exceeded several crores of rupees and continued to mount steadily due to the accruing interest component, the situation became increasingly untenable. Despite this, the Corporate Debtor failed to take any substantive steps toward resolution. Apart from occasional assurances and minimal communication, no concrete action was ever taken by the Corporate Debtor to address or settle the outstanding dues.
- g) In view of the continued and deliberate silence on the part of the Corporate Debtor since July 2022, as evidenced by its conduct, the Operational Creditor was compelled to issue a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. The said notice was issued on 20.03.2023 and was duly dispatched via speed post and email to the Corporate Debtor's registered address and email ID as reflected in the MCA Master Data available on www.mca.gov.in. Additionally, a soft copy of the demand notice was sent via email on 24.03.2023, which was not returned as undelivered or bounced, thereby indicating successful transmission.
- h) The Operational Creditor has duly complied with all the mandatory requirements under Section 9(3)(a), (b), and (c) of the Insolvency and Bankruptcy Code, 2016. It is submitted that the Corporate Debtor has failed to respond to the Demand Notice dated 20.03.2023. Accordingly, the Operational Creditor is filing the present application 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, seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

4. An affidavit of Compliance has been filed by the Operational Creditor on 20.03.2024 pursuant to the order dated 12.02.2024, directing the Operational creditor to serve private notice to the Corporate Debtor via all modes. The same is taken on record. Further, vide order dated 07.06.2024, it was noted that this order will be decided on ex-parte basis in view of the non-appearance of the Respondent's Counsel.
5. Heard **Shri. Gursat Singh**, the Learned Counsel for the Petitioner. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made under.
6. In pursuance of the Agreement & Work Order, the Petitioner had commenced with the supply of shuttering and scaffolding material on hire basis at the project sites of the Corporate Debtor where, as on date of filing of the present Petition before this Tribunal, a sum of Rs. 3,73,40,540/- from 3 sites of the Corporate Debtor is pending and thus unpaid. The Demand Notice issued under Form-4 dated 20.03.2023 was duly served on the Corporate Debtor.
7. The petitioner has not filed the Record of Default from Information Utility. It has been held in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2017) ibclaw.in 01 SC***, if there is no record of dispute in the information utility, nor any documents submitted to show any dispute with regard to the claim made by the creditor, it cannot be presumed that there is a pre-existing dispute on the quantum or the issue of payment due.
8. On examining the petition along with supporting documents this Adjudicating Authority is of the considered opinion that the petitioner has made out a case for initiating CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing **CP (IB) No. 33/BB/2024 is admitted** against the Corporate Debtor **APM**



DESIGN BUILD PRIVATE LIMITED and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:-

- a. The institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in;
- b. any court of law, tribunal, arbitration panel or other authority;
- c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- d. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- g. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;



9. In Part-III of Form No.5, no name of the Interim Resolution Professional was proposed by the Operational Creditor. However, this Tribunal vide order dated 29.04.2025 permitted the Operational Creditor to propose the name of an Interim Resolution Professional.
10. The Operational Creditor has proposed the name of **Mr. Gagan Gulati** as Interim Resolution Professional (IRP) of the Corporate Debtor and Form No.2 dated 29.04.2025 has been filed through the e-filing portal. The Operational Creditor is directed to file the physical copy of the same within 07 days from the date of receipt of copy of this order.
11. Based on this the bench appoints **Mr. Gagan Gulati** bearing Registration No.- **IBBI/IPA-002/IP-N00893/2019-20/12832** having registered address at A-179, First Floor, Sudershan Park, New Delhi, 110015, e-mail: advocategulati@gmail.com, and Contact No.- 9717999399 as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
12. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
13. It is further directed that the Operational Creditor shall rectify the discrepancy in its address as reflected in the Petition and the MCA Master Data, to ensure consistency in the records.
14. The Interim Resolution Professional shall after collation of all the claims received against **APM DESIGN BUILD PRIVATE LIMITED** and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry



of thirty days from the date of his appointment and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal, monthly.

15. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his email address forthwith.

-Sd-

(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)

-Sd-

(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)