

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - II
Company Petition (IB) No.188/ND/2020**

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

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

AND

In the matter of:

SINGHAL PIPES PRIVATE LIMITED

(CIN U00359DL2005PTC139114)

2744, Naya Bazar, Delhi, Central Delhi DL-110006

Email ID: anilsinghal166@gmail.com

...Applicant/Operational Creditor

VERSUS

LA RESIDENTIA DEVELOPERS PRIVATE LIMITED

(CIN-U70200DL2010PTC208933),

220, 2nd Floor, Vardhman Sunrise Plaza, Plot

No. 1, L.S.C., Vasundhra Enclave Delhi, East

Delhi, DL-110096

Email ID: financelaresidentia@gmail.com

...Respondent/Corporate Debtor

ORDER DELIVERED ON: 25/05/2022

CORAM:

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. L. N. Gupta, Hon'ble Member (Technical)

For Operational Creditor	:	Adv. Harsh Tikoo
For Corporate Debtor	:	Adv. Subhash Choudhary & Adv. Ravindra Singh



ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/Operational Creditor, i.e. "**Singhal Pipes Private Limited**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**LA Residentia Developers Pvt. Ltd.**".
2. The Operational creditor is a company engaged in trading of cement, sockets, pipes and ancillary materials.
3. The Corporate Debtor is a real estate developer
4. Brief Facts of the case are as follows:
 - i. That in December 2016, the Respondent had approached the Applicant to purchase the pipes, socket, cement and allied products on regular basis and issued a purchase order.
 - ii. That from 15.02.2017 till 20.05.2017, the operational creditor had supplied plumbing materials on regular basis and raised invoices to corporate debtor to which payment is outstanding.
 - iii. That from 20.06.2017 till issuance of demand notice, the Applicant did numerous follow-ups both verbatim, via personal visits to the corporate office of the corporate debtor qua payment of outstanding invoices with corporate debtor but only few invoices were paid fully but most of the invoices are either partly paid or fully unpaid.
 - iv. That the Applicant had delivered a demand notice dated 01.07.2019 to the corporate debtor demanding the payment of amount in default through email and also to the whole time director of the corporate debtor in accordance with section 8 of the code.



5. That the total amount of debt due and payable is Rs. 28,07,764/- (being principal amount of Rs. 18,25,329/- and applicable interest payment @ 24% per annum of Rs. 9,82,435/-). Details of Transactions on account of which debt fell due and date from which such debt fell due are given as below:

Invoice date	Invoice no.	Invoice amount (net of return)/ amount of debt	Date on which debt fell due
15.02.2017	SPPL/3802/16-17	*3,35,201	17.03.2017
15.02.2017	SPPL/3804/16-17	1,21,617	17.03.2017
15.02.2017	SPPL/3806/16-17	35,760	17.03.2017
15.02.2017	SPPL/3808/16-17	86,378	17.03.2017
15.02.2017	SPPL/3809/16-17	3,65,955	17.03.2017
15.02.2017	SPPL/3810/16-17	1,92,500	17.03.2017
16.02.2017	SPPL/3827/16-17	3,18,655	18.03.2017
24.02.2017	SPPL/3919/16-17	3,992	26.03.2017
24.02.2017	SPPL/3920/16-17	40,269	26.03.2017
24.02.2017	SPPL/3921/16-17	354	26.03.2017
24.02.2017	SPPL/3922/16-17	7,511	26.03.2017
22.03.2017	SPPL/4133/16-17	2,27,997	21.04.2017
22.03.2017	SPPL/4134/16-17	13,309	21.04.2017
22.03.2017	SPPL/4135/16-17	11,975	21.04.2017
22.03.2017	SPPL/4136/16-17	3,867	21.04.2017
20.05.2017	SPPL/0537/17-18	59,989	19.06.2017
	TOTAL	18,25,329	

6. That the respondent was proceeded exparte vide order dt. 11/08/2021, but permitted to file the written synopsis.

7. That the scanned copy of the written submissions filed by the Applicant is reproduced below:

A

WRITTEN SUBMISSIONS ON BEHALF OF APPLICANT /
OPERATIONAL CREDITOR

MOST RESPECTFULLY SHOWETH THAT:

