



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

2. C.P.(IB)-185(MB)/2017

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **04.08.2023**

NAME OF THE PARTIES: M/s A B & Co. Global Pvt Ltd.

V/s.

M/s Seth Developers Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Counsel appearing for the Respondent is present. Appearance sheet not
tendered to the Court Officer.

C.P.(IB)-185(MB)/2017

The above Company Petition listed on board today for pronouncement of
order. Order pronounced in the open court vide separate order. In the result,
the above Company Petition bearing No. 185/2017 is **admitted** and **Mr.**
Umesh Chand Goyal appointed as IRP.

Sd/-
MADHU SINHA
Member (Technical)
//Vitthal//

Sd/-
H. V. SUBBA RAO
Member (Judicial)



IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, COURT III

C.P.(IB)-185(MB)/2017

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

IN THE MATTER OF,

AB & Co. Global Pvt Ltd

Registered Office at: 32/33, Gopal Bhuvan, 2nd Floor, 199, Princess Street, Mumbai-400 002

..... **Petitioner/Operational Creditor**

Vs.

Seth Developers Pvt Ltd.

(CIN: U45200MH1993PTC070335)

Registered Office at: Sheth House, Next to Dindoshi Fire Station, Gen. A. K. Vaidya Marg, Off. Western Express Highway, Malad (East), Mumbai-400097.

..... **Respondent/Corporate Debtor**

Order Reserved On : 14.06.2023

Order Pronounced On : 04.08.2023

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance:

For the Petitioner : Ms. Leena Sapra, Advocate

For the Respondent : Mr. Vikramaditya Deshmukh, Advocate


ORDER

Per: H. V. Subba Rao, Member (Judicial)

- 1) The above Company Petition was originally filed before the Hon'ble Bombay High Court under Company Petition No. 293 of 2016 under Section 433 and 434 of the Companies Act, 1956 which was subsequently transferred and

renumbered as C.P.(IB)- 185(MB)/2017 after the commencement of the I.B. Code.

- 2) The above Company Petition was filed for resolution of "Operational Debt" of Rs. 10,00,089/- due and payable to the Operational Creditor by the Corporate Debtor.
- 3) The brief facts behind filing the above company petition are as follows:
 1. The address of the Petitioner for the purpose of service of notices and process of this Hon'ble Court is that of its Advocates Leena Sapra, and G. A. Patil having their Office at 309, Birya House, 265, Bazaar Gate Street, Fort, Mumbai-400 001.
 2. The Petitioner is a Company incorporated and registered under the provisions of Companies Act, 1956 ("the Act") carrying on business amongst its other business of Civil Contractor, Labour Contractor, Sub Contractor and other related work of construction and trading in Building Construction Material, having its place of business at the address mentioned in the title of the Petition.
 3. Sheth Developers Private Limited, (hereinafter referred to as "the Respondent Company") is a Private Limited Company incorporated on 06.01.1993 and Registered under the provisions of the Companies Act, 1956 (Company Limited by Shares). The Respondent Company has its registered office at Sheth House, Next to Dindoshi Fire Station, Gen. A. K. Vaidya Marg, Off. Western Express Highway, Malad (East), Mumbai- 400 097. The Respondent Company is a Private Limited Company and engaged in the business of Construction and Land Development. Here to annexed and marked as an "Exhibit A" is copy of the ROC Extract of the Respondent Company retrieved from the website of the Ministry of Corporate Affairs.
 4. As per details available with ROC in the Annual Report of the Respondent company for the financial year ended 2014, the Authorized Capital of the Respondent Company is Rs.



13,10,00,000/- (Rupees Thirteen Crore Ten Lacs Only) Consisting of 10,00,000/- (Ten Lacs Only) Equity Shares of Rs.100/- each and 31,00,000/- (Thirty One Lacs Only) Preference Shares of Rs. 10/- each. The issued, subscribed and paid-up share capital of the Respondent Company is Rs. 12,97,72,000/- (Rupees Twelve crore Ninety Seven Lacs Seventy Two Thousands Only) consisting of 10,00,000/- (Ten Lacs Only) Equity Shares of Rs.100/- each and 29,77,200/- (Twenty Nine Lacs Seventy Seven Thousands Two Hundred Only) Preference Shares of Rs. 10/ each. The Respondent Company Identification number (CIN) is U45200MH1993PTC070335 and date of Incorporation is 06.01.1993.

