

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB)3310/MB/C-IV/2018

Under section 9 of the I&B Code, 2016

In the matter of

Om Scaffolders

...Operational Creditor

v/s.

Vag Buildtech Limited

[U45400MH2012PLC232077]

...Corporate Debtor

Order Delivered on: 26.11.2021

Coram:

Shri Rajesh Sharma

Smt. Suchitra Kanuparthi

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

For the Petitioner: Mr. Uttam Hathi, Advocate

For the Respondent: Mr. Manoj Mishra, Advocate

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Om Scaffolders** ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Vag Buildtech Limited** ("the CORPORATE Debtor").

The Operational Creditor claiming a sum of Rs.71,07,575/- inclusive of interest @18% p.a. as on 30.06.2018 which is said to be date of default.

As per the invoices annexed by Petitioner, the provision of interest is 3% for late payment.

2. The Corporate Debtor is a limited Company incorporated on 12.06.2012 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45400MH2012PLC232077. Its registered office is at Saba Palace, 3rd Floor, Flat No. 301, Khar West, Mumbai Maharashtra also at 6th Floor, C-Wing, MET Complex, Gen. A.K. Vaidya Marg, Bandra Reclamation Bandra West, Mumbai. Therefore, this Bench has jurisdiction to deal with this petition.

BRIEF FACTS OF THE CASE

3. The Corporate Debtor for its project Central Sudhar Ghar Goindwal (Goindwal Sahib Project) and for the site at Bathinda (herein after called as Bhatinda Site) had contracted with the petitioner for hiring various shuttering and scaffolding material for which the Corporate Debtor have received quotations from the Petitioner or work orders or communication for renting shuttering and scaffolding materials for the Bhatinda project and for the Goindwal Sahib Project. The Corporate

Debtor has issued work orders dated 10.02.2015 and 20.02.2015 for Central Sudhar Ghar Goindwal, *which are annexed to the Petition at Page 123 & 127.*

4. The Petitioner submits that the all the materials has been returned and the last of the materials were received on 06.01.2016. However, the material hired by the Corporate Debtor for Goindwal Saheb Project are still under the control of the Petitioner.
5. The Petitioner has raised several invoices for Bathinda and Goindwal site and has enclosed ledger statements which show an amount of Rs.2,11,655/- (Rupees Two Lakh Eleven Thousand Six Hundred Fifty-Five only) is due and payable by the Corporate Debtor with reference to Bhatinda site and the amount of Rs. 68,95,920/-(Rupees Sixty Eight lakh Ninety Five Thousand Nine Hundred Twenty only) for Goindwal site.
6. The accounts were periodically reconciled between the parties and the last reconciled was done on 30.05.2017. The Petitioner has received an amount of Rs. 5,00,000/- as a last payment on 02.06.2017 from the Corporate Debtor and the same has been credited to the account of Goindwal Sahib Project. The Petitioner has filed the ledger account which is reproduced hereunder:-

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Om Scaffolders
Viii. Kuranwala, Barawala- Derabassi Road, Derabassi
Ph: 1762-284628, 284122, 284123
Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib
Ledger Account
170, Ormoxe City
Goniana Road, Bhatinda

