

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH**

C.P. (IB)715/MB/2021

Under section 8 & 9 of the IBC, 2016

In the matter of

Capacite Infraprojects Limited

Registered Office at: Office 605-607

Shirkant Chambers, Phase- 1

6th Floor, Phase-1, Adjacent to

R.K. Studios, Sion Trombay

Road, Mumbai 4000071

.... Petitioner / Operational Creditor

V/s.

Siddhi Raj Housing Projects Pvt. Ltd.

Rajpipla, Opp. Standard Chartered Bank,

Linking Road, Santacruz (West),

Mumbai-400054.

Respondent/Corporate Debtor

Order Pronounced on 02.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner: Adv. Shyam Kapadia

For the Corporate Debtor: None appeared

Per: - Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company petition is filed by **Capacite Infraproject Limited** (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Siddhi Raj Housing Pvt. Ltd.** (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor had failed to make payment of a sum of Rs. **4,29,90,292/.**

The submissions by the Operational Creditor: -

3. The Applicant/Operational Creditor is engaged in the business of building and construction and specializes in High Rise and Super-High Rise residential and commercial buildings.
4. Around 2016, the Respondent has approached the Operational Creditor for the purpose of availing its services.
5. On 4th February 2016, the Respondent issued a Letter of Intent "**LOI**" in favour of the Applicant/Operational Creditor for the purpose of undertaking the work of construction and development of building "Phase-I, ALTUS" ("**the Project**") in Worli, Mumbai for a contract price of Rs. 46,43,17,967.11/-.
6. On 3rd March 2016, the LOI was mutually amended in terms of the Clause 6 i.e. Payment Clause, the amended clause which reads as under:

Interim Bill: Monthly RA bills shall be raised based upon the achievement of the milestones mutually

*agreed by client/PMC and Contractor and same shall
be certified by client/PMC within 15 days.*

7. Accordingly, the Applicant/Operational Creditor by and under the Contract Agreement dated 30th May 2016 (**'the said Agreement'**), was appointed as contractor by the respondent for construction and development of the Project.
8. In pursuance of the said Agreement, the Applicant/ Operational Creditor mobilized the site and commenced the construction and development of the Project and raised RA Invoices which were duly certified by the Respondent and became due for the payments as per the agreed terms of the Agreement.
9. As per the terms of the said Agreement, payment to the Applicant / Operational Creditor was to be made on Running Account basis within 30 days from the date of raising the RA invoices for the work done by the Applicant / Operational Creditor. The same were duly certified by the Respondent.
10. Thereafter, two Supplementary Agreements dated 1st September 2017 and 26th August 2019 were executed by the Applicant / Operational Creditor and the Respondent in addition to the aforesaid Contract Agreement dated 30th May 2016.
11. The Applicant/Operational Creditor have duly discharged its obligations as per the said Agreement to the satisfaction of the Respondent. The Applicant/Operational Creditor has due to non-payment of its dues also incurred idling machinery cost which the Respondent is liable to pay.
12. After follow up with the Respondent for release of payments, the Respondent vide its letter dated 26th August 2016 admitted and confirmed that the amounts more particularly mentioned its letter dated 26th August 2019 were outstanding and payable to the Applicant/Operational Creditor. The Respondent also assured that

the said amount shall be paid in two equal instalments and against which the Respondent issued two cheques.

13. After several discussion and negotiation between the Applicant/Operational Creditor, the Respondent further acknowledged and agreed upon to make payment towards cost compensation on account of underutilization/idling of site infrastructure facilities and corresponding losses for construction of the said project. The respondent vide its another letter dated 26th August 2019, agreed upon to settle the cost compensation (prior period) at Rs. 1,50,00,000/- (Rupees One Crores Fifty Lakhs only) plus GST, as applicable thereon. The Respondent further agreed that the said cost compensation amount shall be made 5 equal instalments on resumption of work. However, the said cost compensation was not released by the Respondent.
14. In spite of assurance given by the Respondent, just a couple of days prior to the dates mentioned on the cheques, the respondent orally requested the Applicant/Operational Creditor not to deposit the said cheque on 25th September 2019 and requested for an extension. Considering the long-standing cordial relation with the Respondent and timely assurance, the Applicant/Operational Creditor did not deposit the said Cheques.
15. Applicant/Operational Creditor vide its letters dated 10th December 2019 called upon the Respondent to make payment in terms of the Letter dated 26th August 2019 and also called upon the Respondent to make payment towards the Idle Charges against various sources deployed in the project.
16. Further the Applicant/Operational Creditor vide letter dated 20th May 2020, once again called upon the Respondent to release the outstanding payment in terms of the letter dated 26th August 2019. The Applicant/Operational Creditor categorically recorded in that the supplementary agreements that the revised rate mentioned

therein was for further work and only on the assurance made by the Respondent vide two letters both dated 26th August 2019 that the outstanding dues of the Applicant/ Operational Creditor of Rs. 2,82,79,034/- and cost compensation of Rs. 1,50,00,000/- would be released.

