

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-198/(ND)/2022

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Sawaria Seth Infratech Pvt. Ltd.

...Operational Creditor/Applicant

Versus

M/s Nitya Realtech Pvt. Ltd.

...Corporate Debtor/Respondent

Order Delivered on: 05.08.2022

Coram:

SH. DHARMINDER SINGH, HON'BLE MEMBER, (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER, (TECHNICAL)

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant herein is engaged in the business of supplying of civil construction material and further undertaking with respect to the civil



works and they have filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The Corporate Debtor approached the Operational Creditor and represented that the Corporate Debtor is engaged in the business of real estate and it is developing a project namely "Officer City" at Raj Nagar Extension, Ghaziabad, Uttar Pradesh. The Corporate Debtor requested the Operational Creditor to supply the material for civil construction at the project site.

b. The Corporate Debtor issued the work orders dated 04.07.2018, 03.09.2019, 09.09.2019 and 17.12.2019 for supply of material and executing the civil construction work at the project site.

c. The Operational Creditor further stated that they continued to carry out the work at the project site under the supervision and vigil of the Corporate Debtor. The employees of the Corporate Debtor regularly checked the quality of the materials which were supplied and the construction which was being carried out by the

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Operational Creditor. The construction was carried out by the Operational Creditor to the satisfaction of the Corporate Debtor and the works were completed in a timely manner. No demur or objection was raised by the Corporate Debtor at any point of time.

d. The Operational Creditor also stated that they had sent various e-mails on 05.08.2020 and 08.08.2020 to the Corporate Debtor reminding of and demanding for payment of the remaining debts.

e. The Operational Creditor stated that they issued Legal Notice dated 25.10.2021 and called upon the Corporate Debtor to clear the outstanding dues. Further, the Corporate Debtor requested the Operational Creditor to not initiate legal action and sought some time to clear the outstanding dues. Later, the Corporate Debtor issued a cheque in sum of Rs. 25,00,000/- towards part payment of the outstanding dues. However, on presentation, the said cheque was dishonoured.

f. The Operational Creditor stated that the outstanding operational debt is an admitted debt by the Corporate Debtor and the same is evident

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from the confirmation of account statement which was issued by the Corporate Debtor to the Operational Creditor on 26.11.2021. Further, The Corporate Debtor assured the Operational Creditor that it shall clear all the outstanding dues in the month of December, 2021. However, the Corporate Debtor failed to honour its commitment.

g. The Operational Creditor sent a Demand Notice dated 10.01.2021 demanding payment of an unpaid operational debt i.e. Rs. 1,77,87,056/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

4. The Corporate Debtor has filed his reply against the said Application. The main objections raised by the corporate debtor are as follows:

- a) The Corporate Debtor stated that the substantial payments were made to the Operational Creditor against the work done and the same is evident from the statement of account placed on record.
- b) The Corporate Debtor further stated that the entire world was affected by the outbreak of the pandemic COVID-19 and due to such outbreak the real estate sector including the business of



the Corporate Debtor was effected severally and came to standstill.

c) The Corporate Debtor also states that they could not remit the outstanding dues and the Corporate Debtor is committed to clear all the outstanding dues of the Operational Creditor and for the same they seek 6 months' time.

5. We have heard the arguments and perused the invoices, ledgers and documents which are placed on record. From the pleadings on record, it is evident that the Corporate Debtor has admitted its liability towards the outstanding operational debt.
6. Keeping in view the aforementioned facts and reasons, this Tribunal is satisfied that there is an outstanding operational debt amounting Rs. 1,77,87,056/-, which is above the pecuniary threshold limit as stipulated under Section 4 of the Code, 2016 and there is an unqualified admission of debt and default by the corporate debtor.
7. The Hon'ble Supreme Court in its judgment dated 21.09.2017 in Civil Appeal No.9405/2017 in **Mobilox Innovations Pvt Ltd V. Kirusa Software Pvt Ltd** at paragraph 25 has observed as under:

“Adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the



demand notice of the unpaid operational debt in relation to such dispute?

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

8. In view of the foregoing documents and averments, this Tribunal is of the affirm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant and accordingly, the present application stands admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.
9. The operational creditor has proposed the name of an Interim Resolution Professional in the Part III of Form 5 of the petition therefore this bench appoints Mr. Sanyam Goel as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00138/2017-2018/10397 who has also agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by IRP above named as per the requirement of the IBBI Regulations.
10. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sanyam Goel to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of



Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

11. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

12. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(L. N. GUPTA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)