



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301  
**C.P.(IB)/81(AHM)2022**

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Aaj Buildcon Pvt Ltd

.....Applicant

V/s

Ahmedabad Ring Road Infrastructure Ltd

.....Respondent

**Order delivered on: 27/09/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member (J)

Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN  
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT NO. I**

**C.P. (I.B.) No.81/NCLT/AHM/2022**

*(An application 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:**

**Aaj Buildcon Private Limited**

(CIN: U45309GJ2016PTC092687)

A-001, Kameshwar Florence,  
Shilaj, Ahmedabad – 380058.

**....Applicant/Operational Creditor**

**VERSUS**

**Ahmedabad Ring Road Infrastructure Ltd.**

(CIN: U45203GJ2006PLC048981)

Sadbhav House,  
Opp. Law Garden Police Chowky,  
Ellisbridge, Ahmedabad – 380006.

**....Respondent/Corporate Debtor**

**Order delivered on. 27.09.2023**

**Coram: Shammi Khan, Member (Judicial)  
Kaushalendra Kumar Singh Member (Technical)**

**Appearance:**

For the Petitioner: Mr. Chaitanya Patel, Adv.

For the Respondent : Mr.Navin Pahwa, Sr. Adv., Mr. Ravi Pahwa, Adv



**ORDER**

1. The instant application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“**IB Code, 2016**”) by by the Applicant M/s. Aaj Buildcon Pvt. Ltd. (hereinafter referred to as “**the Operational Creditor**”) to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against the Respondent M/s. Ahmedabad Ring Road Infrastructure Ltd. (hereinafter referred to as “**the Corporate Debtor**”). The amount of debt in default is stated to be as **Rs. 2,32,11,738/-** including interest. The date of default as stated to be 17.02.2020.
2. The Applicant/Operational Creditor is a private limited company incorporated under the provision of the Companies Act, 1956, having CIN U45309GJ2016PTC092687, its registered address is at A-001, Kameshwar Florence, Shilaj, Ahmedabad 380058.
3. The Respondent/Corporate Debtor is a public limited company incorporated under the provisions of the Companies Act, 1956, having CIN: U45203GJ2006PLC048981, its registered address is at Sadbhav House, Opp. Law Garden Police Chowki, Ellisbridge, Ahmedabad, Gujarat- 380006.
4. The averments made by the Applicant/Operational Creditor are summarized as under:-



- (i) The petitioner is engaged in the business of providing all necessary services for under construction activities.
- (ii) It is stated that the Respondent/Corporate Debtor allotted a work to the Applicant/Operational Creditor vide work order reference number: AR/FY19-20/00062 dated 20.12.2019 which is annexed as **(Annexeure D)** with the Petition. As stated the work involved scarification, tack coat and laying BC on the Sardar Patel Ring Road. The said work was completed by the Applicant/Operational Creditor.
- (iii) Upon asking for the payment, the Respondent/Corporate Debtor expressed its difficulty in making the payment. It also made some part payment from its account and also requested a shorter time to make the rest of the due amount.
- (iv) However, the Respondent/Corporate Debtor failed to make repayment even after all the assurances and after giving several opportunities. The copies of the reminder letters/emails are annexed as **(Annexure F)** to the present petition. The Applicant/Operational Creditor also filed a mediation before the Civil Court at Ahmedabad for recovery of the said amount.
- (ii) The Applicant/Operational Creditor issued a demand notice dated 24.01.2022 to the Respondent/Corporate Debtor in Form-



3 and Form-4 under Section 8 of the IB Code, 2016 for the payment of outstanding dues which is annexed as (**Annexure H**) to the present petition. The notice was delivered at the registered address of the Respondent/Corporate Debtor on 27.01.2022. A copy of the demand notice as well as track report is on record (**page 123-124**). However, the Respondent/Corporate Debtor neither repaid the debt nor replied to the demand notice.