1. The present application was filed on 03-01-2020 under section 9 of Insolvency and Bankruptcy Code praying for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor **M/s LA RESIDENTIA DEVELOPERS PRIVATE LIMITED**.
2. The Corporate Debtor namely **M/s LA RESIDENTIA DEVELOPERS PRIVATE LIMITED** is a company incorporated on 30.09.2010 with CIN U70200dl2010PTC208933 under the provisions of the Companies Act 1956 having its registered office at 220, 2nd Floor, Vardhman Sunrise Plaza, Plot No.1, L.S.C Vasundhra Enclave, Delhi-110096 which falls within the territorial jurisdiction of this bench.
3. That the Authorised Share Capital of the Corporate Debtor is Rs. 5,00,00,000/- and Paid-up Share Capital is Rs.1,00,000/- as per Master Date of the Corporate Debtor.
4. That the Applicant Operational Creditor is a supplier of various plumbing and ancillary goods, The Corporate Debtor issued various purchase orders dated 01-12-2016, 14-02-2017 (multiple P.O), 22-03-2017 & 18-05-2017 to the Applicant for the supply of plumbing and ancillary goods having payment terms of 30 days. **Copies of the Purchase Orders are annexed as Annexure C of the Application (Page 64 – 76).**
5. That the Applicant Operational Creditor supplied the goods as per Purchase Order and raised the tax invoices of an amount of Rs. 18,25,319/- [Eighteen Lacs Twenty Five Thousand Three Hundred Nineteen Indian Rupees] for the payment to the Corporate Debtor. **Copies of tax invoices are annexed as Annexure A of the Application (Page 41-57).**



6. That the Corporate Debtor made certain part payment however failed to liquidate / pay the unpaid Operational Debt.
A Copy of Ledger Account maintained by the Applicant Operational Creditor is annexed as Annexure B of the Application (Page 58-63)
7. That Corporate Debtor has also confirmed the amount of Unpaid Operational Debtor of Rs. 18,25,319/- [Eighteen Lacs Twenty Five Thousand Three Hundred Nineteen Indian Rupees] on 31-10-2017. **A Copy of email from Corporate Debtor dated 31-10-2017 having confirmed ledger account maintained by Corporate Debtor is annexed as Annexure E of the Application (Page 148-149).**
8. That the Applicant Operational Creditor issued Demand Notice under the provisions of Insolvency and Bankruptcy Code 2016 read with Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 on 01-07-2019 demanding payment in respect of unpaid operational debt of Rs. 18,25,319/- [Eighteen Lacs Twenty Five Thousand Three Hundred Nineteen Indian Rupees] together with interest of Rs.9,82,435 [Nine Lacs Eighty Two Thousand Four Hundred Thirty Five Indian Rupees] totalling to Rs. 28,07,764/- [Twenty Eight Lacs Seven Thousand Seven Hundred Sixty Four Indian Rupees]. The demand notice was duly delivered to the Corporate Debtor through all modes. In addition to this, the Demand Notice was also delivered to the Directors of the Corporate Debtor. **A Copy of Demand Notice dated 01-07-2019 along with delivery proof and tracking records is attached as Annexure F to the Application (Page 150-169).**
9. That the Corporate Debtor neither gave any notice of dispute the existence or amount of unpaid operational debt (in default) nor any suit or arbitration proceedings is pending in relation to the unpaid operational debt in default. **Copy of affidavit under section 9 (3) (b) of the IBC, 2016 is annexed on Page 22-24 of the Application.**
10. That the Applicant Operational Creditor filed instant application in Form 5 under section 9 of Insolvency and Bankruptcy Code read with Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 praying for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor M/s LA RESIDENTIA DEVELOPERS PRIVATE LIMITED on 03-01-2020 vide CP (I.B)/188 (ND) 2020. **Copy of Form 5 is annexed on Page 9-18 of the Application.**
11. The Operational Debt (in default) as per **Part IV** of the Application is more than Rs. 1 Lac and existence of the same has not been disputed by the corporate debtor. The Application was filed on 03.01.2020, much earlier than increase in the threshold limit and is well maintainable, in light of various judicial precedents.
12. The Corporate Debtor has neither disputed nor made payment of operational Debt (in default) which is the subject matter of this application.



