

**THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I**

IA 1645 OF 2022

Appeal under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules,
2016

RAJ KUMAR DAD

(Resolution Professional of the Corporate Debtor)

...Applicant

V/s

Laxminarayan Ramchandra Bhattad and anr

... Respondent

In the matter of

C.P. (IB) NO.4172/MB/2019

Rangbarshi Projects Realty Pvt Ltd

Order delivered on: 22.02.2024

Coram:

Shri Prabhat Kumar

Hon'ble Member (Technical)

Justice Shri V.G. Bisht

Hon'ble Member (Judicial)

Appearances:

For the Applicant : Adv. Aniruth Purusothaman

For the Respondent : None

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This application IA No.1645 of 2022 is filed by Shri. Rajkumar Dad the Resolution Profession of the Corporate Debtor Bhattad Brothers Reality Private Limited for seeking following directions to Respondent No.1 to 6, who owes certain money to the Corporate Debtor, under and Section 60 (5) r/w 17,18,20 and 25 of the Insolvency and Bankruptcy Code, 2016, r/w Rule 11 of the NCLT Rule;

1.1. That this Tribunal may be pleased to direct the Respondent No. 1 to repay and reimburse forthwith, the amount of Rs. 68,05,294/- (Rupees Sixty-Eight Lakhs Five Thousand Two Hundred and Ninety-Four Only), to the Account of the Corporate Debtor.

1.2. That this Tribunal may be pleased to direct the Respondent No.2 to repay and reimburse forthwith, the amount of Rs. 4.93.78.418/-(Rupees Four Crores Ninety Three Lakhs Seventy Eight Thousand Four Hundred and Eighteen Five Only), to the Account of the Corporate Debtor.

1.3. That this Tribunal may be pleased to direct the Respondent No.3 to repay and reimburse forthwith, the amount of Rs. 3.28,967/-(Rupees Three Lakhs Twenty Eight Thousand Nine Hundred and Sixty Seven), to the Account of the Corporate Debtor.

1.4. That this Tribunal may be pleased to direct the Respondent No.4 to repay and reimburse forthwith, the amount of Rs.26,48,700/- (Rupees Twenty Six Lakhs Forty

Eight Thousand and Seven Hundred Only) towards the Corporate Debtor, to the Account of the Corporate Debtor.

1.5. That this Tribunal may be pleased to direct the Respondent No.5 to repay and reimburse forthwith, the amount of Rs.6.71. 847- (Rupees Six Lakhs Seventy One Thousand Eight Hundred and Forty Seven Only) towards the Corporate Debtor, to the Account of the Corporate Debtor.

1.6. That this Tribunal may be pleased to direct the Respondent No.6 to repay and reimburse forthwith, the amount of Rs 50,000- (Rupees Fifty Thousand Only) towards the Corporate Debtor, to the Account of the Corporate Debtor.

2. On a Petition/ Application filed by the Petitioner/ Financial Creditor herein- named, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (referred to herein-after as the "Code", for the sake of brevity), this Tribunal, vide its Order dated 15.12.2021, was pleased to initiate Corporate Insolvency Resolution Process (referred to herein-after as "CIRP", for the sake of brevity) against the Corporate Debtor and appoint the Applicant herein as the Interim Resolution Professional of the Corporate Debtor. In the First meeting of the CoC, it was resolved that the Applicant be continued as the Resolution Professional of the Corporate Debtor
3. The Applicant issued communications dated 8 02 2022 to the Respondents asking them to repay the dues payable by them to the Corporate Debtor. The Respondents vide their Reply communications dated 8.03.2022 refused to pay the said dues, which cumulate to an amount of Rs. 5,98,83,226/-(Rupees Five Crores Ninety Eight Lakhs Eighty Three Thousand Two Hundred and Twenty Six Only), collectively.
4. The Applicant yet again addressed reminders dated 29.03.2022, to all the Respondents, asking them to repay their dues to the Corporate Debtor. However, the Respondents neither replied to the same, nor they have repaid the said dues. That the non-payment of the said dues by the Respondents above-named has and is continuing to prejudice and negatively affect the CIRP of the Corporate Debtor.

5. The Respondent No.5 has filed reply challenging the maintainability of the petition stating that the Respondent No. 5 is neither a 'corporate person' nor a 'corporate debtor' and as such the present IA purporting to recover monies from the Respondent No. 5 is not maintainable. This Tribunal is not the correct forum to pursue such recovery as against the Respondent No. 5. The Applicant had issued a purported Demand Notice dated 8 February 2022 as annexed to the IA at Exhibit "C" wherein the Applicant had demanded an amount of Rs. 6,71,847/- (Rupees Six Lacs Seventy One Thousand Eight Hundred Forty- Seven only) from the Respondent No. 5 against supply of goods/services/others made to this Respondent. However, the said purported Demand Notice is not in accordance with the provisions of Section 8 of the Code and is also inconsistent with The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which stipulates in Form 3, the form and manner in which a demand notice is to be issued to an operational debtor.
6. Heard, learned Counsel and perused the material on record.
7. This application has been filed by the Resolution Professional seeking directions to the debtors of the Corporate Debtor to pay the money to the Corporate Debtor which remains unpaid despite rumours having been sent by the Applicant to them. The applicant has sought directions by this Tribunal under Section 60(5) r/w 17, 18, 20 and 25 of the Code read with Rule 11 of NCLT Rules. This Bench is of considered opinion that even in the absence of any direction from this Bench to the debtors, they must pay the amount due to the Corporate Debtor without any further delay because withholding of such amount by them results into delayed and partial settlement of the Creditors claim. Accordingly, this Bench consider it appropriate to issue such directions to the Respondent No.1 to 6 to pay the amount due to the Corporate Debtor within 30 days from the communication of this order.
8. We do not find any substance in the arguments of Respondent No.5, as the present application is not a petition under Section 9 of the Code, requiring service of a demand of notice against a corporate person.
9. In view of this IA No.1645 OF 2022 IS Allowed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)