

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH (COURT-II)

(IB)-708(ND)2021

IN THE MATTER OF:

Yogesh Gupta
Sole Proprietor
Rapid Constructions
50, Vijay Block, Laxmi Nagar,
Delhi -110092

...Applicant/Operational Creditor

VERSUS

Aadi Best Consortium Private Limited
Unit No. GF -6, Rishabh Corporate Tower,
Plot No. 16, Karkardooma
Community Centre,
New Delhi-110092

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 31.03.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Adhish Srivastava and Adv. Pradeep Kumar
For the Respondent : Adv. Prem Prakash

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Sh. Yogesh Gupta, Sole Proprietor-Rapid Constructions (for brevity '**Applicant/Operational Creditor**'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Aadi Best Consortium Private Limited (for brevity '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Aadi Best Consortium Private Limited is a Company incorporated on 29.11.2011 with CIN U70100DL2011PTC228100 under the provisions of the Companies Act, 2013 having its registered Office at Unit No. GF -6, Rishabh Corporate Tower, Plot No. 16, Karkardooma, Community Centre, New Delhi-110092.

3. That the Authorized Share Capital of the Corporate Debtor is Rs.1,00,00,000/- and Paid-up Share Capital is Rs.52,46,500/- as per the Master Data of the Corporate Debtor.

4. That the detailed particulars of the operational debt as provided by the Applicant in Part IV of the Application are reproduced overleaf:

PART – IV

PARTICULARS OF OPERATIONAL DEBT

<p>1. Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.</p>	<p>6. Rs. 1,56,61,565 (Rs. One Crore Fifty-Six Lacs Sixty-One Thousand Five Hundred Sixty-Five only) [Rs. 1,47,75,061/- being the principal amount along with Interest @ 18 % per annum amounting to Rs. 8,86,504/- due from 15.05.2021 to 15.9.2021].</p> <p>7. That the Corporate Debtor is a private limited company having its registered office in Delhi. Copy of Master Data available on the website of the</p>
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	<p>Ministry of Corporate Affairs is annexed hereto as <u>ANNEXURE P-1</u>.</p> <p>8. That the Operational Creditor had entered into an Agreement dated 25.10.2012 vide LOI/Cloud9/Vaishali/2012/17 with the Corporate Debtor for execution of structure work of Tower A, B, C, D, L-1 and S-1 of the project Cloud 9 Group Housing situated at Plot No. R-C - ½, Sector 1, Vaishali, Ghaziabad, Uttar Pradesh. Copy of LOI dated 25.10.2012 is annexed hereto as <u>ANNEXURE P-2</u>.</p> <p>9. That after being satisfied with the quality of work and the technical knowhow of the Operational Creditor, the parties further entered into an Agreement dated 25.02.2013 vide LOI/Cloud9/Vaishali/2013/01 with the Corporate Debtor for execution of structure work of tower 'ICONIC' of the project Cloud 9 Group Housing situated at Plot No. R-C - ½, Sector 1, Vaishali. Copy of LOI dated 25.02.2013 is annexed hereto as <u>ANNEXURE P-3</u>.</p> <p>10. Subsequently, the Operational Creditor had further entered into an Agreement dated 22.05.2017 vide LOI/Cloud9/Vaishali/2017/-18/02 with the Corporate Debtor for execution of</p>
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certain finishing works in Tower A,B,C and D of the project Cloud 9 Group Housing situated at Plot No. R-C - ½, Sector 1, Vaishali. Copy of LOI dated 22.05.2017 is annexed hereto as ANNEXURE P-4.

11. That in terms of the aforesaid Agreements, the work was executed at site as per the specifications and bills/invoices were raised on the Corporate Debtor for the work completed at site and payments were made on ad-hoc basis.

12. That after completion of the work in terms of the aforesaid agreements, barring a few works which were pending completion, the parties agreed to settle the outstanding amounts for all three agreements in one composite settlement. That to record the understanding of the parties which they have arrived at, the parties entered into an MOU dated 31.08.2020. A copy of the MOU dated 31.08.2020 along with annexures is annexed herewith as ANNEXURE P-5.

13. That the parties agreed that the outstanding amounts towards the agreements was paid by the Corporate Debtor substantially and the balance amount was to be paid by the Corporate Debtor within 7 days of the

MOU dated 31.08.2020.

14. Thereafter, the Operational Creditor carried out the balance works and completed the work within its scope to the satisfaction of the Corporate Debtor.

15. That after completion of the balance works by the Operational Creditor, admittedly, an amount of Rs. 2,20,56,031 along with Rs. 4,73,185 as security and statutory liabilities including but not limited to GST, TDS etc. was payable by the Corporate Debtor towards the work executed.