13. That the Particulars of the proposed Interim Resolution Professional is given in Part III of the Form 5 annexed with written communication by the Proposed Interim Resolution Professional. **Copy of Written Communication from Proposed Interim Resolution Professional is annexed on Page 28 – 40 of the Application.**
14. That Hon'ble Adjudicating Authority issued notice to the Corporate Debtor vide its order dated 14th Jan 2020 and on 23rd January 2020, The Hon'ble Adjudicating Authority again directed the Applicant on request of the counsel of Corporate Debtor to provide complete paper book, the same was duly complied by the Applicant as per the direction. The Affidavit of Service along with Proof of Service, Tracking Report was filed by the applicant and available on record. The Respondent corporate debtor did not file any reply to the Application.
15. It is most humbly submitted that Applicant Operational Creditor has a bonafide case in its favour in relation to the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Application is complete in accordance with Section 9 read with Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.
16. Thus, the present Application is prayed to be allowed for initiation of Corporate Insolvency Resolution Process under the provisions of Insolvency and Bankruptcy Code 2016.

8. That the scanned copy of the written submissions filed by the respondent is reproduced below:



**WRITTEN SYNOPSIS ON BEHALF OF THE CORPORATE
DEBTOR M/s LA-RESIDENTIA DEVELOPERS PVT. LTD.**

MOST RESPECTFULLY SHOWETH:

1. That at the outset, it is submitted that the petition filed by the financial creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 is deserved to be dismissed with cost as the financial creditor has filed the present petition for initiation of the insolvency proceedings against the corporate debtor by misleading the Hon'ble Tribunal and concealing the material facts of the case.
2. That the brief facts of the case are as under:
 - i. That the respondent/corporate debtor company along with other five companies i.e. M/s. La Residentia Developers Pvt. Ltd. (SPC of M/s. Vidhyashree Buildcon Pvt. Ltd., M/s. Nishant Creations Pvt. Ltd., M/s. Anjali Buildcon Private Limited, M/s. Agarwal Associates (Promoters) Ltd. and M/s. Stunning Constructions Private Limited formed an SPC (Special Purpose Company) with Amarapali Group of Companies. The motive

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of the aforesaid SPC to construct the 3250 flats at the Land plot bearing No.GH-06A SECTOR-TECH ZONE-IV, Greater Noida, out of which the Amrapali Group was having the share of 22% of the entire project.

- ii. That the construction of the aforesaid flats were started in 2009-10 and remained in force up-till 2018 without any hurdles, wherein the petitioner/operational creditor herein supplied the various materials such as cement, Pipes, Socket and other ancillary materials in the aforesaid project and duly received the payment from the company as per the invoices issued by the petitioner.
- iii. That in the year of 2017, a Writ Petition (Civil) No.940 of 2017 (Bikram Chatterji and others vs. Union of India and others) and other connected matters filed before the Honble Supreme Court sought to highlight acts of commission and omission on part of the Amrapali Group of Companies and persons in charge of the affairs and submitted that the amounts invested by the apartment holders were siphoned away by the Amrapali Group of Companies. While entertaining these Writ Petitions, by Order dated 06.09.2018 the Hon'ble Supreme Court directed that 46 companies including the respondent Company be audited by forensic auditors.



iv. That accordingly, the forensic auditors considered various issues and submitted their reports in month of February and April 2019 with regard to the project 'Amrapali La-Residentia'. That the observations of the forensic auditor were quoted with approval by the Hon'ble Supreme Court an Judgment dated 23.07.2019 was passed against the Amrapali Group of Companies along with others subsidiary companies. Whereby, the Hon'ble Supreme Court cancelled the registration of Amrapali Group of Companies under RERA, and cancelled the various lease deeds granted in favour of Amrapali Group of Companies by Noida and Greater Noida Authorities for projects in question stand cancelled and rights henceforth, to vest in Court Receiver and further directed that Noida and Greater Noida Authorities shall have no right to sell the flats of the home buyers or the land leased out for the realization of their dues. The Apex Court further directed that their dues shall have to be recovered from the sale of other properties which have been attached. The direction holds good for the recovery of the dues of the various Banks also as well as the Hon'ble Court had appointed the NBCC to complete the various projects and hand over the possession to the buyers. The percentage of commission of NBCC was fixed at 8 percent. The Copy of the



Judgment dated 23.07.2019 is annexed herewith as **ANNEUXRE -R-1**.

