

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 2916/IBC/MB/2019**

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*

**Namaskar Service Station**

Having registered office at:  
Namaskar Service Station, HPCL  
Petrol Pump, National Highway  
No. 8, Kashigaon, Mira Road (East),  
Thane: 401104

.....**Operational Creditor**

**Vs**

**A B Infrabuild Limited**

(CIN: U45202MH2011PLC214834)  
Registered office at: 104,  
Shubhangan CHS Ltd, Jawahar  
Nagar, Near Railway Crossing,  
Goregaon (W), Mumbai-400062

.....Corporate Debtor

**Order delivered on: 26.08.2021**

**Coram:**

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

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Yash Kataria, Advocate

**For the Respondent:** Mr. Sanjeev Mishra, Advocate

**Per: Shri Chandra Bhan Singh, Member (Technical)**

**ORDER**

1. This Company petition is filed by *Namaskar Service Station* (hereinafter called “Operation Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *A. B. Infrabuild Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 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 failed to make payment of a sum of INR. 30,40,786/- (Principal amount, 21,07,997/- plus interest amount, 9,32,789/- @ 18% per annum) to the Operational Creditor.
3. **The submissions of the Operational Creditor are as follows:**
  - I. The Corporate Debtor became liable to pay the Operational Creditor an Outstanding amount of Rs. 21,07,997/- as on 18.02.2017.
  - II. Demand notice dated 26.06.2019 sent by the Operational Creditor to the Corporate Debtor demanding the outstanding debt.
  - III. Further, the Respondent/Corporate Debtor to the advocate of the Applicant/Operational Creditor issued reply on 16.07.2019 to the Demand Notice dated 26.06.2019.
  - IV. Further, the various letters have been sent by the Operational Creditor to the Respondent/Corporate Debtor on different dates and similarly the Corporate Debtor has

also sent various letters on different dates to the Operational Creditor.

**4. Submissions of the Corporate Debtor are as follows:**

- I. The present Company Petition as framed and filed by the Operational Creditor is not maintainable since, Operational Creditor is not a legal entity as prescribed under Section 3(23) of the Insolvency and Bankruptcy Code, 2016. The definition of a 'person' under section 3(23) of the Insolvency and Bankruptcy Code included an 'individual', it could not be stretched to refer to a sole proprietary concern and hence the present company petition is not maintainable and hence alone on this ground the present petition may be dismissed. The Corporate Debtor hereby request to frame preliminary issue on the ground of maintainability of the present petition that whether being sole proprietor can initiate proceedings under section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.
- II. The present Company Petition is a clear example of mala fides as the Operational Creditor has chosen only the Corporate Debtor, since the Operational Creditor had issued bogus and forged invoices and when the scam of the Operational Creditor came to the knowledge of the Corporate Debtor and the Corporate Debtor caught red-handed about the discrepancies in supply of diesel and invoices raised being hand-in-glove of the Operational Creditor with the drivers of the vehicle, the Corporate Debtor immediately stopped the transactions with the Operational Creditor and wind up the commercial terms with the Operational Creditor. On perusing the books of Accounts and the ledger, the Corporate Debtor is liable for payment of Rs. 4,77,967/- to the Operational Creditor. The

perusal of the Company Petition makes it amply clear that the Operational Creditor has filed the Petition with mala fide and ulterior motives.

- III. Corporate Debtor submits that since the Operational Creditor is not able succeed in his intention of grabbing monies from the Corporate Debtor and hence adopted this policy to extort easy monies from the Corporate Debtor. Corporate Debtor further states that is apparent that there are no signature of the Corporate Debtor or employee of the Corporate Debtor on the cash memo of the supplied diesel as alleged by the Operational Creditor. The present Company Petition filed by the Operational Creditor is therefore, liable to be dismissed with compensatory costs.

#### **FINDINGS**

1. This Company petition is filed by *Namaskar Service Station* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *A. B. Infrabuild Limited* (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Operational Creditor for a total Operational Debt of Rs. 30,40,786/- as per the Part IV of the petition. The invoices raised by the Operational Creditor relates to supply of petrol/diesel to the vehicles of the Operational Creditor between 18.02.2017 till 31.07.2019. The Operational Creditor even though has produced invoices regarding the supply of petrol/diesel, however, has not produced any records to substantiate his claim that an interest amount is due as per invoices or any agreement raised between the parties.

2. The Bench notes that Demand Notice claiming the amount as per Section 8 of IBC has been sent by the Operational Creditor to Corporate Debtor on 26.06.2019 and a subsequent reply to the demand notice has already been issued by the Corporate Debtor to the Operational Creditor.
3. The notes that the Corporate Debtor in his reply to the demand notice has admitted the total claim of Rs. 4,77,967/- as due and payable by them. The relevant portion from the reply to the demand notice reads as under:

*“...Our client further states that as per the book of account of our client, which our client is ready and willing to pay to your client. In fact your client had also not disclosed the true factum that recently, your client had approached crime branch office at Kandivali, wherein, our client had submitted their books of account, wherein only Rs. 4,77,967/- are due and payable by our client...”*

4. The Bench notes that earlier also vide letter dated 28.12.2018, the Corporate Debtor had acknowledged a total due amount of Rs. 4,77,967/- as payable to the Operational Creditor. In this regard, acceptance of letter dated 28.12.2018 addressed by the Corporate Debtor to the Operational Creditor reads as under:

*“...We have received your above referred letter dated 22.12.2018, for making payment of due amount of Rs. 21,07,997/-. But as per our book of account Rs. 4,77,967/- is payable to you and for the same we are attaching herewith the accounts ledger copy for your reference...”*

5. The Bench further notes that even in the reply to their petition, the Corporate Debtor at para 6 has admitted a part of the debt. The acceptance of which is as under:

*“...As per the book of account of the Corporate Debtor, only Rs. 4,77,967/- are due and payable by the Corporate Debtor, which the Corporate Debtor is ready and willing to pay to the Operational Creditor...”*

6. In view of the above it is very clear to the Bench that M/s Namaskar Service Station qualifies as an Operational Creditor as per Section 5(21) of the IBC and Operational Debt to the extent of Rs. 4,77,967/- has been admitted by Corporate Debtor as due and payable. This Bench also notes that the above Company Petition has been filed on 09.08.2019 and demand notice issued on 26.06.2019. Therefore, the Operational Debt of Rs. 4,77,967/- is more than the threshold limit of Rs. 1,00,000/- which existed before the Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India.
7. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation period. Thus, the present Company Petition satisfies all the necessary requirements for admission.
8. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) -2916(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against A B Infrabuild Limited.
- b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Vasudev Ganesh Nayak Udupi** (uvnayak2004@yahoo.co.in), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00019/2016-17/10043 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.2 Lakh towards the initial CIRP cost 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, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

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