

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI (COURT NO. IV)**  
**Company Petition No. IB-561/ND/2018**

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

**IN THE MATTER OF:**

**M/s Indarprashtha Buildtech Private Limited**

**...APPLICANT/OPERATIONAL CREDITOR**

**VERSUS**

**M/s Anjani Realtors Private Limited**

**...RESPONDENT/ CORPORATE DEBTOR**

**ORDER PRONOUNCED ON: 12.01.2022**

**CORAM:**

**DR. DEEPTI MUKESH**  
**HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA**  
**HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

**IN THE MATTER OF:**

**M/s Indarprashtha Buildtech Private Limited**

Having its registered office at:

59, Savita Vihar

New-Delhi-110092

*IB- 561(ND)/2018*  
*M/s Indarprashtha Buildtech Private Limited*

*Vs.*

*M/s Anjani Realtors Private Limited*

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

**M/s Anjani Realtors Private Limited**

Having its registered office at:

37/2, West Patel Nagar

New-Delhi-110008

...RESPONDENT/ CORPORATE DEBTOR

**FOR THE APPLICANT** : Ms. Isha Bhalla

**FOR THE RESPONDENT** : Mr. Rohit Gupta

**ORDER**

**Per- Sumita Purkayastha, Member (Technical)**

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.
2. It is the case of the applicant that an arrangement between the parties was made by which the corporate debtor owns a freehold plot of land and agreed to enter into a Development Agreement for the development of the property. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:-
  - a. That during the execution of the development Agreement, the shareholder of the corporate debtor Mr. Paramjeet Gandhi sought an upfront payment of Rs. 3 crores.

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Further vide email dated 03.10.2016, it was submitted that the Mr. Paramjeet Gandhi pointed out that the development agreement could not be signed until a substantial amount was received, whereby a sum of Rs. 3 crores was paid by the applicant to the corporate debtor i.e Rs.2 crores by way of cheque and Rs.1 crore by way of RTGS.

Copy of Development Agreement signed by the applicant sent to the corporate debtor dated 06.10.2016 placed on record.

- b. That the Development agreement was not signed and further a sum of Rs. 2 crores were demanded vide email dated 04.11.2016, wherein the applicant made payment of Rs.1 crore on 05.04.2017 and another Rs.1 crore was agreed to be handed over on 28.04.2017 after signing of the agreement. It is further stated that a final term sheet duly signed by the applicant was handed over to Mr. Paramjeet Gandhi on 21.04.2017 and thereafter a sum of Rs. 1crore was to be paid by 28.04.2017 which the corporate debtor refused to sign.
- c. It is stated that the detailed project report was sent vide email dated 04.08.2017 and letter dated 06.09.2017 and 01.10.2017 whereby a sum of Rs. 97,00,000/- was spent on the preliminary construction work and Bhoomi Poojan.
- d. It is further submitted that the shareholder of the corporate debtor Mr. Paramjeet Gandhi was unwilling to go ahead with the said Agreement, the applicant on 26.12.2017 sought to refund the sum of Rs. 4 crore along with the interest and additional amount of Rs.1 crore against the expenses incurred.
- e. That the operational creditor sent a Demand Notice dated 13.04.2018 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Copy of the Demand Notice demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India. The postal receipts dates 13.04.2018 and 14.04,2018 has been placed on record.

3. The operational creditor has also relied on certain documents which submitting as follows:

a. That on 28.10.2019 that certain homebuyers approached the creditors and informed that they had invested in the same property that the creditor was to develop.

b. It is submitted that after enquiring it come to light that the property situated at Ghaziabad which is also the subject matter before this Tribunal was already sold in the year 2014 vide registered deed dated 07.03.2014 by the debtor to Navjyoti Associates Private Limited.

Copy of the Registered Deed dated 07.03.2014 placed on record.

c. That vide registered agreement of understanding dated 07.03.2014 registered in the office of sub registrar V Ghaziabad executed by the corporate debtor in favour of Navjyoti Associates Private Limited involved a residential project constructing 20 flat. Further various homebuyers have already filed complaints and legal proceedings to recover their money.

d. It is submitted that the consideration received by corporate debtor being Rs. 1.75 Crore as per the agreements has not been shown in the debtor

company's balance sheet which has been filed before the RoC. Thereafter the applicant also came to know that a firm named M/s Oxygen Infrastructure and Developers Pvt. Ltd., was awarded with the work of erection and construction of residential flats on the property in question.