5. The main objects for which the Respondent Company was established are as follows:

To carry on the business of execution of engineering, civil projects and contracts & to construct, execute, equip, develop, repair, maintain, manage, supervise or control all types infrastructure facilities within or outside the country including building, houses, offices, malls, residential, commercial complexes, roads, metro ways, marine dredging, bridge, dams, airports, runways, hangers, helipads, railway platforms, stations, electro-mechanical, Railway Electrification, Railway OHE, TSS, SCADA projects, tramways, docks, harbours, canals, hu sewages, tunnel, hotels, cold storage, warehouses, cinema houses, economic zones and highways and to act as a trader, importer, exporter, wholesaler, stockiest, agent, broker, distributor or otherwise dealing in all kinds of movable or immovable property including industrial, commercial, residential or farm lands, plots. buildings, houses, apartments, flats another goods or material used in infrastructure business activity.

Other objects are set out in the Memorandum and Articles of Association.

The Petitioners crave leave to refer to and rely upon the Memorandum and Articles of Association of the Company, when produced.


6. The Respondent Company is indebted to the Petitioner for the sum of Rs.10,00,089/- (Rupees Ten Lacs Eighty Nine only) being the outstanding amount along with future interest @24 % p. a. from 16.04.2015 till date of payment and / or actually realization as more particularly specified in particulars of claim.

The material facts giving rise to the filing of the present Company Petition are as follows:

7. The Petitioner states that Pursuant to the work order bearing No. SDPL/AD/57927/2014 dated 20.11.2014, the Respondent company entered into a contract with the Petitioner and issued Letter of Intent for carrying out civil labour works of Block NO. 2 & 8 at Vasant Lawn, Thane (Civil Labour Work Only) (herein after referred as "the said Letter of Intent") (herein after referred to as "the said work order"). The Petitioner has duly accepted the said work order and agreed to execute work as required by the Respondent Company under the said work order. The Petitioner crave leave to refer to and rely upon the said Work order as and when produce before this Hon'ble Court.
8. The Petitioner state that as per the said work order, the Petitioner had rendered the Respondent company various civil work and labour work more particularly mentioned in the said work order.
9. The Petitioner state that as per the said work order/ Letter of Intent, they have raised two Invoices bearing NO. AB/SDPL/003/RA-1 dated 17.02.2015 for a sum of Rs. 11,03,084/- and the other Invoice bearing NO. AB/SDPL/003/RA-2 dated 17.02.2015 for Rs.4,92,290/- aggregating to a sum of Rs.15,95,374/- upon Respondent Company for the work/service/labour job carried out for the Respondent company from time to


time. The Petitioner crave leave to refer to and rely upon the said Invoices as and when produce before this Hon'ble Court.

10. The Petitioner state that since the date of work order, the Petitioner has rendered and carried out various services to the Respondent Company amounting to a sum of Rs 15,95,374. Against the above outstanding amount, the Respondent company had made part payment of Rs.9,82,200/- to the Petitioner leaving behind balance of Rs.6,13,174/.
11. Since February, 2015, inspite of having been due and payable the aforesaid sum of money, the Respondent company failed to pay the money to the Petitioner. The Respondent Company failed and neglected to make the payment of balance outstanding amount of Rs.6,13,174/- due and payable to the Petitioner.
12. The Petitioner state that as on 15.10.2015, a sum of Rs.6,13,174/- being the principal amount due and payable by the Respondent Company to the Petitioner besides interest @ 24%. The Petitioner state that the Respondent Company is liable to pay to the petitioner a sum of Rs. 8,51,052/- inclusive of interest as on 15.10.2015.
13. The Petitioner state that since the Respondent company inspite of having been due and payable the aforesaid sum of money, failed to pay the money the Petitioner through their Advocates sent a statutory notice dated 15.10.2015, under low Sections 433 and 434 of the Companies Act, 1956 at the registered office of the Respondent Company, interalia calling upon them to pay the outstanding amount of Rs.8,51,052/. (Rupees Eight Lacs Fifty One Thousand Fifty Two Only) together with further interest thereon at the rate @ 24% per annum on the principal amount till payment and / or realization within the statutory period of 21 days from the date of the receipt of the Notice ("the statutory Notice") as provided under the Companies Act. The petitioner informed the Respondent Company that in the event of failure to make payment of the Claim Amount within Notice period, the Petitioner, would be constrained to initiate winding up proceedings against the Respondent




Company. The said Notice also categorically states that the same be read as a statutory notice under the provisions of Sections 433 and 434 of the Companies Act, 1956, Hereto annexed and marked "Exhibit 'B' is the copy of the said Statutory Notice dated 15.10.2015, issued by the Petitioner's Advocate to the said Company.

