



**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT III**

**Company Petition No. IB-1941(ND)/2019**

**&**

**IA-4109/2022**

**In**

**Company Petition No. IB-1941(ND)/2019**

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

In the matter of:

M/s. Ahluwalia Contracts (India) Ltd

...Applicant/  
Operational Creditor

**Versus**

M/s. Jasmine Buildmart Pvt. Ltd

...Corporate Debtor

**Judgment delivered on: 12.01.2023**

**Coram:**

**SHRI BACHU VENKAT BALARAM DAS  
Hon'ble MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA  
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Prashant Katara, Advocate.

For the Respondent : Mr. Sumant Batra, Sr. Advocate,  
Ms. Bina Gupta, Ms. Sheena,  
Mr. Dhvanit Chopra, Ms. Akansha Saini,  
Ms. Shwyulaya, Advocates.



## **ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (J)**

1. The present application i.e., CP (IB)-1941(ND)/2019 has been filed under Section 9 of the IBC, 2016 with the prayer to initiate CIR Process against the Corporate Debtor viz, *M/s. Jasmine Buildmart Pvt. Ltd*, declare the Moratorium and appoint the Interim Resolution Professional. The Corporate Debtor is unable to repay the principal outstanding amount of Rs. 19,81,00,000/-/- along with interest @ 12% per annum on the amount of Rs. 13.11 crores and @ 24% per annum on Rs. 4.24 crores out of the Settlement Amount as per Clause 4 of the Settlement Agreement dated 16.12.2017.
2. Briefly stated, the facts of the present application as submitted by the Operational Creditor are that the Operational Creditor had accepted a contract awarded by the Corporate Debtor i.e., *M/s. Jasmine Buildmart Private Limited* for construction of Krrish Provence Estate (Structure and Finishing Work) at Sector 3 Gwal Pahari, Gurgaon, Haryana. The said contract consisted of two independent components, first being the structure work and the second one being the finishing work. In pursuance of the work done under both structure and finishing work, the Operational Creditor raised timely bills which were duly certified by the Corporate Debtor. The 49<sup>th</sup> and 50<sup>th</sup> RA bill for the work done by ACIL towards the finishing work were accordingly raised and were duly certified by the Corporate Debtor.
3. It is submitted that the outstanding amounting to the tune of Rs. 19,81,00,000/- fell due on different dates as admitted by the Corporate Debtor which are as follows: -
  - a. The amount fell due on 31.07.2017, when the Operational Creditor issued a statutory notice under Section 8 of IBC, calling upon the



Corporate Debtor to make the payment of outstanding operational debt of Rs. 19,81,00,000/-.

- b. The amount fell due on 16.12.2017, when the Corporate Debtor entered into settlement having admitted to pay the outstanding amount.
- c. The amount fell due on 18.12.2017, when the settlement deed dated 16.12.2017 was placed before the NCLT Principal Bench in IB-488/PB/2017.
- d. The amount fell due, when after the expiry of 12 months of the settlement arrived at between the parties because the Corporate Debtor failed to pay the outstanding dues.
- e. The amount fell due and payable on 16.04.2019 when the Arbitration Petition filed by the Corporate Debtor before the Hon'ble High Court of Delhi was dismissed.
- f. The amount fell on 28.05.2019 when the Operational Creditor served a statutory demand notice under Section 8 of IBC.

4. The Operational Creditor had issued a demand notice under Section 8 of IBC, 2016 on 28.05.2019 demanding the payment of the unpaid operational debt in reply of which the Corporate Debtor gave a reply to the said demand notice on 07.06.2019. Accordingly, the Operational Creditor has filed the petition under Section 9 of IBC, 2016 since the Corporate Debtor did not make any payment.

5. The Corporate Debtor in its reply has stated that the amount claimed in the present application by the Operational Creditor arises out of a Settlement Agreement dated 16.12.2017 between three parties i.e., M/s. Ahluwalia Contracts (India) Limited ('Operational Creditor'), M/s. Jasmine Buildmart Private Limited ('Corporate Debtor') and/s. Venta Reatech Private Limited pertaining to the claims made by the Corporate Debtor before the NCLT. A sum of Rs.19,81,00,000/- was arrived at whereby securities of such amount were offered to the Operational Creditor based upon the assurances of their positive due diligence and securities of such amount were offered to the



Operational Creditor based upon the assurances of their positive due diligence.