5. In this context, defense placed by the Respondent/Corporate Debtor in its affidavit in reply are summarized as under:-
- (i) The present petition is not maintainable on the ground that there are pre-existing disputes between the parties. The Respondent/Corporate Debtor has raised disputes with respect to the non-satisfactory performance of the work order by the Applicant/Operational Creditor. These disputes are prior to the issuance of the demand notice dated 24.01.2022.
  - (ii) The Respondent/Corporate Debtor has entrusted the project of widening of two-lane Sardar Patel Ring Road to Four-Lane Road around Ahmedabad City on BOT basis. However, the Applicant/Operational Creditor did not execute the work to the satisfaction of the Respondent/Corporate Debtor. As per obligations of the contractor, for any deviation from the specification or any rejection/rectification of executed work, the



Respondent/Corporate Debtor shall not pay any amount for rejected work, and re-work, if any, shall be carried out by the contractor at no cost to the work order. The defect so notified shall be rectified within 7 days from the date of defect notification.

- (iii) The Respondent/Corporate Debtor vide email dated 13.08.2019, 05.09.2019, 11.11.2020, 01.12.2020 and 11.12.2020 made a request to the Applicant/Operational Creditor to rectify the defects on the said project. However, the Applicant/Operational Creditor did not rectify the defects up to the satisfaction of the Respondent/Corporate Debtor. The Respondent/Corporate Debtor was compelled to take up the work with other contractor in the interest of the project. Further, a letter dated 04.05.2021 was addressed to the Applicant/Operational Creditor reiterating the dispute with regard to non-satisfactory performance of work regarding the project.
- (iv) Again vide letter dated 27.09.2021, a reminder was sent to the Applicant/Operational Creditor for carrying out the repair work which has not been done despite several reminders.
- (v) The Applicant/Operational Creditor has failed to rectify the poor quality of work despite repeated requests. Thus, there are



pre- existing disputes between the parties even much before the issuance of demand notice.

6. The submissions made in the rebuttal affidavit of the Applicant/Operational Creditor are summarized hereunder:-

- (i) The Applicant/Operational Creditor has timely completed the work without any complaints. All the complaints with regards to the damaged roads were timely repaired and completed during the course of the defect liability period. The Respondent/Corporate Debtor has also issued a work completion certificate in favour of the Applicant/Operational Creditor in which they have clearly mentioned that the work has been completed satisfactorily.
- (ii) No documents has been placed on record by the respondent with regard to the defects/disputes which the respondent has addressed to the applicant.
- (iii) There are no pre-existing disputes between the parties, the debt is due and payable and the defenses raised by the Respondent/Corporate Debtor are moonshine defense as the emails and letters referred by the Respondent/Corporate Debtor are not addressed to the Applicant/Operational Creditor and so there are no proof of service of the said emails and letters to the Applicant/Operational Creditor by the Respondent/Corporate



Debtor. The work order is of dated 20.12.2019 and the respondent has mentioned that the respondent has mailed regarding the defect dated 13.08.2019 and 05.09.2019 which is prior to the issuance of work order and are not addressed to the Applicant/Operational Creditor. Further, E-mails dated 11.11.2020, 01.12.2020 and 11.12.2020 are also not addressed to the Applicant/Operational Creditor. No documents have been placed on record by the Respondent/Corporate Debtor with regards to the defects/disputes which the the Respondent/Corporate Debtor has addressed to the the Applicant/Operational Creditor.

- (iv) The Applicant/Operational Creditor also denied the letters referred by the respondent dated 31.07.2021 and 27.09.2021 as irrelevant because first of all the respondent has not put any proof regarding the delivery of the said letters to the applicant. Secondly, as per the clause 8 (d) of the work order dated 20.12.2019, the defect liability period is one year and so the said objections are beyond the scope of the defect liability period and the Applicant/Operational Creditor is not liable to repair any damage/defect.
- (v) The Applicant/Operational Creditor also denied the that the judgments as referred by the respondent will not be applicable to



the present case as there are no pre-existing disputes. The respondent is trying to mislead this Hon'ble Tribunal by making false averments as well as false allegations stating about the pre-existing disputes. The Applicant/Operational Creditor has timely completed the work without any complaints. As per the letters put before this tribunal with regard to the damaged roads are beyond the defect liability period. The Respondent/Corporate Debtor has also issued work completion certificate dated 02.06.2022 in favour of the Applicant/Operational Creditor to the Karyapalak Engineer Shri, Patnagar Yojna Bhawan, Gandhinagar in which they have clearly mentioned that the work has been completed satisfactorily. A copy of the said certificate issued by the respondent in which the respondent has admitted that the work has been satisfactorily completed along with its translated copies are enclosed with Rejoinder and marked as **Annexure-1.**

7. During the oral arguments, learned Senior Counsel for the Respondent/Corporate Debtor made following submissions:
  - (i) This Adjudicating Authority vide its order dated 19.05.2023 has already rejected one similar petition being CP (B) No.79 of 2022 which was filed by a sister concern of the present Applicant/Operational Creditor against Sadbhav Infrastructure



Projects Limited on the ground that there were pre-existing disputes between the parties.

