



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 1366/IB/MB/2020

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

**Jones Lang LaSalle Building
Operations Private Limited**

No. 1110, Level 11, Ashoka Estate, 24
Barakhamba Road, New Delhi 110001

**..... Operational Creditor/
Petitioner**

Vs

Epitome Residency Private Limited

One BKC, A Wing 1401, Plot No. C-66, G
Block, Bandra Kurla Complex, Bandra
(East), Mumbai Bandra Suburban 400051

..... Corporate Debtor

Order Pronounced On: 12.06.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Adv. Shashwat Rai i/b Keystone Partners

For the Respondent: Adv. Anmol Bartaria i/b Juris Consillis

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company petition is filed by **Jones Lang LaSalle Building Operations Private Limited** (hereinafter called "**Petitioner**" / "**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Epitome Residency Private Limited** (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed a default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of **Rs. 1,34,46,109/-**.

FACTS OF THE CASE

3. The Operational Creditor is a company engaged in the business of real estate management and is a solution provider and specialises in real estate consultancy and property management.
4. An Agreement dated 30.05.2017 was executed between the Operational Creditor and the Corporate Debtor for the purposes of availing the Operational Creditor's services with respect to, Corporate Debtor's property called '**Imperial Heights**' located near BEST Colony, behind Oshiwara Bus Depot, Opp. Fire Brigade Station, Goregaon (W) Mumbai 400 062 ("said Property"). The Agreement dated 30.05.2017 was amended vide an Addendum dated 10.04.2018.
5. Pursuant to this, the Operational Creditor has satisfactorily performed its services according to the terms and conditions agreed upon in the

Agreement dated 30.05.2017 and Addendum dated 10.04.2018 and has started raising monthly invoices for the services rendered. It has been submitted that no complaints have ever been raised by Corporate Debtor, with regard to either the services rendered by the Operational Creditor or invoices raised.

6. In this regard, payments amounting to Rs. 14,98,225/- by way of two cheques i.e. Ch. No.509380 and Ch. No. 509378 for a sum of Rs.10,00,000/- and Rs. 4,98,225/- respectively have been received by the Operational Creditor from the Corporate Debtor under the invoices raised for the months of June 2018. From July 2018 onwards, the Corporate Debtor began to default in making payments with respect to invoices raised by the Operational Creditor.
7. The Operational Creditor was constrained to issue a Demand Notice dated 25.11.2019, under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, upon Corporate Debtor after extensive correspondence, negotiations and follow-ups, on account of Corporate Debtor's persistent default in making payments. By the said Demand Notice, the Corporate Debtor was called upon to clear payments amounting to Rs. 1,49,44,337/-.
8. The Operational Creditor has submitted that a settlement agreement dated 29.11.2019 ("Settlement Agreement") was executed between the Operational Creditor and Corporate Debtor, in order to settle the dispute amicably, whereby the Corporate Debtor had admitted its liability to pay an amount of Rs. 1,49,44,334/- to the Operational Creditor. However, as a gesture of goodwill, the Operational Creditor agreed to receive an amount of Rs. 1,46,35,701/- from the Corporate Debtor and post-dated cheques in this regard were issued to the Operational Creditor.
9. While payments under the first two post-dated cheques were honoured, however, the remaining cheques when presented for encashment were returned on account of "**insufficient funds**". In this regard, the Operational

Creditor addressed Notices to the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881.

10. It has been submitted that the Corporate Debtor is liable to pay the Operational Creditor an amount of Rs. 1,34,46,109/- on the basis of the invoices raised from time to time (after adjustment of amounts received under the said Settlement Agreement). Since no payments have been forthcoming from the Corporate Debtor till date, this necessitated the filing of the present petition under Section 9 of the Code.

REPLY FILED BY THE CORPORATE DEBTOR

11. At the outset, the Corporate Debtor denies all statements, allegations and submissions made by the Operational Creditor in the petition.

12. It has been submitted that the Demand Notice dated 25.11.2019 has been amicably settled and resolved by entering into Settlement Agreement dated 29.11.2019. Under the said Settlement Agreement, six post dated cheques were received under out of which two cheques have been encashed. It has been submitted that the encashment of two post-dated cheques satisfied and settled the Demand Notice dated 25.11.2019. Therefore, the default of payment of settlement amount under the undated Settlement Agreement cannot be treated as a default under IBC and cannot result in initiating the proceedings under Section 9 of the Code.

13. The Corporate Debtor has further submitted that Clause 5 of Settlement Agreement dated 29.11.2019 provides exclusive jurisdiction to the court in Delhi with regard to any dispute arising from Settlement Agreement. Therefore, the present Petition cannot be entertained by NCLT, Mumbai.

14. It has been submitted that the present Petition is hit by threshold limit of 1 crore. The Settlement Agreement includes six post-dated cheques aggregating to a sum of Rs. 1,46,35,701/-. Cheque No.509380 dated 11.12.2019 for Rs. 10,00,000/- and cheque No.509378 11.12.2019 for Rs.4,98,225/- have been encashed. Further, the Operational Creditor has

chosen not to proceed against the Corporate Debtor for dishonour of cheque No.154216 dated 26.3.2020 for Rs.34,32,669/- and cheque No.154217 dated 28.4.2020 for Rs.34,42,263/- and has not issued any notice for dishonour of the aforesaid cheques. However, the Operational Creditor has issued notice under Section 138 for dishonour of cheque No. 154214 dated 28.1.2020 for Rs.31,10,245/- and cheque no. 154215 dated 27.2.2020 for Rs.31,45,326/-. The mere fact of dishonouring of cheques by itself cannot be construed as existence of debt and/or default. Without Prejudice to the above, the claim raised by the Operational Creditor under the dishonoured cheques aggregates Rs.62,55,571/- which is below the threshold prescribed under law and, therefore, the Petition is barred under Section 4 of IBC.