- v. That aggrieved by the order/judgment dated 23.07.2019, the respondent herein approached to the Hon'ble Apex Court by filing an appeal as the respondent has invested the amount of Rs.140 Crores approx which were collected from Home Buyers and the same money was to be utilized to pay Operational Creditors including the petitioner herein in the petition. The said appeal was decided by the Hon'ble Supreme Court in favor of the respondent company vide order/judgment dated 29.06.2021, whereby the Hon'ble Apex Court observed that the respondent Company shall be entitled to continue with the construction and development of the instant project, and the 632 flats which were subject matter of Orders dated 23.07.2019 and 14.10.2019 shall be allowed to be sold by the respondent Company to the interested persons or parties at a fair price or value provided that all the concerned transactions including the execution of appropriate documents or deeds are counter-signed by the Court Receiver or his nominee;. The Apex Court further directed that the price or value at which said flats are to be sold is certified by the Court Receiver to be fair and appropriate, all the amounts received by way of such transactions of sale are credited to a



separate account completely under the control of the Receiver and/or his nominee, the cost of construction with respect to those 632 flats, upon due certification by the Chartered Accountants of the Company and to the satisfaction of the Receiver, shall be made over to the Company, it shall however be open to the Receiver to give such advances towards the construction of these 632 flats from and out of the amounts deposited in the account as specified hereinabove, depending upon the stage and progress of construction. The injunction with respect said 632 flats, as directed in the Orders dated 23.07.2019 and 14.10.2019, shall stand modified to the extent indicated hereinabove. The difference between the amounts received from the concerned flat buyers for purchase of said 632 flats and the expenditure incurred on cost of construction shall finally be credited to the general account maintained for the benefit of the flat buyers of the Amrapali Group of Companies. The True Copy of the Judgment dated 29.06.2021 passed in W.P. (C) 940 OF 2017 by the Hon'ble Supreme Court is annexed herewith as **ANNEUXURE-R-2**.

3. That thereafter, the directors of the respondent company opened a separate account in Uco Bank having its branch at Supreme Court with the motive to re-start the construction of the project and to



make the payments to the operational creditors including the present petitioner from their own funds as all the earlier accounts of the respondent company were frozen by various departments/authorities. The corporate debtor has recently made the payment of Rs.15-16 lac to the corporate debtor against the material supplied by them.

4. That in the month of January,2022, the aforesaid current account of the respondent company has been attached/freeze by Tehsildar Dadari in pursuance of order dated 20.11.2021. upon aggrieved by the action of the Tehsildar Dadri, the corporate debtor approached to the Hon'ble Supreme Court by filing an I.A. bearing No. 12572/2022 seeking relief for de-freezing of the bank accounts of the corporate as further sought to release the fund to the extent of Rs.167 Crores already invested in the project for the construction of 632 flats by way of money transfer or in the form of flats of equivalent values, as the corporate debtor having source of income to re-start the construction of the project or make the payments to the operational creditors. The said I.A was listed on 22.02.2022 for directions.
5. That the respondent herein have no intention to stop the payment of the petitioner since inception of the goods supplied by the operational creditor and the respondent company have always



make the payment as agreed mutually between the parties for the goods supplied by the petitioner company till the 2017, when the aforesaid disputed was erupted with the company and the construction of the aforesaid project got stopped. The transactions of payment made by the respondent to the petitioner can be seen by the bank statement annexed by the petitioner with their petition.

6. That it is pertinent to mention herein that the operational creditor is still in business relation with the corporate debtor and still supplying the material and received the payment of Rs.40,00,000/- (from the period 01.11.2021 to 31.12.2021) from the corporate debtor, whereas on the other hand, the operational creditor has filed the present petition for initiating the insolvency proceedings against the Corporate Debtor. The copy of the invoices raised by the operational creditor and copy of the bank statement of the Corporate debtor showing payment made to the operational creditor is annexed herewith as ANNEXURE-R-3.
7. That the Writ Petition (Civil) No.940 of 2017 (Bikram Chatterji and others vs. Union of India and others) including the IA. Bearing No. 12572/2022 is pending before the Hon'ble Supreme Court and further fixed for 14.03.2022 for further hearings.

