IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA
C.P. (IB) No. 1686/KB/2018

In the matter of:
Under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:
Masters Development Management (India) Private Limited (CIN U70102MH2008PTC187221), a Company incorporated under the Companies Act, 1956, having its registered office at 1-C-1403 Whispering Palms, Lokandwala Complex, Kandivli (East) Mumbai – 400101.

... Operational Creditor

-Versus-

Bellagio Projects Private Limited (CIN U70102WB2013PTC192980), a Company incorporated under the Companies Act, 1956, having its registered office at 186, Rajarhat Main Road Kolkata - 700157, West Bengal.

... Corporate Debtor

Date of Hearing: 11.02.2022
Date of pronouncing the order: 25.02.2022

Coram:
Shri Rohit Kapoor, Member (Judicial)
Shri Harish Chander Suri, Member (Technical)

Appearances (via video conferencing):
For the Operational Creditor
Mr. Ratnesh Rai, Advocate.
Mr. Ankan Rai, Advocate
Ms. Kirti Dhadeech, Advocate
Ms. Vipra Gang, Advocate

For the Corporate Debtor
Mr. Mainak Bose, Advocate.

ORDER

Per : Harish Chander Suri, Member (Technical):

1. This Court convened *via* video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("***the Code***") by Masters Development Management (India) Private Limited ("***Applicant***"), a Company incorporated under the Companies Act, 1956, filed by Mr. Dhruba Bhattacharya, Regional Manager, authorized by a Board Resolution dated 18.07.2018, seeking to initiate Corporate Insolvency Resolution Process ("***CIRP***") against Bellagio Projects Private Limited, a Company incorporated under the Companies Act, 1956 ("***Corporate Debtor***").
3. The present petition was filed on 13.12.2018, before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.9,48,997/- (Rupees Nine Lakh Forty Eight Thousand Nine Hundred Ninty Seven only). The Operational Creditor has issued different invoices falling due on different dates, details of which are as follows:

SI No.	***Invoice No.***	***Due on***
(1)	041640/BPPL-CM/16-17/14 dated 17.02.2017	04.03.2017
(2)	041640/BPPL-CM/16-17/15 dated 23.03.2017	07.04.2017
(3)	041640/BPPL-CM/17-18/16 dated 19.04.2017	04.05.2017
(4)	041640/BPPL-CM/17-18/17 dated 29.05.2017	13.06.2017

Submission of the learned Counsel for the Operational Creditor

4. The Applicant had initiated a section 9 proceeding against the Corporate Debtor in the year 2018 before this Adjudicating Authority. However, during the pendency of the proceeding a settlement agreement dated 04.10.2019 was entered into between the Applicant and the Corporate Debtor.
5. The terms of settlement drawn in the settlement agreement were not only in respect of C.P. (IB) No.1686/KB/2018 but also covered three other petitions being C.P. (IB) No.1687/KB/2018 [*Masters Development Management (India)*

Private Limited v. Soumita Construction Private Limited], C.P. (IB) No.1578/KB/2018 [*Masters Development Management (India) Private Limited v. Team Taurus Realty and Infrastructure Private Limited* (for Sonartori Project)] and C.P. (IB) No.1675/KB/2018 [*Masters Development Management (India) Private Limited v. Bellagio Projects Private Limited*] filed under section 9 by the group companies of the Applicant against the Corporate Debtor.

6. Since, the terms of settlement arrived between the parties was not with respect to the C.P. (IB) No.1686/KB/2018 but also covered three other petitions, a ***composite terms of settlement*** was entered into between the parties dated 22.10.2019.[1]
7. On 03.10.2019, this Adjudicating Authority was informed about such settlement between the parties. Accordingly, the petition was disposed of by this Adjudicating Authority by recording settlement with liberty to the Applicant to revive the proceeding in the event of failure of the Settlement.
8. As per the ***composite terms of settlement***, the Corporate Debtor had approached the Applicant to settle the matter amicably and offered a composite settlement amount of Rs.30,00,000/- (Rupees Thirty Lakh only) inclusive of Invoice Amount (net) Rs.21,53,761/-, TDS of Rs.2,06,575 and TDS of Rs.6,39,664/- for old invoices).
9. On failure of the Corporate Debtor to comply with the agreed terms of settlement. This Adjudicating Authority *vide* order dated 21.10.2021 this Adjudicating Authority restored the petition being C.P. (IB) No.1686/KB/2018.

Supplementary Affidavit on behalf of the Corporate Debtor

10. The Ld. Counsel appearing on behalf of the Corprate Debtor submits that all the claims have been paid by the Corporate Debtor as per the composite terms of settlement. However, the TDS amount of Rs.66,884/- (Rupees Sixty Six Thousand Eight Hundred Eighty Four only) and Rs.1,10,820/- (Rupees One Lakh Ten Thousand Eight Hundred Twenty only) could not be paid to the

[1] Annexure C of the Petition.

income tax authorities and the same does not come within the pecuniary jurisdiction of this Adjudicating Authority.

11. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and have perused the records and the concerned documents annexed to the Petition.
12. It is pertinent to mention that the parties had executed the settlement agreement and the Corporate Debtor was obligated to strict adherence of terms and conditions of payment which the Corporate Debtor obliterated and committed default of payment terms.
13. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances.
14. We do not agree with the contention of the Corporate Debtor that the TDS amount of Rs.66,884/- (Rupees Sixty Six Thousand Eight Hundred Eighty Four only) and Rs.1,10,820/- (Rupees One Lakh Ten Thousand Eight Hundred Twenty only) does not come within the pecuniary jurisdiction of this Adjudicating Authority. The Corporate Debtor is liable to pay the said amount.
15. It is, accordingly, hereby ordered as follows:-
    a. The application bearing C.P. (IB) No.1686/KB/2018 filed by Masters Development Management (India) Private Limited, the Operational Creditor, under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Bellagio Projects Private Limited, the Corporate Debtor, is admitted.
    b. There shall be a moratorium under section 14 of the IBC.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
e. ***Mr. Yogesh Gupta,*** registration number ***IBBI/IPA-001/IP-P00349/2017-18/10650***, email: ***yogeshgupta31@rediffmail.com***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
f. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

h. The Operational Creditor shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand 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 (CoC).

i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. ***C.P. (IB) No.1686/KB/2018*** to come up on **28 April, 2022** for filing the progress report.

17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri	**Rohit Kapur.**
Member (Technical)	**Member (Judicial)**

The Order is pronounced on 25th day of February, 2022

LRA