1-Apr-2014 to 30-Jun-2018

Date	Particulare	Vch Type	Vch No.	Debit	Credit
28-02-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1602	72057.00	
31-03-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1701	254083.00	
18-04-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/001/04		66930.00
30-04-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	83	292016.00	
15-05-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/003/05		249963.00
31-05-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	177	308655.00	
15-06-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/001/06		292016.00
30-06-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	267	325201.00	
16-07-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/001/07		308655.00
31-07-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	358	367541.00	
31-08-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	445	375177.00	
21-09-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/003/09		323246.00
30-09-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	536	368412.00	
15-10-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/006/10		367541.00
31-10-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	633	380691.00	
30-11-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	731	368412.00	
21-12-2015	Dr Axis Bank Ltd	Bank Receipt	BV-2014-15/005/12		300000.00
31-12-2015	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	830	380691.00	
31-01-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	933	380691.00	
29-02-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1044	356131.00	
31-03-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1151	380691.00	
30-04-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	79	368412.00	
31-05-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	194	380691.00	
30-06-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	303	368412.00	
13-07-2016	Dr Axis Bank Ltd	Bank Receipt	BV-2016-17/003/03		100000.00
31-07-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	415	380691.00	
31-08-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	527	373186.00	
30-09-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	649	359562.00	
29-10-2016	Dr Axis Bank Ltd	Bank Receipt	BV-2016-17/004/03		100000.00
31-10-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	779	371547.00	
30-11-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	905	359562.00	
29-12-2016	Dr Axis Bank Ltd	Bank Receipt	BV-2016-17/005/03		500000.00
31-12-2016	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1036	371547.00	
31-01-2017	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1168	600105.00	
28-02-2017	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1298	153945.00	
31-03-2017	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1439	125280.00	
30-04-2017	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	108	121239.00	
31-05-2017	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	259	125280.00	
02-06-2017	Dr Axis Bank Ltd	Bank Receipt	BV-2017-18/004/06		500000.00
30-06-2017	Cr Rent Local 5.5% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	414	121239.00	
31-07-2017	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	562	139397.00	
31-08-2017	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	701	232383.00	
30-09-2017	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	848	100879.00	
31-10-2017	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	994	38661.00	
30-11-2017	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1147	37414.00	
31-12-2017	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1298	38661.00	
31-01-2018	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1450	38661.00	
28-02-2018	Cr RENT GST LOCAL 18% (Sunilhitech India Infra Pvt. Ltd.- Goindwal Sahib)	Rent Bill	1600	34918.00	

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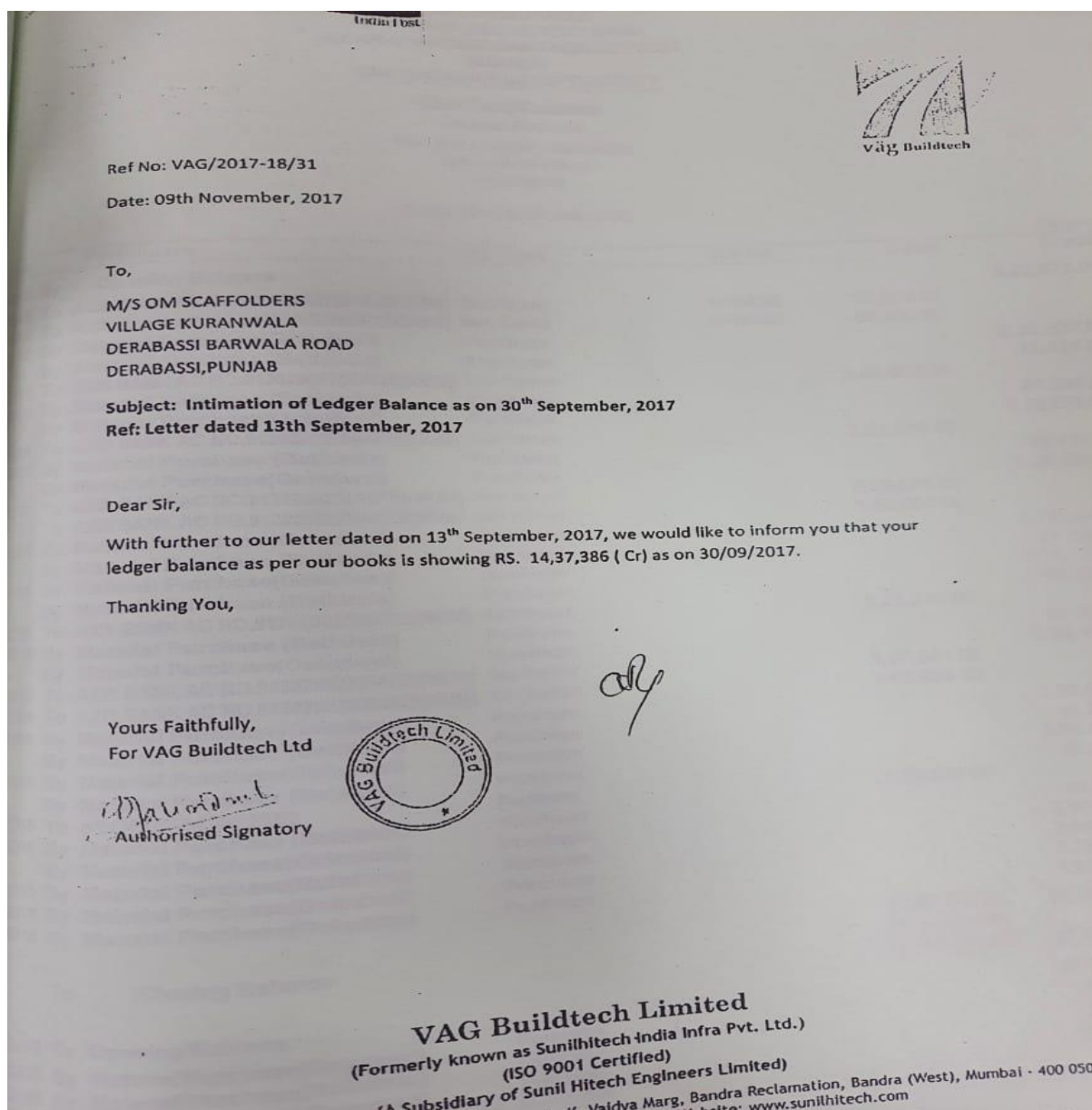
7. The petitioner has issued Demand Notice u/s 8 of Code on 24.07.2018 thereby demanding and recalling of outstanding dues. Despite receipt of said Demand Notice, the Corporate Debtor chose not to reply.
8. The Petitioner has filed affidavit u/s 9 (3)(b) of the Code thereby stating that there is no notice of dispute received from the Corporate Debtor. Hence this Petition.

