



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

CP (IB)/542/MB/2019

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

BIGBLOC CONSTRUCTION LIMITED,
a public limited company, having its registered office at 06th Floor, A-601/B, International Trade Centre, Majura Gate, Ring Road, Surat, Gujarat-395002.

..... Applicant/ Operational Creditor

Versus

GOLDPRISM REALTY PRIVATE LIMITED, having its registered office at :- 'A' Sunrise, Ground Floor, Plot No. 32, Sector 8A, CBD Belapur, Thane-400614.

.....Corporate Debtor

Order Delivered on :- 02.11.2023

Coram:

**Mr. Anuradha Sanjay Bhatia
Member (Technical)**

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

Appearances:

For the Operational Creditor: Adv. Dhiren R. Dave.

For the Corporate Debtor: Adv. Aayushi Singh.

ORDER

Per: - Shri. Kuldip Kumar Kareer (Hon'ble Judicial Member)

1. This Company petition is filed by M/s. BigBloc Construction Limited, a Public Limited Company (hereinafter referred to as "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Goldprism Realty Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of 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 Company Petition was filed on 06.02.2019 claiming an amount of Rs.3,74,710.48/- (Rupees Three Lakhs, Seventy-Four Thousand, Seven Hundred and Ten Only and Fourty Eight Paise) out of which the principal outstanding is INR 2,63,773/-and interest on the principal outstanding is INR 1,10,937.48/-.
3. The details of the transactions leading to the filing of this Application as averred by the Operational Creditor in the application are as follows:

- a) The Operational Creditor sold AAC Blocks of various size as per the Bills and the Debit Notes attached to the Demand Notice as well as to the Petition. There are five invoices and three debit notes in respect of which the payments from the Corporate Debtor are still due. The Debit Notes have been raised by the Operational Creditor for freight reimbursement from the Corporate Debtor.
- b) The Operational Creditor has provided the working at Annexure II-D to the Petition showing the invoices in respect of which the payments are still due by the Corporate Debtor. As per the said working, there are five invoices and three debit notes in respect of which the payments from the Corporate Debtor are still due. The Operational Creditor has also annexed the Ledger at Annexure II-B to the Petition, showing its account with the Corporate Debtor in respect of the invoices and debit notes raised and the payments made by the Corporate Debtor so far and the amount still due by the Corporate Debtor to the Operational Creditor. The Operational Creditor has also annexed a Certificate from the Bank viz. SVC Co-operative Bank stating that there is no entry of INR 2,63,773/- on the credit side showing the amount received from M/s. Gold Prism Realty Pvt Ltd.
- c) According to the Operational Creditor, the default occurred on 25th October, 2017 since no payments were received by the Operational Creditor from the Corporate Debtor thereafter. The Operational Creditor had served the Demand Notice dated 16th November, 2018 to the Respondent Corporate Debtor via Speed Post delivered on 27.11.2018. Despite the service of Demand Notice, neither any payment was made in satisfaction of dues nor any reply was received by the Operational Creditor from the Corporate Debtor. Hence, the Operational Creditor has filed this petition to initiate the corporate

insolvency resolution process of the Respondent Corporate Debtor u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code” for the sake of brevity.

4. Submissions of the Respondent in brief:

- a. The Application does not suffice the minimum threshold of INR 1 lakhs as enumerated u/s 4 of the Insolvency and Bankruptcy Code, 2016 as according to the Respondent, only a sum of INR 99,371/- (Rupees Ninety-Nine Thousand, Three Hundred and Seventy-One only) is due to the Operational Creditor towards the Debit Note bearing No. 008445 dated 10th March, 2017 for INR 27,273/- and Invoice bearing No. 011307 dated 10th March, 2017 for INR 72,098/-. The Respondent states that the said amount remains to be paid to the Applicant due to the wrong address mentioned by the Applicant in the delivery challan. The Corporate Debtor in its Affidavit-in-Reply has stated that the Corporate Debtor is willing to pay the Operational Creditor a sum of INR 99,371/- towards the amount due in respect of the aforesaid invoice and debit note.
- b. The Corporate Debtor claims that rest of the payments due to the Operational Creditor have already been made and the Operational Creditor has failed to give effect to the same in order to meet the threshold to file this petition. The Corporate Debtor has annexed a Certificate from its banker HDFC Bank at Exhibit E to the Affidavit in reply showing the payments made by it to the Operational Creditor.
- c. Since according to the Corporate Debtor no amount other than INR 99,371/- is due and that the Corporate Debtor is willing to pay INR 99,371/- to the Operational Creditor, the petition

should be dismissed as not maintainable for want of minimum threshold.

