IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.21/BB/2020
Under Section 9 of the IBC, 2016
r/w Rule 6 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

M/s. Mfar Constructions Pvt. Ltd.
8 and 8A, AVS Compound,
80 feet Road, 04th Block,
Koramangala,
Bangalore – 560 034. ... Petitioner/Operational Creditor

VERSUS

M/s. Canopy Estate Pvt. Ltd.
Represented by Managing Director
Mr. Syed Yasir Rizvi
#969, 5th cross, H.R.B.R.
01st Block, Kalyan Nagar,
Bangalore – 560 043. ... Respondent/Corporate Debtor

Order delivered on 06.06.2022

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)

2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Mr. R.K. Ravichandran

For the Respondent : None

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application has been filed by M/s. Mfar Constructions Pvt. Ltd. (for brevity 'Petitioner/Operational Creditor') through its Authorised Signatory, namely, Mr. Brig. Raghu Nandan Trivedi, under Section 9 of the IBC, 2016, r/w Rule 6 of the I&B (AAA) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process against M/s. Canopy Estate Pvt. Ltd. (hereinafter called as "Respondent /Corporate Debtor") on the ground that it has committed default for total amount of Rs.5,80,49,773/- (Rupees Five Crore Eighty Lakh Forty Nine Thousand Seven Hundred and Seventy Three Only) as on 22.09.2017.
2. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:
   i. **M/s. Mfar Constructions Pvt. Ltd.** is a Limited Company registered under the Companies Act, 1956, bearing CIN: U45400KA1996PTC020374. The Company is *inter alia* engaged in the business of construction activities and is one of the leading and highly reputed companies in its field globally.

   ii. **M/s. Canopy Estate Pvt. Ltd.** is a Private Limited Company incorporated on 23.12.2005 under the Companies Act, 1956, bearing CIN: U70102KA2005PTC038035. The Nominal Share Capital of the Company is Rs.5,00,00,000/- (Rupees Five Crore only) and Paid-up Share Capital is Rs.2,00,00,000/- (Rupees Two Crore only).

   iii. It is stated that the Corporate Debtor after series of interactions, meetings and exchange of correspondence, had entered into Contract Agreement dated 27.01.2014 with Operational Creditor for a project called Signature Block for Shamom Canopy Crest at Sy. No.34/9 (P), Kogilu Village, Yelanhanka - Hobli, Bangalore North Taluk, Bengaluru. The Operational Creditor was the constructing contractor of the proposed commercial & residential complex

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(Signature Block) community service block for Shalom Canopy Crest. Under this agreement, the total value of the Contract, which the Corporate Debtor was liable to pay to the Operational Creditor is Rs.41,03,48,071/- (as per amendment No.1 dated 07.04.2015).

iv. It is stated that the Operational Creditor having trust and confidence in the promises made by the Corporate Debtor and its top management was carrying on the work and had raised running account bills 1 to 10 for doing the work as shown at Annexures 1 to 10. In addition to the Running Account Bills the Operational Creditor has raised Supplementary Bills 1 to 8. The Corporate Debtor failed to pay the overdue amount on Running Account Bills submitted on various due dates pushing the Operational Creditor to huge costs and legal problems apart from drying up all its sources utilized in meeting expenses for construction of proposed Commercial & Residential complex (Signature Block) community service block for Shalom Canopy Crest. Number of invoices were sent by the Operational Creditor to the Corporate Debtors office which were duly acknowledged but amounts due were not paid as also no reasons were assigned. Thus, the amounts are admitted *bona fide* overdue amounts form the Corporate Debtor to the Operational Creditor.

v. It is also stated that the Operational Creditor has issued a letter dated 08.10.2016 to the Managing Director of Corporate Debtor giving a detailed information about the project status, pending issues and reasons for the failure of the project attributed to dishonest and non-responsive attitude of Corporate Debtor and its failure to overdue amount to the Operational Creditor. But this also fell in deaf ears and non-response is the only response and the overdue amounts remained unpaid till now.

vi. It is stated that vexed with the non-responsive attitude of the Corporate Debtor, the Operational Creditor got issued a notice dated the 22.09.2017 demanding payment of the overdue amounts. The Corporate Debtor has failed to respond

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from which it has clearly exposed the failure of the Corporate Debtor's inability to pay the long overdue debt to the Operational Creditor. The Operational Creditor has also got issued a notice dated 22.10.2018 demanding the said amount to the Debtor and upon receipt of the said notice, it has replied vide email dated 16.04.2019 informing the Operational Creditor that it would look into the closure/settlement further to resolve the issue. But the Corporate Debtor has failed to settle the same and hence the Operational Creditor has issued the Demand Notice dated 12.09.2019. The said notice sent to the address mentioned in the Master Data of the Corporate Debtor returned unserved with a postal endorsement that the addressee "left". Hence the C.P.

3. The Respondent/Corporate Debtor has filed the Statement of Objections, by inter alia contending as follows:

    i. It is contended that there exist a pre-existing dispute under Section 9(5)(b) to the debt which is claimed by the Petitioner, which is very evident from the mail which is written by Mrs. Syed Y. Rizvi on 16th April 2019 (Page 59 and 60 of the Petition)-

    "Your continued formal claims of 5 crore dues ignoring my previous communication of offsetting our mobilization advance of Rs.3 crore towards balance dues is really regrettable and in poor state"

    ii. It is contended that the Operational Creditor has not served the demand notice as required under Section 8 of the IBC, r/w Rule 5 of the I&B(AAA) Rules, 2016.

    iii. It is submitted that the Operational Creditor has frivolously and erroneously claim the amount as operational debt which the Respondent denies, and the Operational Creditor has also failed to prove the existence of debt between the parties beyond doubt in Form 3 and Form 5.

