

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II

**CP (IB)/285/MB/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*

**Titan Contracting Services LLP**, having its Registered Office at: 1303, 13<sup>th</sup> Floor, Ellora Fiesta, Sector 11, Opp. Juinagar Railway Station, Sanpada, Navi Mumbai-400 705.

..... **Applicant/ Operational Creditor**

**Versus**

**XRBIA Developers Ltd.**, having its registered office at: - 125/126, Patil Plaza, Mitramandal Chowk, Parvati, Pune-411009.

.... **Corporate Debtor**

**Order Delivered on :- 06.08.2024.**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**





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*Appearances (in Physical Mode):*

For the Operational Creditor: Adv. Pratik Panday i/b. Adv. Vineet Jain.

For the Corporate Debtor: Adv. Jill Rodrigues.

**ORDER**

*Per: - Coram.*

1. This Company Petition is filed by M/s. **Titan Contracting Services LLP** (hereinafter referred to as "Operational Creditor") for initiation of Corporate Insolvency Resolution Process (CIRP) of M/s. **XRBLIA Developers Ltd** (hereinafter referred to as the "Corporate Debtor") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The amount claimed to be in default is stated in the application to be INR 2,86,51,897.58/- (Rupees Two Crores, Eighty-Six Lakhs, Fifty-One Thousand, Eight Hundred and Ninety-Seven, and Fifty-Eight Paise only), out of which the principal is INR 1,69,13,753.00/- and the interest is INR 1,17,38,144.58/-.
3. **Facts of the Case as per the Applicant are briefly stated as follows:**
  - a) The Corporate Debtor is involved in the business of building construction. The Operational Creditor was originally incorporated as 'Titan Builders & Developers Private Limited' on 17/12/2013 under the Companies Act, 2013. Later, the above-named company was





converted into LLP, which is now the Operational Creditor. The Operational Creditor is engaged in the business of civil and building on a contractual basis in India.

- b) The Corporate Debtor issued a Service Work Order dated 10.05.2017, bearing WO No. XDLN ANGANI/W0/06 to the Operational Creditor in respect of project 'Xrbia -Vangani' for a gross consideration of Rs. 31,77 ,77 ,280/- . The abovementioned 'Service Work Order' enumerates the following services to be rendered by the Operational Creditor for the Work Order which, *inter-alia*, includes Design and Build EPC/Turnkey Contract for construction of Ground+7 storied buildings, namely F2, F3, F4 & F5, with complete Architectural, Structural and MEP Design and including the complete execution of RCC work with due excavation and plinth development, Core and Shell with Masonry, all internal and external Plaster, Finishing, Elevator Works, an effective deep clean fog and handing over of Flats/Buildings, its complete repairs and maintenance till expiry of Defect Liability period.
- c) Pursuant to the aforesaid 'Service Work Order', the Operational Creditor herein executed the services/work enumerated in the aforementioned work order as per the timelines in the work order and duly raised the bills only upon achievements of the particular milestones (building wise) as briefly explained in the Payment Schedule referred to in Work Order. It is submitted that pursuant to the said work being completed periodically/ slab wise, the Operational Creditor from the year 2017-2019 had raised various invoices upon the Corporate Debtor.
- d) the Corporate Debtor after the receipt of the Invoices, released the payments towards the outstanding dues. The Operational Creditor





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after adjusting the payments received is further entitled to receive an amount of Rs 1,69,13,753/- towards the Invoices raised, being the principal amount receivable. Time and again the Operational Creditor has requested the Corporate Debtor to release the complete outstanding dues and not the part dues, but to no avail. The officers of the Operational Creditor further through various letters dated 29.06.2020, 30.09.2020 and 30.12.2020 informed the officers of the Corporate Debtor regarding the non-payment of the dues and requested to pay the amount due at the earliest. However, the Corporate Debtor even after acknowledging the letters had purposely neglected to make payments due to the Operational Creditor.

