

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**(Through web-based video conferencing platform)**

**CP (IB) No.112/BB/2021**  
**U/s. 9 of the IBC, 2016**  
**r/w Rule 6 of the IBC (AAA) Rules, 2016**

**IN THE MATTER OF:**

**M/s. NHDPL South Private Limited**  
Registered under Companies Act, 1956  
110-A, Level 1, Andrews Building,  
M.G Road, Karnataka  
Bengaluru – 560 001

... Petitioner/Operational Creditor

**VERSUS**

**M/s. East Mond Infra And Trade Pvt.Ltd**  
R/O: 10/45, 8<sup>th</sup> Cross,  
3<sup>rd</sup> Main, Srinivasa Nagar, BSK III Stage,  
Bangalore,  
Karnataka – 560085

... Respondent/Corporate Debtor

**Order delivered on 05.01.2022**

**Coram:** Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Uday Shankar  
For the Respondent : Shri K Dushyantha Kumar

**ORDER**

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

1. The present petition is filed, under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s. NHDPL South Private Limited (for brevity 'Operational Creditor/Petitioner') through its Special Officer Mr. Swamy K B inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. East Mond Infra And Trade Pvt.Ltd (hereinafter referred as 'Corporate

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Debtor/Respondent). There is an affidavit of Mr. Swamy K B, Special Officer of Operational Creditor in support of the contents of application dated 01.11.2021 from page 16-21 of the petition. The Board Resolution dated 29.06.2021 authorising Mr. Swamy K B to represent the company in the present application is attached at page 22 of the petition.

2. The corporate debtor name has been changed from Somerest Infra Projects Pvt.Ltd to East Mond Agri and Infra Pvt.Ltd on 28.07.2020. Then on 29.12.2020 the corporate debtor changed its name from East Mond Agri and Infra Pvt.Ltd to East Mond Infra and Trade Pvt.Ltd. The certificate of incorporation dated 29.12.2020 is enclosed as Annexure – F. The corporate debtor namely, M/s. East Mond Infra And Trade Pvt.Ltd is a company incorporated on 12.12.2007 under the provision of Companies Act, 1956 with CIN No.U74110KA2007PTC044646 with its registered office at R/O: 10/45, 8th Cross, 3rd Main, Srinivasa Nagar, BSK III Stage, Bangalore, Karnataka – 560085. Hence, the territorial jurisdiction lies with this Adjudicating Authority. The authorized share capital of the respondent company is Rs. 2,00,000/- and paid up share capital is Rs. 1,00,000/-. Copy of Master Data of corporate debtor is attached at page 48 of the petition.

3. The facts of the case, briefly, as stated in the petition are that the petitioner is engaged in the business of real estate, construction and development. The corporate debtor herein is engaged in the business of arranging, assembling and facilitating the acquisition of land and immovable properties.

4. It is stated that the corporate debtor and the operational creditor entered into Memorandum of Understanding dated 28.03.2014, wherein, the Corporate debtor had undertaken to provide conveyance of good, and free marketable title land of 7 acres to operational creditor, free from all encumbrances, attachments, minor rights, court or acquisition proceeding or charges of any kind.

5. It is stated that for the purpose of rendering such services, the operational creditor had remitted the amount of Rs.150,39,14,084/- (Rupees One Hundred and Fifty Crores Thirty Nine Lakhs Fourteen Thousand and Eighty Four Only) to the corporate debtor. But till date the corporate debtor has neither given or transferred any lands nor has not done any work on the services that they have promised to render. In view of the various defaults committed by the corporate debtor, the operational creditor issued a termination notice dated 01.05.2019 wherein the operational creditor has terminated the memorandum of understanding dated 28.03.2014 entered with the corporate debtor.

4. It is stated that the operational creditor issued a demand notice dated 15.10.2021 as per section 8 of IBC, 2016 and Rule 5 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority), Rules 2016 in Form 3 wherein the operational creditor is demanding the payment of Rs.150,39,14,084/- (Rupees One Hundred and Fifty Crores Thirty Nine Lakhs Fourteen Thousand and Eighty Four Only) from the corporate debtor.

