

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

**C.P. IB/1172/2020**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Leighton India Contractors Private Limited,**

6/F, Tower 3, Equinox Business Park,  
Off Bandra Kurla Complex, LBS Marg,  
Kurla (West), Mumbai-400070

**....Operational Creditor**

**Vs**

**Radius Project Developers LLP.**

(LLPIN AAC-4706)

One BKC, A-Wing 1401, Plot C-66, G  
Block, Sandra Kurla Complex, Sandra  
(East), Mumbai 400051.

**....Corporate Debtor**

**Order Dated: 17.05.2023**

**Coram:**

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

*Appearances (via Videoconferencing)*

**For the Applicant:** Mr. Rohit Gupta, counsel

**For the Respondent:** Mr. Anmol Bartaria, counsel

**Per: Kuldip Kumar Kareer, Member (Judicial)**

**ORDER**

1. This Company petition is filed by **Leighton India Contractors Private Limited** (hereinafter called "**Petitioner**" / "**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Radius Project Developers LLP** (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed a default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of **Rs. 5,91,30,901/-**.

**FACTS OF THE CASE**

3. The Corporate Debtor and the Operational Creditor executed a Project Alliance Agreement dated 14.11.2017 (hereinafter referred to as "**Agreement**") wherein the Operational Creditor agreed to carry out construction work including structural work, block work, internal plaster and waterproofing works in respect of two residential towers named One Central Avenue with built up area of 13,218 square meters located at Central Avenue Road, 11th Road, Santacruz West, Mumbai.
4. The Operational Creditor has submitted that 21 invoices were raised till 01.03.2020 aggregating to an amount of Rs. 46,84,40,899/- for the service rendered as per the Agreement dated 14.11.2017. It has further been submitted that a total amount of Rs. 40,93,10,000/-has been paid by the Corporate Debtor.
5. The Operational Creditor has further been submitted that the Corporate

Debtor has failed to pay total outstanding amount under invoices dated 29.03.2019, 09.05.2019 and 02.12.2019 aggregating to a sum of Rs. 5,91,30,901/- despite repeated reminders and requests made by the Operational Creditor.

6. The Operational Creditor has further submitted that the Corporate Debtor was liable to pay all the invoices within 21 days from the date of receipt as per clause 8.3.10 of the Agreement dated 14.11.2017 and therefore, the said invoices became due for payment on 19.04.2019, 30.05.2019 and 23.12.2019 respectively.
7. Since no payment was made by the Corporate Debtor for the above referred invoices, the Operational Creditor served a Statutory Demand Notice dated 22.06.2020 in Form No.4 under section 8 of the Code to the Corporate Debtor through Registered Post A.D. and Speed Post at the registered address of the Corporate Debtor and by way of email to the Designated Partner of the Corporate Debtor.
8. The Operational Creditor did not receive any response from the Corporate Debtor disputing the demand which necessitated the filing of the present petition.

**REPLY FILED BY THE CORPORATE DEBTOR**

9. At the outset, the Corporate Debtor denied all the averments made by the Operational Creditor and submitted that the present petition is not maintainable lacking the fundamental requirement to initiate the process under the Code.
10. The Corporate Debtor has submitted that there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor with regard to the discharge of the obligations by the Operational Creditor under the Project Alliance Agreement dated 14.11.2017. It has further submitted that the Operational Creditor has deliberately suppressed the factum of pre-existing dispute between the parties.

11. The Corporate Debtor has placed its reliance upon various emails between the Operational Creditor and the Corporate Debtor while addressing the issue of deficiency in services rendered by the Operational Creditor.
12. It has been submitted that the issues raised by the Corporate Debtor have remained unresolved and no documents has been placed on record by the Operational Creditor to controvert the same.
13. It has further been submitted that the claim amount is broadly covered under the issues raised by the Corporate Debtor which proves the pre-existing dispute between the parties. It has been stated that the Operational Creditor has acknowledged the pre-existing dispute raised by Corporate Debtor vide emails dated 05.07.2017, 15.01.2018, 19.09.2018 and 12.02.2019.
14. With the above averments, the Corporate Debtor has prayed for the dismissal of the present petition.