17. The Applicant/Operational Creditor vide another letter dated 16th September 2020 once again called upon the respondent to release the outstanding payment in terms of the letter dated 26th August 2019.
18. Since no payments was received from the Respondent, nor did the Respondent made payment towards the outstanding admitted amount, the Applicant/ Operational Creditor was once again constrained to issue another letter dated 19th November 2020, vide which the Applicant/Operational Creditor once again called upon the Respondent to release outstanding payment in terms of letter dated 26th August 2019. But despite that no payment was received.
19. The Applicants/Operational Creditor were constrained to issue Demand dated 26th November 2020 in Form 3 under Section 8 of the Insolvency & Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Applicant to Adjudicating Authority) Rules, 2016.
20. By the said demand notice dated 26th November 2020, the Applicant/Operational Creditor called upon the Respondent and its directors to make payment of the total outstanding amount of Rs. 4,29,90,292 (Rupees Four Crore Twenty-Nine Lakh Ninety Thousand Two Hundred and Ninety-Two Only) and further interest at the rate of 18% per annum till payment and/or realization.
21. Despite receipt of the demand notice the Respondent did not respond to the said demand notice.
22. The Applicant/Operational Creditor states that the aforesaid sum of

Rs. 4,29,90,292/- (Rupees Four Crore Twenty-Nine Lakh Ninety Thousand Two Hundred and Ninety-Two Only) is an operational debt on the part of the Respondent based on the RA Bills and cost compensation amount payable by the Respondent.

23. After receiving the notice, the Corporate Debtor appeared through the Counsel and sought time to file the reply within 2 weeks. However, no reply was filed by the Corporate Debtor despite sufficient opportunity afforded for the purposes.

FINDINGS:

24. We have heard the Ld. Counsel appearing for the Petitioner and perused the records.

25. The present Company Petition has been filed by the Operational Creditor for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Operational Creditor, pursuant to the Agreement dated 30.05.2019, rendered services of construction and development of building "Phase-I, ALTUS" (the Project) in Worli, Mumbai for a contract price of Rs. 46,43,17,967.11/-.

26. The Operational Creditor, thereafter, has issued RA Invoices which were duly certified by the Corporate Debtor.

27. It has been brought to the notice of this Bench that the Corporate Debtor vide letters dated 26.08.2019 admitted and confirmed the outstanding amount of Rs. 2,82,79,034/- and has agreed to settle the compensation at Rs. 1,50,00,000.

28. The Corporate Debtor, despite repeated reminders for making the payment of the outstanding amount, did not make the payment. This necessitated the Operational Creditor to issue a Statutory Demand Notice dated 26.11.2020 to the Corporate Debtor under Section 8 of the Code.

29. The Corporate Debtor, despite receiving the Demand Notice dated 26.11.2020 under Section 8 of the Code, has not responded to the same and has defaulted in making the payment of the outstanding amount due.
30. No reply has been filed by the Corporate Debtor to controvert the averments made in the petition. Therefore, without any plea raised on behalf of the Corporate Debtor, it cannot be said that there was a pre-existing dispute between the parties justifying non payment of the outstanding dues. Moreover, the Corporate Debtor has admitted its liability towards the Petitioner in the letter dated 26.08.2019 in unequivocal terms.
31. From the above discussion, it flows that the petitioner has been able to establish that there has been an operational debt in respect of which the default has been committed by the Corporate Debtor. Even otherwise, the averments made in the petition have not been controverted as no reply has been filed by the Corporate Debtor. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- a. The above Company Petition No. 715/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Siddhi Raj Housing Projects Pvt. Ltd.**
- b. **Mr. Amit Vijay Karia**, having registration No. IBBI/IPA-001/IP-P-02600/2021-2022/13969, having email Id- amit.karia@yahoo.co.in, having address - Flat 202, Padmalaya Apartments, Pandit Colony Lane 1, Behind Ananda Laundry, Nashik, Maharashtra - 422002 having Mobile Number- 9029210069, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs 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.
- 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.

Accordingly, CP 715 of 2021 is **admitted**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)