6. It is submitted that the Hon'ble NCLT, Principal Bench took on record the Settlement Agreement between the parties and noted that the Operational Creditor did not further press for the Petition. Consequently, the application under Section 9 of IBC was dismissed as compromised. Moreover, the Hon'ble High Court on 16.04.2019, had dismissed the application under Section 11 Arbitration Act preferred by the Corporate Debtor holding that since a Settlement had been reached between the parties, therefore the Original Agreement containing the Arbitration Clause could not be invoked.
7. It is further submitted that M/s. Venta Realtech Private Limited had sent a notice on 11.05.2019, under Section 21 of the Arbitration and Conciliation Act, 1996 to the Operational Creditor herein for resolution of disputes between the parties. In the said notice, it has been clearly specified that the parties agreed that the entire amount of the settlement was to be paid by Venta Realtech Private Limited. Further the Operational Creditor had already filed a claim of Rs.19,81,00,000/- before the Insolvency Resolution Professional (IRP) the CIRP of M/s.Venta Realtech Private Limited and the same has already been admitted by the IRP.
8. The Operational Creditor on 28.05.2019 had sent another demand notice under Section 8(1) of IBC, 2016 to the Corporate Debtor pertaining to the payment of Rs.19,81,00,000/- which was arrived at in the settlement agreement before this Tribunal. Further, it is submitted that the Corporate Debtor submitted that vide reply dated 07.06.2019 to the demand notice sent by the Operational Creditor on 28.05.2019, the Corporate Debtor had pointed out that on account of



shoddy quality of work by the Operational Creditor, Rs.13,00,00,000/- is estimated towards additional expenditure to be borne by the Corporate Debtor Corporate Debtor. Moreover, the Corporate Debtor had to pay an extra settlement compensation over Rs.25,00,00,000/- to more than 50 Home Buyers who had approached the National Consumer Disputes Redressal Commissioner (NCDRC) on account of delay in completion of work by the Operational Creditor and the Corporate Debtor had incurred huge losses.

9. We have heard the arguments advanced by the Learned Counsel appearing for the parties and perused the records. We find that the Operational Creditor had earlier filed a petition under Section 9 of IBC, 2016 i.e., IB-488/ND/2017 case titled M/s. Ahluwalia Contract (India) Private Limited v. Jasmine Buildmart Private Limited which was **“dismissed as compromised”** vide order dated 18.12.2017 on the basis of settlement arrived at between the parties. After dismissal of the said petition, the Operational Creditor filed another petition under Section 9 of IBC, 2016 and initiated afresh proceedings against the Corporate Debtor for the same amount. We further observe that on the basis of the settlement arrived between the parties, the Operational Creditor has already filed a claim of Rs. 19,81,00,000/- with the IRP appointed in the CIRP of M/s. Venta Realtech Private Limited and the amount of claim has been admitted by the said IRP.
10. On mere reading of the Settlement Agreement dated 16.12.2017, we find that the Corporate Debtor, Operational Creditor and a third party had entered into a settlement agreement whereby as per the terms the Composite settlement Amount is Rs. 19.81 Crores which is payable by Krrish (‘third party’) to ACIL (‘Operational Creditor’). The Operational Creditor in Part-IV of the present petition had claimed an



outstanding debt of Rs.19.81 Crores and submitted that the said amount against fell due after the expiry of 12 months of the settlement arrived at between the Operational Creditor and Corporate Debtor, Corporate Debtor failed to clear the outstanding dues. Further in pt. 6 (Provision of Law, Contract or other Document under which Operational Debt had become due) Part-V of Form V, the applicant had also placed reliance on the settlement agreement dated 16.12.2017 to prove the existence of debt.

11. At this juncture, we find it advantageous to refer the **Hon'ble NCLAT judgement dated 25.11.2020 in case titled Amrit Kumar Aggarwal verus M/s. Tembo Appliances Private Limited in Company Appeal (AT) (Insolvency) No. 1005/2020** wherein while discussing this issue, ***it was observed by Hon'ble NCLAT that a mere obligation to pay does not bring the liability within the ambit of 'financial debt' as defined under IBC.*** The debt, along with interest, if any, should be disbursed against the consideration for the time value of money. ***Mere breach of terms of any agreement including a Settlement Agreement by a party, whereby some payment was due, would not fall within the scope of Section 5(8) of IBC, so as to constitute a 'Financial Debt'.*** Accordingly, it was observed that mere obligation to pay under a Settlement Agreement would not amount to disbursement of amount for consideration against the time value of money, and thus, breach of such obligation would not entitle a party to invoke CIRP against the other party. Taking guidance from the aforesaid judgement, it can be concluded that mere breach of terms of any agreement including a settlement agreement by a party, whereby some payment is due cannot take colour of an operational debt arising out of supply of any goods or services as envisaged under Section 5(20) of the Code, 2016



12. It is no more res integra that IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Adjudicating Authority for the recovery of the same amount.
13. Having regard to the conspectus of all relevant facts and circumstances and the judgements cited supra, we are of the view that the outstanding debt as claimed in the present application does not fall under the definition of Operational Debt as defined under Section 5(21) of the Code, 2016 as the debt claimed is not the debt owed for the supply of goods or rendering of services, it is a debt which has arisen from the breach of the Settlement Agreement. **Accordingly, the present application being not maintainable stands dismissed.** No orders to cost.
14. The Operational Creditor had filed an interlocutory application **IA-4109/2022** for placing on records some additional documents. The main application being dismissed as non – maintainable, the said I.A. has become infructuous, therefore this Adjudicating Authority is not inclined to go through the additional documents which were placed on record by the Operational Creditor. Accordingly, **IA-4109/2022 also stands dismissed.**

Sd/-

**(DR. BINOD KUMAR SINHA)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**