- e) The Operational Creditor issued letters to the Corporate Debtor seeking confirmation of the outstanding balance confirmation payable as follows:
  - i) Vide Letter dated 09.04.2020, the Corporate Debtor has acknowledged the Balance confirmation payable to an extent of Rs 1,69,13,753/- (Rupees One Crore Sixty-Nine Lakhs Thirteen Thousand Seven Hundred Fifty-Three Only) as of 31<sup>st</sup> March 2020.
  - ii) vide letter dated 14.04.2021 the Corporate Debtor has acknowledged the Balance confirmation payable to an extent of Rs 1,64,87,651/- as of 31st March 2021 towards the amount due against bills for work done.
  - iii) Vide Letter dated 17.04.2022, the Corporate Debtor has acknowledged the Balance confirmation payable to an extent of Rs 1,64,87,651/- as of 31<sup>st</sup> March 2022 towards the amount due against bills for work done.





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- iv) vide letter dated 12.04.2023 the Corporate Debtor has acknowledged the Balance confirmation payable to an extent of Rs 1,64,87,651/- (Rupees One Crore Sixty Nine Lakhs Thirteen Thousand Seven Hundred Fifty-Three only) as of 31st March 2022 towards the amount due against bills for work done.
- v) The Operational Creditor sent a Demand Notice dated 21.12.2023 under FORM 3, Rule 5 of the Insolvency and Bankruptcy Rules, 2016 to the Corporate Debtor to its registered address and its office address for repayment of an outstanding amount of Rs. 2,86,51,898/-. It is further submitted that the Operational Creditor sent the aforesaid Demand Notice to the Registered address of the Corporate Debtor through hand delivery and the same was accepted by the Accounts Department on 22.12.2023.
- vi) The Corporate Debtor in respect of FORM 3 addressed a letter dated 28.12.2023 to the Operational Creditor acknowledging the liability, as claimed in the demand notice and further promised that all their creditors should get paid of entire dues for completion of the Operational Creditor's work that took place at the project site.
- vii) However, the Corporate Debtor failed to make the entire payment till date. Hence this petition as the Corporate Debtor has been unable to discharge the outstanding debt duly acknowledged and payable to the Operational Creditor amounting to Rs.2,86,51,898/-. It is submitted that debt, as against the invoice numbered TCS/V AN/JUNE19/2 fell due on 16.07.2019, being the last date of the invoice raised. It is





further submitted that the debt fell due on 28.12.2023 being the balance confirmation received from the Corporate Debtor.

**4. Reply and Contentions of the Corporate Debtor:** The Corporate Debtor has filed its reply on Affidavit dated 06.06.2024. The reply and contentions of the Corporate Debtor are briefly capitulated below:

- i. The Corporate Debtor is involved in the business of building constructions and development since the year 2004. In the year 2017, the Corporate Debtor executed a work order dated 10th May, 2017 with the Operational Creditor for carrying out contractual work at its project sites for designing, executing and procuring all necessary materials at the construction site i.e., Xrbia Vangani of the Operational Creditor as and when required. The services were being rendered timely on the project site and invoices were issued up till the period of 2019. However, the strain of undue payments and lack of sale of flats and completion of various project sites during and post Covid-19 period, hampered the workings of the Corporate Debtor and the business of the Corporate Debtor was badly hit, which, in turn, affected the Corporate Debtor from releasing funds towards the work done by the Operational Creditor and put the Corporate Debtor in the bad books of the Operational Creditor.
- ii. The business of the Corporate Debtor in whole suffered irreversible losses, with most of its projects either being stalled or being drained out of money flow during the peak Covid-19 period of 2020 to 2022, with maximum collection of funds being used since December, 2020 towards Bankers interest payment. As the Corporate Debtor's sole source of earnings were from the





development and construction sector, it was unable to source its funds from any loans offered by the Banks or financial institutes to invest in its projects.

