

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P.(IB)-427(MB)/C-III/2024

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

IN THE MATTER OF

Tricon Infra Buildtech Pvt. Ltd.

Shop No. 2s-3, First Floor, Konark Baugh New Hub, First Floor, Indrayu Mall, Near Konark Pooram, Kondhwa, Pune, Maharashtra-411048.

....Operational Creditor

Versus

Eiffel Lifespaces Private Limited

Office No. 125/126, Patil Plaza Mitramandal Chowk, Parvati, Pune, Maharashtra – 411009.

...Corporate Debtor

Order pronounced on: 07.01.2025

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati Member (Technical)

Appearances:

For the Petitioner: Adv. Aditya Sharma a/w Adv. Pratik Pandey

For the Respondent: Adv. Sandeep Nirban and Adv. Ritesh Hegde

PER: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)

1. This Petition has been filed by M/s. Tricon Infra Buildtech Private Limited (**“Petitioner/Operational Creditor”**) to initiate Corporate Insolvency Resolution Process (**“CIRP”**) against M/s. Eiffel Lifespaces Private Limited (**“Respondent/Corporate Debtor”**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**) for the default by the Corporate Debtor in payment of debt of **Rs. 2,34,03,189/-** (Rupees Two Crore, Thirty-Four Lakhs, Three Thousand One Hundred and Eighty-Nine Only).

Brief Facts:

2. The Corporate Debtor executed a Work Order dated 07.12.2021 in favour of the Operational Creditor for carrying contractual work at the Corporate Debtor’s project site for excavation, levelling, rubble soling etc.
3. In respect of the work completed, the Operational Creditor raised the following invoices: -

Sr. No.	Invoice Date	Invoice No.	Amount (in Rs.)
1.	25.01.2022	ELSPLRA001BBOUND	66,81,750
2.	25.02.2022	ELSPLRA002BBOUND	68,51,375
3.	25.03.2022	ELSPLRA001BBOUND	40,81,325
Total			1,76,14,450

4. The Operational Creditor addressed letters dated 29.07.2022, 28.12.2022 and 20.09.2023 informing the Corporate Debtor regarding the non-payment of the dues and requested to pay the amount due at the earliest.
5. The Operational Creditor issued letters dated 14.04.2022 and 11.04.2023 confirming the outstanding balance of Rs.1,73,15,900/- payable by the Corporate Debtor.

6. The Operational Creditor sent a Demand Notice dated 09.12.2023 under Section 8 of the Code in Form 3 as per Rule 5 of the Insolvency and Bankruptcy Rules, 2016 to the Corporate Debtor for payment of the outstanding invoices amounting to Rs.2,34,03,189/-.
7. In response to the Demand Notice dated 09.12.2023, the Corporate Debtor replied vide letter dated 14.12.2023 acknowledging the liability and ensuring that the Operational Creditor at the project site.
8. The Operational Creditor filed the present Company Petition under Section 9 of the Code on 27.04.2024.

Reply by Corporate Debtor

9. The Corporate Debtor submitted that it is involved in the business of building constructions and development since 2011. In the year 2021, the Corporate Debtor executed a Work Order dated 07.12.2021 with the Operational Creditor for carrying out contractual work at its project site for excavation, levelling, rubble soling etc. As per the Work Order dated 07.12.2021, the Operational Creditor delivered its services timely on the project sites and issued invoices to the Corporate Debtor.
10. The strain of undue payments, lack of sale of plots and completion of projects during the Covid-19 period, hampered the Corporate Debtor's business which in turn affected the Corporate Debtor from releasing funds towards the work done by the Operational Creditor.
11. The Corporate Debtor's business suffered irreversible losses, with most of its projects either being stalled or drained out of cash flow during the peak Covid-19 period. The collection of funds was being used since December, 2020 towards Banker's interest payment.

12. Since the Corporate Debtor's only source of income was from the development and construction sector, it faced unequivocal number of legal strains and was unable to source its funds from any loans offered by the Banks or financial institutes to invest in its projects, as the same would be stripped off in the form of interest cuts or reduced in amount disbursement, due to restrain in policy factors by the Banks.
13. Pertinently, due to lower collection and higher interest burden, the interest payment was delayed and the Corporate Debtor's account was declared NPA in the month of March, 2023 which led to the stalling of its projects and any source of income that was retained by the Corporate Debtor, had to be utilized towards further interest payment, as no cash flow could be generated towards paying off any of its Creditors including the present Operational Creditor.
14. For the past three years, the Corporate Debtor has been severely restrained from carrying out its business and obligations to its creditors, due to decline in cash flow and usage of profits towards payment of interest has left no way of reform to keep the business of the Corporate Debtor afloat. The Corporate Debtor submitted that despite all the efforts put in by the Corporate Debtor to pay off the debt amounting to Rs.1,73,15,900/-, it has been unable to meet its commitments and therefore sought further time upon receipt of the Demand Notice dated 09.12.2023.
15. The Corporate Debtor prayed for grant of reasonable time to clear its liability owed to the Operational Creditor.

