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BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

C.P. (I.B) No. 235/9/NCLT/AHM/2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)  
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE  
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.02.2021

Name of the Company: CHD Developers Ltd  
V/s  
DB Corp Ltd


Section: 9 of the Insolvency and Bankruptcy Code, 2016

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

  
(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

  
(MADAN B GOSAVI)  
MEMBER (JUDICIAL)

Dated this the 5<sup>th</sup> day of February, 2021.

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**CP (IB) No.235/9/NCLT/AHM/2019**

*(An application filed under Section 9 of the  
Insolvency and Bankruptcy Code, 2016)*

**In the matter of:**

M/s. CHD Developers Limited,  
Having its registered office at:  
SF-16-17, First Floor,  
Madam Bhikaji Cama Bhawan,  
Bhikaji Cama Place, New Delhi – 110066.

... Operational Creditor

V/s.

M/s. D.B. Corp Limited,  
(CIN: L22210GJ1995PLC047208)  
Plot No.280, Sarkhej-Gandhinagar Highway,  
Near YMCA Club, Makarba,  
Ahmedabad, Gujarat – 380051.

... Corporate Debtor

**Date of Hearing: 1<sup>st</sup> February, 2021**


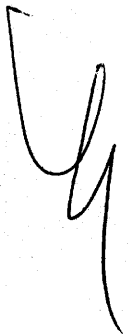
**Date of Pronouncement: 5<sup>th</sup> February, 2021**

**Coram: Madan B. Gosavi, Member (Judicial)  
Virendra Kumar Gupta, Member (Technical)**

**Appearance:**

Learned Counsel Mr. C.S. Gupta, for the Operational Creditor.

Learned Counsel Mr. Praveen N. Surange, for the Corporate Debtor.



**ORDER**

**[Per: Madan B. Gosavi, Member (Judicial)]  
(Through Video Conferencing)**

1. M/s. CHD Developers Limited - the Operational Creditor filed this application under Section 9 of the I.B. Code against M/s. DB Corp Limited, the Corporate Debtor to initiate the Corporate Insolvency Resolution Process ("CIRP") on the ground that the Corporate Debtor committed default in paying operational debt of Rs.2,67,82,670/- due and payable on the basis of the Arbitral Award dated 28.10.2014, which has reached finality by virtue of dismissal of second appeal by the Division Bench of Hon'ble Delhi High Court on 03.10.2018.
2. The following facts are not in dispute.
3. On 10.02.2008, the Operational Creditor and the Corporate Debtor entered into and executed an advertisement agreement whereunder, the Corporate Debtor was to publish advertises of business of the Operational Creditor in print media. The Operational Creditor paid a sum of rupees three (03) Crore to the Corporate Debtor as service charges. Since, some dispute arose, out of that contract. On 01.02.2010 the Operational Creditor initiated arbitral proceedings against the Corporate Debtor. On 28.10.2014, the Arbitral Tribunal passed the Award in favour of the Operational Creditor, directing the Corporate Debtor to

refund the Operational Creditor a sum of Rs.1,22,91,736/- together with interest at the rate of 12% per annum from November-2009.

4. The Corporate Debtor challenged the award by way of appeal under Section 34 of the Arbitration and Conciliation Act, 1996 in Delhi High Court (OPM No. 259 of 2016). On 31.08.2018, Hon'ble Delhi High Court dismissed that appeal. The Corporate Debtor filed Second Appeal under Section 37 of the Arbitration and Conciliation Act before the Division Bench of the Hon'ble Delhi High Court. On 03.10.2018, the Hon'ble Division Bench of Delhi High Court dismissed that appeal also (FAO COMM 225/2018).
5. It is also not in dispute that upon dismissal of the Second Appeal, the Operational Creditor served on the Corporate Debtor the demand notice dated 25.01.2019 under Section 8 of the I.B. Code, 2016 and called upon the Corporate Debtor to pay the debt. Since, the Corporate Debtor committed default in paying the debt, this proceeding is filed to start the CIRP of the Corporate Debtor under Section 9 of the I.B. Code.
6. Notice of this application was duly served to the Corporate Debtor. One of its authorized signatory, Mr.Sharad Mathur appeared and filed affidavit-in-reply. As noted above, he did not dispute some of the factual aspects.

7. He contended that demand notice under Section 8 of the I.B. Code, 2016 cannot be issued on the basis of Arbitral Award. He further contended that as the Operational Creditor has already filed execution proceedings of the Award in the District Court, Bhopal, this parallel proceeding under Section 9 of the I.B. Code is not maintainable in view of principles of *res judicata* as stated under Section 11 of the Code of Civil Procedure, 1908.
8. He pointed out that there is some difference in the amount claimed in this proceeding and the amount claimed in the execution proceeding. He also contended that the Award was not appropriately drawn. The agreement on which, the award came to be passed was not properly stamped and hence, that agreement cannot be read in evidence. He lastly contended that it is a time barred debt.
9. We have gone through the evidences on record. We heard the submissions made by the Learned Counsels appeared for the both the parties. We have gone through notes of written submissions and rulings relied on by them.
10. At the outset, it is noted that there was no dispute in respect of the operational debt claimed herein was pending between the parties prior to the date of demand notice under Section 8 of the I.B. Code served on the

Corporate Debtor. The Arbitral Award in favour of the Operational Creditor reached finality on 03.10.2018, whereby, the Division Bench of Hon'ble Delhi High Court had dismissed Second Appeal of the Corporate Debtor. Thereafter, on 25.01.2019, the Operational Creditor served on the Corporate Debtor, the demand notice under Section 8 of the I.B. Code, 2016.