14. The Petitioner state that the said Notice was sent to the said Company via Speed Post A.D. The statutory Notice dated 15.10.2015 sent by the Petitioner was received by the said Company on 17.10.2015, Here to annexed and marked Exhibit "C" is the copy of the Postal Acknowledgement Card indicating delivery of the statutory Notice upon the Respondent Company / that the said Company has received the statutory Notice on 17.10.2015. The aforesaid Statutory Notice period lapsed on 07.11.2015.
15. The Petitioner state that as on 15.04.2016, a sum of Rs.10,00,089/- is due and payable by the Respondent Company towards principal & interest. The Petitioner state the Respondent Company is liable to pay a sum of Rs 3,86,915/- towards interest @ 24 % p.a. from 18.02.2015 to 15.04.2016. As on 15.04.2016, an aggregating sum of Rs 10,00,089/- is due and payable by the Respondent Company towards principal & interest. The Respondent Company had failed and neglected to discharge its contractual obligations to the Petitioner. Here to annexed and marked Exhibit "D" is the copy of the Respondent Company's Ledger account reflecting various debits and credit entries in the Books of Account maintained by the Petitioner.
16. In the circumstances the Petitioner states that the Respondent Company is unable to pay its debt of Rs.10,00,089/- (Rupees Ten Lacs Eighty Nine only). The Respondent Company is deemed unable to pay its debts and therefore can be considered as commercially insolvent. The Petitioner further submits that the Respondent Company is unable to discharge its liability in the course of its business.

- 
17. The Petitioner states that the said Company has never disputed about the Civil Labour work carried out by the petitioner as per the work order.
 18. The Petitioner, therefore, says and submits that a sum of Rs.6,13,174/- (Rupees Six Lacs Thirteen Thousand One Hundred Seventy Four Only) towards the principal and interest a sum of Rs. 3,86,915/- is due towards interest @ 24 % p.a. till 15.04.2016 totalling to a sum of Rs 10,00,089/- is due and payable by the said Company to the Petitioner along with further interest @ 24% till payment and realization more particularly set out in the Particulars of Claim. Hereto annexed and marked as "Exhibit E" is the copy of the said particulars of claim.
 19. The Petitioner state that the Respondent Company is unable to pay its debts within the meaning of section 433 (e) and 434 of the Companies Act, 1956 and therefore it is just and proper that the said Respondent company shall be ordered to be wound up under the provisions of the Companies Act, 1956.
 20. From the charges file maintained with the Registrar of Companies it is found that the Respondent Company has created several charges in favor of financial Institutions and Banks for several lakhs of rupees. None of these charges have till date been satisfied.
 21. The Petitioner state that the Respondent Company is not in a position to meet its financial commitments as and when they arise. The Respondent Company appears to be in an insolvent condition. The Substratum of the Respondent Company appears to have been lost. The Petitioner submits that the Respondent Company is, therefore, even otherwise unable to pay its debts.
 22. The Petitioner therefore submits that with a view to ensure that the financial conditions of the Respondent company does not further deteriorate and / or its assets are not disposed of as also to ensure that all the creditors of the Respondent company including the petitioners receives their dues, it is just and equitable and in the

interest of justice that the Respondent company be ordered to be wound up under the directions of this Hon'ble Court.

23. The Petitioner submits that it is also just proper and necessary that this Hon'ble Court be pleased to direct the appointment of the Official Liquidator, High Court, Bombay or some other competent person as the Liquidator in respect of all assets, business, bank accounts, properties and books of account of the Respondent Company.
24. The Petitioner further submits that in order to safeguard and protect the interest of all the creditors including the Petitioner, it is just equitable and necessary that pending the hearing and final disposal of this Petition, the Official Liquidator, High Court, Bombay, be appointed as the Provisional Liquidator of the Respondent Company together with all the powers under the provisions of the Companies Act, 1956.
25. The Petitioner submits that it is also just, equitable and necessary that pending the hearing and final disposal of the present petition, the Respondent company itself its servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner dealing with, disposing of or parting with possession, alienating, transferring, selling and encumbering of any of its assets or properties or creating any third party rights so as to prejudice the interest of the creditors including the Petitioner.
26. The Petitioner further submits that unless the ad-interim and interim reliefs as prayed for herein are granted, grave and irreparable harm, loss and injury will be caused to the creditors including the Petitioner, where as if the reliefs as prayed for are granted no hardship, harm and prejudice will be caused to the Respondent Company. On the contrary, it would be in the interest of the general body of the creditors that the business and affairs of the Respondent Company be forthwith handed over to the Official Liquidator as the Provisional Liquidator so as to ensure the protection and preservation of the assets.