REPLY BY THE CORPORATE DEBTOR

9. The Corporate Debtor filed its Affidavit in reply thereby denying each and every averments/contention levelled made in the Petition.
10. The Corporate Debtor submits that the amount demanded by the Petitioner does not exist and he is not liable to the pay said amount. However, the Corporate Debtor mentioned that the sum of Rs.14,37,386/- is due and payable by the Corporate Debtor as per the ledger account. The letter dated 09.11.2017 addressed by the Corporate Debtor to the Petitioner is reproduced hereinbelow:-

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FINDINGS

11. Heard both sides. We have prudently gone through the pleadings available on record.
12. Ld. Counsel for the Petitioner has pointed out that the amount under various invoices towards the Bhatinda & Goindwal project is due and payable by the Corporate Debtor. However, the Corporate Debtor

acknowledged that as per the ledger amount they were only liable to pay an amount of Rs.14,37,386/- as on 13.09.2017. The Counsel for the Corporate Debtor has also admitted that they are liable to pay an amount of Rs. 14,37,386/- during the course of arguments. In view of the admission of the liability by the Counsel for the Respondent/Corporate Debtor, this Petition deserves to be admitted.

13. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 9 of the Insolvency and Bankruptcy Code, admits this Application declaring Moratorium.

14. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP(IB) 3310/MB-IV/2018 filed by Om Scaffolders, the Petitioner, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Vag Buildtech Limited (“the Corporate Debtor”), [CIN: U45400MH2012PLC232077], is admitted.

(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or

passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Ashish Vyas, registration No. IBBI/IPA-001/IP-P-01520/2018-2019/12267, email- ashishvyas2006@gmail.com, Mobile No. 9930035377, appointed as Interim Resolution Professional 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.
- (g) 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.

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- (h) The Petitioner shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Petitioner, 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.
- (j) 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/-

RAJESH SHARMA
Member (Technical)

26/11/2021

/Rohit/

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)