

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

**CP (IB) No.460/MB-IV/2023**

Under Section 9 of the IBC, 2016

*In the matter of*

STEINER INDIA LIMITED.

[CIN: U45203MH2011FLC221029]

...Operational Creditor

v/s.

PHOTOGRAVURS (INDIA) PRIVATE  
LIMITED.

[CIN: U29268MH1952PTC008733]

...Corporate Debtor

**Order Delivered on: 20.10.2023.**

*Coram:*

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

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Operational Creditor:

Mr. Harshad Vyas a/w Mr. Patel, Ld.  
Counsel.

For the Corporate Debtor:

Mr. Ajay a/w Ms. Jasdanwala, 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 STEINER INDIA LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of PHOTOGRAVURS (INDIA) PRIVATE LIMITED., the Corporate Debtor.

1.1. The Company Petition is filed on 29/05/2023 claiming that an amount of 3,04,29,632/- is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 30.05.2022.

**Submissions of the Operational Creditor**

2. The Corporate Debtor was constructing a residential Tower in Worli, for which the Corporate Debtor floated a tender for the Civil work and RCC work. The Operational Creditor was successful in getting the Work and subsequently Letter of Award was issued to it by the Corporate Debtor on 30.03.2016. As per the Letter of Award the value of the Contract was Rs. 20,60,00,000/- (Rupees Twenty Crore and Sixty lacs only) which was inclusive of all material cost with basic rates but excluding of Composite VAT, Service Tax and Labour Cess as per the tender. Pursuant to the LOA a Work Order dated 20.12.2016 was issued for the work of residential project in Worli Mumbai. The total value of the project was Rs. 24,42,69,488.04 (Rupees Twenty- Four Crore Forty-Two Lakh Sixty-Nine Thousand Four Hundred and eighty-Eight Rupees and four paise).

2.1. In terms of the Work Order, the Operational Creditor time to time submitted RA bills to the PMC and the PMC after verifying the details certified the

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RA bills and thereafter, Operational Debtor was to make the payment within 28 days from PMC certifying the Bill.

2.2. The Operational Creditor submitted a total 36 RA bills amounting to cumulative total aggregate amount of Rs.39,87,20,462/- to the PMC. Out of the total 36 RA bills submitted by the Operational Creditor to the PMC, RA Bill up to 35 for total amount aggregating to Rs. 30,72,33,664/- (Including Bills Extra work such as piling etc and idling charges certified by the PMC) were duly certified by PMC. The Operational Creditor, after execution of the project and after handing over the same to the Corporate Debtor has submitted the final bill RA Bill No. 36 to PMC dated 09.02.2021 as well as to the Corporate Debtor. The total amount certified by the PMC for RA bill upto 35 and bills for Extra work and idling charges is Rs. 30,72,33,664/-, out of which the Corporate Debtor has made partial payment as per certified running account basis amounting to Rs 26,52,02,802/- after deducting the recoveries of Electricity charges, TDS and retention amount of Rs. 2,11,03,038/-. Therefore, even after making the part payment and deducting the recoveries, Rs.2,09,27,824/- is still pending.

2.3. The Operational Creditor thereafter filed Company Petition No. 797 of 2021 before the National Company Law Tribunal, Mumbai Bench under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor for outstanding amount of Rs. 2,09,27,824/-.

2.4. During the pendency of the proceedings before this Tribunal, Corporate Debtor approached for amicably settling the disputes between the parties. The Corporate Debtor and Operational Creditor entered into a

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comprehensive settlement which also included the RA Bill 36 for an amount of Rs. 5,13,57,456/- (Rupees Five Crore Thirteen Lakhs Fifty-Seven Thousand Four Hundred and Fifty-Six Only) in three instalments under the Consent Terms executed in December 2021. However, the Corporate Debtor was unable to make payments in three instalments. Modified consent terms were entered into on 11/04/2022 under which the amount was to be paid in 5 instalments. Accordingly, the Corporate Debtor issued 8 post-dated cheques in favour of the Operational Creditor. The consent terms were taken on record by this tribunal.

2.5. The Operational Creditor withdrew the Company Petition No. 797 of 2022. The Tribunal by its Order dated 21.03.2023, recorded that Corporate Debtor shall remain bound by its undertaking.

2.6. Subsequently, Cheques dated 30.05.2022, 30.06.2022, 25.10.2022 and 21.11.2022 issued by the Corporate Debtor were dishonoured by the bank with remark “insufficient funds” / “Payment stopped by drawer”.

2.7. The Operational Creditor further submits that, the Corporate Debtor has purportedly issued a Notice invoking Arbitration dated 20.03.2023 under the Work Order dated 20.12.2016. The Notice is nothing but an afterthought issued with a malafide intent to wriggle out of its liability to make payments under the Consent Terms. The Notice was issued with dishonest, fraudulent intention. The Notice raises contentions which are illusory, spurious and baseless. The Operational Creditor has replied to the aforesaid Notice by its Letter dated 12.05.2023, wherein, the Operational Creditor has denied the contents of the Notice.

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2.8. The Operational Creditor issued a Demand Notice dated 12.05.2023 under Section 8 of the Insolvency and Bankruptcy Code. The said Demand Notice was replied to by the Corporate Debtor by its letter dated 23.05.2023 denying all the allegations made by the Operational Creditor.

***Findings***

3. The bench has heard the arguments of Learned Counsel for Operational Creditor

3.1. This bench observed that vide order dated 18.07.2023 last opportunity was granted to Corporate Debtor to file its reply and the matter was listed on 17.08.2023. The Corporate Debtor was present but no reply was filed by the Corporate Debtor. Therefore, right to file reply by the Corporate Debtor was ***forfeited*** by this bench vide order dated 25.09.2023. The matter was heard on merits and was Reserved for Orders vide its order dated 25.09.2023.

3.2. This bench further observes that, the Operational Creditor in Part IV of the application has specified date of default 30.05.2022 and the present petition filed on 29/05/2023 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor.

3.3. The bench takes note of the fact that pursuant to filing of Original Application by the Operational Creditor on 29.05.2023, the parties entered into a comprehensive settlement agreement in December 2021, which was subsequently, modified on 11.04.2022 to adjust the payment schedule. The Corporate Debtor tendered 8 cheques of which 4 were honoured by the Corporate Debtor. However, the Corporate Debtor defaulted in payment as balance 4 cheques were dishonoured by the bank with a remark “insufficient funds” and “payment stopped by the drawer”. In view of the above the bench observes that, there is no dispute as to existence of debt.

4. On perusal of the documents submitted by the Operational Creditor, this bench noted 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 out by the Corporate Debtor, it is a fit case for admission under section 9 of Insolvency and Bankruptcy Code,2016.
5. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016 by passing the following order.

### **ORDER**

6. The petition bearing CP (IB) No.460/MB-IV/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by STEINER INDIA LIMITED (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of PHOTOGRAVURS (INDIA) 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;

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- 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 **Mona Laxmichand Vora**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals

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of ICAI having registration number **IBBI/IPA-002/IP-N00938/2019-2020/12997** Email: **advmonavora@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

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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)**  
**20.10.2023.**

**Sd/-**

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