- 
27. The Petitioner states that in spite of repeated demands with regards to the said outstanding amount, the Respondent Company has not bothered to fulfill its obligation of making payment to the Petitioner and has completely failed and neglected to make the payments in respect of the said Civil Labour Work carried out as per the said work order.
 28. The Respondent Company has issued work order though Letter of Intent to the Petitioner and Petitioner has accepted the said work order at their Registered office situated at 32/33, Gopal Bhuwan, 199, Princess Street, Mumbai. The said work order is executed at Vasant Lawn Building at Thane, hence, this Hon'ble Court has, exclusive jurisdiction under the Companies act, 1956 to try and entertain this Petition.
 29. The Petitioner state that as per online case status, there is no reference pending before B. I. F. R. or A. A. I. F. R. against the said Company.
 30. The Petitioner state that as per computer record there mand are two Petitions bearing Company Petition No. CP/115/2016 and CP/120/2016 are pending against said Company at pre-admission stage, hence this Petition is maintainable.
 31. The Petition is affirmed by Arvind Ramjor Yadav, director of the Petitioner company duly authorized vide Board Resolution dated 10.07.2015, who is conversant with the facts of the case, has signed and verify present petition with a Leave under Rule XXI of the Companies (Courts) Rule, 1959. Hereto annexed & marked exhibit-F is the Copy of Board Resolution.
 32. The Petitioner state the Respondent Company issued the said Letter of Intent on 20.11.2014, the Petitioners have carried out the said Civil Labour work in February, 2015, Therefore, the present Petition is in time as prescribed.
 33. The Petitioner have paid the fixed Court Fees of Rs.200/-.
 34. The Petitioner will refer to and rely upon a list where of is annexed herewith.



4) The Corporate Debtor filed affidavit in reply of Mr. Rajendra C. Bajaria, an authorized signatory of the Corporate Debtor opposing the admission of the above Company Petition. The important paras in the affidavit in reply filed by the Corporate Debtor are extracted hereunder for ready reference:


3. I further say that the Operational Creditor has filed Reply dated 27th January, 2018 to the Notice of Dispute through their Letter dated 27th January, 2018. And it was only through this Letter dated 27th January, 2018 it was informed first time by the Operational Creditor to the Respondent Company that the captioned matter is kept for AR hearing for the first time only on 31st January, 2018. On 31st hearing on 31st January, 2018. The captioned matter has come up January, 2018 one of the Law Officer of the Respondent Company TRA F INDIA appeared before this Hon'ble Court but however this Hon'ble Court did not permit the said Law officer to make any statement. Even the Advocate for the Operational Creditor sought date to file compilation of documents. Then the captioned matter was adjourned to 23rd February, 2018.

6. I say that I am filing the present affidavit in reply to the said company petition No. 293 of 2016 as well as to the said Application. The said Petition is now renumbered as Transferred Company Petition No. 185 of 2017. The present affidavit in reply be treated as the reply to both, the said Company Petition No. 293 of 2016 as well as to the said Application which is now renumbered as Transferred Company Petition No. 185 of 2017. The present affidavit in reply is filed for opposing the admission of the petition as well as the Application filed by the Operational Creditor to initiate corporate insolvency Resolution Process. The present affidavit in reply is also filed for opposing the appointment of any Insolvency professional. I reserve the right of the

respondent Company to file a detailed affidavit in reply, if required.


