

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

CP (IB) No.1881/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

ISS Facility Private Limited

[CIN: U74140MH2005PTC163481]

...Operational Creditor
Versus

**Qing Ambay City Developers
Corporation Limited**

[CIN: U45400MH2011PLC213969]

... Corporate Debtor

Order pronounced on : 28.04.2020

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Ms Prachi Wazalwar, Advocate
For the Corporate Debtor : Mr Shyam Kapadia, i/b PSL
Advocates & Solicitors.

ORDER

Per: Ravikumar Duraisamy, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 ("**IBC**") by **ISS Facility Private Limited ("the Operational Creditor")**, a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Assistant General Manager, Mr Ankur Taksande, on the basis of a Board Resolution dated 30.01.2019 seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Qing Ambay City Developers Corporation Limited ("the Corporate Debtor")**.
2. The Corporate Debtor is a public company limited by shares and incorporated on 24.02.2011 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45400MH2011PLC-213969. Its registered office is Hotel Sahara Star, Opp Domestic Airport, Vile Parle (East), Mumbai 400 099, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 10.05.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹7,11,76,227.00 (Rupees seven crore eleven lakh seventy-six thousand two hundred and twenty-

seven only) as principal and ₹2,66,92,698.51 (Rupees two crore sixty-six lakh ninety-two thousand six hundred and ninety-eight and paise fifty-one only) as interest as on 21.12.2018, which is the date of default.

4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor and the Corporate Debtor entered into a contract dated 07.10.2017, whereby the Operational Creditor entered housekeeping services to the Corporate Debtor (para 8 at page 6 of the Petition);
 - (b) A total of fifty-nine invoices were raised on the Corporate Debtor from time to time. The invoices were payable within thirty days from the date of receipt of each invoice. (para 8 at page 6 of the Petition);
5. Invoices have been placed on record as **Exhibit 'D'** at pp.36-95. The invoices provide for interest in case of delayed payments, to be charged at the rate of 18.00% per annum. Bank statements are attached as **Exhibit 'C'** at pp.26. The total debt due and payable to the Operational Creditor is ₹9,78,68,925.51 (Rupees nine crore seventy-eight lakh sixty-eight thousand nine hundred and twenty-five and paise fifty-one only), as mentioned at page 25 of the Petition.

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6. The Operational Creditor had served a Demand Notice in Form 3 dated 03.04.2019 to the Corporate Debtor (**Exhibit 'D'**, pp.27-34) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been annexed at p.162.
7. The Corporate Debtor has unequivocally acknowledged the debt *vide* its letter dated 19.12.2018, as seen from the Petition at p.129.
8. Mr Shyam Kapadia, Learned Counsel i/b PSL Advocates & Solicitors, appeared on behalf of the Corporate Debtor and made his submissions.
9. In its reply dated 19.11.2019, the Corporate Debtor has set up the following defence:-
 - (a) The Corporate Debtor is a part of the Sahara group of companies. It is engaged in the development of properties in and around Aamby Valley city (para 4 at page 2 of the Reply);
 - (b) The invoices alleged to be outstanding pertain to the period 2015, which have been fully set off against allotment of land *vide* letter of allotment dated 18.06.2015. The Corporate Debtor has been allotted two plots, being Plot Nos.475A and 475B, in Village Peshtapur. These plots have been given for a total outstanding amount of ₹4.46 crore, and the same has been accepted by the Operational Creditor (para 5 at page 2 of the Reply);

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- (c) The Operational Creditor has annexed invoices pertaining to Aamby Valley Limited, which is a different company. Out of the total of fifty-nine invoices, twenty-three invoices are raised upon Aamby Valley Limited (para 6 at page 2-3 of the Reply);
- (d) The Hon'ble Supreme Court has, *vide* order dated 21.11.2013, directed that all the assets of the Sahara group of companies shall stand frozen and there is a restraint on alienation thereof except with the leave of the Hon'ble Court (para 7 at page 3 of the Reply);
- (e) By further order dated 19.06.2015, the Hon'ble Supreme Court has held that the stage for making any reliefs to the Sahara group of companies has not ripened as yet (para 8 at page 3-4 of the Reply);
- (f) By another order dated 06.12.2017, the Hon'ble Supreme Court has directed attachment of Aamby Valley Property on an application made by SEBI. The Official Liquidator of the Hon'ble Bombay High Court has been appointed to conduct the sale of property (para 9 at page 4 of the Reply);
- (g) By a further order dated 07.02.2018, the Hon'ble Supreme Court has directed that as it is in seisin of the matter, no other court shall entertain any litigation pertaining to Aamby Valley city (para 12 at page 5 of the Reply).;
- (h) By order dated 12.07.2018, the Hon'ble Supreme Court has only allowed only activities that can generate revenues for the purposes of maintenance of Aamby Valley property (para 14 at page 6 of the Reply);

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- (i) In view of the above orders of the Hon'ble Supreme Court, the Corporate Debtor is restrained from disbursing any proceeds or funds and alienating or dealing with any assets (para 15 at page 6 of the Reply);
- (j) Any proceedings under the IBC will lead to violation of the orders passed by the Hon'ble Supreme Court (para 16 at page 7 of the Reply).
10. We have heard the arguments of the Learned Advocate for the Operational Creditor and perused the records.
11. It is noted that the Corporate Debtor has admitted the liability by the way of Balance Confirmation dated 19.12.2018, at p.129. However, *vide* Letter of Intent for Allotment dated 18.06.2015, the Corporate Debtor has intended to sell two plots of land, *viz.*, Plot No.475A and Plot No.475B, towards the liability, which has also been accepted by the Operational Creditor. The letter makes it clear in para 6 thereof that rights in the said plots shall be created only on receiving confirmation thereof from the Hon'ble Supreme Court.
12. During oral arguments, Mr Shyam Kapadia appearing for the Corporate Debtor submitted that the Corporate Debtor is restrained from making any payments since the various orders passed by the Hon'ble Supreme Court are in effect.

13. Countering the submissions, Ms Prachi Wazalwar appearing for the Operational Creditor submitted that the Hon'ble NCLAT, in its order dated 14.08.2019 in Company Appeal (AT) (Insolvency) No.94/2018 in the matter of *Romi Datta v S Gurumoorthi & another* has upheld an order dated 15.12.2017 passed by this Adjudicating Authority in the matter of *Sahara Q Shop Unique Products Range Limited*.
14. However, this is a matter where the Operational Creditor has chosen to move this Adjudicating Authority after accepting the Letter of Intent for Allotment of the two plots of land. It is the case of the Operational Creditor that it does not know when it is likely to take possession of the said plots in view of the orders of the Hon'ble Supreme Court. That by itself cannot be a reason to move this Adjudicating Authority. Moreover, we are of the considered opinion that the orders of the Hon'ble Supreme Court make it clear that there cannot be any alienation of movable or immovable property in the light of the order dated 21.11.2013 passed by the Hon'ble Supreme Court.
15. For the reasons stated above, the present petition fails and therefore, the same is rejected.
16. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced

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on grounds only of dismissal of the present petition by this Adjudicating Authority.

17. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-

Ravikumar Duraisamy
Member (Technical)

28.04.2020

Sd/-

Rajasekhar V.K.
Member (Judicial)