

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. (IB)-408 (ND)/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:**M/S WORXPACE CONSULTING PRIVATE LIMITED****...Applicant****VERSUS****M/S IREO FIVERIVER PRIVATE LIMITED****...Corporate Debtor****Judgement Pronounced on: 13.12.2018****CORAM:****DR. DEEPTI MUKESH****MEMBER (Judicial)****For the Applicant:**

Mr. Akhil Gupta, Advocate

For the Corporate debtor:

Mr. Ramakant Rai, Advocate

MEMO OF PARTIES

M/S WORXPACE CONSULTING PRIVATE LIMITED

Registered office at: D-113, East of Kailash

New Delhi-110065

...Applicant

VERSUS

M/S IREO FIVERIVER PRIVATE LIMITED

Registered office at: 305, 3rd Floor, Kanchan House

Karam Pura Commercial Complex

New Delhi-110015

...Corporate Debtor

JUDGEMENT

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'Code, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Worxpace Consulting Private Limited (for brevity 'Applicant') through its Director, Ms. Nupur Dube, who has been authorized vide Board Resolution dated 12.01.2018, with a prayer for initiation of

Corporate Insolvency process against M/s Ireo Fiveriver Private Limited (for brevity 'Corporate Debtor').

2. The Applicant M/s. Worxpace Consulting Private Limited, having CIN U74140DL2003PTC118834, is a company incorporated under the Companies Act, 1956 having its registered office at D-113, East of Kailash, New Delhi-110065.
3. The Respondent M/s. Ireo Fiveriver Private Limited is a company incorporated on 08.03.2007 under the Companies Act, 1956 having its registered office at 305, 3 Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015 and CIN U45200DL2007PTC160318.
4. The Authorised share capital of the Corporate Debtor is Rs. 77,50,00,000/- and Issued, Subscribed and Paid up share capital of the company is Rs. 68,46,25,830/-.
5. It is the case of the Applicant that during the course of business M/s Worxpace Consulting Private Limited has agreed to provide its consultancy services for the internal roads-planning & design services at its integrated township project located at Panchkula, Haryana in terms of the consultancy agreement

dated 09.08.2010. Thereafter, the applicant started rendering its services to the CD.

6. The parties thereafter entered into three supplementary agreements on 22nd December 2010(First Supplementary Agreement), 1st April 2013(Second Supplementary Agreement) and 8th August 2013 (Third Supplementary Agreement), amending certain clauses of the agreement.
7. The applicant provided regularly its professional services to the CD and raised various invoices and last invoice raised dated 01.09.2015 against the CD for the payment of services rendered is Rs.7,52,400/-. Though there is no written reminders but the appellant states that various oral reminders were made to CD for payment of said dues unpaid.
8. The applicant on 28.11.2017 sent a demand notice under section 8 of I & B Code, 2016 seeking payment of its dues. The CD had not replied to the said notice. Hence, the Operational Creditor filed this application.
9. The CD has replied vide to the application dated 26.07.2018 by admitting the default as follows:

“The CD is in financial distress and would be greatly aided by corporate restructuring. The CD while being cognizant of its current financial situation, believes that the best interests of all stakeholders will be best served if it were allowed to restructure”.

10. The CD has further relied upon the judgment of Hon’ble National Company Law Appellate Tribunal in the matter of *Prowess International Private Limited Vs. Parker Hannifin India Private Limited*, Company Appeal No. 89 of 2017, has held as under:

“It is made clear that insolvency resolution process is not a recovery proceeding to recover the dues of the creditor. I & B Code, 2016 is an act relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balances the interest of all stakeholders including the government dues.....”

Thereby pleading that the present application is merely recovery against the CD and as such it should not be allowed.

11. The CD had further stated that the applicant has suppressed the fact that in terms of the agreement, it has recourse against the CD under clause 16 of the agreement. Clause 16 is reproduced below as:

“16. Settlement of disputes

In the event of any dispute(s) or difference(s) and/or claim(s) between the parties arising out of this agreement or in relation thereto, during the subsistence of this agreement or thereafter, in connection with the validity, interpretation, implementation or alleged breach of any provision(s) of this agreement or regarding any question(s), including the question as to whether the termination of this agreement by one party has been legitimate or otherwise, the parties shall endeavor to settle such dispute(s) amicably.

In the event no amicable resolution or settlement is reached between the parties within period of 30(thirty) days from the date of notice being served by either party upon the other that a dispute or difference had arisen, such dispute or difference shall be referred to arbitration of a sole arbitrator to be appointed mutually by the parties. In the vent the parties fail to agree on the appointment of as sole arbitrator, then the dispute or difference shall be referred to a panel of 3 arbitrators, each party to appoint

one arbitrator and the third arbitrator to be appointed by the arbitrators so appointed.

