IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

C.P. (IB) – 624(ND)/2021

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. SPLENDOR LANDBASE LIMITED

Having Its Registered Office at:

Unit Nos. 501, 511, 5th Floor,

Splendor Forum, Plot No. 3,

Jasola District Centre, New Delhi- 110025

Through Its Authorized Representative

Mr. Manish Prakash

...... Operational Creditor

VERSUS

M/s. ANGLE INFRASTRUCTURE PRIVATE LIMITED

Having Its Registered Office at:

201, Elegance Tower,

Plot No. 8, District Centre Jasola

New Delhi- 110025 **...... Corporate Debtor**

Order Pronounced On: 27.02.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Siddharth Bhatli, Ms. Khyati Jain, Mr. Kashish Sandha, Advs.

For the Respondent : Mr. P. Nagesh, Sr. Adv., Mr. Sidhartha Dev, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This Application has been filed by M/s. Splendor Landbase Limited through its Authorized Representative, Mr. Manish Prakash, the Applicant/ Operational Creditor before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), declaring moratorium and for appointment of Interim Resolution Professional ("IRP"), against M/s. Angle Infrastructure Private Limited, the Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 3,38,84,521/- which includes interest @ 18% p.a. from the date when such amounts became due up to 28.02.2021.
2. **Brief Background of the Case**

i. The Operational Creditor and Corporate Debtor are real estate developer companies. The Operational Creditor constructed and developed a commercial complex under the name of "Splendor Forum" on Plot No. 3, Jasola District Centre, New Delhi ad- measuring approx. 5705 sq. mtrs.

ii. The Corporate Debtor, a real estate developer company of Krrish Group, desirous of taking a portion of the said Complex on lease approached the Operational Creditor for taking on lease space within the said Complex. Accordingly, the Corporate Debtor and the Operational Creditor entered into Lease Deed dated 01.09.2015 qua space ad-measuring 6,350 sq. ft. of Super Area of the said Complex with a covered area efficiency of 50% i.e. 3,175 sq. ft. bearing Unit Nos. 4, 8 and 9 on the Ground Floor of the said Complex for a term of 9 (Nine) years. The monthly lease rent under the said Lease Deed for the said Leased Premises for the period from 25.09.2015 to 19.07.2018 was Rs. 7,30,250/- and the Lease Commencement Date was determined and the possession of the said Lease Premises was handed over to the Corporate Debtor on 20.07.2015. The Lock-In-Period under the said Lease Deed was 3 (Three) Years expiring on 19.07.2018.

iii. The Corporate Debtor also entered into a Maintenance Agreement dated 20.07.2015 with Splendor Space Management Services (a Unit / Division of the Operational Creditor) towards the maintenance of he said Leased Premises (hereinafter referred to as the "said Maintenance Agreement"). Under the said Maintenance Agreement, the Corporate Debtor was liable to pay Common Area Maintenance (CAM) Charges @Rs.23.90 per sq. ft. of super area of the said Leased Premises aggregating to Rs. 1,51,765/- per month and electricity charges at the rate of Rs. 11.46/- per unit. Furthermore, under the terms of the said Maintenance Agreement, the Corporate Debtor was liable to pay interest at the rate of 24% per annum in case of delayed payment.

iv. The Corporate Debtor continued to use and occupy the said Leased Premises under the terms of the said Lease Deed on a month-to-month basis, herein monthly invoices for the lease rent and the Maintenance charges and Electricity charges were raised and the same were to be paid by the Corporate Debtor. The lease rent and maintenance charges cheques/RTGS were deposited in the bank account of the Operational Creditor. The Maintenance Agency by the Corporate Debtor and the Ledger Account, Bank Account Statement of the relevant period along with Form 5A is attached with the Application.

v. The Operational Creditor was in receipt of Lease Termination Notice dated 06.04.2018 from the Corporate Debtor and the Operational Creditor vide email dated 09.05.2018 duly acknowledged and accepted the Lease Termination Notice and informed the Corporate Debtor to ensure that the possession of the said Leased Premises to be handed over to the Operational Creditor on or before 31.07.2018.

vi. The Corporate Debtor vacated the said Leased Premises on 31.07.2018. However, the Principal Amount of Rs. 1,97,78,222/- remained due and payable to the Operational Creditor on account of Electricity, CAM and Lease Rent charges. The total unpaid debt is amounting to Rs. 3,38,84,521/- which includes interest @ 18% p.a. from the date when such amounts became due up to 28.02.2021.