16. That the Corporate Debtor admitting and acknowledging its liability paid an amount of Rs. 18,85,970 to the Operational Creditor and a balance amount of Rs. 2,01,70,061 was payable to the Operational Creditor. Copy of the bank statements from 01.04.2021 to 08.10.2021 is annexed herewith as ANNEXURE P-6.

17. That after making part payment of Rs. 18,85,970, the Corporate Debtor had expressed some financial difficulties and had requested for additional time for making the balance payment.

18. That to bind the Corporate Debtor, detail the amended timelines,

		<p>outstanding amounts and understanding between the parties, the parties entered into a Supplementary MOU dated 15.04.2021 with the Operational Creditor. A copy of the Supplementary MOU dated 15.04.2021 along with annexures is annexed herewith as <u>ANNEXURE P-7</u>.</p>
		<p>19. In the Supplementary MOU, the Corporate Debtor acknowledged and admitted its liability of Rs. 2,01,70,061 along with Rs. 4,73,185 as security and statutory liabilities including but not limited to GST, TDS etc. was payable towards the work executed under the agreements to the Operational Creditor and agreed to pay the same within one month from the date of execution of the Supplementary MOU.</p> <p>20. In fact, pursuant to the Supplementary MOU, an amount of Rs. 53,95,000 was paid by the Corporate Debtor to the Operational Creditor however, a balance of amount of Rs. 1,47,75,061 remained payable to the Operational Creditor. Copy of the bank statements evidencing the cumulative payment of Rs. 53,95,000 has been annexed herewith as ANNEXURE P-6.</p> <p>21. Despite constant follow up and</p>

persuasion, the Corporate Debtor failed to clear the outstanding amount of Rs. 1,47,75,061 due and payable under the Supplementary MOU dated 15.04.2021.

22. Therefore, the Operational Creditor issued email dated 08.09.2021 demanding release of Rs. 1,47,75,061 with interest on or before 10.09.2021 failing which it would be at liberty to initiate legal action. A copy of email dated 08.09.2021 is annexed herewith as ANNEXURE P-8.

23. The Corporate Debtor through its director, Mr. Sanjeev Jain, vide email dated 21.09.2021 acknowledged and admitted an amount of Rs. 1,47,75,061 as being due and payable to the Operational Creditor. However the Corporate Debtor requested for additional time to make the admitted payment to the Operational Creditor. A copy of email dated 21.09.2021 is annexed herewith as ANENXURE P-9.

24. However, despite best efforts and persuasions, the Corporate Debtor did not release the balance payment to the Operational Creditor.

25. Therefore, after occurrence of default by the Corporate Debtor, the

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Operational Creditor was constrained to deliver a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (as amended) along with invoices/ledgers and other relevant documents demanding payment of Rs. 1,47,75,061 being the amount of default. Copy of demand notice dated 27.09.2021 along with copies of invoices/ledgers and other relevant documents and proof of service are annexed herewith as **ANNEXURE P-10.**

26. That after receipt of the demand notice dated 27.09.2021 by the Corporate Debtor, it accepted and admitted to its liability towards the Operational Creditor for a sum of Rs. 1,47,75,061, however, expressed its inability to pay the said amounts. Copy of email dated 04.10.2021 is annexed hereto as **ANNEXURE P-11.**

27. That therefore, it is apparent that the Corporate Debtor is in default of Rs. 1,47,75,061 being the unpaid operational debt. Further, the part payment by the Corporate Debtor is an admission of its liability.

28. Accordingly, the Corporate Debtor, is liable to make payment of the outstanding principal amount of Rs. 1,47,75,061 (Rupees One Crore Forty-

		<p>Seven Lakhs Seventy-Five Thousand sixty-one only) along with interest @ 18 % per annum amounting to Rs. 8,86,504/- (Eight Lakh Eighty-Six Thousand Five Hundred and Four only) due from 15.05.2021 to 15.9.2021.</p> <p>29. Therefore the total claim amount being Rs. 1,56,61,565/- (Rupees One Crore Fifty-Six lacs Sixty-One Thousand Five Hundred Sixty-Five Only) [Rs. 1,47,75,061/- being the principal amount along with Interest @ 18 % per annum amounting to Rs. 8,86,504/- due from 15.05.2021 to 15.9.2021].</p>
2.	Amount claimed to be in default and the date on which the default occurred.	<p>Total claim amount being Rs. 1,56,61,565 (Rs. One Crore Fifty-Six Lacs Sixty-One Thousand Five Hundred Sixty-Five only) [Rs. 1,47,75,061/- being the principal amount along with Interest @ 18 % per annum amounting to Rs. 8,86,504/- due from 15.05.2021 to 15.9.2021].</p> <p>Thus, the default occurred on several dates as mentioned in the Table for Computation of Amount and Days in Default filed along with the Application.</p>

