



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.561/MB-IV/2023**

Under Section 9 of the IBC, 2016

*In the matter of*

**ARISINFRA SOLUTIONS PRIVATE  
LIMITED.**

[CIN: U51909MH2021PTC354997]

**...Operational Creditor**

v/s.

**SABVE ROHINI CONTRACTORS  
PRIVATE LIMITED.**

[CIN: U45201MH2011PTC223438]

**...Corporate Debtor**

**Order Delivered on: 31.10.2023.**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Operational Creditor:

Mr. Harsh Kesharia, Ld. Counsel.

For the Corporate Debtor:

Mr. Vishal Phal a/w Mr. Prashant  
Berri, Ld. Counsel.



**ORDER**

***Per: Anu Jagmohan Singh, Member (Technical)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by ARISINFRA SOLUTIONS PRIVATE LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SABVE ROHINI CONTRACTORS PRIVATE LIMITED., the Corporate Debtor.

1.1. The Company Petition is filed on 18.04.2023 claiming that an amount of 1,05,81,026/- is due and payable by the Corporate Debtor as on 10.04.2023 (Principal Amount Rs. 84,90,198/- alongwith Interest @ 18% p.a. Rs. 20,90,828/-). The date of default as specified in Part IV of the petition is 21.04.2022.

**Submissions of the Operational Creditor:**

2. The Purchase Orders were issued by the Corporate Debtor for supply of RMC (Ready Mix Concrete) and CLSM (Controlled Low-Strength Material) at AMN School Project at Powai, Mumbai. In accordance with the purchase orders received by the Operational Creditor, the necessary goods were supplied to the Corporate Debtor and the Delivery Challans were acknowledged by the Corporate Debtor. Alongwith delivery of the goods, the invoices raised by the Petitioner were received by the Corporate Debtor. The Corporate Debtor was bound to make payment of the Invoices within 30 days from the date of Invoice failing which the Operational Creditor would levy Interest at 18% p.a. for the balance due.



2.1. Operational Creditor had raised Invoices amounting to Rs. 1,05,87,197/- (One Crore Five Lakhs Eighty -Seven Thousand One Hundred and Ninety-Seven only) on the Corporate Debtor. The Corporate Debtor had paid a sum of Rs. 20,96,999/- to the Operational Creditor and the principal of Rs. 84,90,198/- (Rupees Eighty-Four Lakhs Ninety Thousand One Hundred and Ninety-Eight Only) was payable by the Corporate Debtor. The payment of the invoice was made by the Corporate Debtor on lumpsum basis and the Operational Creditor settled the account of the Corporate Debtor on First In First Out ('FIFO') basis.

2.2. The Corporate Debtor vide email dated 14.09.2022 had acknowledged the payment of outstanding dues of Rs. 99.90 lakhs and committed to pay dues but the Corporate Debtor never paid the dues of the Operational Creditor. The Operational Creditor had raised a Debit Note dated 17-12-2022 for an amount of Rs. 20,90,828/- (inclusive of GST of Rs. 3,18,940/-) on the Corporate Debtor for the Interest on delayed payment. The Corporate Debtor vide letter dated 28.01.2023 requested the Operational Creditor to withdraw the Debit Note.

2.3. The Operational Creditor issued Demand Notice dated 02.02.2023 on the Corporate Debtor seeking outstanding dues of Rs. 1,20,81, 026/-. Upon receipt of Demand Notice, the Corporate Debtor vide letter dated 16.02.2023 informed that due to their liquidity issues, the payment was not made to the Operational Creditor.

2.4. Regarding the issue of maintainability on account of Principal plus interest, the Operational Creditor has relied upon the decision of the Hon'ble NCLAT in the matter of *Prashant Agarwal vs. Vikash Parasrampuriah & Anr.* **held that**

- “9. *Issue of maintainability:*
- (i) *The other issue as brought out by Learned Counsel is about maintainability of the Application being principal operational debt claim of only Rs. 97,87,220 which is below the minimum threshold limit of Rs. 1 crore as per Section 4 of IBC to file Application for CIRP proceeding under Section 9 of IBC.*
- (ii) *Section 4 of the IBC reads as follows: – “4. Application of this Part – (1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees. Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”*