- iii. Further, as the Corporate Debtor relied heavily on the general public being flat purchasers in its projects which was hit by the wake of Covid-19 wherein the buyers were unable to fetch out any payments on the flats, as they themselves faced difficulty in getting loans or monies arranged to pay the consideration to the Corporate Debtor. In fact, the Promoters during the aforesaid period fetched approximately Rs. 50 to Rs. 100 crores towards the said projects causing a bilateral effect on the income of the Corporate Debtor and since then the Corporate Debtor has been unable to gain back its status and goodwill in the market to further gain profits and pay off all its debts as no amount was available for development of its projects. Pertinently, due to lower collection and higher interest burden, the interest payment was delayed and the account of the Corporate Debtor turned NPA in the month of March, 2023, which, in turn, stalled many of its projects and any source of income that were retained by the Corporate Debtor had to be utilized towards further interest payment, as no cash flow could be generated towards profiting or paying of any of its Creditors including the present Operational Creditor.
- iv. The sole lender of the Corporate Debtor i.e. L&T Finance Ltd and L&T Housing Finance Ltd assigned outstanding Loan to Asset Reconstruction Company India Limited ("ARCIL") in March 2023. In order to revive the business of Corporate Debtor and start construction at full pace, the Corporate Debtor





submitted restructuring plan in the month of June 2023. The said plan was discussed on multiple occasions in the past one year and the Corporate Debtor was only able to receive the restructuring draft documents by March 2024, by which point the interest had further accumulated and had ended up eating the entire profit of the Corporate Debtor's business which in turn increased the cost factor of the business.

- v. Over the last three years the Corporate Debtor has been severely restrained from carrying out its business and its obligations to its Creditors, due to decline in cash flow and untethered usage of profits towards payment of interest. Despite all the efforts put in by the Corporate Debtor to pay off the amount of debt of Rs. 1,69,13,753/- (Rupees One Crore Sixty-Nine Lakhs Thirteen Thousand Seven Hundred and Fifty-Three Only) to the Operational Creditor for the work completed as per the Work Order date 10<sup>th</sup> May, 2017, it has been unable to meet its commitments and, therefore, sought further time upon receipt of the Demand Notice dated 21st December, 2023 issued by the Operational Creditor.
- vi. The Corporate Debtor tried to pay off its debts to the Operational Creditor but due to its inability to source its funds defaulted on the payment. The Corporate Debtor is making every effort to source funds to revive its business and pay off its Creditors. In the end, the Corporate Debtor prays to this Tribunal to grant a reasonable time to the Corporate Debtor to clear its liability to the Operational Creditor.





**ANALYSIS AND FINDINGS**

5. We have heard the learned Counsel for the Operational Creditor and the Corporate Debtor and we have examined the records.
6. In the present case, the Corporate Debtor has admitted its default in the affidavit-in-reply in the following terms:

*"8) I say that from the last three years the Corporate Debtor has been severely restrained from carrying out its business and its obligations to its Creditors, due to decline in cash flow and untethered usage of profits towards payment of interest and so on, has left no form of reform to keep the business of the Corporate Debtor afloat. Despite all the efforts put in by the Corporate Debtor to pay off the amount of debt of Rs. 1,69,13,753/- (Rupees One Crore Sixty-Nine Lakhs Thirteen Thousand Seven Hundred and Fifty-Three Only) to the Operational Creditor for the work completed as per the Work Order date 10<sup>th</sup> May, 2017, it has been unable to meet its commitments and therefore sought further time upon receipt of the Demand Notice dated 21<sup>st</sup> December, 2023 issued by the Operational Creditor."*

(Emphasis Supplied).

7. Thus, in unequivocal terms, the Corporate Debtor has admitted the principal amount of default of INR 1,69,13,753/- (Rupees One Crore Sixty-Nine Lakhs Thirteen Thousand Seven Hundred and Fifty-Three Only) in respect of the operational debt due and payable to the Operational Creditor. Further, we observe that in reply to the Demand Notice u/s 8 of the Code dated 21<sup>st</sup> December, 2023, the Corporate Debtor has not denied or disputed the factum of default, but rather the Corporate Debtor has acknowledged its liability to the Operational Creditor in respect of the operational debt arising out of the works carried out by the Operational Creditor at the project site "Xrbia-Vangani" of the Corporate Debtor.





