

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 3770/MB/2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy (Application to  
Adjudication Authority) Rule 2016)

*In the matter of*

**JIGAR KANTI CHHEDA**

Sole Proprietor of Divya Construction,  
Unit No. 125, New Apollo Estate,  
Mogra Lane, Andheri (East),  
Mumbai - 4000069

**.....Operational Creditor**

**Vs**

**S. K. M. REAL INFRA LIMITED**

Having Registered office at: Raaj  
Chamber, Plot No. 1 15-1 151 1 to 3,  
R. K. Paramhans Marg, Andheri  
(East), Mumbai - 400069

**.....Corporate Debtor**

**Order delivered on: 10.03.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Bankim Gangar, Advocate

**For the Respondent:** Mr. Darshit K. Jain, Advocate

***Per: Shri H.V. Subba Rao, Member (Judicial)***

1. This Company petition is filed by *Jigar Kanti Chheda* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *S. K. M. Real Infra Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Operational Creditor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an unresolved Operational Debt of Rs. 32,00,000/- to the Operational Creditor.
  
2. **The brief facts of the case as follows:-**
  - i. The Operational Creditor is a private company providing services in the Real Estate Sector.
  - ii. The Operational Creditor has done Civil Work for the Corporate Debtor at its site. Since the Corporate Debtor failed to pay the amount as per the invoices, the Operational Creditor has filed Company Petition against the Corporate Debtor being Company Petition No. 311 of 2016 before the Hon’ble Bombay High Court under the provisions of the Companies Act, 1956.
  - iii. In the above mentioned Company Petition the Corporate Debtor and the Operational Creditor has amicably settled the matter out of court and accordingly draw a consent terms under which the schedule of payment of total unpaid debt was agreed by the Corporate Debtor.
  - iv. The Operational Creditor and the Corporate Debtor have signed the Consent Terms on 20.10.2017 and filed before the Hon’ble Bombay High Court.

- v. As per the said Consent Terms a total amount of debt is Rs. 1,32,30,677/- (Rupees One Crore Thirty Two Lacs Thirty Thousand Six Hundred Seventy Seven Only) agreed to be paid by the Operational Creditor as per the Schedule agreed upon under the Consent Terms. In the following manner:

| Sr. No. | Amount to be Paid | Payment to be made on or before |
|---------|-------------------|---------------------------------|
| 1.      | Rs. 3,00,000/-    | 1 <sup>st</sup> May 2018        |
| 2.      | Rs. 5,00,000/-    | 1 <sup>st</sup> June 2018       |
| 3.      | Rs. 5,00,000/-    | 1 <sup>st</sup> July 2018       |
| 4.      | Rs. 5,00,000/-    | 1 <sup>st</sup> August 2018     |
| 5.      | Rs. 5,00,000/-    | 1 <sup>st</sup> September 2018  |
| 6.      | Rs. 5,00,000/-    | 1 <sup>st</sup> October 2018    |
| 7.      | Rs. 7,00,000/-    | 1 <sup>st</sup> November 2018   |
| 8.      | Rs. 7,00,000/-    | 1 <sup>st</sup> December 2018   |
| 9.      | Rs. 7,00,000/-    | 1 <sup>st</sup> January 2019    |
| 10.     | Rs. 7,00,000/-    | 1 <sup>st</sup> February 2019   |
| 11.     | Rs. 7,00,000/-    | 1 <sup>st</sup> March 2019      |
| 12.     | Rs. 7,00,000/-    | 1 <sup>st</sup> April 2019      |
| 13.     | Rs. 8,00,000/-    | 1 <sup>st</sup> May 2019        |
| 14.     | Rs. 8,00,000/-    | 1 <sup>st</sup> June 2019       |
| 15.     | Rs. 8,00,000/-    | 1 <sup>st</sup> July 2019       |

|     |                |                                |
|-----|----------------|--------------------------------|
| 16. | Rs. 8,00,000/- | 1 <sup>st</sup> August 2019    |
| 17. | Rs. 8,00,000/- | 1 <sup>st</sup> September 2019 |
| 18. | Rs. 8,00,000/- | 1 <sup>st</sup> October 2019   |
| 19. | Rs. 8,00,000/- | 1 <sup>st</sup> November 2019  |
| 20. | Rs. 6,30,677/- | 1 <sup>st</sup> December 2019  |

