NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No. 199/Chd/Pb/2020

Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:

Adit Goel Prop. Adit Collaboration
SSS 64, Phase 9,
Sector 63, SAS Nagar
Mohali-160062

…Petitioner-Operational Creditor

Vs.

Best Zone Builders & Developers Private Limited
having its registered office at
SCF 4, Shivalik City,
Sector 127
Kharar-Landran Road,
Mohali Kharar Mohali

…Respondent-Corporate Debtor

Judgement delivered on: 19.02.2021

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Raghu Nayyar, Member (Technical)

For the Operational Creditor: Ms. Mandeep Gujral, Advocate

For the Corporate Debtor : Mr. Vishav Bharti Gupta, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, (**for brevity 'IBC' / 'Code'**)**, 2016** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Adit Goel being Proprietor of Adit Collaboration (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate the Corporate Insolvency Process against Best Zone Builders & Developers Private Limited (**for brevity 'Corporate Debtor'**).

2. The Corporate Debtor namely, Best Zone Builders & Developers Private Limited, is a Company incorporated on 19.01.2011 under the provisions of Companies Act, 1956 with CIN No. U45209PB2011PTC034617 having its registered office at SCF 4, Shivalik City, Sector 127, Kharar Landran Road, Mohali which falls within the State of Punjab. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹1,00,000/- and Paid-Up Share Capital of the Company is ₹1,00,000/-. Copy of Master Data of corporate debtor is found attached as Annexure B of petition.

3. The facts of the case, briefly, as stated in the petition are that the corporate debtor was regularly transacting and purchasing cement, bricks and other building material from the operational creditor since 2018-19. It is stated that the operational creditor has raised various bills/invoices for supply of material on the basis of verbal orders. It is also stated that the operational creditor has supplied material on a credit of 60 days. However, corporate

debtor has failed to make any payment towards the due invoices despite several requests by the operational creditor. As per Part-IV of the Form 5, the total amount claimed to be in default is ₹1,19,57,310 (inclusive of ₹1,03,48,300/- as principal amount and ₹16,09,010/- as interest @ 15% per annum till 26.02.2020).

4. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as it failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Forms 3/4 dated 20.06.2020 is stated to be served upon the corporate debtor by speed post. The demand notice was accompanied by copy of invoices, copy of ledger account and computation of interest. The corporate debtor vide these demand notices was called upon to repay the total unpaid operational debt of ₹1,19,57,310/- within 10 days.

6. It is deposed by the petitioner that the demand notice was issued to the corporate debtor vide speed post and the same has been delivered successfully. It is also deposed that the operational creditor has not received any notice relating to any dispute of the unpaid operational debt. The affidavit is appended with the petition at Page No. 20.

7. In Part III of Form 5, the operational creditor has proposed Mr. Parvinder Singh, bearing registration No. IBBI/IPA-001/IP-P01603/2019-20/12468 as the Interim Resolution Professional. The consent of the proposed IRP furnished in Form 2 is placed at Annexure G (Page 91 to 93), in which he has stated that he is currently serving as a Resolution Professional in one other proceeding. It is also stated that there are no disciplinary

proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professional of ICSI.

8. Notice of this petition was issued to the corporate debtor on 01.10.2020 to show cause as to why this petition be not admitted.

9. Respondent-corporate debtor filed reply vide Diary No. 00444/1 dated 04.01.2021, in which it has been stated that due to non-materialization of receivables, the company has incurred default of operational creditor.

10. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

11. The first issue for consideration is whether the demand notice in Forms 3/4 dated 20.06.2020 was properly served. The demand notice was sent to the registered address of the corporate debtor as per the master data at Page No. 32 of the petition in which registered office is shown as SCF 4, Shivalik City, Sector 127, Kharar-Landran Road, Mohali, Punjab. Copy of postal receipt and tracking report showing duly service of notice are part of Annexure – A (Colly) at Page No. 31.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent-corporate debtor has filed reply and admitted the occurrence of default towards operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

13. We have gone through the contents of the application filed in the Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹1,19,57,310/- (inclusive of ₹1,03,48,300/- as principal amount and ₹16,09,010/-). Copy of various

invoices raised by operational creditor are appended with the petition and the same are found as Annexure – C (Page No. 33 to 68). Copy of ledger account maintained by operational creditor is attached as Annexure – D of the petition. Moreover, demand notice in Form 3 was also sent on 20.06.2020 stating that the amount due as on 26.02.2020 is ₹1,19,57,310/-. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 04.07.2020 (Page No. 20) has been placed by the operational creditor stating that despite the service of notice, dated 20.06.2020, corporate debtor did not raise any dispute qua the outstanding payment. Table showing the computation of default is attached as Annexure-E. The bank statement for the period of July 2019 till June 2020 has been annexed as Annexure-F of the petition. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of **Section 9** of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

"(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.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

(f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till 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 as the case may be."

15. The Law Research Associate of this Tribunal has checked the credentials of Mr. Parvinder Singh and there is nothing adverse against him. In view of the above, we appoint Mr. Parvinder Singh, Registration No. IBBI/IPA-001/IP-P01603/2019-20/12468, E-mail: caparvinder03@gmail.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

16. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-

(Raghu Nayyar)
Member (Technical)

(Ajay Kumar Vatsavayi)
Member (Judicial)

February 19th, 2021
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