



**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT III**

**IB-494(ND)/2020**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

**IN THE MATTER OF:**

**Thomas and Company Pvt Ltd.** ...Applicant/Financial Creditor

Versus

**Thapar Builders Pvt Ltd.** ...Respondent/Corporate Debtor

**Judgment delivered on: 18.05.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS  
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI  
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Gursat Singh, Mr. Ayush Nanda, Advs.  
For the Respondent : Mr. Pankaj Kumar Singh,  
Mr. Ben Daniel Mathew, Advocates.

**ORDER**

**Per: BACHU VENKAT BALARAM DAS, MEMBER (J)**

1. The present petition has been filed by M/s. Thomas and Company Private Limited (Applicant) under Section 9 of the IBC, 2016 with the prayer to initiate CIRP against M/s. *Thapar Builders Private Limited.*, (Corporate Debtor) declare the Moratorium and appoint the Interim Resolution Professional.
2. M/s. Thomas and Company Private Limited is a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at D-143, Ambedkar Colony, Chattarpur, New Delhi-110074.



**3.** M/s. Thapar Builder Private Limited is a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at A-3, Pamposh Enclave, New Delhi-110048.

**4.** It is the case of the Operational Creditor that pursuant to letter of intent dated 26.03.2014, the Operational Creditor entered into an agreement with the Corporate Debtor on 10.05.2014, for the construction of a residential tower, 'The Arthah' at Vaishali, Sector 4, Ghaziabad, U.P.

**5.** It is contended that the Operational Creditor raised certain invoices from 25.07.2014 onwards as per the terms of agreement. As per the terms of the agreement the Corporate Debtor would retain of 5% of the total value of work done as a security measure, which would be released after 12 months from the date of completion of the project. The Operational Creditor raised several invoices between 07.08.2014 and 20.05.2017 amounting to Rs. 40,55,769/- towards the release of retention money which is duly reflected in the ledger account maintained by the Operational Creditor, in respect of account of Corporate Debtor for the period 01.04.2013 till 31.03.2019. It is also contended that after 07.01.2017, no payments have been credited in favour of the Operational Creditor and the outstanding Operational Debt of Rs. 40,55,769/- is due for payment with an interest @ 18% per annum.

**6.** The date of default as declared by the Operational Creditor in Part IV of the application is 08.01.2017. The Operational Creditor issued a demand notice under Section 8 of IBC, 2016 on 17.10.2019 to which the Corporate Debtor sent a reply on 26.10.2019.

**7.** The Corporate Debtor filed reply affidavit wherein a preliminary objection with regard to limitation has been raised. The Corporate Debtor contended that as per Part IV of the Section 9 petition, an amount of Rs. 40,55,769/- outstanding towards the retention amount was due since 08.01.2017. Therefore, the claim is barred under Article 137 of the Limitation Act, 1963, since, the present application has been filed after a period of three years. Learned Counsel appearing for the Corporate Debtor submitted that preliminary issue with regard to the limitation should be decided first before deciding the matter on merits.



**8.** Learned Counsel appearing for the Operational Creditor submitted that the demand notice was issued on 17.10.2019 and the Corporate Debtor gave a reply to the demand notice on 26.10.2019. Therefore, the date of default ought to be calculated from 26.10.2019.

**9.** We do not find any force in the submissions of the Learned Counsel appearing for the Operational Creditor. It is settled law that the date of limitation for filing an Application under Section 9 would accrue from the date of default as stated by the Applicant in Part IV of the petition in the present case which is 08.01.2017. The present application under Section 9 of IBC having been filed on 14.02.2022 which is beyond the period of three years since the date of default, this Application is barred by limitation.

**10.** The present Application is barred by limitation and the same is therefore **dismissed**.

Sd/-

**(SHRI ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**