



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.506/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

STRONGBUILT CONSTRUCTIONS
PRIVATE LIMITED

[CIN: U45209MH2011PTC213494]

...Operational Creditor

v/s.

TRIDHAATU BHARDWAJ
DEVELOPERS LLP.

[AAA-5803]

...Corporate Debtor

Order Delivered on: 02.08.2023.

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Operational Creditor:

Mr. Aman Kacheria a/w Mr. Joshua
D'souza, Ld. Counsel.

For the Corporate Debtor:

Ms. Anchita Nair, Ld. Counsel.



ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by STRONGBUILT CONSTRUCTIONS PRIVATE LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of TRIDHAATU BHARDWAJ DEVELOPERS LLP, the Corporate Debtor.

1.1. The Company Petition is filed on 04/02/2020 claiming an amount of Rs. 1,66,52,041/- (as on 31.12.2019) in default. The date of default is not specified in Part IV of the petition.

2. That the Petitioner/ Operational Creditor is engaged in the business of inter-alia building and construction activities. The Corporate debtor is engaged in the business of building completion, construction and allied activities. The Respondent/ Corporate Debtor approached the Operational Creditor for executing RCC Core and Shell works for Bhardwaj (Hersh Aangan) Project ("Project"), and on terms and conditions as more particularly stated in the Work Order dated 09.07.2017 read with Amended Work Order dated 04.07.2018.

2.1. Pursuant to the said Work Order placed by the Corporate Debtor, the Operational Creditor executed the Contract at the said project. Accordingly, between November 2017 and May 2019, the Operational Creditor against the work executed by it, raised various invoices upon the Corporate Debtor (net of TDS and material debit) total amounting to Rs.4,59,88,841/- (Rupees Four Crores Fifty- Nine Lakhs Eighty-Eight Thousand Eight Hundred and Forty-One Only). The Operational Creditor states that the



Corporate Debtor acknowledged the work executed by the Operational Creditor and did not complaint or express any dissatisfaction in respect of the work executed by the Operational Creditor. The work executed by the Operational Creditor was duly accepted by the Corporate Debtor without any demur as to quality and quantity thereof.

2.2. Out of the said amount of Rs.4,59,88,841/- (Rupees Four Crores Fifty-Nine Lakhs Eighty-Eight Thousand Eight Hundred and Forty-One Only) the Operational Creditor received a part payment of a sum of Rs.2,93,36,800/- (Rupees Two Crores Ninety-Three Lakhs Thirty-Six Thousand and Eight Hundred Only). Hence, a sum of Rs. 1,66,52,041/- (Rupees One Crore Sixty-Six Lakhs Fifty-Two Thousand and Forty-One Only) remained due and payable to the Operational Creditor.


2.3. On the said invoices the terms of payment as well as the interest rate are incorporated. Under the aforesaid invoices, the Respondent agreed to pay interest at the rate of 24% per annum, if not paid within time.

2.4. Accordingly, the Operational Creditor time and again called upon the Corporate Debtor to pay the Operational Creditor the outstanding amount against the aforesaid invoices and pointed out that the credit period in respect thereof had lapsed. Accordingly, as of 15.01.2020, a sum of Rs.1,66,52,041/- (Rupees One Crore Sixty-Six Lakhs Fifty-Two Thousand and Forty-One Only) remained outstanding, due and payable by the Corporate Debtor to the Operational Creditor as per the aforesaid unpaid Invoices. In addition, thereto, as agreed between the parties and as provided in the Invoices, interest from the respective due dates of each invoice at the

rate of 24% per annum is also payable on the respective due dates of the Invoices.

2.5. After, repeated follow up, the Corporate Debtor in discharge of its part liability of Rs.1,00,00,000/- (Out of total liability of Rs.1,66,52,041/-) handed over to the Operational Creditor 2 cheques aggregating to a sum of Rs.1,00,00,000/- (Rupees One Only) being cheque nos. (i) 000028 and (ii) 000029 both dated 10.10.2019, for a sum of Rs.50,00,000/- each and both drawn on HDFC Bank, Chembur Branch. The Operational Creditor deposited the said cheques on 10.10.2019. However, the same returned dishonoured. Hence, the Operational Creditor immediately contacted the Corporate Debtor and informed it to pay the aforesaid outstanding immediately. In response, the Corporate Debtor sought for an additional time and requested the Operational Creditor to deposit the said cheques in the month of January 2020. Considering the business relations between the parties the Operational Creditor agreed to the said suggestion.

