

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
KOLKATA BENCH  
KOLKATA**

**C.P (IB) No.18/KB/2021**

**In the matter of**

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

**In the matter of:**

**Jones Lang Lasalle property Consultants ( India ) Pvt. Ltd.** , having its registered office at 1110, 11<sup>th</sup> Floor, Ashoka Estate, 24, Barakhamba Road,Connaught, New Delhi, 110001.

*... Operational Creditor*

Versus

**In the matter of:**

**Srijan Realty Pvt. Ltd.**, having CIN: U51909WB1996PTC078214, having its Registered office at 36/1A, Elgin Road, Kolkata-700020,West Bengal

*...Corporate Debtor*

Date of hearing :18/04/2022

Order Pronounced on : 25 /05/2022

**Coram:**

***Mr. Rohit Kapoor, Member (Judicial)***

***Mr. Harish Chander Suri, Member (Technical)***

**Counsels appeared through Video Conference**

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|--------------------------------|----------------------------|
| 1. Ms. Manju Bhuteria, Adv.    | ] For Operational Creditor |
| 2. Mr. Varun Kedia,Ad.         |                            |
| 1. Ms. Urmila Chakraborty,Adv. | ] For Corporate Debtor     |
| 2. Ms. Sevanti Roy, Adv.       |                            |

3. Mr.Raghunath Ghose, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by Jones Lang Lasalle property Consultants ( India ) Pvt. Ltd.,through its Assistant Manager (legal) authorised vide Board Resolution dated 27/09/2019 ( Annexure A-3) (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of Srijan Realty Pvt. Ltd., its Registered office at 36/1A, Elgin Road, Kolkata-700020, (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor is, inter alia, engaged in the business of real estate consulting marketing and advisory services and in usual course of business, the Corporate Debtor had engaged the Operational Creditor for an outright transaction of a commercial property in North 24 Parganas. It was agreed between the parties that the Operational Creditor would be entitled to a mutually agreed consultation fee for such outright transaction of land, subsequent to the signing of agreement between the Corporate Debtor and the land owner, It was agreed that the Operational Creditor shall raise invoice and the same would be payable upon receipt of the invoice.
4. It is submitted that the Operational Creditor took necessary steps for facilitating the transaction between the Corporate Debtor and one ESAB India Ltd. and as a result of the services, an agreement was executed between the Corporate Debtor and the said land owner EASB India Limited sometime in March, 2017 with respect to the land admeasuring

9.83 acres, Mouza- Khardah, Block- Barrackpore 2 J.L. No.2, Police Station -Khardah, Sub- Registry Office- Barrackpore, under the jurisdiction Khardah municipality, District- North 24 Parganas. A copy of the Agreement executed between the Corporate Debtor and ESAB India Limited is annexed as Annexure-A-5.

5. It is submitted that upon successful completion of the transaction due to the effort of the Operational Creditor, the consultancy fee of the Operational Creditor was mutually agreed upon and the Operational Creditor issued a fee confirmation and Revenue Recognition letter to the Corporate Debtor on 22.12.2017 stating that the Operational Creditor has satisfactorily completed all its services and is entitled to an amount of Rs.1,00,00,000/- plus taxes and the same is payable by the Corporate Debtor on receipt of invoice. It is submitted that the Corporate Debtor through one of its Directors Mr. R.N.Agarwal duly accepted such confirmation letter and terms contained therein on behalf of the Corporate Debtor. The Corporate Debtor also stated that the Corporate Debtor could not share any further documents with the Operational Creditor due to a non-disclosure agreement signed by the Corporate Debtor. A copy of the letter to the Corporate Debtor dated 22<sup>nd</sup> December, 2017 and the confirmation letter from the Corporate Debtor dated 30<sup>th</sup> December, 2017 are annexed as Annexure- A-6 (colly).
  
6. It is submitted that in terms of the said agreement between the parties, invoice dated 31<sup>st</sup> January, 2018 was physically delivered to the registered office of the Corporate Debtor to the tune of Rs.1,18,00,000/- inclusive of GST, and the payment was due on 2<sup>nd</sup> March, 2018. It is submitted that the Corporate Debtor has duly received the invoice without any objection or demur. (Annexure-A-7). However, several calls as well as emails dated 24.04.2018, 24.05.2018,21.06.2018 have been sent to the Corporate Debtor by the Operational Creditor to clear outstanding amount but the Corporate Debtor did not respond to such reminders and failed to pay the dues of the Operational Creditor. Copies

of the emails have been enclosed as Annexure A-8.