PRAYER



In the above facts and circumstance of the case this Hon'ble Tribunal may be graciously be pleased to:

- a. Dismiss the petition under section 9 of IBC filed by the operational creditor in view of the order dated 23.07.2019 & 29.06.2021 passed in Writ Petition (Civil) No.940 of 2017 (Bikram Chatterji and others vs. Union of India and others) and/or
- b. Pass such other order or further orders as this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case

9. We have heard the Ld. Counsels appearing for the Applicant and Respondent/Corporate Debtor and perused the averments made in application and written submissions filed on behalf of the parties.

10. That the tracking report of delivery of demand notice is also placed at page no. 159 of the application, which shows that the demand notice has been delivered The scanned copy of the same is reproduced below :



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You are here Home >> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

RU091693131IN

Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location	Delivered On
Chikamberpur SO	02/07/2019 12:26:23	110096	90.00	Registered Post	Vasundhra Enclave SC	04/07/2019 16:07:41

Event Details For : RU091693131IN

Current Status : Item Delivery Confirmed

Date	Time	Office	Event
04/07/2019	16:07:41	Vasundhra Enclave SO	Item Delivery Confirmed
04/07/2019	10:03:17	Vasundhra Enclave SO	Out for Delivery
04/07/2019	08:40:06	Vasundhra Enclave SO	Item Received
03/07/2019	15:56:04	CRC Delhi RMS Bhawan L1R	Item Dispatched
03/07/2019	14:17:43	CRC Delhi RMS Bhawan L1R	Item Bagged
03/07/2019	11:21:10	CRC Delhi RMS Bhawan L1R	Item Received
02/07/2019	12:26:23	Chikamberpur SO	Item Booked

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Application Security Audit Report

For SINGHAL PIPES PVT. LTD.

Director/ Auth. Sign.

11. That on perusal of the averments made in the para 5 and 6 of the written synopsis filed on behalf of the Respondent, we observe that the Respondent has specifically mentioned this fact that there is no intention to stop the payment of the Petitioner. It is also averred in the written synopsis that the transactions of payment made by the Respondent to the Petitioner is reflected in the bank statement.

12. We further observe that in para 6 of the written synopsis, the Respondent has admitted this fact still there is business relationship between them.

13. We further observe that the last invoice was raised on 28.05.2017, whereas the present application is filed on 01.01.2020, therefore, it is well within the limitation period and since the application was filed prior to the issuance of the notification dated 24.03.2020, by which the minimum threshold has been increased from Rs. 1 lakh to Rs. 1 crore, therefore, the present application is also within the pecuniary jurisdiction of this Bench.

14. We further observe that the amount of default is also not denied by the Respondent either by filling the reply to the demand notice or even by filling the written synopsis. We further observe that there is no pre-existing dispute and the application is complete. The Applicant has not proposed the name of IRP. Therefore, in our considered view, it fulfills the requirement of Section 9(5)(i) of the IBC 2016.

15. In sequel to the above, **the petition is admitted.** Accordingly, the CIR Process is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all :



- “(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 Securitisation 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.”

16. As proposed by the Operational Creditor, this Bench appoints Mr. Naveen Kumar Jain having his Office at F-1, Milap Nagar, Uttam Nagar, New Delhi - 110059 (email id- insolvencyprofessional@rediffmail.com and Registration No. IBBI/IPA-001/IP-P-00650/2017-18/11097), who has also submitted his written consent in form 2 placed at page 28 of the application and disclosure as required under Regulation 7(2)(h) of IBBI (Insolvency Professional) Regulation 2016 placed at page 32 of the application. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Operational Creditor is directed to deposit Rs. 100000/ only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

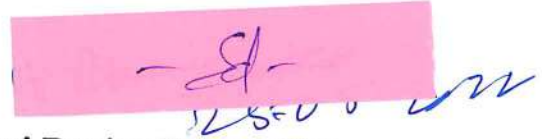
18. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry.



In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



L. N. Gupta
(Member Technical)



Abni Ranjan Kumar Sinha
(Member Judicial)