

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 592/MB-VI/2022

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

AMIT INFRA-LOGIC (INDIA) PRIVATE LIMITED

[CIN: U51432MH2007PTC172769]

Registered Office: B-4, 1st Floor, Sita Premises
Limited, Aziz Baug, Nr. R. C. F. Police Station,
R.C. Marg, Chembur(E) Mumbai- 400074,
Maharashtra.

...Operational Creditor

V/s

RADIUS & DESERVE BUILDERS LLP

[LLPIN: AAA-5895]

Registered Office: ONE BKC, A Wing
1401, Plot No. C-66, G Block, Bandra
Kurla Complex, Bandra (East),
Mumbai -400051, Maharashtra

...Corporate Debtor

Order Reserved on: 06.09.2023
Order Pronounced on: 27.09.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances (Physical):

Operational Creditor: Adv. Dhruva Gandhi a/w. Danesh Mehta i/b Mulla
Associates

Corporate Debtor : None.

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. Background

1.1 This Application bearing C.P. (IB) No. 592/MB/C-VI/2022 was filed on 30.04.2022 by Amit Infra-Logic (India) Private Limited, the Operational Creditor (OC), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Radius & Deserve Builders LLP, the Corporate Debtor (CD). The OC is engaged in the business of manufacturing and supplying of Ready- Mix Concrete (RMC) and the CD is in the business of construction. However, an amount of Rs. 8,29,19,331/- fell due to the OC from CD in furtherance of a tripartite agreement dated 13.07.2019 that was executed among the OC, one M/s. Capacite Infraprojects Limited and the CD herein.

2 Contentions of OC

2.1 The amount payable by CD to OC arises account of –

a) Supply of RMC by the OC, and on account of the execution of the Tripartite Agreement dated 13.07.2019- a sum of Rs. 2,51,66,440/- (Rupees Two Crores, Fifty-One Lakhs. Sixty-Six Thousand, Four Hundred and Forty only)

b) Idling charges incurred on the RMC Plant from 13.07.2019 till 31.12.2021, the unrecovered mobilisation and demobilisation costs, and the loss of revenue suffered for this duration- Rs.5,77,52,891/- (Rupees Five Crores Seventy-Seven Lakhs Fifty-Two Thousand Eight Hundred and Ninety-One only).

2.2 Capacite Infraprojects Limited had been awarded the contract of constructing 16 buildings as a part of a Slum Redevelopment Authority (SRA) Scheme by the CD, and in view of this, it issued a Work Order dated 06.11.2015 upon the OC for setting up an RMC Plant for the supply and provision of an approximate requirement of around 2,00,000 cum. of RMC for this construction project. The same came to be modified by a 'Work Order Amendment' on 23.07.2017.

2.3 The CD on 04.12.2019 addressed a letter to the OC, whereby it allocated an area to the OC at the project site for setting up the RMC batching plant and also provided it access to the site.

2.4 In the tripartite agreement dated 13.07.2019 executed among the OC, Capacite Infraprojects Limited and the CD, it is, *inter alia*, recorded:

"... We hereby agree, confirm and acknowledge that pursuant to Tripartite agreement entered into/to be entered into by and amongst inter alia CIL, Amit Infra and the Radius Deserve ("Agreement"), Radius & Deserve Builders LLP has taken over the obligation and responsibility of paying us and settling the said Total Receivables, as a primary obligor."

- 2.5 A schedule of payment was also agreed upon, in pursuance of which the CD handed over ten post-dated cheques (PDCs) to the OC, the details of which are set out in letter dated 20.08.2019 issued by the CD to the OC. However, subsequently, the CD asked the OC not to present the PDCs.
- 2.6 In view of the above events, the OC issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC) on 07.01.2022 to the CD. The CD failed and/or willfully refused to respond to this Demand Notice and no payment has been released in favour of the OC.
- 2.7 The OC's banker, Yes Bank Limited had issued a letter dated 22.04. 2022 to the OC certifying that the OC has not received any payments in its account from the CD for the period from 13.07.2019 to 21.04.2022.

3 Contentions of CD

- 3.1 We observe that on 21.06.2023, the Counsel for the CD had undertaken to file reply, along with application for condoning the delay; however, it was under scrutiny in the Registry for certain period and was listed before us after this Application was already reserved for orders. The Counsel for CD failed to appear and agitate its case in the said IA. The Counsel for OC argued its case with respect to I.A. 4133/2023 stating that CD's conduct was demonstrated by their continuous non-appearance in the matter. Further, the CD has not served copy of this I.A. upon the OC. In

view of the above, we disposed of the IA as closed for want of follow-up action by the CD.

4 Analysis & Findings

- 4.1 The date of default is not clearly mentioned by the OC in Part IV of the Application. However, upon perusal of the documents available on record, we are of the considered view that the date of default for the purpose of determining the maintainability of this Application on account of limitation is 20.08.2019, i.e. the date on which the said ten PDCs were issued to the OC by the CD in furtherance of its admission of liability to pay to the OC in relation to the project as recorded in the Tripartite agreement dated 13.07.2019. We find that the present Application was filed on 30.04.2022, i.e. within the period of 3 years from the date of default, and is hence, maintainable to be adjudicated by us under Section 238A r/w Article 137 of the Limitation Act, 1963.
- 4.2 We find that despite several opportunities granted by this Adjudicating Authority to the CD to file its reply and argue its case on merits, it chose not to avail of the opportunities. In view of that the above, the CD was set *ex-parte* by this Bench on 05.09.2023.
- 4.3 We find that the debt against the services provided and the setting up of RMC plant in furtherance of the Work order issued and the Tri-partite agreement, falls within the meaning of “operational debt” u/s. 5(21) of the IBC.

4.4 On perusal of the documents submitted by the OC, it is clear that the operational debt of more than Rs.1,00,00,000/- (One crore Rupees) is due and payable by the CD to the OC u/s. 4 of IBC and thus, this Application u/s. 9 of the IBC is maintainable. The CD has not notified the existence of any dispute to the OC. The Application is complete and has been filed under the proper form. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.

ORDER

This Application bearing C.P. (IB) No. 592/NCLT/MB/C-IV/2022 under Section 9 of I&B Code, 2016, filed by Amit Infra-Logic (India) Private Limited, the OC, for initiating CIRP in respect of Radius & Deserve Builders LLP, the CD is **admitted**.

We further declare moratorium u/s 14 of IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 (54 of 2002);
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for the liquidation of the CD under section 33 of IBC, as the case may be.
- V. That the public announcement of the CIRP shall be made in accordance with the IBC, the Rules and Regulations made thereunder.

VI. That this Bench hereby appoints Ms. Pournima Jayant Tungatkar, a registered Insolvency Professional having Registration Number-IBBI/IPA-002/IP-N01188/2021-2022/13989 and Email ID-tungatkarpournima@gmail.com as the Interim Resolution Professional (IRP) to carry out the functions under the Code, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VII. During the CIRP Period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VIII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- X. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**SD/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**SD/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//LRA-Akshata Shah//