

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH****(IB)-1033(ND)2019****IN THE MATTER OF:**

M/s Aanav Construction Co.
Through its Sole Proprietor
Mr. Manish Sachdeva
A - 323, Defence Colony,
New Delhi-110024

...Operational Creditor**VERSUS**

Shri Balaji Infradevelopers Private Limited
11/102, East End Apartments,
Mayur Vihar, Phase-I Extension
Delhi-110096

...Corporate Debtor**Section: 9 of IBC, 2016****Order Delivered on: 20.09.2019****Quorum:****SMT. INA MALHOTRA, HON'BLE MEMBER (J)****SHRI. L. N. GUPTA, HON'BLE MEMBER (T)****PRESENT:**

For the Petitioner : Mr. Anshu Bhanot, Mr. Anuj Mirdha
and Mr. Nitish Ojha, Advocates
For the Respondent : Mr. Ritesh Khare and
Mr. Mohd. Azeem, Advocate

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20/9/19

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Aanav Construction Co. (for brevity 'Operational Creditor') through its Sole Proprietor Mr. Manish Sachdeva, with a prayer to initiate the Corporate Insolvency process against M/s Shri Balaji Infradevelopers Pvt. Ltd. (for brevity 'Corporate Debtor').

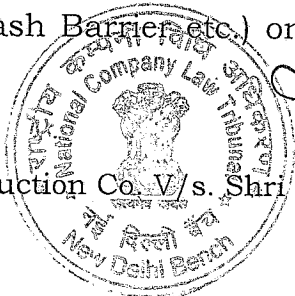
2. The Corporate Debtor namely, M/s Shri Balaji Infradevelopers Pvt. Ltd. is a Company incorporated on 24.09.2008 under the provisions of Companies Act, 1956 with CIN No. U45300DL2008PTC183677, having its Registered office at 11/102, East End Apartments, Mayur Vihar Phase-I Extension Delhi-110096.

3. The Authorised Share Capital of the Respondent Company is Rs. 50,00,000 and Paid-up Share Capital of the Company is Rs. 34,50,000 as per Master Data of the Company Annexed.

4. It is the Operational Creditor's case that a Sub Contract vide Work Order No. SBIPL/2014-15/007 dated 29.06.2014 for construction of pre-cast structures (such as PUP/VUP/Box Culvert/Crash Barrier etc.) on Etawah – hakeri (Kanpur) Section of

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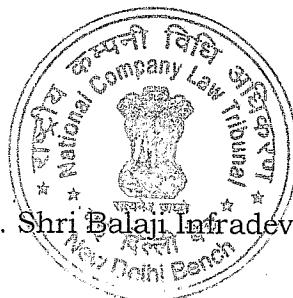


NH-2 in the State of Uttar Pradesh was executed between the Parties. It is submitted by the Operational Creditor that pursuant to the terms of the aforementioned contract, the contract work was commenced at the above-mentioned site on 01.07.2014. The Operational Creditor further added that the same was acknowledged by the Corporate Debtor in due course.

5. It is further submitted by the Operational Creditor that the contract work was completed on 15.03.2015 and the total liability of the Corporate Debtor towards completion of the said work is Rs. 6,28,66,367 against the work contract price of Rs. 5,21,51,780. The Operational Creditor further added that the fact of completion of the work and work contract completion price has been categorically acknowledged by the Corporate Debtor vide Work Completion Certificate dated 11.01.2019 issued by the Corporate Debtor Company i.e. Shri Balaji Infradevelopers Pvt. Ltd.

6. It is stated by the Petitioner that the total outstanding Liability of the Corporate Debtor as on 31.03.2019 is to the tune of Rs. 3,00,37,703. It is further added by the Petitioner that since the Respondent Company had failed to liquidate its dues, it had sent a Demand Notice dated 14.03.2019 under Section 8 of IBC 2016 vide Speed Post of even date to the Registered Office of the Respondent and the same was delivered to them on 15.03.019 as per the Tracking Report annexed.





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7. That the Petitioner in its Affidavit under Section 9(3)(b) of IBC, 2016 had made specific averments with regard to non-receipt of notice of any dispute issued by the Respondent. The Petitioner has also annexed a Certificate dated 16.02.2019, issued by the Corporation Bank in compliance of Section 9(3)(c) of IBC, 2016.

