

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.202  
TP 199 of 2019 [CP(IB) 424 of 2019]

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Ramdev Infra

.....Applicant

V/s

CMM Infraprojects Ltd

.....Respondent

**Order delivered on 15/12/2022**

**Coram:**

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

Sd/-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

**DR. MADAN B. GOSAVI  
MEMBER (JUDICIAL)**

Braj Mohan

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH**

**CASE NO: TP 199 of 2019  
[CP (IB) 424 of 2019]**

***[An application under Section 9 of the Insolvency and  
Bankruptcy Code, 2016]***

**In the matter of:**

**Ramdev Infra**

102, Nayapura,  
Aerodrome Road Indore,  
Madhya Pradesh, 452 005

---- Operational Creditor

**VERSUS**

**CMM Infraprojects Limited**

108, Shalimar Corporate Centre,  
8-B, South Tukoganj  
Indore Madhya Pradesh, 452 001

---- Corporate Debtor

**Order Reserve Date: 17.11.2022**

**Pronounced on: 15.12.2022**

**Coram:**

**Dr. Madan B. Gosavi, Member (Judicial)**

**Kaushaslendra Kumar Singh, Member (Technical)**

**Advocate who appeared in this case:**

For Operational Creditor: Ld. Adv. Mr. Vikash Rathi

For Financial Creditor: Mr. Priyank S. Dave

**ORDER**

1. The instant application is filed by M/s. Ramdev Infra operational creditor through its Company Secretary PCS Manju Mudra under section 9 of the Insolvency and Bankruptcy Code 2016 ('the code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating of Corporate Insolvency Resolution Process (CIRP)

against M/s CMM Infra projects Limited (corporate debtor). The amount of debt in default is stated to be Rs 1,65,30,653/- (One crore sixty-five lakhs thirty thousand six hundred fifty-three only).

2. The operational creditor is an unregistered partnership firm having its identification No PAN: AAQFR1052D, its registered office is at Ramdev Infra 102, Nayapura, Aerodrome Road, Indore (Madhya Pradesh).

3. The corporate debtor is a public limited company listed in the National Stock Exchange Mumbai, incorporated under the provision of the Companies Act, 1956 bearing its CIN No. L45201MP2006PLC018506 and having its registered office at 108, Shalimar Corporate Center 8 – B, South Tukoganj, Indore Madhya Pradesh. The Nominal Share Capital is Rs 16,00,00,000/- and the Paid-Up Share capital is Rs 15,67,32,600/-.

4. The averments made by the Operational Creditor in its application and presented/argued by the learned counsel are summarised hereunder:

i. The corporate debtor had entered into an agreement on 01.10.2015 duly signed by the corporate debtor and operational creditor on 03.12.2015. Whereby the operational creditor had agreed to undertake to execute the entire work as allotted to the corporate debtor by MPPWD, PIU Ujjain in respect of the upgradation of 100 bedded Civil Hospital at Badnagar, District Ujjain including electrification work with CMM Infra Projects Limited, a public limited company listed in NSE Mumbai under SME platform having audited turnover of Rs 233.61 Crores as per the balance sheet for the year ended 31.03.2018.

ii. The operational creditor is in association with the corporate debtor Since 2013 and maintained a running account vide letter dated 15.02.2019, clearly confirming that there were no faults whatsoever in the nature of the operational creditor in the execution of work. As per the agreed terms with the corporate debtor, the operational creditor executed work from time to time and subsequently raised the invoices as and when required.

iii. The corporate debtor has been availing services from the operational creditor for more than six years. Also had received

the payment from the party for whom the work was executed. But the financial crisis of the corporate debtor was so deep-rooted that he did not deposit TDS for the financial year 2017-2018. Despite the receipt of the said invoices, he failed to make payment of the due amounts and the debt due arising from the regular transactions.

iv. During this period, the corporate debtor issued three cheques without the arrangement of funds to honor partial operational debt but the cheques were returned unpaid by the corporate debtor bank i.e., Dena Bank for insufficiency of funds, and the account was blocked.

