



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 520/Chd/Hry/2019

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Ramesth Constructions Private Limited

having its registered Office at
B-270, 2nd Floor North Ex Mall,
Sector-9 Rohini
Delhi-110085

...Petitioner-Operational Creditor

Vs.

ELDECO Infrastructure and Properties Limited

having its Office at
Shop No.S-16, Second Floor,
Eldeco Station 1, Site No. 1,
Sector-12, Faridabad-121007
CIN No. U74899HR2000PLC043893+

...Respondent-Corporate Debtor

Judgement delivered on: 10.02.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-

Operational Creditor : Mr. Pulkit Goyal with Mr. Pranjal Chauhan,
Advocates

For the Respondent-

Corporate Debtor : Mr. Vijay Kaundal



Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Ramesh Constructions Private Limited** through its Authorized Signatory Mr. Anup Gupta, Director, (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **ELDECO Infrastructure and Properties Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, ELDECO Infrastructure and Properties Limited, is a Company incorporated on 16.03.2020 under the provisions of the Companies Act, 2013 with CIN No. U74899HR2000PLC043893 with its Office: at Shop No.S-16, Second Floor, Eldeco Station 1, Site No. 1, Sector-12, Faridabad-121007. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure II(d) at Page No. 62-63.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor for the construction of the project approached the respondent. After negotiations, the corporate debtor issued a work order as under:-

- i. Work order No. LoI/EIPL/Panipat (PH-II)/RCPL/SCO (Project)-//Dec./363 Dated December 3, 2014 for the contract value of Rs. 6,60,03,660/-.



- ii. After the issuance of the aforesaid work order, the corporate debtor issued the change order (CO-01) for Rs. 6,30,907/-.
- iii. Thereafter, the second change order (CO-02) was issued for Rs. 6,33,501/- and
- iv. Third and final change order (CD-03) (FINAL DO) dated 04.09.2017 was issued vide email dated 19.04.2017 whereby the contract value was reduced by Rs. 4,42,53,675/-.

The final contract value amounts to Rs. 2,30,14,393/-. The petitioner executed the work and raised the final bill on 01.10.2017 for Rs. 2,62,15,723/- including price variation of raw material and taxes on material plus CGST and SGST. The bill was accepted by Mr. Munish Garg, AGM Projects on 12.10.2017. The petitioner received a total amount of Rs. 2,16,68,088/-. The petitioner raised a debit note for Rs. 2,32,706/- towards reimbursement of excess deduction 1% of Work Contract Tax (WCT) from Running Account (RA) Bills. The corporate debtor was also liable to pay interest on delayed payment @ 18% p.a. amounting to Rs. 11,51,121/-.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 47,80,341/- (Rupees Forty Seven Lakhs Eighty Thousand Three Hundred and Fourty One Only) plus interest on late payment/due amount of Rs. 11,51,122/- (Rupees Eleven Lakhs Fifty One Thousand One Hundred and Twenty Two Only) totaling to Rs.59,31,463/- (Rupees Fifty Nine Lakhs Thirty One Thousand Four Hundred and Sixty Three Only) as on 30.04.2019 and default occurred on 30.11.2017 i.e. the corporate debtor defaulted in making final payment of debt towards final bill dated 01.10.2017 on 30.11.2017 (Affidavit filed vide



Diary No. 00659/7 dated 23.11.2022. The Counter affidavit was filed vide Dairy No. 00659/8 dated 27.12.2022 and was refiled on 03.01.2023 wherein the date of default and debt due as claimed by the operational creditor had been disputed by the Corporate Debtor. Copy of Ledger (Annexure-II(e), work order (Annexure-II(f), change order dated 06.08.2015 (Annexure-II(g), termination letter dated 26.06.2016 (Annexure-II(h), final change order (Annexure-II(i), tender document and agreement dated 01.08.2014 (Annexure-II(j), Bank statement (Annexure-III) is attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 14.05.2019 through registered post (Annexure-I). The corporate debtor submitted its reply dated 29.05.2019 wherein it is stated that there is a pre-existing dispute between the parties whereby both the parties are at loggerhead pertaining to the Project and have submitted their respective claims and counter-claims before the Ld. Arbitral Tribunal, New Delhi.