7. It is submitted that in spite of the confirmation and acknowledgement of the fees of the Operational Creditor towards the said transaction, the Corporate Debtor is either unable or has willfully failed to clear the dues of the Operational Creditor. Therefore, on October 15, 2020, the Operational Creditor addressed a notice under section 8 of IBC under Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor at its registered office calling upon the Corporate Debtor to pay the principal outstanding sum of Rs. 1,18,00,000/- within a period of 10 days from receipt of the said notice. The notice was duly delivered to the Corporate Debtor on 29<sup>th</sup> October, 2020. Copy of the Postal receipt and Track report are annexed as Annexure A-9.
8. It is submitted that the Corporate Debtor through the above notice was also intimated that in case the Corporate debtor failed to pay outstanding amount so demanded within the statutory period, the Operational Creditor would initiate Corporate Insolvency Process against the Corporate Debtor under Insolvency and Bankruptcy Code, 2016. It is further submitted that the Corporate Debtor vide its letter dated 4<sup>th</sup> November, 2020, has feigned ignorance of the whole transaction and services provided by the Operational Creditor. The Corporate Debtor has stated that they do not have any such invoice in their record, despite the same being delivered at their office and repeated reminders being sent to them. A copy of the letter dated 4<sup>th</sup> November, 2020 is annexed as Annexure- A-10.
9. It is submitted that the contentions raised by the Corporate Debtor are absolutely mala fide and have been made for an ulterior motive to delay the proceedings. The Corporate Debtor is also liable to pay interest on the outstanding dues @ 18% p.a. from the date of default until payment.

10. It is stated that at no point of time has the Corporate Debtor raised any dispute with regard to the outstanding dues of the Operational Creditor and when the Corporate Debtor is unable to pay or is purposefully avoiding its liability to pay the outstanding amount.
11. The Operational Creditor has submitted that the date of default, in repayment the outstanding operational debt is 2<sup>nd</sup> March, 2018.
12. The Operational Creditor has enclosed with the petition, the following documents:-
- i. Agreement executed between the Corporate Debtor and ESAB India Limited,
  - ii. Letter dated 22.12.2017 from the Operational Creditor to the Corporate Debtor,
  - iii. Confirmation Letter dated 30.12.2017,
  - iv. Invoice dated 31.01.2018,
  - v. Copy of the emails dated 24.04.2018, 24.05.2018, 21.06.2018 along with enclosures.
  - vi. Notice dated October 15, 2020 along with the postal receipt and track report,
  - vii. Copy of the letter dated 4<sup>th</sup> November, 2020.
13. In **reply** to the petition, the Corporate Debtor has filed reply affidavit through its Manager (Legal) and submitted that the petition is not filed in accordance with forms prescribed under the Code and the various Rules and Regulations; the petition is defective and that there is no default on the part of the Corporate Debtor; that the Operational Creditor has failed to show any existence of debt or any occurrence of default; that no operational debt whatsoever is due to the operational creditor; that the operational creditor has suppressed material facts before this Adjudicating Authority with mala fide object. It is further submitted that the demand notice is not in the form as prescribed under the Code and that the demand notice of the operational creditor does not disclose any cause of action.

14. It is submitted that the purported notice is defective and such defect is incurable and fatal in nature. It is submitted that there are existence of disputes as to the service allegedly rendered by the operational creditor prior to the issuance of the purported demand notice.

15. It is submitted that the corporate debtor is a reputed profit making company as would be evident from its last audited financial statement and that the present application has been filed with an intent and as a means for realizing the alleged debts from the Corporate Debtor. It is submitted that the present proceedings have been initiated with an ulterior object to **exert** pressure on the corporate debtor to recover money which is alleged to be due from the Corporate debtor. It is submitted that the Corporate Debtor had shown an interest in purchasing land measuring 9.83 Acres, detailed above and one ESAB India Limited claimed to be the absolute owner of the said property.

16. It is submitted that the Operational Creditor being the land broker and the ESAB India Limited, the vendor/ land owner of the said property, represented to the Corporate Debtor, being the intending purchaser, that there was no suit or proceedings or litigation pending in respect of the said property or any part thereof.

17. It is submitted that no part of the said property has been or is liable to be acquired under and/or vested under the relevant law(s) and no proceedings have been initiated or are pending in respect thereof. It is submitted that though the land is recorded as 'Sali land' in the land records, the land has since long been used for industrial purpose and the land is covered with structures since prior to 1976.

18. It is submitted that on an application for exemption made by the predecessor-in-interest of ESAB seeking exemption under the Urban Land( Ceiling & Regulation Act, 1976, the Urban Land Ceiling Branch of the Urban Land Ceiling Branch of the Urban Development Department,

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Government of West Bengal, by its order dated 29<sup>th</sup> October, 1992 specifically exempted the vacant land measuring 21286.47 sq. Meter from the provisions of the Urban Land (Ceiling & Regulation) Act, 1976, specifically under the provisions as enumerated under Section 20 of the Urban Land Ceiling Act only for industrial use.