Findings

16. Heard Ld. Counsel for the parties and perused the record.
17. The Operational Creditor has sent a Demand Notice dated 09.12.2023 to the Corporate Debtor to pay the outstanding debt of Rs.2,34,03,189/-. The details of outstanding debt and date of default is as follows: -

Invoice Date	Invoice No.	Due Date/Date of Default	Invoice Amt.	Interest @18% p.a.	Gross Amount
25.01.2022	RA01	10.02.2022	66,81,750	22,81,817.63	89,63,567.63
25.02.2022	RA02	18.03.2022	68,51,375	22,33,548.25	90,84,923.25
25.03.2022	RA03	09.04.2022	40,81,325	12,73,373.40	53,54,698.40
Total			1,76,14,450	57,88,739.28	2,34,03,189.28

18. The relevant portion of the Work Order regarding payment of Invoices has been reproduced below: -

*“...From the date of inward of bill in Billing Department, **amount shall be released** upon thorough scrutiny of the said Bill within **next 15 working days...**”*

19. As per Part IV of the present Company Petition, the date of default was 10.02.2022 for Invoice No. RA001, 18.03.2022 for Invoice No. RA002 and 09.04.2022 for Invoice No. RA003.

20. The Corporate Debtor sent a letter dated 14.12.2023 addressing the Operational Creditor. The relevant excerpts of this letter have been reproduced below: -

“We are acknowledging the liability, and we are ensuring that all our creditors should get repayment of entire dues. We appreciate completion of your work at our “Xrbia-Eiffel City” project site and your necessary co-operation during the construction.”

21. The Corporate Debtor submitted in their Reply Affidavit that: -

“I say that from the last three years the Corporate Debtor has been severely restrained from carrying out its business and its obligations to its Creditors, due to decline in cash flow and untethered usage of

profits towards payment of interest and so on, has left no form of reform to keep the business of the Corporate Debtor afloat. Despite all the efforts put in by the Corporate Debtor to pay off the amount of debt of Rs.1,73,15,900/- to the Operational Creditor for the work completed as per the Work Order dated 07.12.2021 it has been unable to meet its commitments and therefore sought further time upon receipt of the Demand Notice dated 09.12.2023 issued by the Operational Creditor.”

22. We note that the Corporate Debtor acknowledged the work completed by the Operational Creditor and the liability towards the Operational Debt of Rs.1,73,15,900/- in their letter dated 14.12.2023.
23. Subsequently, the Corporate Debtor prayed for a reasonable time to be granted to them for clearing the liability owed to the Operational Creditors. The Corporate Debtor did not deny their liability and expressed the financial difficulty that they are facing and sought further extension of time to make payment of dues.
24. We note that, the interest @ 18% that has been charged by the Operational Creditor, which was neither a part of the ‘Service Work Order’ dated 07.12.2021 nor a part of the Invoices dated 25.01.2022, 25.02.2022 and 25.03.2022, rather this interest was part of the letters dated 14.04.2022, 29.07.2022, 28.12.2022, 11.04.2023 and 20.09.2023 sent to the Corporate Debtor as a reminder for payment of dues. We note that there is no clause on interest charges either in the invoice or the Service Work Order, and there appears to be no understanding or agreement between the parties in regards to the imposition of interest in case of the interest being added to the default amount. Nonetheless, the principal amount of Rs.1,76,14,450/- alone satisfies the threshold limit prescribed under section 4(1) of the Code, therefore, the present petition is maintainable.

25. The Operational Creditor has annexed documents evidencing the debt and default on part of the Corporate Debtor, along with the National E-Governance Services Limited (NeSL) Certificate wherein the default falling under the Code: Yellow is 'DEEMED TO BE AUTHENTICATED' and the date of default has been recorded as 14.12.2023.
26. In view of the circumstances of the case, we note that there is clear admission of debt and default of Rs. 1,73,15,900/- on the part of the Corporate Debtor which is well above the threshold of Rs.1 Crore under section 4(1) of the Code.
27. We note that, the application filed by the Operational Creditor is complete in all respect as mandated under the Code; (i) the Petition is filed within the limitation period, (ii) to the default amount is above the threshold limit of Rs. 1 Crore, (iii) there is no pre-existing dispute, (iv) default is not within 10A period. Therefore, we are satisfied that the present petition is maintainable.
28. Accordingly, the Company Petition (IB)427(MB)/2024 is **admitted** and ordered as follows:

ORDER

- i. The above Company Petition (IB)427(MB)/2024 is **admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Eiffel Lifespaces Private Limited.**
- ii. The Operational Creditor has proposed an Insolvency Professional, but we shall appoint the Insolvency Professional from the IBBI Panel. We hereby appoint **Mr. Raghunath Sabanna Bhandari** bearing Registration No: IBBI/IPA-002/IP-N01023/2020-2021/13276, having valid Authorization for

Assignment up to 31.12.2025, email: raghunathsb@yahoo.com; Address: Flat No. 501 Raj Atlantis 2, Opp. SVP High School, Kanakia, Mira Road, Thane, Maharashtra – 401107 as the IRP, with a direction to the Operational Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.

- iii. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** 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.
- iv. This Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
 - 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 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.
- v. 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.
- vi. 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.
- vii. 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.
- viii. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- ix. 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.

- x. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
 - xi. The Registry is hereby directed to communicate this order to both the parties and to the IRP immediately.
 - xii. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record. The Petitioner is also directed to forthwith communicate this order to the IRP.
 - xiii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
29. The Company Petition **No. 427 of 2024** is **admitted accordingly**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Vaishnavi, LRA

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)