**REJOINDER FILED BY THE OPERATIONAL CREDITOR**

15. The Operational Creditor denied all the statements, allegations and submissions made by the Corporate Debtors in Affidavit in reply.
16. The Operational Creditor has submitted that liability to pay the claimed amount has been admitted by the Corporate Debtor while signing the Interim Payment Certificate as annexed with the petition under “Exhibit 7 to 9” and no dispute was raised even at the time of signing the Final Certificate, as annexed with the petition.
17. It has further been submitted that the Corporate Debtor vide email dated 01.03.2021 has acknowledged its liability and offered to make the full payment of the claim amount in installments by September 2021 which is annexed with the Rejoinder under “Exhibit A”.
18. The Operational Creditor has submitted that correspondences annexed with reply were exchanged prior to the issuance of the relevant invoices

and certificate of interim payment certificate. It has further been submitted that as per clause 8.3.6 of the Agreement dated 14.11.2017, the invoices are deemed to have been accepted after 6 days from its issuance even without approval by the Corporate Debtor.

19. With the above averments, the Operational Creditor has prayed for the admission of the present petition and sought initiation of CIRP against the Corporate Debtor.

### **FINDINGS**

20. We have heard the Ld. Counsel appearing for both the parties and perused the records. ‘
21. The present petition has been filed by the Operational Creditor for initiation of Corporate Insolvency resolution process against the Corporate Debtor for the default in payment of Rs. 5,91,30,901/-.
22. It is an undisputed fact that Project Alliance Agreement dated 14.11.2017 was executed between the Operational Creditor and the Corporate Debtor for the construction work in respect of two residential towers named One Central Avenue with built up area of 13,218 square meters located at Central Avenue Road, 11th Road, Santacruz West, Mumbai. It is also an undisputed fact that 21 invoices were raised till 01.03.2020 aggregating to an amount of Rs. 46,84,40,899/- for the service rendered by the Operational Creditor. Out of the above given amount, a total amount of Rs. 40,93,10,000/-has been paid by the Corporate Debtor.
23. The Operational Creditor has submitted that the Corporate Debtor has failed to pay total outstanding amount under invoices dated 29.03.2019, 09.05.2019 and 02.12.2019 aggregating to a sum of Rs. 5,91,30,901/-. It has further submitted that as per clause 8.3.10 of the Agreement dated 14.11.2017, the Corporate Debtor is liable to make the payment within 21 days from the date of the receipt of the invoices. The details of the given invoices along with the due date are as under:

<b>PC No</b>	<b>Invoice ref no.</b>	<b>Invoice date</b>	<b>Due date</b>	<b>Outstanding amount</b>
IPC-19	MH/11608/I PA/019	29.03.2019	19.04.2019	2,77,30,484/-
IPC-20	MH/1608/IP A/020	09.05.2019	30.05.2019	1,80,20,231/-
IPC-21	MH/160812 19INVO 1	02.12.2019	23.12.2019	1,33,80,186/-
	<b>Total</b>			<b>5,91,30,901/-</b>

24. The Operational Creditor has submitted that since the Corporate Debtor did not make the payment of the above-mentioned invoices, a statutory demand notice dated 22.06.2020 was served to the Corporate Debtor demanding the payment of the outstanding amount. In response to the demand notice, neither the reply nor any payment was received from the Corporate Debtor.

25. The Corporate Debtor placed its reliance on various emails and contented that there was deficiency in services rendered by the Operational Creditor was addressed to the Operational Creditor from time and again. Therefore, the Corporate Debtor has claimed that there is a pre-existing dispute between the parties and, therefore, the Petition deserves to be dismissed.

