

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

IA No.3820/2022

In

CP (IB) No.1341/MB-IV/2020

Under Section 9 of the IBC, 2016

*In the matter of*

Ashit Patel & Keyur Shah Partners of  
Winkey

[PAN No: AABFW7529D]

...Operational Creditor

v/s.

Shobha Asars Private Limited

[CIN: U36996MH2008PTC182521]

...Corporate Debtor

Order Delivered on:17.02.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner:

Mr. Nitesh Bangera, Ld. Counsel

For the Respondent:

Mr. Pulkit Sharma a/w Zeeshan Syed  
i/b M/s. Jayakar & Partners Ld.  
Counsel.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Ashit Patel & Keyur Shah, partners of Winkey, ("the Operational Creditor"), seeking initiation of Corporate

Insolvency Resolution Process (CIRP) against Shobha Asars Private Limited, (“the Corporate Debtor”).

2. The applicant/OC submitted, it was engaged by the Corporate Debtor for releasing advertisement in the newspaper for the business of the Corporate Debtor.
3. The Applicant/OC raised invoices for the advertisements so released in the newspaper during the period from 03.04.2019 to 05.03.2020. For an aggregate amount of Rs.1,14,72,336/-.These advertisements were released from 4 offices of the OC. The OC has further submitted subsequent to filing of present application it has received a sum of Rs. 9,00,000/-. Accordingly, the total outstanding due claimed from a Corporate Debtor is Rs.1,05,72,336.
4. The Corporate Debtor has neither responded to the Demand Notice dated 07.09.2020 nor filed any reply to the present petition which led to forfeiture of right to file reply in the present petition vide order dated 21.10.2022. The Corporate has filed an IA No 3820/2022 seeking recall of order dated 21.10.2022; condonation of the delay of 637 days in filing of the reply; and another opportunity to file affidavit in reply to the CP No.1341/2020.
5. The Corporate Debtor has pleaded the two of its three directors are senior citizens and were not in position to deal with daily affairs of the company due to health ailments. In support of contention the Corporate debtor has filed doctors certificate dated 17.11.2022. This petition was filed in 27.10.2020 and the Corporate debtor is carrying its business. The medical health of directors in November 2022 cannot be enough ground for condonation of delay. It is

noticed when Corporate debtor has been represented by the counsel on few occasions.

6. The Corporate debtor has taken the plea of maintainability, Financial and Operational difficulties in its submissions in the IA 3820/2022 itself. The Corporate debtor has not disputed existence of debt and the default committed by it. The Corporate debtor has pleaded that petition cannot be maintained for claim of Rs.1 crore and the Operational Creditor has deliberately shown Principal amount as more than Rs.1 crore i.e. 1,04,72,336. It has also pleaded that the amount of debt has arisen from various invoices and amount due under different invoices cannot be clubbed together.
7. The applicant/Operational Creditor has filed Written Submission dated 28.12.2022 and has stated that all the invoices pertaining to outstanding debt due were raised in terms of creative work received from Corporate Debtors Mumbai for releasing the advertisement in various newspapers and GST invoices were raised on different branch offices of the Corporate Debtor under instruction of its Mumbai office, which was releasing all the payments of the Operational creditor. It is further submitted that Hon'ble NCLAT in the matter of *International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Limited* had dismissed the petition for claims arising out of different agreements/work order and it is distinguishable on the facts for the stated herein before .
8. We have heard both the Counsel and perused the material on record. The Operational Creditor has filed present application stating the date of default to be 05.03.2020 in part IV of Form 5. The amount of debt claimed is

1,05,72,336/-. The application is filed on 27.10.2020. There is no record of pre-existing dispute.

9. The conduct of the Corporate debtor in defending the present petition has been casual and negligent. The ground of health of one of the directors for not filing reply in 637 days cannot be regarded as *bona-fide*. Hence, this bench does not find it a fit case for allowing the prayer of the Corporate Debtor to let him file affidavit in reply after lapse of 637 days, more particularly when the provisions of the code provide timelines and time bound resolution. The present IA 3820/2022 in CP(IB)1341/2020 is hereby **dismissed**. However, the defenses raised by the Corporate Debtor in the present IA are being dealt with in the Interest of Justice.
10. We observed that the work of the releasing the advertisement was executed on verbal instructions and neither of the party has placed on record any work order/purchase order. However, we noticed that the Corporate Debtor has released Rs 10,00,000 after filing of this petition in January 2021 and such payment has been appropriated from the consolidated outstanding as claimed by the Operational Creditor and not from the individual branch wise outstanding. In view of this we are of considered view that the work was executed by the Operational Creditor under common understanding. Hence the present application is maintainable on the grounds of threshold limit.
11. As regards to the date of default the Corporate Debtor has relied upon email dated 14.08.2020 and 10.06.2020 which was in nature a reminder only and cannot be regarded as date of default. The default occurs when the amount is due for payment and it is not paid. In the present case amounts have not been paid on due dates as it is reflected from invoice vide amount of claim annexed

to the petition and the copy of invoices. The terms of the payments in the invoices does not allow any credit period hence the invoice becomes due as and when presented for payment. Hence, the plea taken by the Corporate debtor that the default date falls under 10A period is not sustainable.

12. 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.

### ORDER

13. The petition bearing CP(IB) 1341/MB-IV/2020 filed by **Ashit Patel & Keyur Shah Partners of Winkey**, the Operational Creditor, 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 **Shobha Asars Private Limited** (“the Corporate Debtor) is **admitted**.

- a) 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, -
- (v) 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;
  - (vi) 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) The bench hereby appoints Ms. Manisha Sanjay Agrawal, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-003/IP-N00214/2019-2020/12836 Email Id [m\\_taiyal@yahoo.com](mailto:m_taiyal@yahoo.com) Mb No 9970152138. 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.
- (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.
- (h)The Operational Creditor 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 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.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No.3820/2022  
In  
CP (IB) No.1341/MB-IV/2020

---

(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/-

PRABHAT KUMAR  
MEMBER (TECHNICAL)  
17.02.2023.

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)