



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 124/Chd/Pb/2021

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Rajinder Infrastructure Private Limited

H. No. 66, Sector 27-A,
Chandigarh-160019

...Petitioner-Operational Creditor

Vs.

Bajwa Developers Limited

having its registered office at
Sunny Enclave Desu Majra
Kharar, District Mohali, Kharar
Punjab 140301
CIN No. U70101PB2001PLC024692

...Respondent-Corporate Debtor

Judgement delivered on: 04.07.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. G.S. Sarin, PCs

For the Respondent-
Corporate Debtor : Respondent Proceeded ex-parte
vide order dated 17.05.2023

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Rajinder Infrastructure Private Limited** through its Director Mr. Gurinder Pal Singh (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate



Corporate Insolvency Resolution Process (**CIRP**) in case of Bajwa Developers Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Bajwa Developers Limited, is a Company incorporated on 09.10.2001 under the provisions of Companies Act, 1956 with CIN No. U70101PB2001PLC024692 with its registered office at Sunny Enclave Desu Majra, Kharar, District Mohali, Kharar, Punjab 140301, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A-1.

3. The facts of the case, briefly, as stated in the petition are that Operational Creditor since 2015 was supplying various products such as building materials to the Corporate Debtor. Since 16.01.2016, the Operational Creditor was facing issues and receiving balance outstanding money. First default occurred against Bill No. 14 dated 16.01.2016 for Rs. 5,51,884/- out of which Rs. 60,118/- had been received. After that amount against Bill Nos. 04,10,12,16,17,18,19,20,21 is outstanding for total amount of Rs. 3,72,28,158/- (Rupees three crore seventy two lakh twenty eight thousand one hundred fifty eight only).

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 3,72,28,158/- (Rupees Three crore seventy two lakh twenty eight Thousand One Hundred Fifty Eight Only). The default occurred from 16.01.2016 to 21.03.2017 i.e. when the invoices were issued during this period for the goods/material supplied. Copy of various transactions on account of which debt fell due and computation of date of default for various transactions on account of which default has occurred



(Annexure A3), ledger (Annexure A4), bill/invoices (Annexure A5) and bank statements (Annexure A6) are attached with the main petition.

5. A demand notice in Form 3 & 4 is stated to be issued by the operational creditor on 28.04.2021 and the same has been delivered to the corporate debtor vide registered post as the delivery report and postal receipt is attached at Annexure A-8 of the petition. The corporate debtor had not replied to demand notice till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavits of service were filed vide Diary Nos.00678/2 dated 03.08.2021,00678/3 dated 18.07.2022,00678/4 dated 30.01.2023 and 00678/7 dated 05.04.2023. However, none appeared on behalf of the respondent-corporate debtor. It appeared that the respondent-corporate debtor was not interested to defend the present petition. Therefore, respondent-corporate debtor was proceeded ex-parte vide order dated 17.05.2023 of this Adjudicating Authority. The short written submissions had been filed by petitioner vide Diary No.00678/8 dated 06.04.2023.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 & 4 was duly served upon the corporate debtor. The demand notice is stated to be issued by the operational creditor on 28.04.2021 and the same has been delivered to the corporate debtor vide registered post as the delivery report and postal receipt is attached at Annexure A-8 of the petition.



The corporate debtor had not replied to demand notice till date. Therefore, the demand notice was duly served upon the corporate debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by the operational creditor that under sub-section (8)(1) he has neither received any payment from the corporate debtor nor received any notice of dispute under sub-section 8(2) relating to the operational debt. The affidavit u/s 9(3)(b) of Code has been annexed with the petition as Annexure-A-9. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated Form 3 & 4 dated 28.04.2021 was delivered to the corporate debtor (Annexure A-8). However, the period of limitation would begin from the date of default 16.01.2016 to 21.03.2017 i.e. when the invoices were issued during this period for the goods/material supplied as mentioned in the petition by Operational Creditor. However, the last payment is stated to be received on 23.05.2018, which can be taken as date of default. This application was filed vide Diary No. 00678 on 21.05.2021. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 3,72,28,158/- (Rupees Three crore seventy two lakh twenty eight Thousand One Hundred Fifty Eight Only). Copy of various transactions on account of which debt fell due



and computation of date of default for various transactions on account of which default has occurred (Annexure A3), ledger (Annexure A4), bill/invoices (Annexure A5) and bank statements (Annexure A6) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

12. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Bajwa Developers Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

14. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. However, vide IA No. 1231, Mr. Jalesh Kumar Grover has been proposed as Interim Resolution Professional and same was disposed of vide order dated 16.12.2022 of this Adjudicating Authority. Form-2 dated 17.09.2022 along with the certificate of



registration has been submitted with the application. The Law Research Associate of this Tribunal has checked the credentials of Mr. Jalesh Kumar Grover and there is nothing adverse against him. In view of the above, we appoint Mr. Jalesh Kumar Grover, Registration No. IBBI/IPA-001/IP-P00200/2017-18/10390, E-mail: jk.grover27@gmail.com, Mobile No. 9501081808, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Jalesh Kumar Grover shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;



iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider



kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific



mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.



15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Securitization and Reconstruction of Operational 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.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.



17. The order of moratorium shall have effect from the date of this order till 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.

18. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is accordingly admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 04, 2023
PKA/TB