5. Submissions of the Operational Creditor in Rejoinder

- a. The Operational Creditor in its rejoinder affidavit has denied the submissions and averments made by the Corporate Debtor as false and misleading. The Operational Creditor has stated that the accounts of the Corporate Debtor have been maintained on running account basis and even after giving credit of all the amounts paid by the Corporate Debtor, still a sum of INR 3,74,710/- is remaining due and payable.
- b. The Operational Creditor has stated in its rejoinder affidavit that the interest @ 24% p.a. has been charged to the Corporate Debtor for late payment in view of the terms and conditions stated in the bills. Since the bills have been admitted, the Operational Creditor is eligible to charge interest.

ANALYSIS AND FINDINGS

6. We have heard the Counsel for the Applicant-Operational Creditor and the Respondent-Corporate Debtor. We have also gone through the pleadings and the records.
7. In this case, the Operational Creditor has claimed that the Corporate Debtor has committed a default of Rs.3,74,710.48/- including the interest amount of INR 1,10,937.48/-. The amount has been remaining due in respect of the five invoices and three debit notes

remaining partly unpaid as per the workings and ledger account annexed by the Petitioner. The Corporate Debtor has admitted the claim of INR 99,371/- (Rupees Ninety-Nine Thousand, Three Hundred and Seventy-One only) remaining due to the Operational Creditor towards the Debit Note bearing No. 008445 dated 10th March, 2017 for INR 27,273/- and Invoice bearing No. 011307 dated 10th March, 2017 for INR 72,098/-. The Corporate Debtor has denied its liability to pay interest. On seeing the copy of invoices annexed by the Petitioner, the terms and conditions in the bills clearly state that late payment charges at the rate of 24% p.a. will be chargeable after the due date. Hence, the Corporate Debtor is eligible to include the claim of interest to meet the threshold of rupees one lakh u/s 4 of the Code. The interest computed @ 24% p.a. by the Applicant on the two aforementioned invoice and debit note are INR 29,487.09/- and INR 11,154.28/- respectively. If the interest, as above, is added to the admitted claim of INR 99,371/-, then the threshold of INR 1 Lakh is met and, on this ground, alone, the Petition deserves to be admitted.

8. On perusal of the running Ledger Account of the Corporate Debtor maintained by the Operational Creditor (annexed as "Annexure II-B" to the petition), it is evident that the Operational Creditor has given effect to all the payments made by the Corporate Debtor and still a sum of INR 2,63,773/- in principal (without charging interest on late payment) is due from the Corporate Debtor. Therefore, the submission of Corporate Debtor at Para 8 of its Affidavit-in-Reply "despite the receipt of payment under the aforesaid remaining Invoices/Debit Notes, the Applicant has failed to give the Respondent credit for the aforesaid payments and has purported to

include the aforesaid Invoices/Debit Notes within the purported claim in the above Company Petition” appears to be incorrect.

9. The Corporate Debtor has not brought any existence of dispute or any record of pendency of suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. Thus, there is no pre-existing dispute with respect to the goods supplied by the Operational Creditor to the Corporate Debtor.
10. On the basis of the foregoing discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of an Operational debt and its default having been committed by the Corporate debtor. The Application is also within time. Therefore, the Application deserves to be admitted. It is ordered accordingly, in the following terms:

ORDER

- a. **The above Company Petition No. (IB) -542 (MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution -Process (CIRP) is ordered **against M/s. GOLDPRISM REALTY PRIVATE LIMITED;**
- b. This Bench hereby appoints **Ms. Mona Vora,** Insolvency Resolution Professional, having Registration No: **IBBI/ IPA-002/ IP-**



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

CP (IB)/542/MB/2019

N00938/2019-202/12997 as the Interim Resolution Professional having email id :- advmonavora@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs.1,00,000/- (Rupees One Lakh Only) towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.



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

CP (IB)/542/MB/2019

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
11. Accordingly, **this Petition is admitted.**
12. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
(MEMBER TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
(MEMBER JUDICIAL)