2.6. The Operational Creditor states that it has also maintained the account in the usual course business. Whenever a payment is made it is reflected in the Ledger Statement. The Operational Creditor states that as per the Ledger Statement maintained in ordinary course of business a sum of Rs.1,66,52,041/- (Rupees One Crore Sixty-Six Lakhs Fifty-Two Thousand and Forty-One Only) is due and payable by the Corporate Debtor. Accordingly, the Operational Creditor in its normal course of business dealings: with the Corporate Debtor by its email dated 06.11.2019, emailed the Corporate Debtor the Accounting Statement maintained by it. In response to the said email, the Corporate Debtor by its email dated 07.11.2019, admitted that a sum of Rs.1,66,52,041/- (Rupees One Crore



Sixty-Six Lakhs Fifty-Two Thousand and Forty-One Only) is outstanding. Thereafter, on 07.01.2020, the Operational Creditor deposited the said cheques with its Bankers viz. ICICI Bank, Fort Branch. However, to the shock and surprise of the Operational Creditor the said cheques returned dishonoured with remarks "FUNDS INSUFFICIENT".

2.7. In the circumstances, the total outstanding principal amount as of 31.12.2019 is admittedly Rs.1,66,52,041/- (Rupees One Crore Sixty-Six Lakhs Fifty-Two Thousand and Forty-One Only). In addition, thereto, as agreed between the parties and as provided in the Invoices, interest from the respective due dates of each invoice at the rate of 24% per annum is also payable on the respective due dates of the Invoices.

2.8. In spite of lapse of sufficient time the Corporate Debtor failed and neglected to pay the said outstanding amount, therefore, the Applicant served a Demand Notice dated 17.01.2020 under Section 9 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("Demand Notice") for referring the Corporate Debtor for the proposes of insolvency resolution under the code.

3. The Corporate Debtor vide its affidavit in reply dated 06.07.2023 states that, IBC is not a recovery mechanism; Petitioner has failed to demonstrate the existence of "operational debt", the present case does not fall within the provisions of the IBC in as much as there is no evidenced debt. The Petitioner has failed to annex a statement of account in relation to the total amount of debt and failed to give any particulars thereof. The onus of demonstrating the provision of services is on the Petitioner which the Petitioner has failed to do so, there is no basis of cause of action for the Petitioner to base its claim of Section



5(21) of the IBC; No interest payable, the Petitioner has incorrectly stated in the Petition that 24% interest was payable from the respective due dates of each invoice and that this was provided for in the invoices. On perusing the invoices, it can be seen that there is no such condition mentioned in any of the invoices; Deposit of cheques itself does not evidence debt, the Petitioner/ Operational Creditor has wrongly laid excessive reliance on the fact that the cheques were returned for insufficient balance. The Respondent/ Corporate Debtor had requested the Petitioner not to deposit the same and mere reference to certain liability while handing out cheques does not confirm any liability and it cannot be construed that there is a binding agreement of any debt due in terms of the Section 5(21) of the Code; Respondent is in the process of executing transaction documents, the Respondent/ Corporate Debtor submits that in the course of its business, the Respondent/ Corporate Debtor is in the process of executing transaction documents with a Lender. On the basis of the execution of the said documents, the payments will be made from the disbursement.

Findings:

4. We have heard the arguments of Learned Counsel for Operational Creditor and the Corporate Debtor.

4.1. As per the material on record this Bench is of the view that, this bench finds that the Corporate Debtor had approached Operational Creditor for executing RCC Core and Shell works for Bhardwaj (Hersh Aangan) Project ("Project") and the amount claimed in default is due on account of such services provided by the Operational Creditor. The Operational Creditor has placed on record copy of GST invoices, duly acknowledged by the Corporate Debtor. The said supplies were made in terms of the work order issued by the Corporate Debtor. Since part payment was made against the

said invoices. The due date of the invoice falls in the period from 31.03.2018 to 15.05.2029. The present application has been filed on 04.02.2020. Accordingly, the application is within the limitation period.

5. Thus, the present Company Petition satisfies all the necessary requirement for admission. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor.
6. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.
7. This matter was kept for pronouncement on 02.08.2023. Before we could proceed to make pronouncement of the order, the Learned Counsel for the Corporate Debtor mentioned that the debt claimed to be in default has been settled with the Operational Creditor under Consent terms executed between both the parties. The Counsel for the Operational Creditor confirms this submission. Both Counsel were ad-idem for withdrawal of this petition as settled. Accordingly, this bench considered it appropriate to allow the withdrawal of the petition at this juncture and decided to modify its order by inserting this paragraph to **dismiss this petition as withdrawn.**

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)
02.08.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)