*Vide the notification No. S.O 1205 (E) dated 24.3.2020 issued by the Ministry of Corporate Affairs as announced the threshold limit had been increased from Rs. 1 lakh to Rs. 1 crore for purpose of Section 4 of IBC.*

*9(iii)b ..... We have perused 9 invoices issued by OC raised against CD at Page No. 47 to 55 of the Memo of Appeal, Volume I and noticed that it has clearly Company Appeal (AT) (Ins) No. 690 of 2022 8 of 10 been mentioned under terms and condition “ interest will be charged @ 18% plus GST P.A after due date of the bill” unlike in cited judgment of NCLAT ‘Steel India vs. Theme Developers Pvt. Ltd.’ (Supra) where there was no mention of interest*

*in delayed payment at all vis-à-vis specific mention of interest on delayed payment in all nine invoices in present case before this Tribunal. Hence, the cited case by Learned Counsel is not exactly and directly relevant.*

*9(iv) ..... In this context, as discussed above, all 9 invoices clearly stipulated provision of Interest on delayed payment. It is also observed that payments of three invoices has been made in full and for one invoice in part against said invoices by CD and no dispute on this clause was ever raised as noted from record available before us.*

*9(v) ..... Since, interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for “right to payment” (under Section 3(6) IBC) and therefore will form part of “debt” (Section 3(11) IBC).*

**Submissions of the Corporate Debtor:**

3. The Corporate Debtor vide its Affidavit in reply dated 31.07.2023 stated that Operational Creditor is not bound ‘to levy Interest as the same is not stipulated in the purchase order. Since the Principal amount is less than the threshold limit, the present petition does not satisfy the threshold as stipulated under section 4 of the Insolvency and Bankruptcy Code, 2016 is not maintainable. Further the Corporate Debtor has objected and disputed the said claim of interest of the Operational Creditor.



**Submissions of the Operational Creditor through its Affidavit in Rejoinder dated 30.08.2023:**

- a. The tax invoices raised by the petitioner contained the detailed terms and conditions including the period for payment and interest on default of payment.
- b. The Operational Creditor further stated that the, Corporate Debtor never disputed the clause of interest.
- c. The Corporate Debtor was a regular defaulter, but considering the business relations and in order to continue its business, the Operational Creditor never levied any interest or raised any debit notes However, owing to the long pending dues, the Operational Creditor raised a debit note on 17.12.2022.

**Findings**

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.
  - 4.1. This bench observes that, the Operational Creditor in Part IV of the application has specified date of default 21.04.2022 and the present petition filed on 18/04/2023 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.
  - 4.2. As per the material on record this Bench finds that, the Corporate Debtor had approached Operational Creditor for supply of RMC (Ready Mix Concrete) and CLSM (Controlled Low-Strength Material) 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 email correspondence dated 14.09.2022 which clearly shows admission of liability on the part of Corporate Debtor.



- 4.3. On perusal of Tax Invoices, the bench observes that the invoices have stipulated for interest @18% p.a. for non-payment of dues on or before the due date. In view of decision, of the Hon'ble NCLAT in the matter of *Prashant Agarwal vs. Vikash Parasrampuria & Anr.* cited by the Operational Creditor in Para No.2.4, it is clear that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself. It is noted that the total principal debt amount of Rs. 84,90,198/- alongwith Interest @ 18% p.a. Rs. 20,90,828/- the total debt makes total outstanding as Rs. 1,05,81,026/-. Thus, the total debt outstanding of Operational Creditor is above Rs. 1 crore as per requirement of Section 4 IBC read with notification No. S.O 1205 (E) dated 24.3.2020 (Supra), and meets the criteria of Rs. 1crore as per Section 4 of IBC and Application is therefore maintainable in present case.
5. 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. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. 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.



6. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

7. The petition bearing CP (IB) No.561/MB-IV/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by ARISINFRA SOLUTIONS PRIVATE LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SABVE ROHINI CONTRACTORS PRIVATE LIMITED., the Corporate Debtor is **Admitted.**

- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.



- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
  - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints **Mrs. Hetal Gaurang Kothari**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P01610/2019-2020/12500** Email: **[iphetalkothari@gmail.com](mailto:iphetalkothari@gmail.com)** . Is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.



- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**31.10.2023.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**