- (ii) As per the ledger produced by the Applicant/Operational Creditor, the amount of invoice dated 21.01.2020 is paid to the Applicant/Operational Creditor and the other invoices dated 01.06.2020 and 01.08.2020 is barred by section 10 A of the code.
- (iii) The Applicant/Operational Creditor has filed a commercial suit before the City Civil Court, Ahmedabad and has instituted pre-institution mediation as per section 12A of the Commercial Courts Act, 2015. Pre-institution mediation is instituted only to settle commercial disputes. Therefore, there exists pre-existing dispute between the parties.

8. Learned council for the Applicant/Operational Creditor, in reply to the arguments made by the senior council of the Respondent/Corporate Debtor, made following submissions:

- (i) The above points are not been pleaded in the reply of the Respondent/Corporate Debtor and first time the said points have been raised at the time of oral arguments.
- (ii) There is no sister concern of the Applicant/Operational Creditor. The case that the Respondent/Corporate Debtor refers is filed by a proprietorship firm and the Applicant/Operational Creditor has no relation to the said proprietorship firm and the proprietor



except business competitor and professional friend being in the same business profession.

- (iii) There is no commercial suit filed by the Applicant/Operational Creditor against the Respondent/Corporate Debtor. The Applicant/Operational Creditor has initiated pre-institution mediation and the annexure referred by the Respondent/Corporate Debtor is a proposed plaint which, as per the prescribed format, is to be filed alongwith the mediation application. There is a Non-Starter report dated 24.01.2022 which clearly stipulates that the mediation between the parties has failed because of non-appearance of the Respondent/Corporate Debtor despite of repeated reminders and thereafter on the same date after the failure of mediation, demand notice under section 8 of the code has been issued by the Applicant/Operational Creditor.
- (iv) The ledger entry that the Respondent/Corporate Debtor refers itself clearly states that the said payment has been made by the Respondent/Corporate Debtor to some other party and this is a journal voucher entry of the same and no payment of the said invoice has been made by the Respondent/Corporate Debtor to the Applicant/Operational Creditor. Further, the Respondent/Corporate Debtor has failed to show any proof of the said payment made to the Applicant/Operational Creditor.



(v) The contentions raised by the Respondent/Corporate Debtor with regard to Section 10A, work was completed prior to the section 10 A period and the proforma invoices of the tax invoices dated 01.06.2020 and 01.08.2020 were issued to the Respondent/Corporate Debtor on 15.02.2020 and 28.02.2020 which is before the period prescribed under section 10 A which are produced along with the additional affidavit. Even otherwise ignoring these invoices, the tax invoice dated 21.01.2020 amounting to Rs. 1,81,00,000/- is not barred by section 10 A of the Code.

9. We have heard the learned counsels appearing from both sides and perused the relevant documents available on record. We have also considered the written submissions submitted by both the parties.

It is noted that there was a business relationship between the Applicant/Operational Creditor and the Respondent/Corporate Debtor. As per the work order bearing no. AR/FY19-20/00062 dated 20.12.2019, work was allotted by the Respondent/Corporate Debtor to the Applicant/Operational Creditor to construct a ring road around the city of Ahmedabad. Various invoices were raised. Part payments were made by the Respondent/Corporate Debtor. The default amount stated by the Applicant/Operational Creditor is Rs 2,32,11,783/- including interest @ 18% per annum till 30.09.2021 for which a



demand notice under section 8 of the Code was issued on 24.01.2022 by the Applicant/Operational Creditor and served through speed post to the Respondent/Corporate Debtor on 27.01.2022. The proof of service is also placed on record. However, the Respondent/Corporate Debtor failed to reply to the said notice.