5. The petitioner stated that the demand notice has been served upon the corporate debtor on 15.10.2021 by way of hand duly acknowledged. The proof of service of the demand notice dated 15.10.2021 upon the corporate debtor is enclosed herein as Annexure H.

6. It is stated that the corporate debtor has not replied to the demand notice dated 15.10.2021 and has also not issued any notice stating the existence of any dispute between the operational creditor and corporate debtor in respect of unpaid operational debt. Notice of this petition was issued to the corporate debtor through email dated 30.10.2021.

7. It is further stated that corporate debtor is thus unable to pay its dues to the operational creditor herein. Therefore, Corporate Insolvency Resolution Process may be initiated against the corporate debtor. Hence, the Corporate Debtor has committed

default for a total outstanding amount of Rs. 150,39,14,084/- (Rupees One Hundred and Fifty Crores Thirty Nine Lakhs Fourteen Thousand and Eighty Four Only) as on 01.05.2019 and the workings on computation of claim amount is attached to the petition.

8. The respondent filed its statement of objections vide diary No.3512 dated 10.12.2021 admitting that the corporate debtor owes money as demanded by the petitioner. It is submitted that the corporate debtor is not able to successfully carry out the business as enumerated in its Memorandum of Association and is also not in a position to honour its financial commitments and the revenue generation is not at an expected rate.

9. Further, it is submitted that corporate debtor entered into Memorandum of Understanding "MOU" dated 28.03.2014 with operational creditor for assemble and provide an extent of land approximately measuring 49 acres 20 guntas within the Village of Manchenahalli Village, Yelahanka Hobli, Bangalore and consideration upon the same had been agreed to pay sum of Rs.17,50,00,000/- (Rupees Seventeen Crore and Fifty Lakhs Only) per acre towards cost of land as well as the expenses relating to the various process of classification of the land, title, verification, survey, public notice, etc.

10. It is submitted that as per the said MOU Operational Creditor paid sum of Rs. 150,39,14,084/- (Rupees One Hundred and Fifty Crores Thirty Nine Lakhs Fourteen Thousand and Eighty Four Only) as consideration for part of above said land measuring 7 acres for their real estate business. The copy of ledger statement of operational creditor is attached as Annexure 1.

11. It is submitted that corporate debtor failed to convey free marketable title of land of 7 acres due to the concealed encumbrance attached to the land and thereafter operational creditor sent termination of notice as on 01.05.2019 w.r.t MOU executed 28.03.2014 and further demanding the repayment of outstanding amount sum of

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Rs.150,39,14,084/- (Rupees One Hundred and Fifty Crores Thirty Nine Lakhs Fourteen Thousand and Eighty Four Only).

12. It is submitted that due to the conditions of pandemic havoc and prevailing the real estate market conditions and the size of financial obligation corporate debtor is not in a position to honour its financial commitments. The assets of the corporate debtor are not sufficient to pay off its liabilities.

13. The financial substratum of the company is not sufficient to pay off all its debts. The company is not able to function with its complete capacity and it is not able to mobilize funds to pay off its liabilities.

14. The following are the details of the assets and liabilities as at 31, March,2020

S.No.	Particulars	Amount
<b>LIABILITIES</b>		
1	Other Current Liabilities	271,10,11,644
	<b>TOTAL</b>	<b>271,10,11,644</b>
<b>ASSETS</b>		
1	Intangible Asset	67,55,772
2	Investment	20,00,00,000
3	Cash and Bank Balances	4,93,834
4	Short term loans and advances	249,21,62,572
5	Trade Receivables	8,86,960
	<b>TOTAL</b>	<b>270,02,99,138</b>

15. It is submitted that the corporate debtor signifies its willingness to admit the instant application and directions as to initiation of Corporate Insolvency Resolution Process of the company as the company has been facing many difficulties due to financial stress it is under.