8. The NeSL Report (annexed at Exhibit 'P' to the Petition) shows the Status of Authentication of Default as "DEEMED TO BE AUTHENTICATED", which implies that the factum of default has not been disputed by the Corporate Debtor. This is consistent with the pleading of the Corporate Debtor in the above-captioned petition. The date of default and the amount of default, as stated in the aforementioned Information Utility Report, are 16.07.2019 and INR 2,86,51,898.00/- respectively.

9. On perusal of the records, it is evident that the date of execution of work order is 10<sup>th</sup> May, 2017. Thereafter, the work as per the work order was carried out at the project site as against which the invoices were raised by the Operational Creditor from time to time and part payments were made by the Corporate Debtor. The Ledger maintained in the books of Operational Creditor (annexed at Exhibit 'G' to the petition) shows that payments were made by the Corporate Debtor from 2017 to 2019. The last payment of Rs. 1 lakh was made by the Corporate Debtor towards the retention money on 02<sup>nd</sup> March, 2020 and since such payment was made on account of a debt before the expiry of prescribed period of limitation (i.e. within three years of debt becoming due and payable), a fresh period of limitation would run from 02<sup>nd</sup> March, 2020. Further, we observe that the Corporate Debtor has given balance confirmation to the Operational Creditor on 09.04.2020, 14.04.2021, 17.04.2022 and 12.04.2023 in respect of the financial years ending on 31.03.2020, 31.03.2021, 31.03.2022 and 31.03.2023 respectively. These balance confirmations are nothing but an acknowledgment of debt/liability in writing signed by the Corporate Debtor and, therefore, as per the provisions of Section 18 of the





Limitation Act of 1963, a fresh period of limitation would run from the time when the acknowledgment was so signed. As the last acknowledgment was made on 12.04.2023, a fresh period of limitation would run therefrom. Since the present petition has been filed on 02.04.2024, which is within three years from 12.04.2023, we hold that the above-captioned Company Petition has been filed within the period of limitation as prescribed under Article 137 of the Schedule to the Limitation Act, 1963. The aforementioned balance confirmations also prove that the debt is due and remains unpaid as on 31.03.2023.

10. In view of the foregoing findings and discussions, we conclude as follows:

- i. The Petitioner has successfully established from the records that the Corporate Debtor has defaulted in payment of operational debt due to the Operational Creditor;
- ii. Demand Notice u/s 8 of the Code has been served by the Petitioner upon the Corporate Debtor and even after expiry of 10 days of service of the aforesaid notice, the operational debt continues to remain in default;
- iii. The amount of default in the instant case exceeds the minimum threshold of Rupees One Crore, as prescribed u/s 4 of the Code; and
- iv. The present petition is not barred by limitation.

Hence, under such circumstances, the Adjudicating Authority is left with no alternative but to admit the application under Section 9 of the Code and order the initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. ~~It is ordered~~ accordingly in the following terms:





**ORDER**

(a) The petition bearing **CP(IB)-285/MB/2024** filed by **TITAN CONTRACTING SERVICES LLP**, the Operational Creditor, under Section 9 of the IBC, 2016 read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor M/s. **XRBIA DEVELOPERS LIMITED** [CIN: U45209PN2004PLC019772] is hereby admitted;

(b) **Mr. Vikas Gopichand Khiyani**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP- P02738/2022-2023/14194**, (email: [cavikas.khiyani@gmail.com](mailto:cavikas.khiyani@gmail.com)), is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(c) The Operational Creditor shall deposit a sum of **₹ 1,00,000/-** (Rupees One Lakh only) with the IRP towards the initial **CIRP costs** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

(d) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

(i) The institution of suits or continuation of pending suits or proceedings against the **Corporate Debtor** including





execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(e) Notwithstanding the above, during the period of moratorium-

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(f) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.





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(g) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(h) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor.

Sd/-

Sd/-

ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)

*Certified True Copy*

Date of Application 30/9/2024

Number of Pages 14

Fee Paid Rs. 70/-

Applicant called for collection copy on 03/10/2024

Copy prepared on 01/10/2024

Copy Issued on 03/10/2024

KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)