v. The operational creditor has sued the corporate debtor under Section 138/141 of N.I. Act for the efficacy of the banking system in respect of cheque No 036999 dated 20.11.2018 for Rs 55,00,000/-. The operational Creditor had also registered a case Vide No. MP 09010281802019 at Indore and the remaining two cheque process is underway.

vi. The operational creditor due to the financial crisis of the corporate debtor could not continue the work and informed corporate debtor of its inability to further invest the amount till the operational debt is fully paid.

vii. In spite of several requests, the corporate debtor failed to honor the commitment since 28<sup>th</sup> May 2018. The ledger account of operational creditor M/s Ramdev infra in the books of the corporate debtor M/s CMM Infra Projects Ltd. confirms and exhibits a credit balance of Rs 1,38,95,561/- up to 24.12.2018.

viii. Despite constant follow-ups and reminders the corporate debtor failed to meet its commitments and paid no heed to the requests of the operational creditor and therefore, the operational creditor finally sent a Demand Notice under Section 8 of the Code on 03.05.2019 through speed post to their respective address and the same was also sent through email on 03.05.2019.

ix. Following that the operational creditor has preferred the present petition under Section 9 of the IBC.

5. In the context, the defence placed by Mr. Kishan Mundra director of the respondent corporate debtor in its affidavit in reply

and submissions made by them and as presented and argued by the learned counsel are as follows:

i.) It is stated that the petition is filed by the unregistered partnership firm on the basis of the contract dated 01.10.2015, which in itself is not permissible as per section 69(2) of the Indian Partnership Act, 1932.

ii.) The Hon'ble National Company Law Tribunal, Chennai Bench also observed that the claim of the operational creditor was held inadmissible as the partnership firm was unregistered.

iii.) The operational creditor being an unregistered partnership firm entered into a contract dated 01.10.2015 with the corporate debtor is void ab initio. The operational creditor on the basis of the contract dated 01.10.2015 cannot file the petition.

iv.) It is stated that the alleged demand notice dated 03.05.2019 was issued through Mr. Pradeep Agrawal, claiming to be an authorized person of the operational creditor, but there is nothing on record to substantiate that he was authorized to issue the alleged demand notice.

v.) Board resolution dated 23.05.2019 was passed after the date of issuance of the alleged demand notice served upon the corporate debtor and was not accompanied by board resolution nor by any authorized letter. The provisions of IBC 2016, also stated that Mr. Pradeep & CS Ms. Manju Mudra had no authority to issue the demand notice and initiate any proceedings against the corporate debtor and so the demand notice dated 03.05.2019 was without any valid authorization and shall be constructed to be defective.

vi.) The operational creditor has failed to produce any affidavit of no dispute in accordance with section 9 (3) (b), of the IBC 2016, therefore, the present application is liable to be rejected on grounds of being incomplete and defective.

vii.) It is also stated that the operational creditor has failed to state the exact date of default in the form-5 which is very prior to filing any petition for seeking initiation of the Corporate Insolvency Resolution process CIRP. The

application comprises a number of defects therefore, the present application is liable to be rejected.

6. The rejoinder in response to the affidavit in reply filed by the respondent corporate debtor are as follows:

i. The corporate debtor has relied upon Section 69(2) of the Indian Partnership Act, to contend that there is a bar for an unregistered partnership firm to file an application under Section 9, however, the proceeding initiated under Section 9 of the code does not fall under the ambit of Section 69(2) of the Partnership Act, applies to suits and, therefore, cannot apply to proceedings under the IBC, as proposed in the case of ***M/s. N.N. Enterprises Vs. Relcon India Projects Limited*** CP(IB) 3980/MB/C-Iv/2018 vide order dated 01.01.2020.

ii. The operational creditor denied the content of the reply from Para-7 to 12 and submits that as per Clause 20 of Section 5 of the IBC code, the operation creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. Hence, there has been no default within the meaning of IBC, 2016.

iii. The operational creditor had got itself registered with the registrar of the firm in the name of Ramdev Infra Bearing Registration No. 03/27/01/0014/20, the year 2020-2021 dated 29.06.2020 and the applicant creditor had specifically authorized its partner Mr. Pradeep Agarwal Resolution dated 01.04.2019 to issue demand notice to the respondent under Section 8 of the code for the due payment. The issue was raised by the respondent debtor. Hence, it became necessary to file true copy of the resolution dated 01.04.2019.