11. In case of M/s. K. Kishan Vs. M/s. Vijay Nirman Company (Civil Appeal No. 21825/2017) decided on 14.08.2018, the Hon'ble Apex Court led the precedence stating principles to be consider while considering the application under Section 9 of the I.B. Code. It has been held that,

*The adjudicating authority, therefore, when examining an application under Section 9 of the Code, will have to determine the following:*

- (i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh?*
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*

12. In this case, there is no dispute that the Operational Debt more than rupees one lakh is due and payable by the Corporate Debtor to the Operational Creditor and there exist no dispute then pending in between the

parties prior to the receipt of the demand notice under Section 8 of the I.B. Code by the Corporate Debtor.

13. The Corporate Debtor raised objection to this proceedings contending that the Operational Creditor has filed execution proceeding of the award in the District Court at Bhopal, so, this parallel proceedings under I.B. Code is not maintainable. However, we are unable to accept this contention. Section 3(10) of the I.B. Code, 2016 defines the creditor as:

*“Creditor means any person to whom a debt is owned and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.”*

14. The Award passed in Arbitral Proceedings is in the form of money decree. The Operational Creditor herein is the decree holder and the creditor of the Corporate Debtor. Considering the nature of agreement executed in between them, i.e. to provide services to publish advertisement for the Operational Creditor, the Arbitral Amount is the Operational Debt within the meaning of Section 5(25) of the Insolvency and Bankruptcy Code, 2016. The Hon'ble National Company Law Appellate Tribunal in the case of “M/s Ugro Capital Limited Vs. M/s. Bangalore Dehydration and Drying Equipment Co. Pvt. Ltd., Company Appeal (AT) (Insolvency) No.984 of 2019.” While setting at rest such controversy, as raised, has held that:

*“Based on the decree of the Court this petition was filed*

*U/S 7 of the Code. Since, the definition of word creditor in I&B Code includes decree-holder, therefore, if a petition is filed for the realization of decretal amount, then it cannot be dismissed on the ground that applicant should have taken steps for filing execution case in Civil Court.”*

15. We further add to that, the scheme of I.B. Code does not prohibit the creditor from filing application under Section 7 or Section 9 against the Corporate Debtor irrespective of the fact that in proceeding for execution of decree or award is filed and pending before a Civil Court/ Competent Court of Law. It is more particularly, in view of Section 238 of the I.B. Code, 2016.
16. Moreover, the I.B. Code is complete code in itself. It regulates the proceedings of the Insolvency and Liquidation of the Corporate Persons. The provisions of Civil Procedure Code cannot be pressed in to service to regulate proceeding filed under I.B. Code, 2016. For this reason also we reject the contention of the Corporate Debtor that this parallel proceedings is not maintainable in view of Section 11 of the Civil Procedure Code (Governing Principle of ***res judicata***).
17. The Corporate Debtor raised some technical defense that there are some defects in Award and the agreement of which, Award is passed was not appropriate/proper stamp etc. For this, we hold that the Award has reached its finality. We cannot consider such defense over and again as we cannot sit in appeal against the order of dismissal of the appeal challenging the award. All above

points have been considered during the Arbitral Proceedings. In this case the debt became due on 03.10.2018. The application is filed in 2019. It is filed well within the limitation.

18. Coming back to the factual aspect of the matter, the Operational Debt more than rupees one lakh is due and payable by the Corporate Debtor since 03.10.2018 upon confirmation of the Arbitral Award by Hon'ble Delhi High Court in Second Appeal under Section 37 of the Arbitration and Conciliation Act, 1996. In-spite of demand notice dated 25.01.2019 the Corporate Debtor committed the default in paying such debt. The application is filed within three (03) year therefrom. Hence. We have to admit the Corporate Debtor in Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the I. B. Code.
19. The Operational Creditor has suggested the name of Insolvency Professional, Mr. Jaswant Singh, Registration No. IBBI/IPA-002/IP-N00372/2017-2018/11135, for the appointment of the Interim Resolution Professional. The proposed RP has also given his consent (Annexure-A, Pg.151-155) and submitted that there are no disciplinary action is pending with IBBI or ICAI.
20. The application is defect free Hence, we admit the Corporate Debtor in the Corporate Insolvency Resolution

Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 by following order:

**ORDER**

1. The Corporate Debtor, **M/s. D.B. Corp Limited, (CIN:L22210GJ1995PLC047208)** is hereby admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
  
2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
  - 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.

3. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
4. We hereby appoint Mr. Jaswant Singh, Registration No. IBBI/IPA-002/IP-N00372/2017-2018/11135, email: sjaswantsingh@gmail.com, Mobile No.09873606667, Address: 70/15, 2nd Floor, Ashok Nagar, New Delhi, National Capital Territory of Delhi -110018 to act as an Interim Resolution Professional (IRP) under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.
5. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of

the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

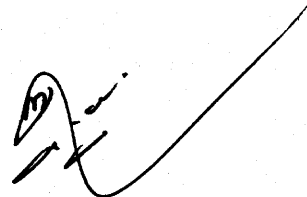
6. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks **from the date of this order** for the purpose of smooth conduct of Corporate Insolvency Resolution Process ("CIRP") and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.235/9/NCLT/AHM/2019** stands admitted.



**(Virendra Kumar Gupta)**  
**Member (Technical)**



**(Madan B. Gosavi)**  
**Member (Judicial)**

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