10. I say that the Operational Creditor has suppressed the material and true facts and has approached this Hon'ble Court with unclean hands. I say that the relevant and brief facts of the matter are as under:

- b) Pursuant to the aforesaid Work Orders the Operational Creditor has raised Invoices/Bills upto around Rs. 16,42,857/- (Rupees Sixteen Lakhs Forty Two Thousand Eight Hundred Fifty Seven). The Respondent has paid more than 60% of the amount to the Operational Creditor against the total Invoice of Rs. 16,42,857/- for the partly work done by the Operational Creditor. Further The Respondent has debited certain amount for the defects caused by the Operational Creditor and has also debited liquidated damages for delay and incomplete work. The Respondent hence dispute the amount of Rs. 6,13,174/- being balance outstanding and or sum of Rs. 7,90,888/- towards interest @ 24% p.a. for any delay payment. The Respondent also denies and dispute that the Operational Creditor has raised Tax Invoice bearing No. AB/SDPL/003/RA- 2 dated 17.02.2015 for a sum of Rs. 15,95,374/- as alleged.
- c) The Respondent Company dispute the entire claim amount mentioned by the Operational Creditor in the Application, Legal Notice as well as in the Demand Notice for the reasons mentioned herein below. The Respondent further state and submit that the Operational Creditor did not carry out the work as per specifications mentioned in the said Work Orders and provided defective work by providing poor workmanship in the said Project which has hampered the quality of the work due to which The Respondent has incurred huge loss. I further says that the Operational Creditor has not only provided poor



workmanship but also left the work incomplete. I further say that the Operational Creditor has not completed the work which was assigned to him through the said Work Orders/Letter of Intent/Articles of Agreement. I says that The Respondent has to helplessly carry out rectification work from other third party agencies. I says that The Respondent is not raising this issue for the first time but The Respondent has brought to the Operational Creditor's notice about his poor workmanship and defective work since February, 2015 i.e. after 2 months from the date of the main Work Orders.

- d) From February 2015 the Operational Creditor started carrying out unsatisfactory work. In the month of February, 2015 the Operational Creditor started carrying out concreting work for 16th Slab for Block No. 2.
 - e) In the month of February 2015 the Operational Creditor started work of casting of 16th Slab and 15th Floor roof & wall. When the work of the Operational Creditor was checked by the Quality incharge person of The Respondent, the work of the Operational Creditor was found unsatisfactorily.
 - f) Somewhere in the month of February, 2015 the Operational Creditor has failed to remove the existing Mivan shuttering at 17th Floor for Vasant Lawns- Block 2 despite giving intimation by Site incharge person of The Respondent. But the Operational Creditor ignored the intimation and did not remove the existing Mivan shuttering at 17th Floor. Further to say that The Respondent has to carry out the said work of the Operational Creditor from other third party agency and incurred additional expenses. The Respondent has to debit the amount of Rs.2,31,967/- from the Operational Creditor's account for the work left by the Operational Creditor.
13. I say that when the Notice of Dispute was sent, at that time the total amount debited was showing as Rs. 2,68,115/- (Rupees Two



Lakhs Sixty Eight Thousand One Hundred Fifteen Only) from the Operational Creditor's account for the additional expenses incurred by the Respondent for rectifying the defects of the Operational Creditor. I further say that as per latest Ledger details of the Respondent Company there are no dues pending to be given to the Operational Creditor. I say that as per Clause No. 32 of the said Work Orders the Respondent Company is entitled to deduct Liquidated Damages and penalties from the dues for delay and incomplete work. I crave leave to refer and reply upon the Ledger details of the Respondent Company as and when produced.


25. With reference to Para No. 13, I deny that since the Respondent Company in spite of having been due and payable the aforesaid sum of money, failed to pay the money the Petitioner through their advocates sent a statutory notice dated 15.10.2015 u/s, 433 and 434 of the Companies Act, 1956 at the registered office of the Respondent Company, inter alia calling upon them to pay the outstanding amount of Rs.8,51,052/- together with further interest thereon @ 24% p.a. on the principal amount till payment and/or realization within the statutory period of 21 days from the date of receipt of the notice ("the statutory notice") as provided under the Companies Act. I deny that the Petitioner informed the Respondent Company that in event of failure to make payment of the claim amount within notice period, the Petitioner, would be constrained to initiate winding up proceedings against the Respondent Company. I further deny that the said notice also categorically states that the same may be read as the statutory notice under the provisions of S. 433 and 434 of the Companies Act, 1956.
43. The Operational Creditor is very much aware that there is an Arbitration Clause in the main Work Orders. The Respondent invokes Arbitration Clause as mentioned in the main Work Orders. The Respondent wants to appoint an Arbitrator.