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16. We have heard the learned counsel for the petitioner and learned PCS for the respondent and have perused the records.

17. The first issue for consideration is whether the demand notice in Form 3 dated 15.10.2021 was properly served. It has observed that the demand notice was given in hand dated 15.10.2021 and it was duly acknowledged by the corporate debtor on the same date. In view of the same, it is deposed that the demand notice has been duly served.

18. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. There is no dispute as to the liability of the corporate debtor. A copy of bank statement of operational creditor from 28.03.2014 to 31.03.2018 has been attached as Annexure-I of the application

19. The other issue for consideration is whether present application is filed within limitation. The transaction involving the defaulted amount dates back to 01.05.2019 (as shown as Annexure H) and the application was filed on 01.11.2021. Therefore, the petition has been filed within the period of limitation.

20. The corporate debtor in its statement of objections filed in the C.P, admitted the debt and its liability to pay the same to the petitioner, however, due to its financial difficulties they have failed to pay the same.

21. We have gone through the contents of the application filed in the prescribed Form no.5 and is found to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 150,39,14,084/-. Table of Computation showing the calculation of outstanding debt amounting to Rs.150,39,14,084/- is found at Part IV. It could be seen that the operational creditor has sent the demand notice in Form 3 by hand delivery dated 15.10.2021 for the payment of outstanding dues attached at page 36 of the application which is duly acknowledged by the corporate debtor. The copy of ledger statement of operational creditor is attached as Annexure I. A copy of bank statement of operational creditor from 28.03.2014 to 31.03.20218

has been attached as Annexure-I of the application. It has been shown that corporate debtor is failed to pay its dues to the operational creditor. It is also observed that the conditions under section 9 of the Code stand satisfied.

22. In the given facts and circumstances, the present petition being complete and having established the default in payment of the operational debt and for the default amount being above Rs.1,00,000/-, the petition is admitted in terms of Section 9 of the IBC,2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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;
- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31

or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

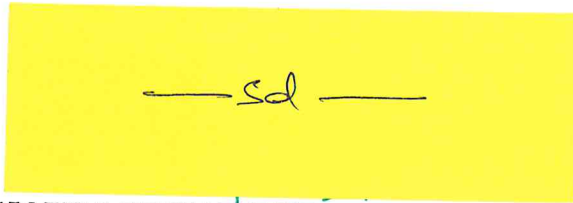
23. In Part III of Form No.5, Mr. Nitin Daga, Registration No. IBBI/IPA-001/IP-P-02213/2020-2021/13405 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form No.2 dated 09.10.2021 has been filed along with the C.P at Page Nos.24-26 (Annexure -C) of the Petition. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order.

24. The Law Research Associate of this Tribunal has checked the credentials of Mr. Nitin Daga and there is nothing adverse against him. In view of the above, we appoint Mr. Nitin Daga, bearing Registration No. IBBI/IPA-001/IP-P-02213/2020-2021/13405, registered address at Avani Oxford-II, Block 1, Flat 1B, 136 Jessore Road, Opposite China Mandir Bus Stop, Kolkata, West Bengal-700055, e-mail: [daga.nitin.cs@gmail.com](mailto:daga.nitin.cs@gmail.com), as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under the IBC, under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

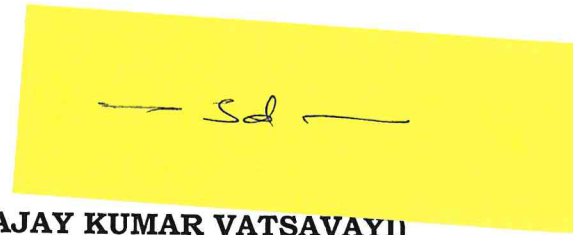
25. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

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26. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.



**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**



**(AJAY KUMAR VATSAVAYI)**  
**MEMBER (JUDICIAL)**

Mythreye (LRA)