

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.66/MB-IV/2023**

Under Section 9 of the IBC, 2016

*In the matter of*

M/s Gujarat Enterprise

[GST No. 24ADGPV6681H1Z3]

...Operational Creditor

v/s.

M/s. Interbuild Infrastructure Private  
Limited

[CIN: U45309PN2016PTC166209]

...Corporate Debtor

Order Delivered on: 11.07.2023

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Operational Creditor:

Mr. Yasu Jariwala i/b Mr. Param  
Shah, Ld. Counsel.

For the Corporate Debtor:

None.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s Gujarat Enterprise (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Interbuild Infrastructure Private Limited, the Corporate Debtor.
  - 1.1. The Company Petition is filed on 16.11.2022 claiming an amount of Rs. 1,12,24,632/- in default. The date of default as specified in Part IV of the petition is 23.01.2020.
  - 1.2. Gujarat Enterprise ("Operational Creditor") is a Proprietary firm owned and proprietor managed Shri by its Amin Rajahusainbhai Vasaya and in the business of trading of industrial Fuel oil and other types of oils used for industrial purpose.
  - 1.3. The M/s Interbuild Infrastructure Pvt. Ltd. ("Corporate debtor") is mainly in a business of construction and building installation and repair of building constructions and other related activities.
2. The Corporate Debtor i.e. M/s Interbuild Infrastructure Pvt. Ltd. requested for the purchase of fuel oil from Gujarat Enterprise. That in view of the detailed exchange of views with regard to business terms and conditions put forth by and on behalf of Gujarat Enterprise and in pursuance of promises and assurance given by M/s Interbuild Infrastructure Pvt. Ltd., corporate debtor raised various purchase orders of fuel oil Including Marin Gas/light diesel oil ("Goods") on operational creditor in the year 2019-2020.

- 2.1. Pursuant to the supply of goods, various invoices were raised by the Operational Creditor on Corporate Debtor which were sent to Corporate Debtor along with goods. No claim/complaint was ever raised with regard to quality, quantity and time of delivery etc. by Corporate Debtor.
- 2.2. Thereafter, since the operational creditor is regularly maintaining its books of account /ledger account, various requests were regularly made to pay outstanding dues via telephonic reminders as well as by way of various emails but the same was never replied by the Corporate Debtor. Despite of promises and assurance to make full payment quite on time and as per the terms and conditions which had been agreed upon by the corporate debtor, the bills remained unpaid.
- 2.3. Several months have lapsed, but no payments were received from the Corporate Debtor towards unpaid invoices despite repeated follow-ups wherein the Corporate Debtor used to inform that there was a cash crunch and that there was difficulty in making payment which will take time. The last payment received by the corporate debtor was on 23.01.2020.
- 2.4. Thereafter, against the unpaid debt, the Corporate debtor issued various cheques, however, all the cheques were dishonoured for the reasons of insufficient funds.
- 2.5. In view of the persistent failure of the Corporate Debtor to pay the outstanding debt, the Operational Creditor was constrained to issue a demand notice dated 12.09.2022 under Form-3 as well as Form-4 of the Insolvency and Bankruptcy Code to the company and its directors. Despite of receipt of demand notice, neither any reply, nor any payment was received from the Corporate Debtor.

3. This matter was listed for hearing on 31.01.2023, 17.04.2023, and 12.06.2023. This bench gave last opportunity to Corporate Debtor to appear and defend his case, and it was ordered that in case of failure to appear on the next date, this matter will be heard *ex-parte* and decided on the basis of pleadings available on record. Even then, the Corporate Debtor didn't file reply to the present application nor prayed for recall of order dated 12.06.2023.

*Findings:*

4. We have heard the argument of Learned Counsel for Operational Creditor.
5. As per the material on record this Bench is of the view that, this bench finds that the Operational has supplied fuel oil to the Corporate Debtor and the amount claimed in default is due on account of such supply. The Operational Creditor has placed on record copy of GST invoices, duly acknowledged by the Corporate Debtor. The said supplies were made in terms of the purchase order issued by the Corporate Debtor. Since no payment was made against the said invoices on the due date of each invoice becoming due for payment. The due date of the invoice falls in the period from 06.01.2020 to 12.03.2020. The present application has been filed on 16.11.2022, Accordingly the application is within the limitation period.
6. In the absence of any reply or representation from the Corporate Debtor this bench feels that the debt claimed in default is undisputed. Since, the Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate

the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.

7. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

### ORDER

8. The petition bearing CP (IB) No.66/MB-IV/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s Gujarat Enterprise (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Interbuild Infrastructure Private Limited, the Corporate Debtor is **Admitted**.

I. That this Bench as a result of this prohibits:

- 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 Securitization and Reconstruction of

Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Hajib Raghavan Vishwanath, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having Registration Number IBBI/IPA-001/IP-P01761/2019-2020/12676 Email: [vishwanath.geevis@gmail.com](mailto:vishwanath.geevis@gmail.com).

He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor 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. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) 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. The amount so deposited shall be interim finance and paid back to the applicant 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. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance

report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

**Sd/-**  
**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
**11.07.2023.**

**Sd/-**  
**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**