19. It is submitted that the Vendor has full right and absolute authority to enter into an Agreement for Sale of the property. The said landed property is free from all encumbrances, charges, liens, lis pendens, attachment and trust whatsoever or however. It is submitted that all rates, taxes, cesses and outgoings in respect of the said property for the period up to execution and registration of the conveyance shall be borne and repaid by the Vendor/ESAB and thereafter the intending purchaser.

20. In Consideration of Respondent having paid the advance and agreeing to purchase the said property in entirety, ESAB has granted the following rights in favour of the Corporate Debtor:-

- i. To cause searches in the relevant offices for the purpose of determining the title of the vendor to the said land.
- ii. To obtain vendor's answer and/or compliance with all requisitions on title that may be required by the Advocate of the Corporate Debtor for and in connection to the title of the said property.

21. It is submitted that after execution of the said agreement and in pursuance thereto, the Corporate Debtor caused searches to be made in the relevant offices to ascertain the title of the Vendor/ESAB India Limited to the said land. Upon having searched the land records, the Corporate Debtor was shocked and surprised to learn that the said property is an Agricultural land and not an industrial land as falsely represented by the Operational Creditor as well as ESAB India Limited. The land was not even muted in the name of ESAB India Limited.

22. It is submitted that however, Electrosteel has again objected to the

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issuance of the NOC on the ground that ESAB having factory next to Electrosteel, has violated the condition imposed by the Government while granting exemption for possessing excess vacant land within its factory premises as it is closed for last few years. Electrosteel further objected to ESAB's recent move to get the subject industrial land to be used for residential purpose which, according to Electrosteel, will purportedly affect human life staying so close to industrial factory and Electrosteel further contended that it will be detrimental to the interest of Electrosteel in so far its expansion plans are concerned.

23. It is submitted that believing on such representation to be true and correct and in good faith, the Corporate entered into an agreement with ESAB in March,2017 to purchase the said land which is conditional subject to the Corporate Debtor being able to obtain the NOC from Urban Land Ceiling Department upon successful conversion of the said landed property from its existing industrial use to any other use within a period of two year from the execution of the said Agreement for Sale or such extended time as may be agreed by the Vendor/ESAB to be granted to the intending purchaser /Corporate Debtor.

24. It is submitted by the Ld. Counsel for the Corporate Debtor that subject to the successful conversion of the said property and clearances from the ULC Department by the Corporate Debtor, ESAB India Limited agreed to sell on as is where is basis and the Respondent agreed to purchase the said property for a total sale consideration of Rs.44.0 Crores if the time taken to obtain NOC from ULC Department upon conversion of land is 12 months from the date of the said agreement. However, if the time taken to obtain NOC is 18 months, then the sale consideration was agreed to be of Rs.46 Crores and in the event, NOC is obtained within 24 months from the date of the said agreement, the final consideration amount would be Rs.48 Crores. At the time of signing the said agreement, the Corporate Debtor paid an adjustable advance of Rs. 2.50 Crores to ESAB India Limited which is recorded in the said agreement.

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25. It was further agreed between ESAB and the Respondent that on fulfillment of the condition precedent or soon thereafter, ESAB would cause sale of the said property in favour of the Corporate Debtor free from all encumbrances etc. and that the balance consideration amount shall be paid by the Corporate Debtor to ESAB India Limited at the time of execution and registration of the Deed of Conveyance of the said land.

26. The Corporate Debtor denied that it had accepted the terms of the alleged confirmation letter dated 22<sup>nd</sup> December, 2017. The Corporate Debtor further denied that the purported invoice (Annexure A-7) to the petition was received by the Corporate Debtor or that it was physically delivered to the registered office of the Corporate Debtor. It is denied that any payment is due or payable or outstanding by the Corporate Debtor to the Operational Creditor.

27. In the **Rejoinder** to the reply filed by the Corporate Debtor, the Operational Creditor has denied the contentions of the Corporate Debtor that there was any defect in the petition or that there is no default. It is denied that the Operational Creditor has failed to show existence debt or occurrence of default on the part of the Corporate Debtor. It is denied that there is no operational debt due to the Operational Creditor or there has been any suppression of material facts. It is denied that the notice of the operational creditor was defective or that there was any dispute as to the services rendered by the Operational Creditor. The Operational Creditor denies that there were any genuine or pre-existing or contemporaneous disputes against the claim of the operational creditor. It is denied that the question of initiating insolvency proceedings against the Corporate Debtor does not arise. It is denied that there are any bonafide disputes to the claim of the Operational Creditor or that the instant proceedings have been filed solely with an intention to recover debt.