10. The defense taken by the Respondent/Corporate Debtor in its affidavit in reply includes that the present petition is non-maintainable on the grounds that there is a pre-existing disputes between the Applicant/Operational Creditor and the corporate debtor regarding the quality of services provided by the Applicant/Operational Creditor. After perusing the email conversations and letters, it is noted that the Respondent/Corporate Debtor has sent the said emails on “mantracorporation2103@gmail.com” which is not the email id of the Applicant/Operational Creditor. Also, there is a work Completion Certificate of the work done as per the work orders issued by the Respondent/Corporate Debtor in which the Respondent/Corporate Debtor admits that the work is completed satisfactorily. In view of this observation, it is clear that, the disputes raised by the Respondent/Corporate Debtor are moonshine defenses and there are no pre-existing disputes between the parties.
11. The Respondent/Corporate Debtor has also taken defense that the Applicant/Operational Creditor has filed a commercial suit before the



City Civil Court, Ahmedabad and has instituted pre-institution mediation as per section 12A of the Commercial Courts Act, 2015. After perusing the documents it is clear that there is pre-institution mediation filed by the Applicant/Operational Creditor and the Non-Starter report clearly states that the mediation has not started because of non appearance of the Respondent/Corporate Debtor and after the same no suit has been filed by the Applicant/Operational Creditor. Further, no documents has been placed by the Respondent/Corporate Debtor which proves that there is a civil suit filed by the Applicant/Operational Creditor. Therefore, it cannot be said that Applicant/Operational Creditor has filed a commercial suit.

12. The Respondent/Corporate Debtor has also taken the defense that two invoices dated 01.06.2020 and 01.08.2020 is barred by section 10 A of the code and the invoice dated 21.01.2020 is already been paid by the Respondent/Corporate Debtor as per the ledger enclosed by the Applicant/Operational Creditor. We have gone through the documents and Respondent/Corporate Debtor has failed to produce a single document which stipulates that the said payment has been made by the Respondent/Corporate Debtor to the Applicant/Operational Creditor as the ledger entry which the Respondent/Corporate Debtor refers does not shows that the said payment has been made by the Respondent/Corporate Debtor to the



Applicant/Operational Creditor. Even otherwise ignoring two invoices dated 01.06.2020 and 01.08.2020, the tax invoice dated 21.01.2020 amounting to Rs.1,81,00,000/- is not barred by section 10 A of the Code.

13. The present petition is complete in view of Section 9(5) of the IB Code, 2016. The present petition has been filed on 23.02.2022 and meets the threshold limit as prescribed under Section 4 of the IB Code, 2016. It is also filed well within the three years of limitations from the date of default. In view of the above stated discussion, it is found that the present IB Petition is complete and fit for triggering the Insolvency Resolution Process in respect of Respondent/Corporate Debtor. Therefore, the present IB Petition, filed under Section 9 of the Code, deserves admission.
  
14. The Applicant/Operational Creditor in Part-III of the Form-V has proposed the name of one **Mr. Jigar Tarunkumar Bhatt** for the appointment of Insolvency Resolution Professional (**IRP**) to conduct the CIRP of the Respondent/Corporate Debtor. He has filed his written communication annexed with the Application annexed at **Page 122** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings



pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI.

15. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- i) The Respondent/Corporate Debtor, viz., **M/s. Ahmedabad Ring Road Infrastructure Ltd.** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Insolvency and Bankruptcy Code, 2016.
- ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
  - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - b) transferring, encumbering, alienating or disposing of by the Respondent/Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - c) any action to foreclose, recover or enforce any security interest created by the Respondent/Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent/Corporate Debtor.
- e) *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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*
- iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Respondent/Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- iv) As proposed by the Operational Creditor, we hereby appoint **Mr. Jigar Tarunkumar Bhatt** having Registration No.IBBI/IPA-001/IP-P-01917/2019-20/13005, having address as per Form-2, B-101, Arvind Citadel, B/h. BSNL Tower, Off. C. G. Road, Navrangpura, Ahmedabad – 380009, to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder.
- v) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution



Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

- vi) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Respondent/Corporate Debtor, its Promoter or any other person associated with management of the Respondent/Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Respondent/Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
  
- vii) It is further directed that in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
  
- 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 in this regard, 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 shall be under duty to protect and preserve the value of the property of the 'Respondent/Corporate Debtor Company' and manage the operations of the Respondent/Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- ix) The Applicant/Operational Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.
- x) The Registry is directed to communicate a copy of this order to the Applicant/Operational Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.



xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.

xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

16. Accordingly, **CP (IB) No. 81 of 2022** stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN  
MEMBER (JUDICIAL)**