8. On entering appearance, the Corporate Debtor has filed its reply on 23.05.2019 and has made the following averments which are reproduced below :-

"2. That the Operational Creditor came before this Hon'ble Tribunal with the present application for initiation of CIRP of the Corporate Debtor on the basis of work orders which are marked as Annexure-B is manufactured, tampered, and highly objectionable. As the said work order is fake and false and never issued by the Corporate Debtor to the Operational Creditor.

3. It is stated that the Operational Creditor has not only manufactured and fabricated the documents but also in his pleading failed to demonstrate the fact that any bill issued in the year 2015 against the above-mentioned work order or Completion of Work. It is further stated that the letter head and Rubber Stamp used by the Operational Creditor for creating the above said work order is also manipulated and misplaced as these type of work order on this type of letter head has never issued from the office of Corporate Debtor for any purpose.

4. That the Operational Creditor has obtained the alleged Work Completion Certificate by giving wrong and mala fide Submission. That the Operational Creditor requested to provide the Work Completion Certificate for an adjustment entry. Therefore, the Corporate Debtor granted the Completion Certificate in good faith which was fraudulently used to cover up the difference in fabricated work order value and linking up with some other transaction which had nothing to do with the work done as claimed by the so called operational Creditor.

5. That the alleged Work Contract was Rs. 5,21,51,780/- but the Operational Creditor escalated the amount of contract by Rs. 1,07,14,587/- and their opening balance was showing of Rs. 6,28,66,367/- in his Ledger Account of Corporate Debtor on



31.03.2015, whereas, the Work Completion Certificate issued on 11.01.2019 which is clearly shows that documents are completely manufactured, arbitrary and mala fide. It is further submitted that the amount of Rs. 6,28,66,367/- is showing for the purpose of SALE SERVICES EXEMTPED, there is nothing for the work contract.”

9. From the above-mentioned averments by the Corporate Debtor, it is evident that they had admitted issuance of the work order of Rs. 5,21,51,780 and the Work Completion Certificate, a fact that was also not repudiated by the Ld. Counsel for the Corporate Debtor.

10. After hearing submissions of both the Parties, this Bench is of the view, that the dispute raised by the Corporate Debtor is not a pre-existing one as there is nothing on record, which could suggest that it was raised prior to the issuance of Demand Notice. It may be worthwhile to refer to the judgement of the Hon'ble NCLAT in the matter of **Ahluwalia Contracts (India) Pvt. Ltd. VS Raheja Developers Limited Company in Appeal No.703 of 2018**, where it was held that :

“From the aforesaid decision, it is clear that the existence of dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the ‘operational debt’ is exceeding Rs. 1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any 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’, the application under Section 9 cannot be rejected and is required to be admitted.”



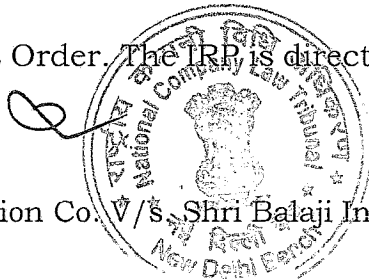
11. Therefore, the amount of default being above Rs. 1,00,000 and their being no pre-existing dispute raised by the Respondent, the Petition is admitted in terms of Section 9(5) of the IB Code and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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 any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the 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 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 corporate debtor.”

12. As proposed by the Petitioner, this Bench appoints Sh. Pawan Kumar Goyal, having his Office at #304 D R Chamber 12/56 D B Gupta Road, Karol Bagh, New Delhi - 110005 (email id- ca.pawangoyal@gmail.com) and Registration No. IBBI/IPA-001/IP-P00875/2017-2018/11473, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated

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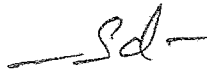
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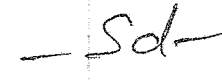
under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Petitioner is directed to deposit Rs.1,00,000 (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Petitioner.

14. Accordingly, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.


(L. N. Gupta)
Member (T)




(Ina Malhotra)
Member (J)


सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003