28. It is stated by the Operational Creditor that scope of service of the operational creditor was limited to the execution of the agreement for sale between ESAB India Limited and corporate debtor and the claim of the

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operational creditor cannot be denied on the ground of any private dealings or understandings between ESAB India Limited and the Corporate Debtor. In any event, admittedly there was no injunction on execution of Deed of Conveyance in favour of Corporate Debtor and the Corporate Debtor has not initiated any legal proceeding against ESAB India Limited for non- execution of the Deed of Conveyance. The Corporate Debtor has not even alleged any disputes between ESAB India Limited and the Corporate Debtor or the Operational Creditor herein. It is denied that any assistance was called for from the Operational Creditor since execution of Agreement for Sale or that the Operational Creditor failed or neglected to assist the parties in the sale of land transaction.

29. It is submitted that no dealing between the Corporate Debtor and ESAB India Limited subsequent to the agreement for sale execution in March, 2017 are material for adjudication of claim of the Operational creditor. The exact area of the land or alleged difference in signature of Mr. Ashish Chandak, being the employee of the Operational Creditor, is immaterial in the instant case. It is denied that the Operational Creditor has failed to render any service as consultant/ land broker to the Corporate Debtor. It is denied that the transaction between ESAB India Limited and the Corporate Debtor is far from completion. The Corporate Debtor admits that it has even obtained a sanctioned building plan in respect of the said property, while alleging that the transaction has not completed. It is denied that the claim of the Operational Creditor is barred by the limitation . It is denied that the demand notice issued by the Operational Creditor is misconceived or false or is not in accordance with the said code.

30. Learned Counsel for the parties have been heard at length and both of them have taken us through each and every documents they wanted to refer. On perusal of the documents of the Operational Creditor, the two letters one by Operational Creditor to the Corporate Debtor written on 22<sup>nd</sup> December, 2017 and the reply thereto dated 30<sup>th</sup> December, 2017 are the main planks of

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the case and the third important document i.e. required to be considered is the agreement executed between the Corporate Debtor and ESAB India Limited along with a receipt and memo of consideration whereby a sum of Rs. 2,50,00,000/- has been transferred by the Corporate Debtor to the vendor/land owner ESAB India Limited vide cheque no. 050595 dated 9<sup>th</sup> March, 2017 (drawn on IDBI Bank). It is clear that once the Corporate Debtor has authorized the Operational Creditor and admittedly confirmed the letter dated 22<sup>nd</sup> December, 2017 sent by the Operational Creditor, vide letter dated 30<sup>th</sup> December, 2017 written by the Director of the Corporate Debtor and pursuant thereto admittedly entered into an agreement along with their receipt, duly executed by the land owner after accepting part payment of Rs.2,50,00,000/-, there is hardly anything left to be doubted. The right of the Operational Creditor to its fees of Rs. 1,00,00,000/- along with GST gets reinforced by the language of the letter dated 30<sup>th</sup> December, 2017, which reads as under:-

***“ 30/12/2017  
Jones Lang LaSalle Property Consultants(India) Pvt. Ltd.  
Bachhawat House, No.2, 2<sup>nd</sup> Floor  
Dr. Martin Luther King Sarani, Upper Wood Street  
Kolkata  
West Bengal, 7000016, India  
Kind Attn: Mr. Ashish Chandak***

***Reg: JLL Brokerage***

***Dear Ashish,  
This has reference to your brokerage letter dated 22<sup>nd</sup> December, 2017,  
we hereby acknowledge and confirm the amount.***

***However, please note we would not be able to share any documents pertaining to the deal as we have signed a non-disclosure agreement with the Seller. Please also maintain privacy/confidentiality within your company.***

***Warm Regards***

***R.N.Agarwal  
Director ...”***

31. The Operational Creditor has duly complied with all the procedural

formalities in filing the petition and has filed affidavit under section 9(3)(b), the petition is complete in all respects.

32. Even though the Corporate Debtor has tried to convince this Adjudicating Authority as regards some pre-existing disputes and has raised certain frivolous grounds of defence but we are not convinced with any of the grounds of defence taken by the Corporate Debtor. We are, therefore, convinced that this petition deserves to be admitted and therefore, pass the following orders:-

### **O R D E R S**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
  - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
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- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Mr. Manish Jain, IRP** having Reg. No. **IBBI/IPA-001/IP-P00582/2017-2018/11023**, email [manishmahavir@gmail.com](mailto:manishmahavir@gmail.com) act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x) **Mr. Manish Jain IRP**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs.2,00,000/- (Rupees Two Lakhs only )** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- 33.Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

34.List the matter on **12/07/2022** for filing of **Progress Report**.

35. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

**(Rohit Kapoor)**  
**Member (Judicial)**

Order signed on the 25<sup>th</sup> day of May, 2022

PJ