4. The Petitioner/Operational Creditor has filed Rejoinder denying the counter averments.

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5. Heard Mr. R.K. Ravichandran, learned Counsel for the Petitioner/Operational Creditor and none for the Respondent/Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.
6. The Hon'ble Supreme Court of India, in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353* has categorically laid down that IBC is not intended to be substituted to a recovery forum. It is also laid down whenever there is existence of real dispute, the IBC provisions cannot be invoked.
7. In view of above categorical declaration of law, in an application filed under Section 9 of the IBC, 2016, this Adjudicating Authority is required to determine the following:
   a. Whether the C.P. is filed within the period of limitation?
   b. Whether the Demand notice was duly delivered on the Respondent/ Corporate Debtor or not?
   c. Whether the Petitioner proved the debt and default thereon?
   d. Whether there was any pre-existing dispute between the parties?
8. The Respondent/Corporate Debtor and the Petitioner executed contract agreement dated 27.01.2014 for construction of a commercial & residential complex (Signature Block) community service block for Shalom Canopy Crest at Bangalore as per terms agreed thereon. The total value of the Contract was Rs.39,64,71,567/. Date of commencement of work was 24.02.2014 and Contract performance duration was 24 calendar months from the date of commencement. The various bills and the supplementary bills and their respective dates and the amounts payable thereon and the amounts paid by the Corporate Debtor were shown in a table (at page 36 of the C.P). The Petitioner states that the work has not yet been completed, since the Corporate Debtor has not paid the amounts with regard to the bills already issued. It is to be seen that the Contract performance duration was 24 calendar months from the date of commencement of work i.e., with effect from 24.02.2014.

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9. The Respondent/Corporate Debtor paid Rs.25 lakhs on 07.11.2015, being the last payment made. The Respondent/Corporate Debtor vide the e-mail dated 03.10.2018 i.e. within three years from the date of last payment, while not denying the liability to pay but expressed its inability to pay by stating certain reasons (at page 61 of the C.P.). The Petitioner filed the instant C.P. on 13.11.2019, hence the C.P. is within the period of limitation.
10. The Petitioner vide the Demand Notice issued under Section 8 of the IBC, 2016 on 12.09.2019 demanded a total amount of Rs.5,80,49,773/- and also filed the C.P. for the same amount. In support of the said claim filed the statement of bills and the payments made therein (at page 36 of the C.P.). The Respondent/Corporate Debtor neither shown any payments made other than those stated by the Petitioner nor denied the debt. On the other hand, it was only stated that his mobilization advance of Rs.3.5 Crores were not adjusted against the alleged debt of Rs.5 Crores. Hence, we are of the view that the Petitioner is able to prove the debt and default there on.
11. The Respondent/Corporate Debtor in order to establish the pre-existing dispute between the parties drawn our attention to the various e-mails exchanged between the Petitioner and the Respondent (filed by the Petitioner itself from page Nos.57-63). However, the Respondent/Corporate Debtor in the said e-mail correspondence only contended that since Mr. Syed Yasir Rizvi, the Director of the Respondent/Corporate Debtor was in personal difficulties such as facing certain criminal cases, and the Corporate Debtor is unable to pay the debt, but no valid dispute was raised. The simple contention that the Petitioner has not adjusted the mobilization advance of Rs.3.5 Crore against alleged debt of more than Rs.5 Crore cannot be treated as disputing the debt. Even in the event of deduction of the said Rs.3.5 Crore from the debt claimed by the Petitioner, the remaining amount is more than the threshold limit of Rs.1 Crore. In view of the same, we are of the view that the Respondent/Corporate Debtor failed to show any pre-existing dispute between the parties.

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12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt being above Rs.1,00,00,000/-, the petition is admitted in terms of Section 9 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, 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
   (b) any court of law, tribunal, arbitration panel or other authority;
   (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
   (d) 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;
   (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
   (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
   (g) 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 financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
   (h) 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

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passed an order for liquidation of Corporate Debtor under Section 33 as the case may be.

13. Since the Petitioner has not suggested any IRP and left the matter to the Adjudicating Authority to appoint suitable IRP, we are inclined to appoint Mr. Girish Kambadaraya Registration No. IBBI/IPA-003/IP-N000127/2017-2018/11403 having registered address at 36, Chatura Homes, 2nd Main, Meenakshinagar, Near Krishna Kalyana Mantapa, Basaveshwaranagar, Bangalore - 560079 and e-mail cmagirish999@gmail.com appearing at Sl. No.27 of the panel of IPs for appointment as IRP or Liquidator, approved for NCLT, Bengaluru Bench by Insolvency and Bankruptcy Board of India from 01st January 2022 to 30th June 2022, as the Insolvency Resolution Professional.

14. The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Girish Kambadaraya and there is nothing adverse against him. In view of the above, we appoint Mr. Girish Kambadaraya, bearing Registration No. IBBI/IPA-003/IP-N000127/2017-2018/11403 registered address at 36, Chatura Homes, 2nd Main, Meenakshinagar, Near Krishna Kalyana Mantapa, Basaveshwaranagar, Bangalore – 560079, as the Interim Resolution Professional of the Corporate Debtor. The IRP shall file his certificate of Registration and written consent within one week from the date of the receipt of this order. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

15. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority 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 for filing the report of Constitution of the Committee. The Interim Resolution Professional is further

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16. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners 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 e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)