26. On the other hand, the Operational Creditor has submitted that the Corporate Debtor has raised all these issues prior to the issuance of the Invoices. The Operational Creditor has further placed reliance on clause 8.3.6 of the Agreement dated 14.11.2017 and has submitted that since the Corporate Debtor has not raised any issue within 6 days from the issuance of invoices, as stated in the said clause, the same deemed to

have been accepted. The Counsel for the Operational Creditor further referred to Clause 8.3.4 to 8.3.6 of the Agreement dated 14.11.2017 which deal with the satisfaction of the Corporate Debtor in respect to the invoices raised and same is reproduced as under:

*8.3.4 If the Owner's Representative is not satisfied with any part of the monthly payment claim(s), or the supporting documentation, received pursuant to Clause 8.3.3, he must notify the Alliance Project Manager within three (3) days of receipt of the monthly payment claim(s) with his reasons in writing, In the same notification, the Owner's Representative shall be entitled to seek such additional information or documentation from the Alliance Project Manager as he deems necessary or reasonable. The Alliance Project Manager must provide the requested additional information and documentation as soon as practicable.*

*8.3.5 If the Owner's Representative has not notified the Alliance Project Manager in accordance with Clause 8.3.4 in relation to any part of the monthly payment claim(s), the Owner's Representative is deemed to have all the information and documentation that is necessary and required to approve the monthly payment certificate with respect to the monthly payment claim(s), or such part of the monthly payment claim(s) for which the Owner's Representative has not requested additional information or documentation.*

*8.3.6. If the Owner's Representative has not approved the monthly payment certificate(s) for the monthly payment claim(s) within six (6) days pursuant to Clause 8.3.3, **the Owner's Representative shall be deemed to be satisfied with such part of the monthly payment claim(s) for which he has not provided the notification required under Clause 8.3.4**, and that part of the monthly payment claim(s) shall be deemed certified.*

27. A perusal of the above referred clause of the Agreement clearly reveal that the Corporate Debtor was supposed to point out any shortcoming or infirmity with regard to the work carried out by the Operational

Creditor within a fix time span of the submission of the bills/monthly payment claims. However, the emails (Exhibit-D) dated 07.08.2017 and Exhibit-B dated 01.07.2017 pointing out certain shortcomings pertain to the period much before the submissions of the invoices/monthly payment claims. Therefore, on the basis of the said emails, it cannot be said that there was some pre-existing dispute with regard to the quality of work carried out be the Operational Creditor.

28. The Operational Creditor has further referred to the letter dated 01.03.2021 whereby the Corporate Debtor has unequivocally acknowledged its liability to pay the outstanding amounts and offered to make the full payment of the claim amount by way of installments by from April 2021 to November 2021. Keeping in view the admission made in the letter Exhibit-RR dated 01.03.2021, it cannot be said that there was any pre-existing dispute between the parties. It is further worth pointing out that the Corporate Debtor did not respond to the statutory demand notice dated 22.06.2020 sent by the Corporate Debtor.
29. In the light of the above discussion, we are of the considered view that the Operational Creditor has been able to establish the existence of an Operational Debt and the default committed by the Corporate Debtor. The claim is based upon the invoices raised between 29.03.2019 and 02.12.2019, the Petition having been filed on 11.08.2020 is well within the period of limitation. Therefore, the Petition under Section 9 of the Code deserves to be admitted. It is ordered accordingly in the following terms: -

**ORDER**

- A. The above Company Petition No. (IB) **1172 of 2020** is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Radius Project Developers LLP**.
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the

petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Arun Nandlal Agrawal, Insolvency Professional, Registration No: IBBI/IPA-003/00282/2020-2021/13234**, having email Id: irparun@gmail.com and mobile no: 9860000033 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- C. The Operational Creditor shall deposit an amount of **Rs. Five Lakhs** 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. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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 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; 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.
- 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- K. Accordingly, the **C.P.(IB) 1172 of 2020** is **admitted**.

L. 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)**