- vi. As per the Consent Terms, till date the Corporate Debtor has paid an aggregate sum of Rs. 78,00,000/- as against first thirteen instalments i.e. from 1<sup>st</sup> May 2018 till 1<sup>st</sup> May 2019 and thereafter the instalments from 1<sup>st</sup> June 2019 till 1<sup>st</sup> September 2019 are outstanding due and payable.
- vii. It is submitted that by Government Notification dated 28.05.2016, the provisions of Winding Up of the Companies due to its unpaid debt under the Companies Act, 1956 was repealed and Insolvency & Bankruptcy Code, 2016 came to existence
- viii. As the Corporate Debtor defaulted in payment, the Operational Creditor has filled the present Application on 14<sup>th</sup> October 2019 for unpaid operational debt. Due to the unpaid Operational Debt, for the instalments from 1<sup>st</sup> June 2019 till 1<sup>st</sup> September 2019.
- ix. A Demand Notice under section 8 of the Code was issued by the Operational Creditor on 16.09.2019. Corporate Debtor replied the same on 14.10.2019 vide email, wherein the Corporate Debtor alleged that the new settlement terms were agreed.

- x. The Operational Creditor submits that no fresh settlement terms were ever agreed for payment of the Operational Debt.
  - xi. The Corporate Debtor has failed to demonstrate any pre-existing disputes after the said Consent Terms filed and prior to filing of the present Company Petition.
  - xii. The Corporate Debtor has failed to establish pre-existing disputes after the consent terms filed and prior to demand notice. Accordingly, as per the provision of the IBC and law laid down in several landmark judgement of the Hon'ble Supreme Court, the Corporate Debtor has failed to pay its debt.
  - xiii. The Corporate Debtor has vide reply dated 26.09.2019 and 14.10.2019 admitted the liability but falsely alleged that the said payment schedule as agreed under the consent terms was revised and therefore the same is not due and payable.
  - xiv. Hence, the present petition be admitted, and corporate insolvency resolution process be initiated against the Corporate Debtor.
3. The Corporate Debtor filed affidavit in reply dated 17.03.2021 of Ms. Mansa Bhatia, the authorized representative of the Corporate Debtor opposing the above Company Petition on the ground of maintainability and also pre-existing disputes between the parties.

### **FINDINGS**

1. The main contention of the Corporate Debtor is that the Operational Creditor has not performed his professional obligations in carrying out the civil work of breaking and cutting

RCC. The Corporate Debtor also alleges that the Operational Creditor has also carried out manipulations and discrepancies in various challans/ bills raised by them. The Operational Creditor colluded with the site supervisor in manipulating and raising grossly inflated bills on the Corporate Debtor, which are apparent from the bills/challans raised by them. The Corporate Debtor also alleges that the Operational Creditor has avoided furnishing details of work done, in an attempt to raise inflated bills.

2. After hearing the submissions on both the sides, this bench notes that the above Company Petition is filed by the Operational Creditor in respect of four defaulted instalments dated 01.06.2019, 01.07.2019, 01.08.2019 and 01.09.2019 respectively as per the consent terms filed by both parties before the Hon'ble Bombay High Court in Company Petition bearing No. 311/2016. After filing the present Company Petition the remaining instalments of 01.10.2019, 01.11.2019 and 01.12.2019 have also become due and payable for which we are not concerned. The Corporate Debtor is estopped from raising all the above pleas having admitted the liability and filed the consent terms undertaking to repay the amount as per the payment schedule mentioned in the Consent Terms. However, the Corporate Debtor once again making an unsuccessful attempt by raising all the above pleas so as to give a colouring as if there is a pre-existing dispute between the parties which is legally impermissible. Under these circumstances this bench is of the view that the existence of "debt" and "default" stands proved through the consent terms and the Corporate Debtor has no valid defence and the above Company Petition deserves to be admitted even without giving opportunity to the Corporate

Debtor. Accordingly, the above company petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) – 3770 /MB/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against S. K. M. Real Infra Limited.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Ms. Neeraja Kartik** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01445/2018-19/12137, having E-mail Address: neerajakartikip@gmail.com and having Phone No: (+91) 9922508850 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its

assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**CHANDRA BHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**