- 15.It has further submitted that dishonour of cheques cannot constitute existence of a debt and default and therefore, it cannot be the basis for instituting a petition under Section 9 of the Code.
- 16.It has further submitted that the Settlement Agreement is undated, and it cannot become the basis to for initiating CIRP against the Corporate Debtor under the Code.
- 17.With the above averments, the Corporate Debtor has prayed for the dismissal of the present petition.

Findings: -

18. We have heard the Counsel for the parties and have gone through the record.
19. During the course of arguments, it has been contended by the Counsel for the Petitioner that the factum of existence of Operational Debt has not been seriously disputed by the Corporate Debtor. In this regard, the Counsel for the Petitioner has referred to Exhibit (c) wherein the detail of the outstanding amount in respect of the invoices has been given. The Counsel for the Petitioner has further referred to an email dated 28.12.2018 whereby the factum of

liability has been acknowledged and it has been stated that the outstanding payments would be cleared. The Counsel for the Operational Creditor has further referred to another email dated 30.06.2019 whereby the Corporate Debtor has unequivocally admitted its liability to clear the outstanding dues of the Operational Creditor.

20. The Counsel for the Operational Creditor has further referred to the settlement terms which were executed after the demand notice dated 25.11.2019 was issued to the Corporate Debtor and as per the settlement agreement (Exhibit-N) the liability of Rs. 1,49,44,337/- has been acknowledged in no uncertain terms. According to the Counsel for the Operational Creditor, it is, therefore, evident from the record that the Corporate Debtor has committed default in payment of the dues and the Petition deserves to be admitted.
21. On the other hand, the Counsel for the Corporate Debtor has argued that the Petition is not maintainable and deserves outright dismissal. In this regard, the Counsel for the Corporate Debtor has argued that in pursuance of the demand notice dated 25.11.2019, the matter was settled with the Operational Creditor vide settlement agreement (Exhibit-N). Therefore, the dispute raised through the demand notice stands resolved. The Counsel for the Corporate Debtor has further argued that as per the settlement terms, different cheques for a total amount of Rs. 1,46,35,701/- were issued, as detailed in Para No. 2 of the Settlement Agreement. Some of the cheques were dishonoured but the Petitioner has not availed the remedy of prosecuting the Corporate Debtor under Section 138 of the Negotiable Instrument Act. The Counsel for the Corporate Debtor has further contended that since the dispute raised in the demand notice dated 25.11.2019 was resolved by way of the Settlement Agreement, the cause of action to file the Petition under Section 9 does not survive and on this ground alone, the Petition deserves to be dismissed.
22. We have thoughtfully considered the aforesaid contentions raised by the Counsel for the Parties and have also gone through the record.

23. In our considered view, the contention raised on behalf of the Corporate Debtor is not at all tenable. It is evident from the Settlement Agreement (Exhibit-N) that the Corporate Debtor clearly acknowledged its liability to pay Rs. 1,46,35,701/- to the Operational Creditor. In order to discharge its liability, the Corporate Debtor admittedly issued as many as 6 cheques. Out of the said cheques, only the cheques of Rs. 10,00,000/- and Rs. 4,98,225/- were honoured while the rest of the cheques were dishonoured and after deducting the amounting of the cheques which were honoured, the liability of more than Rs. 1.30 crores still subsisted as the cheques were dishonoured which is clearly attributable to the Corporate Debtor. In the given circumstances, it does not lie in the mouth of the Corporate Debtor to say that with the execution of the Settlement Terms, the dispute raised through the demand notice dated 25.11.2019 stood resolved leaving no right with the Operational Creditor to pursue any proceedings against the Corporate Debtor except under Section 138 of the Negotiable Instrument Act.

24. Here it is worth mentioning that the Corporate Debtor cannot be allowed to take advantage of its own grounds nor can it be said by any stretch of imagination that with the execution of the Settlement Terms, the Petitioner in any way has lost its rights to seek any remedy under Section 9 of the Insolvency and Bankruptcy Code. Therefore, the contention raised by the Counsel for the Respondent/Corporate Debtor is not sustainable and is hereby repelled.

25. No other points have been raised by the Corporate Debtor.

26. As a result of the above discussion, it is evident that the Petitioner has been able to establish that there has been an Operational Debtor of Rs. 1,34,46,109/- in respect of which the default has been committed by the Corporate Debtor.

27. Therefore, all the ingredients of Section 9 have been made in this case and in our considered view, this Petition deserves to be admitted.

28. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- A. The above Company Petition No. (IB) 1366 of 2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Epitome Residency Private 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 hereby appoints **Mr. Ashok Venkatrao Barbole**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P02280/2021-2022/13720, having Email id - caashokbarbole2009@gmail.com 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 costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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, the C.P.(IB) 1366 of 2020 is **admitted**.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)