6. Notice of this petition was given to the respondent-corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No.6565 dated 25.04.2019. The reply was filed vide diary No.00659/1 dated 02.03.2021 wherein it is stated that there exists pre-existing dispute between the parties. Arbitration proceedings are already pending with respect to the tender dated 01.08.2014. The parties entered into an understanding on 01.08.2014 in terms of tender No. EOPL/Panipat(PH-II) villas and floors/Oct-2013. The corporate debtor placed a work order dated 03.12.2014 wherein the operational creditor started delaying the execution of the work order. There are various complaints by



Employee/Workman/Labour/Sub-Contractor of Operational creditor against their pending dues. The corporate debtor is in receipt of summons issued by Ld. Authority of Payment of Wages Act, Panipat dated 09.04.2015 the work order and subsequent multiple change orders were issued by the corporate debtor. The work order mentions that the terms and conditions of the contract will remain unchanged. The scope of the work order was altered vide change order dated 06.08.2015 due to variation in quantity, extra items and price variation, the contract value was increased from Rs. 6,60,03,660/- to Rs. 6,66,34,567/- the price of work order was reduced. The work done by the operational creditor was not up to the mark and the amount sought under the final bill was to be released only after the balance work was complete. The operational creditor failed to rectify defects and undertook work balance due to which the work was done by a third party and the equivalent amount was debited from the running account bill of the operational creditor. The timeline for completion of work under the contract was 02.12.2015 after which grace period was taken by the operational creditor for more than six months in the guise that the same shall be completed. The contract was terminated which had not been disputed by the operational creditor establishing that there is a pre-existing dispute between the parties. The operational creditor sent inflated running account bills and the work claimed was not completed. There is no operational debt due and payable by the corporate debtor

7. The rejoinder was filed vide diary No. 00659/2 dated 07.04.2021 wherein it is stated that the respondent tried to distract from the admitted claim to the pending arbitration proceedings for a different contract, which



has nothing to do with the present matter. The delay occurred due to reasons attributable to the respondent. The labour dispute was due to the fact that the respondent did not pay the petitioner's bill within the contractual time. If it is an umbrella contract dated 01.08.2014, then the change order should have been issued by the respondent as per provisions of Clause No. 5.4.0 of the contract. However, in the present matter, the respondent had executed a separate work order dated 03.12.2014. The short written submissions were filed by the petitioner vide Diary No. 00659/4 dated 29.07.2022 and by the respondent vide diary No. 00659/5 dated 11.11.2022.

7. We have heard the learned counsel for the petitioner and respondent, and have perused the records.

8. The first issue for consideration is whether the demand notice dated 14.05.2019 was sent by the corporate debtor through the registered post, tracking report shows that the demand notice was duly served Annexure-I.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit that the corporate debtor just for the sake of getting rid of its admitted liability, raised baseless objections in its reply dated 29.05.2019 against the unpaid amount. The said reply given was beyond the permitted time of 10 days of the Code. The corporate debtor had not made the payment till date. The objection against the unpaid debt is an afterthought and had been raised by the corporate debtor for the first time and the same had never been raised prior to the demand notice. On date, there is no pending suit/case or proceedings and no record of the dispute in respect of the unpaid debt



between the parties. The same has been acknowledged by the corporate debtor in its communications. The pendency of the arbitration proceeding is not proved to be related to the work order dated 3.12.2014. Therefore, operational debt disputed by the corporate debtor cannot be considered as the debt belonged to the same project.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 14.05.2019 is attached as Annexure-I. However, the period of limitation would begin from the date of default 30.11.2017 i.e. date when the corporate debtor defaulted in making the final payment of debt towards the final bill dated 01.10.2017 on 30.11.2017. The present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 has been filed on 12.09.2019 vide Diary No. 4734. Therefore, this Adjudicating Authority finds that this application is within limitation.

11. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 47,80,341/- (Rupees Forty Seven Lakhs Eighty Thousand Three Hundred and Forty One Only). The operational creditor for the construction of the project approached the petitioner. Copy of Ledger (Annexure-II(e)), work order dated 3.12.2014 (Annexure-II(f)), change order dated 06.08.2015 (Annexure-II(g)), termination letter dated 26.06.2016 (Annexure-II(h)), final change order (Annexure-II(i)), tender document and agreement dated 01.08.2014 (Annexure-II(j)), Bank statement (Annexure-III) is attached with the main petition.



12. It is noted that the corporate debtor has failed to make the remaining payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the rest amount is above the threshold limit of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, ELDECO Infrastructure and Properties Limited. and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

14. In Part-III of Form No.5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. However, vide Dairy No. 00659/9 dated 17.01.2023, IRP is proposed, Form 2 dated 13.01.2023, and Form-B dated 18.11.2022 in which AFA Certification is valid till 17.11.2023 is attached with the affidavit. The Law Research Associate of this Tribunal has checked the credentials of Mr. Alok Kaushik and there is nothing adverse against him. In view of the above, we appoint Mr.Alok Kaushik, Registration No.IBBI/IPA-002/IP-N00253/2017-2018/10767,E-mail:alok_kaush@yahoo.co



[m](#) , Mobile No. 9811470267 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Alok Kaushik shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;



iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also the address of the location of the Books of Accounts maintained in the cloud. In case accounting software for



maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.



vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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 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 the possession of the corporate debtor.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

18. The petitioner is directed to deposit an amount of ₹ 80,000/- (Rupees Eighty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

20. This petition is accordingly admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

February 10, 2023
VN/TB