3. It is the case of the Applicant that the Corporate Debtor vide e-mail dated 12.04.2018 duly admitted and acknowledged its liability amounting to a total of Rs. 2,21,22,287/- due and payable to the Operational Creditor and also enclosed cheque bearing no. 591826 dated 12.04.2018 for a sum of Rs. 6,40,146/- towards part payment of its admitted dues. Since, the Corporate Debtor did not make any further payment, the Operational Creditor issued a Demand Notice on 03.03.2021 under Section 8 of the Code in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Corporate Debtor did not give any reply to the Demand Notice.
4. The Corporate Debtor in its reply affidavit states that there is no debt left for payment after Rs. 50,00,000/-(Rupees Fifty Lakhs Only) was paid to the Operational Creditor in cash as well as through cheque bearing No. "591826" dated 12.04.2018. Further, a sum of Rs. 55,00,000/- (Rupees Fifty Five Lakhs only) payable to Frost Falcon Distilleries Ltd. by the Operational Creditor was adjusted against the aforementioned due payable amount. The balance due amount of Rs. 1,16,22,287/- was adjusted against the air conditioning and other fixtures, furniture and computers and laptops etc. worth more than Rs. 1,20,00,000/- left behind by the Respondent/Corporate Debtor in the leased premises.
5. The Operational Creditor in its Rejoinder has stated that the alleged fixtures left behind by the Corporate Debtor are all scrap material and are of no use to the Operational Creditor. There is no proof of acknowledgement of any payment of dues or having left behind fixtures, all these averments raised in the Reply are clearly an afterthought and only Rs. 6,40,146/- was paid through cheque.

6. **<u>Analysis and Findings</u>**

i. We have heard the Ld. Counsels appearing for both parties. Records as well as pleadings and written submissions have been perused.

ii. The Corporate Debtor has argued that the signature on the Accounts Confirmation letter dated 01.04.2020 allegedly issued by the Accountant was neither authorised nor the Accountant was employed with the Corporate

Debtor to issue such letter. The Operational Creditor in its rejoinder has placed on record evidence to prove that the confirmation of accounts is not forged and fabricated.

iii. The Corporate Debtor argued that no debt is left for payment. However, the Corporate Debtor failed to place on record any documentary proof of receipt/acknowledgement of payment issued by the Operational Creditor in favour of the Corporate Debtor and/or any ledger statement/books of accounts maintained by the Corporate Debtor. The Corporate Debtor is restricted under Section 40A (3) of the Income Tax Act, 1961, to make any payment above Rs. 10,000/- in cash, in a day. Therefore, the Corporate Debtor could not have made the alleged payment of Rs. 50,00,000/- (Rupees Fifty Lakhs) in cash to the Operational Creditor.

iv. We do not find force in the above arguments of the Corporate Debtor. It is crystal clear from the records that there is an admission by the Corporate Debtor with regard to the default committed by it and no amount has been paid to the Operational Creditor.

v. On a conspectus of the case, we have found that the Operational Creditor has established that the Corporate Debtor continued to use and occupy the Leased Premises during the period from 20.07.2015 till 06.04.2018. The Corporate Debtor, since the commencement of the said Lease Deed and the said Maintenance Agreement, began defaulting in not only making complete payment towards the said Leased Premises but also the maintenance charges and electricity charges of the said Leased Premises. Despite several reminders calling upon the Corporate Debtor to clear its admitted liability of the principal amount of Rs. 1,97,78,222/- along with interest as stipulated under clause 9.5 of the said Lease Deed. The Corporate Debtor did not reply to the reminders and has failed to make the payments due to the Operational Creditor and therefore we are of the view that the present application under Section 9 of the IBC, 2016 ought to be admitted.

vi. There are emails placed on record suggesting settlement between the parties. This Tribunal vide orders dated 08.11.2023 and 01.12.2023 recorded that the parties were in talks of settling the matter. However, there is no settlement agreement on record. It is the "determination of default" that is relevant for allowing or disallowing an application filed for initiation of corporate insolvency resolution process under the IBC.

vii. The Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited** reported in (2018) 1 SCC 353 has held that the Adjudicating Authority, when examining an application under Section 9 of the Act will have to determine:

(a) Whether there is an "operational debt" as defined exceeding Rs 1 lakh?

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

(c) 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?"

The Hon'ble Supreme Court had further held that if any one of the aforesaid conditions is lacking, the application would have to be rejected. 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 Code, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

viii. In our considered view, the Applicant has been able to comply with all the parameters as laid down by the Hon'ble Supreme Court in the case of ***Mobilox Innovations (Supra)***. Further, the Corporate Debtor has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective.

In view of the aforesaid reasons, the present application under Section 9 needs to be **admitted.**

7. **Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fulfils the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

i. The Application bearing **IB-624/ND/2021** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.

We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(i) *"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;*

(ii) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

(iii) *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;*

(iv) *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]"

iii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

iv. The Operational Creditor has not proposed any name for the Interim Resolution Professional ("IRP"). Therefore, we appoint Mr. Vijay Kumar Gupta as Interim Resolution Professional ("IRP") having address: 408, New Delhi House, 27 Barakhamba Road, Connaught Place, New Delhi-110001. His Email id is vkgupta2004@yahoo.co.in. His Contact No. is 9810050029. His registration number is IBBI/IPA-001/IP-P00262/2017-18/10500. Therefore, the IRP shall file a valid Authorization for Assignment within 3 days of the pronouncement of this order.

v. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

vi. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.

vii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

viii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

ix. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").

x. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

xi. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

xii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-Sd-	-Sd-
(ATUL CHATURVEDI) **MEMBER (TECHNICAL)**	**(BACHU VENKAT BALARAM DAS)** **MEMBER (JUDICIAL)**