OBSERVATIONS & FINDINGS

- 5) From the careful reading of the affidavit in reply filed by the Respondent, the only issue that needs to be determined in the above petition is:
- I. *Whether there exist pre-existence disputes between the parties?*
 - II. *The above Company Petition is liable to be dismissed on the ground of pre-existing dispute?*
- 6) Heard Ms. Leena Sapra, counsel appearing for the Petitioner and Mr. Vikramaditya Deshmukh, counsel appearing for the Respondent and perused the record.
- 7) As mentioned above the Corporate Debtor filed lengthy reply containing 23 pages along with certain emails and copies of quality certificates as annexures. Upon perusal of the entire affidavit in reply one can clearly understand that the entire affidavit in reply filed by the Corporate Debtor is nothing but general denial without any much legal substance. In addition to the above, the Operational Creditor issued a Statutory Notice on 15.10.2015 to the Corporate Debtor calling upon him to pay the outstanding "Operational Debt". The Operational Creditor has also filed the postal acknowledgment along with the postal receipt proving service of notice on the Corporate Debtor. As there was no response from the Corporate Debtor despite receiving the Statutory Notice, the Operational Creditor filed a Company Petition bearing No. 293 of 2016 on the file of Hon'ble Bombay High Court on 16.04.2016 which was subsequently transferred to this Tribunal. The Corporate Debtor for the first time responded to the Demand Notice by issuing Notice of Dispute on

15.11.2017. Neither the Petitioner nor the Corporate Debtor filed copy of the alleged Demand Notice dated 01.11.2017.

- 8) As stated above the contention of the Corporate Debtor is that the Operational Creditor has not completed the civil works to the satisfaction of the Corporate Debtor and there are certain quality defects in the civil works executed by the Operational Creditor. In order to establish the said fact, the Corporate Debtor has annexed quality certificate for billing dated 17.02.2015 wherein it has been certified that the work has been checked and found satisfactory. However certain minor defects of leakage were mentioned in Part 'C' and certain jobs to be completed in Part 'B'. The Corporate Debtor did not produce any evidence before this Tribunal to show that the above defects were not completed by the Operational Creditor nor the Corporate Debtor cancelled the work order.
- 9) The Corporate Debtor further contended that the Operational Creditor failed to remove the Mivan shuttering as a result of which the Corporate Debtor got it removed through some other contractor. However, no proof for the payment made to the alleged contractor through whom the Corporate Debtor got the works done is produced by the Corporate Debtor in this case. The Corporate Debtor relied on certain emails annexed from pages 331 to 340 informing the Operational Creditor regarding certain debitable amounts of Rs. 1250/- incurred by them for breaking the wastage concrete and Rs. 628/- for cleaning work and an amount of Rs. 9246/- for the RCC grinding work done on the site of Vasant Lawns BI-2 16th Floor. The nature of work entrusted to the Operational Creditor is for carrying out civil works on labour basis and whereas the above debits relates to cleaning work and



breaking of wastage concrete. Even otherwise the Corporate Debtor claims to have debited the above amounts and therefore once again cannot complain the deficiency of service and avoid payments to the Operational Creditor on that pretext.

- 10) Even though the Corporate Debtor in Para 13 of his reply mentioned that they crave leave to refer and reply upon the ledger details of the Respondent Company as and when produced to show that there is no amount due and payable to the Operational Creditor from the Corporate Debtor, no such evidence is placed before this Tribunal by Corporate Debtor to show that there is no amount due and payable by them and therefore an adverse inference has to be drawn against the Corporate Debtor.

The Corporate Debtor in their reply denied the issue of Statutory Notice dated 15.10.2015 by the Operational Creditor. However, the Operational Creditor filed the acknowledgment and the relevant postal receipt in proof of delivery of the Demand Notice which clearly shows that the affidavit in reply filed by the Corporate Debtor is nothing but out and out blatant lie.

Thus, viewing from any angle, this Bench is of the considered opinion that the above defence of the Corporate Debtor with regard to the defects in quality of service is a spurious defence that does not require any further investigation.

- 11) The Operational Creditor has successfully proved the existence of the “debt” and “default” in this case. The above Company Petition being filed on 16.04.2016 is within limitation. Thus, the above Company Petition satisfies

all the legal requirements for admission and this Bench did not find any valid reason to dismiss the same.

- 12) Accordingly, this Bench hereby admit the above Company Petition by passing the following:

ORDER

- a. The above Company Petition No. (IB) 185 (MB)/2017 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Seth Developers Pvt Ltd.**
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is hereby appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Umesh Chand Goyal** (goyaluc.ip@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01876/2019-2020/12974 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.1 Lakh towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Shubham

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)