

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

CP (IB)-300/ND)/2021

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Preet Shuttering Store

Having its Office at:

338, Sector-37, Udyog Vihar,

Phase - VI, Gurgaon

Haryana - 122001

...Applicant/Operational Creditor

Versus

M/s M. I.BUILDTECH PRIVATE LIMITED

Registered Office at:

T - 196, Gali No.1, Gautampuri

Delhi - 110053

...Respondent/Corporate Debtor

PATIBANDLA
SATYANARAY
ANA PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23 16:12:17
+05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:12:23 +05'30'

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

PRESENT

Counsel for Applicant/ Operational Creditor: Mr. Gursat Singh,
Adv & Mr, Pranam Jain, Adv

Counsel for Respondent/ Corporate Debtor: Mr. Ashok Juneja, Adv

ORDER

Per P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

Date: 23.11.2022

1. This is an application filed by the Preet Shuttering Store, Partnership firm on 05.05.2021, through its partner Mr. Chandeeep Singh to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ('the Code') of the Respondent M/s M. I. Buildtech Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 2,14,85,141/- (Rupees Two Crores Fourteen Lakhs Eighty-Five Thousand One Hundred and Fourty One). The details of transactions leading to

PATIBANDLA
SATYANARAY
ANA PRASAD
Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23 16:12:41
+05'30'

RAHUL
PRASAD
BHATNAGAR
Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:13:15 +05'30'

the filing of this application as averred by the Applicant/Operational Creditor are as follows:

- That the Operational Creditor and Corporate Debtor had entered into an agreement vide work order dated 12.10.2013 along with other Supply orders dated 10.12.2013, 18.12.2013 27.12.2013, 20.01.2014, 19.07.2014 and MOU dated 01.08.2017 for the supply of shuttering and scaffolding material from the Operational Creditor to the project sites of the Corporate Debtor. In pursuance of the work orders the Operational Creditor supplied the materials on the project site of the Corporate Debtor.
- That, the business was going smoothly but between 30.06.2014 and 20.06.2018 situation turned sour and gradually there were dues mounting up aggregating to a total sum of Rs. 1,00,48,202 /- the amount which is in fact reflected in the ledger account of the Corporate Debtor maintainable in the books of Accounts of Operational Creditor.

PATIBANDLA
SATYANARAY
ANA PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23
16:13:02 +05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:13:31 +05'30'

- That thereafter, the Operational Creditor had been chasing the Corporate Debtor for clearing of outstanding dues but same has been unpaid till date
- That the Operational Creditor has complied with all the mandatory provisions of Section 9(3)(a), (b) and (c) of the IBC, 2016.
- The Corporate Debtor has not replied to the Demand Notice dated 15.04.2021.
- It is evident from the aforesaid facts that the Corporate Debtor is unable to discharge its liability and hence, it is a fit case to initiate corporate insolvency resolution process in the present matter.

2. The Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor as below: -

- That, the present application is filed by applicant through its Partner, Mr. Charandeep Singh but no partnership deed has been attached with the application and one cannot ascertain whether this partnership firm is registered or not. Further, no Power of Attorney/ Authorisation Letter in favour of Mr. Charandeep Singh is enclosed with this application.

- That, the OC has mentioned the details of the invoices pertains to the year of 2017 which is now a time barred debt
- That, the Corporate Debtor financial position comes into the trouble due to the huge funds blocked by Amrapali Group. Amrapali Group engaged the Corporate Debtor for raising construction of RCC Structure of High-Rise Towers. The Corporate Debtor rendered the services amounting to Rs. 40,27,10,802/- out which the Corporate Debtor received Rs. 26,62,47,632/- including adjusted value of 3 villas which are not fully constructed till date allotted to the applicant against the bill. It is submitted that for the recovery of the outstanding amount of Rs. 10,68,46,607/- being the amount admitted out of the total outstanding of the 13,64,63,170/- in the first instance and the balance of Rs. 2,96,16,563/- the Corporate Debtor has filed an application before the Hon'ble Supreme Court for impleadment of the Corporate Debtor as Co-Applicant in Writ Application (C) No. 940 of 2017 in the matter of Bikram Chatterji 85 Ors. Vs. Union of India 81, Ors. The matter is pending before the Hon'ble Supreme Court.