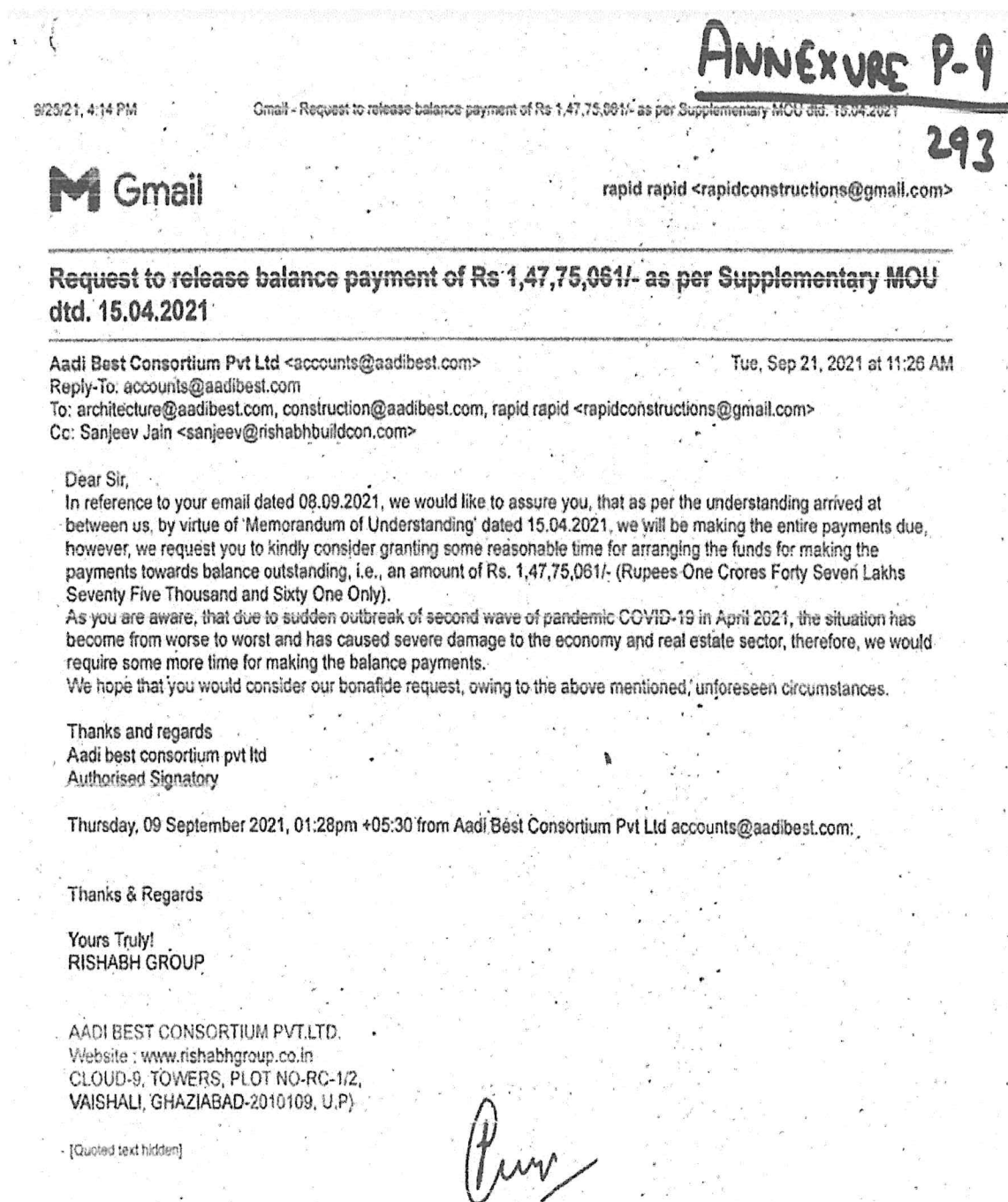
5. That from perusal of the Part IV of the Application, it is observed that the Applicant has rendered construction services for structural work of Tower A, B, C, D, L-I and S-I of the project Cloud 9 Group Housing over Plot No. R-C – 1/2, Sector 1, Vaishali, Ghaziabad, Uttar Pradesh. That the total amount of the unpaid Operational Debt claimed by the Applicant amounts to Rs.1,47,75,061/- excluding interest. That the date of default mentioned by the Applicant is 15.09.2021.

6. That the Applicant has annexed invoices, copy of the MOU dated 31.08.2020 and 15.04.2020 and ledger account of the Corporate Debtor to establish the default on the part of the Corporate Debtor.

7. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 27.09.2021 under Section 8 of IBC 2016 which was delivered by Speed Post at the registered office of the Corporate Debtor on 04.10.2021. The Tracking Report has been placed on record. The Applicant has averred that no reply to the demand notice has been received by him. The Applicant has accordingly filed the Affidavit under Section 9(3)(b) of 2016 stating that no notice of dispute has been received by it.

8. That on issuance of notice to the Corporate Debtor has not filed its reply. Further during the course of hearing held on 28.03.2022, Ld. Counsel Sh. Prem Prakash appearing on behalf of Corporate Debtor had admitted the debt and default committed by the Corporate Debtor.

9. Further, during the course of hearing, the Ld. Counsel for the Applicant referred to the E-mails placed at Page No. 293 & 381 of the Application in support of his contention and the admission of liability by the Corporate Debtor. Here, we refer to the Email dated 21.09.2021 (Page-293) sent by the Corporate Debtor to the Applicant/Operational Creditor, which is reproduced below :



10. The Email dated 04.10.2021 (Page-381) as referred to by the Applicant is also reproduced below :

ANNEXURE P-1

381

09/10/21, 5:37 PM

Conrad - Reply



rapid rapid <rapidconstructions@gmail.com>

Reply

Aadi Best Consortium Pvt Ltd <accounts@aadibest.com>
Reply-To: accounts@aadibest.com
To: Rapid Rapid <rapidconstructions@gmail.com>, Sanjeev Jain <sanjeev@rishabhbuildcon.com>
Cc: construction@aadibest.com

Mon, Oct 4, 2021 at 12:34 PM

Dear Sir,

In reference to your email dated 27.09.2021, we would like to assure you, that as per the understanding arrived at between us, by virtue of 'Memorandum of Understanding' dated 15.04.2021, we will be making the entire payments due, however, we again request you to kindly consider granting some reasonable time for arranging the funds for making the payments towards balance outstanding, i.e., an amount of Rs. 1,47,75,061/- (Rupees One Crores Forty Seven Lakhs Seventy Five Thousand and Sixty One Only).

As you are aware, that due to sudden outbreak of second wave of pandemic COVID-19 in April 2021, the situation has become from worse to worst and has caused severe damage to the economy and real estate sector, therefore, we would require some more time for making the balance payments.

We hope that you would consider our cordial request, owing to the above mentioned, unforeseen circumstances.

Thanks and regards,
Aadi best consortium pvt ltd
Authorised Signatory
Cloud9, Vaishali, Ghaziabad

Dear Sir

A Supplementary Memorandum of Understanding was signed between Rapid Constructions and Aadi Best Consortium Pvt. Ltd. on dtd 15.04.2021 confirming the outstanding balance amount of Rs 2,01,70,061/- (Rs Two Crores One Lac Seventy Thousand and Sixty One Only) (balance amount) against misc work carried out by Rapid Constructions for an amount of Rs 2,20,56,031/- (Rs Two Crores Twenty Lacs Fifty Six Thousand and Thirty-One Only) (final amount) along with security amount of Rs 4,73,185/- against the construction work done at "Cloud 9", Sector -1, Vaishali, Ghaziabad.

As per the Supplementary MOU , it was committed by your good self to release full & final payment of Rs 2,01,70,061/- to M/s Rapid Constructions within 30 days of signing of Supplementary MOU i.e. up to 15.05.2021 but till date only Rs 53,86,000/- has been paid . Since the work was completed on your commitment and now the suppliers and bankers are chasing me for their due payment.

You are hereby requested to release balance payment of Rs 1,47,75,061/- with interest from 15.05.2021 before 10.09.2021 otherwise no option will be left with us except to take legal action against you .

I hope you understand my problem and release my payment till 10.09.2021 to continue our business relations as earlier.

Thanking you

For Rapid Constructions

Yogesh Gupta

<https://mail.google.com/mail/u/0/?ui=2&ik=2783c3d9&view=pr&ik=searchmail&permmsgid=msg-fs:3A1112671743634736613&simlmsgid=fs:3A1112671...>

TRUE COPY

11. From the aforesaid two Email communications dated 21.09.2021 and 04.10.2021 from the Corporate Debtor to the Operational Creditor, evidently the Corporate Debtor has admitted its liability and a debt of more than Rs.01 (One) crore towards the Applicant. The same is further admitted by the Ld. Counsel appearing on behalf of the Corporate Debtor during the course of final hearing on 28.03.2022. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:


- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.”

12. As proposed by the Operational Creditor, this Bench appoints Mr. Mohit Goyal having his Office at 17, LGF, Defence Enclave, Near Preet Vihar, Delhi-110092 (email id- camohitgoyal@gmail.com and Registration No. IBBI/IPA-001/IP-P02395/2021-22/13636, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Operational Creditor is directed to deposit Rs.2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

14. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal immediately. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.


(L. N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)