

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 210/NCLT/AHM/2021

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

**Aakar Construction
Through its proprietor
Mr. Sani P. Panchal**

**Applicant/
Operational Creditor**

Versus

Omsfri Devprocon Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 04/08/2022

Coram:

**DR. DEEPTI MUKESH
HON'BLE MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL**

MEMO OF PARTIES

**Aakar Construction
Through its proprietor
Mr. Sani P. Panchal**

1, Dev Kutir Bungalows
Iscon Ambli Road
Ahmedabad 380 058

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Applicant/Operational Creditor

Versus

Omsfri Devprocon Limited

Dev House
Opp. Sankalp Restaurant
Nr. Rajpath Club
S.G. Highway
Ahmedabad 380 015
Gujarat State

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Respondent/Corporate Debtor

Appearance:

For Applicant : Ms. Natasha Shah, Advocate

For the Respondent :

ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Mr. Sani P. Panchal, Proprietor of **Aakar Construction** (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Process (CIRP)

against **Omsri Devprocon Limited** (for brevity 'Corporate Debtor').

2. The applicant is proprietor of a firm having its office at 1, Dev Kutir Bungalow, Iscon Ambli Road, Ahmedabad 380 058, engaged in construction activities.
3. The corporate debtor is a limited company, incorporated under the provisions of Companies Act, 1956 on 06.06.2005 duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U45200GJ2005PLC046194, having registered office at Dev House, Opp. Sankalp Restaurant, Near Rajpath Club, S.G. Highway, Ahmedabad 380 015, Gujarat State. The authorised share capital of the corporate debtor is Rs. 50,00,00,000/- and paid up share capital of the company is Rs. 17,50,00,000/-. The corporate debtor is engaged in the business of building construction.
4. It is submitted by the applicant that the corporate debtor was originally incorporated in the name and style of Dev Arcade Private Limited. The corporate debtor changed its name from Dev Arcade Private Limited to Dev Procon Private Limited for which fresh certificate of

incorporation was issued on 04.01.2010. The corporate debtor further changed its name from Dev Procon Private Limited to Shree Devprocon Limited on 31.08.2018. A fresh certificate of incorporation was issued by the Registrar of Companies. The corporate debtor further changed its name from Shree Devprocon Limited to Omsri Devprocon Limited for which updated certificate of incorporation was issued. Copies of all the certificates of incorporation issued by the Registrar of Companies from time to time are annexed to the application.

5. It is stated by the applicant that work order dated 10.10.2020 was issued in the name of Dev Procon Limited and the entire transactions were carried out in the name of Dev Procon Limited which is further evidenced by the Certificate of Registration issued by concerned authority under the GST Regulations.
6. The applicant further states that as per the terms and conditions of the work order dated 10.10.2020 issued by the corporate debtor, the applicant had undertaken the work of dressing, steel binding, concreting (M-25 Grade), pouring, levelling & finishing with material & labour for 1st, 2nd and 3rd Basement Trimix at Dev Aurum situated

at Anandnagar Cross Road, Ahmedabad and raised invoice dated 13.04.2021 for Rs. 1,18,15,847.00 (Rupees one crore eighteen lakhs fifteen thousand eight hundred forty-seven only). As per work order dated 10.10.2020, in case of non-payment within the specified period of one month from the date of submitting invoice, the applicant is eligible to receive interest @ 12% per annum.

7. The applicant further states that on not receiving the outstanding debt from the corporate debtor, the applicant had sent email dated 18.09.2021 calling upon the corporate debtor to clear the outstanding debt which was replied by the corporate debtor vide email dated 20.09.2021 showing their inability to clear the debt. Thereafter, statutory demand notice under Section 8 of the IB Code in Form 3 dated 20.09.2021 was also issued. The said notice was received by the corporate debtor, as stated in MCA master data, address through registered post on 24.09.2021. Copies of postal receipt, track report and MCA master data are annexed. Demand notice dated 20.09.2021 issued by the applicant was not replied by the corporate debtor. Thereafter, the applicant filed present application under section 9 of the IB Code to initiate CIRP against the corporate debtor.

8. In compliance of order dated 07.01.2022, the applicant submitted copy of notice served to the corporate debtor vide email dated 02.02.2022 informing the next date of hearing and, a copy of Master Data of the corporate debtor as proof of registered office of the corporate debtor.
9. In compliance of order dated 29.03.2022, the applicant filed affidavit of service of notice dated 02.04.2022 issued on the corporate debtor informing the next date of hearing i.e. 19.04.2022.
10. Despite issuing notice through Registry and by the applicant, corporate debtor neither appeared nor filed any reply. Therefore, the matter was proceeded ex-parte against corporate debtor on 21.02.2022.
11. As per part IV, Form 5 total amount of debt is Rs. 1,22,88,481/- (Rupees one crore twenty-two lakhs eighty-eight thousand four hundred eighty-one only) which includes principal amount of Rs. 1,18,15,847/- and interest of Rs. 4,72,634/- payable by the corporate debtor @ 12% per annum as per the terms and conditions of the work order.

12. The default occurred on 13.05.2021 as the deadline for making the payment was maximum by 30 days after completion of the work. The application is filed on 02.11.2021, which is within limitation and not barred by law.
13. Registered office of the corporate debtor is situated in Ahmedabad, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
14. In compliance of Section 9 (3) (b) of the IB Code the applicant has filed affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt.
15. Heard submissions and perused the documents on record. The applicant has brought on record all the documents to substantiate its claim. On perusal of the record it is found that email dated 18.09.2021 written by the applicant calling upon the corporate debtor to clear the outstanding debt was replied by the corporate debtor vide email dated 20.09.2021, which reads as under:

“We apologise for the delay from our side. We have received your final bill dated 13.04.2021. We are under financial crunch at the moment. We will try & make payment at the earliest. Please grant us few more days’ time.”

16. In light of the above discussions, it is established that the debt is due and payable and default has occurred. Moreover, the corporate debtor has admitted its debt within limitations and has shown its inability to clear the outstanding debt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

17. The applicant has proposed the name of the Interim Resolution Professional (IRP) to be appointed, namely, Mr. Arpan Maheshkumar Shah who is hereby appointed as IRP of corporate debtor having address at 301, Shoppers Plaza-4, Opp. BSNL, C.G. Road, Ahmedabad 380 006 with registration No. IBBI/IPA-001/IP-P-01847/2019-20/12862 and having email ID arpan@caarpanshsh.com, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2, along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, is filed which is on record.

18. We direct the Operational Creditor to deposit a sum of Rs.2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Arpan Shah to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

20. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.
21. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

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