iv. The contention of the corporate debtor that the application of the applicant is defective per se is bereft of any merits and is completely denied, as the document clearly reflects that Mr. Pradeep Aggarwal partner of the applicant creditor firm was duly authorized to issue the demand notice issued to the respondent debtor and to swear the affidavit in support of the application under Section 9 of the Code.

v. The corporate debtor has taken objection in Para 18 of the reply, that the authorization resolution by the partners of the operational creditor in favour of CS Ms. Manju Mudra was given after the issuance of the demand notice. Such objection is frivolous and baseless, in light of the fact that the operational creditor authorized its partner, Mr. Pradeep Aggarwal, with a resolution dated 01.04.2019, where the authorization resolution is in favour of Ms. Manju Mudra dated 23.05.2019, for filing and prosecuting the application under Section 9 of the Code.

vi. The operational creditor denies the allegation made in Paragraph 26 of the reply as per part 4 of Form-5 Under Rule 6 of IBC regarding the amount claimed to be in default and the date on which the default occurred, the date of default is 24.12.2018 as mentioned in Form-3 and attached as Annexure-2.

vii. The corporate debtor has defaulted another creditor also namely Quippo Infrastructure Limited under section 5 of the code and the same was admitted vide order dated 02.11.2020, passed in TM/MP/197 of 2019 in CP (I.B) No. 66/9/NCLT/AHM/2019 showing the testimony of the bankrupt condition of the corporate debtor. That the various defaults committed by the corporate debtor even in other projects, due to insufficiency of funds the MPPWD had blacklisted the corporate debtor order dated 31.05.2019.

viii. The letter issued by the Income Tax department on 09.10.2019 for the due TDS amount the corporate debtor submitted that its bank account has been attached by the bank (due to NPA proceeding) and such reply reflects that the corporate debtor was in financial stress as admitted by it in the letter dated 15.02.2019.

7. We heard the learned counsels appearing for both sides. We have perused the relevant records. It is noted at the first glance that the corporate debtor has failed to make payments of the debt due and payable even after admission of liability. The claim made by the operational creditor is found to be correct. Hence, following the same, we hold that debt is not barred by limitation. The name of IRP has not been proposed which is not mandatory in case of an application filed under Section 9 of IBC, 2016. Hence, we shall

appoint an IRP from the list approved by IBBI. The petition is otherwise complete and defect-free.

8. As per section 2(f) provisions of IBC code applies to the partnership firm either registered or unregistered as per section 6 IBC financial creditor , operational creditor or the corporate person can initiate CIRP and after operational creditor of 5(20).....of person 3(23) , it is .....unregistered partnership firm can initiate CIRP.

9. In view of the above discussion, we admit this application and order as under:

### **ORDER**

1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
  - (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 Securitisation 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.*
2. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

3. The operational creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. CA Naveen Khandelwal having Registration No: IBBI/IPA-001/IP-P00703/2017-2018/11301 and having Email Address:navink25@yahoo.com** to act as an IRP under Section 13(1) (c) of the CODE.
4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with corporate debtor, its promoter, or any other person associated with the management of the corporate debtor are under a legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate. IRP is at liberty to make an appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
5. This Adjudicating Authority directs the IRP to make public announcements of initiation of the Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.
6. It is further directed that the supply of goods/services to the corporate debtor company, it continues, shall not be terminated or suspended or interrupted during the moratorium period.
7. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a

part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The operational creditor is directed to pay an advance of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

8. The Registry is directed to communicate a copy of this order to the operational creditor, the corporate debtor and to the Interim Resolution Professional, and the concerned Registrar of Companies, after completion of necessary formalities, within twelve working days.s
9. Accordingly, TP 199 of 2019 in CP (IB) No. 424/9/NCLT/2019 is allowed.

**-SD-**

**KAUSHALENDRA KUMAR SINGH**  
**Member (Technical)**

**-SD-**

**Dr. MADAN B. GOSAVI**  
**Member (Judicial)**

*Surbhi - LRA*