PATIBANDLA
SATYANARAY
ANA PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23 16:14:12
+05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:14:12 +05'30'

- That on 17.11.2021 a sudden fire took place at registered office of the Corporate Debtor located at T-196, Gali No. 1, Gautampuri Delhi -110053 and the Company records maintained at registered office of the Company are badly damaged. The copy of the Delhi Fire Service Report details dated 22.11.2021 is also annexed with this application. Consequently, the documents / files of GST, Income Tax, bill file, wages sheet file, voucher files, tally data, computer, printer etc. has been destroyed in the fire. Due to the sudden fire at Registered Office the Corporate Debtor is unable to reconcile the accounts of the Operational Creditor.
 - That based on the facts as stated above the Applicant prayed to dismiss the Application filed by the Applicant with exemplary cost for filing a frivolous Application
3. To the Reply filed by the Corporate Debtor the Counsel for the Operational Creditor has filed its Rejoinder as below
- That the Corporate Debtor has been finding ways to wriggle out and on many dates when the matter has been listed before the Tribunal the Counsel of Corporate Debtor has prayed for grant of time due to one reason or the other.

It is stated that the present application is filed by the partnership firm having a partnership deed but the same is not registered under the Partnership Act, 1932 and that non registration of partnership firm does not bar the Operational Creditor from filing a section 9 application under IBC, 2016.

That detailed invoices are annexed with the petition and they are till the year 2020 Thus the present petition is well within the limitation period.

4. We have heard the Ld. Counsels for the Operational Creditor, Corporate debtor and have gone through the written submission filed by both the parties and documents filed in support of pleadings.
5. That based on the documents on record there are following issues that were raised which need to be adjudicated by this Tribunal
 - 1) Whether the present application is barred by Limitation or not?
 - 2) Whether an unregistered partnership firm can file an application under IBC, 2016?

PATIBANDLA
SATYANARAYANA PRASAD
ANA PRASAD
Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23 16:14:39
+05'30'

RAHUL
PRASAD
BHATNAGAR
Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:14:45 +05'30'

6. With respect to the issue of limitation, it is observed that the operational creditor has raised invoices from time to time and the last payment was made on 20.06.2018 of an amount of Rs. 5,00,000/- and the present application has been filed on 05.05.2021. Article 137 of the Limitation Act, 1963 stipulates a limitation period of three years from the date on which the right to apply accrues so the present application is within the period of limitation.

With respect to the second issue, it is well settled that a partnership firm can file for CIRP against a Corporate Debtor. Reliance can be placed on Shree Dev Chemicals Corporation vs. Gammon India Ltd. (16.07.2020 - NCLT - Mumbai: MANU/NC/9992/2020, para 9 & 10 of the judgement is reproduced as under: -

9. We have heard the arguments of both sides and perused the records. The Corporate Debtor has stated that the claim of the Operational Creditor is not valid, on the following grounds: -

(a) That the petition cannot be maintained in its present form in terms of section 69(2) of the Indian Partnership Act, 1932; and

(b) That the claim is barred by limitation.

On the question of maintainability qua section 69(2) of Indian Partnership Act, 1932

10. Section 69(2) of the Indian Partnership Act, 1932, reads as follows: -

"No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm."

11. It is clear from the above that the provision would apply only to a 'suit' and not to proceedings. Applications filed under the IBC are not 'suits' but only proceedings, and therefore, we hold that the bar in terms of section 69(2) of the Indian Partnership Act, 1932, would not apply to applications filed under the IBC.

7. It is pertinent to mention that the Corporate Debtor has neither orally nor in writing denied the invoices raised by the Operational Corporate Debtor but has stated that due to huge fund blocked by Amrapali Group, the Corporate Debtor financial position came into trouble and due to sudden fire which took place at the registered office of the CD on 17.11.2021 the records/ documents maintained in the office were badly damaged so the CD is unable to reconcile the accounts of the Operational Creditor. These arguments are not sustainable since more than a year has passed since the fire took place and the applicant has placed on record all the invoices to substantiate the debt.

8. In the light of the above said facts and after giving careful consideration to the entire matter and hearing the arguments of the learned counsel for the Operational Creditor as well as the reply filed by the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due and the Corporate Debtor has defaulted in making payment of the amount due and in the absence of any pre-existing dispute, this Tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.

9. The name of IRP has not been proposed in the application filed by the Operational Creditor. From the panel of Insolvency Professional(s) (IPs) valid for the period – June, 1, 2022 – December, 31, 2022 issued by IBBI in terms of Section 16(4), this Adjudicating Authority, hereby appoints Mr. Swatantra Kumar Singh (Email – singh@caindelhiindia.com), Reg. No: IBBI/IPA-001/IP-P-01950/2020-2021/13047, to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more

specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

10. The Applicant/ Operational Creditor shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
11. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
12. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of

PATIBANDLA
SATYANARAY
ANA PRASAD
Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23
16:15:41 +05'30'

RAHUL
PRASAD
BHATNAGAR
Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:15:51 +05'30'

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 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.

13. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject

to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate

Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

16. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website

by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

RAHUL
PRASAD
BHATNAGAR
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.11.23
17:16:57 +05'30'

PATIBANDLA
SATYANARAY
ANA PRASAD
(P.S.N. PRASAD)
MEMBER (JUDICIAL)

Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.11.23 16:16:35
+05'30'