The existence of any dispute or difference or the initiation of continuance of the arbitration proceeding shall not postpone or delay the performance by the parties of their respective obligations pursuant to this agreement.

The arbitration proceeding shall be held as per the provisions of the [Indian] Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereto for the time being in force.”

The clause above makes it clear that in case of dispute, alternate remedy available under the agreement has to be availed. It is submitted that the applicant, despite having the option of amicable resolution vide arbitration, is inappropriately using this forum for recovery of its dues from the CD.

12. The CD further submitted that the inability of the CD to settle the dues of the applicant arose due to the liquidity crisis, suffering due to the development of the project being stalled.

13. It is further submitted by the CD that the requisite approvals for the project from various governmental

authorities were delayed and the CD was directed to take additional approvals and/or NOC from irrigation department, competent authority national board for wildlife, state environment impact assessment authority, Haryana. The CD further states that there was interim order by the Hon'ble Supreme Court for stopping the construction and development projects applicable to Chandigarh, Haryana jurisdiction which further led to delay in executing project.

From the above, it is evident that the process of grant of approvals for the Project was stalled at many stages. Due to the delay in commencement of the Project, the CD has suffered the liquidity crises, and is unable to pay its debts.

14. It is further submitted by the CD that apart from its liability to pay to the plot buyers/home buyers, the CD has a huge loan from HDFC Bank and there have been defaults in payment of interest on the loan from HDFC bank, and this inability to settle the dues of the Applicant and HDFC

Bank, arose due to the liquidity crisis suffered by the CD because of reasons and delay faced by it. It is submitted that the assets of the Corporate Debtor are far in excess of its liabilities, which is supported by annexing the recent balance sheet of the CD. The liquidity of the assets are sufficient to adequately settle the dues of the homebuyers and thus CD as on date is not insolvent but only trapped in liquidity crisis.

15. The applicant filed a rejoinder stating that there is a clear admission on the part of the CD that it is in financial distress due to which the CD is not able to clear the dues of the secured and unsecured creditors including the OC.
16. The applicant has further stated that Operational Creditor has completed its work upto the stage of "Completion of Construction Stage (GFC Drawings)" and submitted the same to the Corporate Debtor in a time bound manner and as per the scope of work outlined in the agreement dated August 09, 2010 and as amended from time to time by virtue of supplementary agreements. Further, no work is

being left pending on behalf of the OC, till the stage it raised the invoice dated September 01, 2015. The OC did not raise any further invoice as the CD failed to commence the construction work of the project in question.

17. It is stated by the applicant that the OC is only claiming the amount till the stage it completed its part of obligation under the agreement. It is further stated that the CD admitted that it had received the GFC drawings from the OC but had vaguely stated that the OC did not submit the correct drawings to the CD in spite of communicating the same. It is stated that for the first time the CD has raised the plea of corrections in the GFC drawings. It is once again submitted that there was no communication, with respect to the corrections and comments, received by the OC from the Corporate Debtor. Further, the CD is contradicting its own stand as on one hand it is submitting that it had not received any GFC drawings and on the other hand, states that it had communicated the corrections and comments on the GFC drawings to the

Operational Creditor and has not received the correct drawings falsely endeavoring to create a pre-existing dispute to escape from the clutches of the I & B Code, to which no correspondences or any other documentary evidence is placed on record. In order to avoid its debt, the CD is making false plea with a malafide intentions while withholding the pending legal dues of the OC.

18. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
19. The default in payment of operational debt owned and debt became payable from the date of the invoice dated 01/09/2015 raised by the Applicant. The OC send demand notice under section 8 of I & B Code, 2016 on 28.11.2017 and CD replied and admitted the default in their reply dated 26.07.2018. Hence, the claim of the applicant is within limitation and the debt is not time barred.

20. In the given facts and circumstances, the Applicant is entitled to claim its dues which remain un-controverted by the Corporate Debtor, due to failure in establishing any pre-existing dispute, the default in payment of the operational debt beyond doubt. Hence, the present application deserves to be admitted.
21. Applicant has named the Interim Resolution Professional (IRP), as Mr. Kanwal Chaudhary having registration number IBBI/IPA-002/IP-00131/2016-17/1243 ([email-kanwalchaudhary@gmail.com](mailto:kanwalchaudhary@gmail.com)), Mobile No. -9810050567 duly registered with Insolvency and Bankruptcy Board of India, who is appointed as the Interim Resolution Professional, whose certificate of registration is also annexed with specific consent filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 making all disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. As a sequel to above, the application is admitted in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:

- 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.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) 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.

*(3) The provisions of sub-section (1) shall not apply to—
a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.*

b. a surety in contract of guarantee to a Corporate Debtor.

23. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under

sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

24. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)