- e. That said registered agreement dated 07.03.2014 was executed for the sale of 20 no's of flats which have neither been constructed nor delivered till date, hence the said registered agreement is valid as on date. Further it has also neither revoked nor disputed by M/s Oxygen Infrastructure and Developers Private Limited or M/s Anjani Realtors Private Limited which shows that both the companies are hand in glove and can resort to any level of treachery to extort money from the people.
- f. It is also submitted that the term sheet dated 19.04.2017 the debtor is relying on is also non-existent and yet the same has been referred repeatedly. Therefore adverse inference can be drawn as to the conduct of the debtor company for not coming clean.
- g. It is stated that the FIR no. 205 dated 23.10.2019 has been lodged against Paramjit Gandhi who is accused no.8 for criminal offences under section 406/408/420 of IPC before Deputy Commissioner of Police (Anti Land and Building Racket Section).


Copy of the FIR has been placed on record.



4. The Corporate Debtor in its reply to the application has raised certain objections against the claim of the operational creditor which are as follows:
- a. It is submitted that the no construction of flats has been carried out on the said land owned nor sale deed had been executed at any point of time with the purported purchasers namely Navjyoti Associates Private Limited. Further it is submitted that the said company i.e Navjyoti Associates Private Limited has paid the sale consideration amounting to Rs. 2,00,00,000/- to a company namely Oxygen Infrastructure and Developers Private Limited while executing the alleged sale deed with the corporate debtor. Furthermore Oxygen Infrastructure and Developers Private Limited and its directors/promoters are unknown to the respondent and the fallacy of the said document was established from the fact that Navjyoti Associates has entered into a Sale deed of flat which does not even exist on the land owned by the corporate debtor.
  - b. It is pertinent to mention that the fraud of the applicant has been established from the fact that Mr. Pawan Kumar Gaur whose name appeared as witness in the purported sale deed is also the director in the applicant company as well as Oxygen Infrastructure and Developers Private Limited which has allegedly received sale consideration from the applicant. Thus the applicant cannot claim to be unaware of the alleged sale deed.
  - c. It is stated that alleged FIR which the applicant seeking to place on record mentions the name of the erstwhile management of the corporate debtor and has nothing to do with the present management of the respondent company.



- d. It is submitted that the respondent has forfeited the amount paid by the application as earnest money towards the said land under the Term Sheet Agreement dated 25.04.2017 inasmuch as the applicant failed to perform its part of the obligation in making timely payment under the said Term Sheet Agreement. Further it is stated that the said term sheet agreement is the only document which was executed between the applicant and the corporate debtor and the applicant was in material breach of the terms of the agreement which eventually led to termination of the agreement and forfeiture of the earnest amount.
5. Heard the parties and perused the case records.
  6. It is an admitted fact that the applicant paid Rs. Rs 3 Crores in the month of October 2016, which is also admitted by corporate debtor in its reply to this application.
  7. The applicant has started construction at the site and the same fact was not denied by the corporate debtor in its reply. The applicant even sent a detailed project report to the respondent vide email dated 04.08.2017 and letters were also sent on 06.09.2017 and 01.10.2017. The respondent has not denied any of this fact.
  8. The respondent has placed nothing on record to show that there was any dispute between the parties regarding services to be provided by applicant.
  9. The claim of the applicant is related to services to be provided by applicant to the respondent and hence, comes under the purview of the "*claim arising out of provisions of goods and services*" and hence, the claim of applicant is an operational debt and the respondent has defaulted in making payment of such operational debt.
  10. Through the corporate debtor tried to create a dispute in its reply but without any substantial evidence hence, the dispute can be termed as moonshone as observed by the Hon'ble

  
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Supreme Court in the “Mobilox Innovative Private Limited vs. Kirusa Software Private Limited”, the Hon’ble Supreme Court observed:

*“It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.”*

11. Resultantly, since no genuine dispute has been raised by respondent prior to issuance of demand notice, the prayer of applicant deserves to be allowed.
12. In view of the above, the application is admitted in terms of Section 9(5) of the Code.
13. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Amit Talwar, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N1178/2021-22/3887 and email id. [amittalwares@gmail.com](mailto:amittalwares@gmail.com). IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely, Mr. Amit Talwar to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
16. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
17. Let the copy of the order be served to the parties.



**SUMITA PURKAYASTHA**  
**MEMBER (T)**



**DR. DEEPTI MUKESH**  
**MEMBER (J)**