

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -V**

C.P. (I.B) No. 807/MB/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

**M/s. Lekha Enterprises
Private Ltd.**

Having its registered address at
503 Harischandra Apartment,
Mogul Lane, Raut Wadu,
Mahim.

Mumbai 400 016.

...Operational Creditor/Applicant

Vs

**M/s Sankalp Siddhi
Developers Private Ltd.**

Ground Floor, Raj Pipla, Opp.
Standard Chartered Bank
Linking Road, Santa Cruz west
Mumbai 400 054.

...Corporate Debtor/Respondent

Order Dated:23.02.2024

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances: (Physical)

For the Operational Creditor: Adv. Sagar Wagle

For the Corporate Debtor: Adv. Bhavana Dubepatil

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed **by M/s. Lekha Enterprises Private Ltd.** (hereinafter referred as "**the Operational Creditor/Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as "**CIRP**") against **M/s Sankalp Siddhi Developers Private Ltd.** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs.1,02,48,201.63/-** (Rs.97,57,294/- (principal) + Rs.4,90,907.63/- interest). The due dates of the default are stated to be the date of the invoice itself i.e. 14.12.2022 to 12.05.2023. The Demand Notice was served on 15.06.2023. The Corporate Debtor replied to the said demand Notice on 22.06.2023

Brief Facts: -

1. The present petition reveals that M/s. Lekha Enterprises (P) Limited, is a private limited company engaged in the business for supplying of services in executing various works contracts in real estate properties under construction.
2. The Corporate Debtor approached the Operational Creditor for the execution of block work and plastering work (Internal and External Plaster) with material for project titled as “Verona” at Jogeshwari West, Mumbai. Accordingly, the Corporate Debtor issued a work order dated 22.06.2022 bearing number WO-02_civil to the Operational Creditor for total contract value of Rs. 6,69,95,475/- plus GST.
3. The entire work was done within the stipulated period of 6 months from the notice to proceed, which was reckoned as 10th day of issue of work order. The Operational Creditor had mobilized its resource at

the construction site and commenced the work as per the schedule.

4. As per the work order an advance of 10% was required to be paid to the Operational Creditor by the Corporate Debtor. The said advance payment was received by Operational Creditor on 14.07.2022. The remaining payment was to be done within 45 days after the completion of the work assigned. This payment by the Corporate Debtor could be done only after the work done is duly certified by the representative of Corporate Debtor. Subsequently, the Operational Creditor raised RA bills numbered 4 to 6 between December 2022 up to 12th May 2023 for a total payable principal amount of Rs. 97,57,294/- for the work carried out which was certified by the Corporate Debtor's representatives at the site.
5. In the meantime, the Operational Creditor had sent an email dated 16.02.2023 to the Corporate Debtor regarding delay in making payment of work done by them within the above mentioned period.
6. The Operational Creditor further states that upon sending several e-mails and WhatsApp's message to the Corporate Debtor to discuss and resolve the issue of non-payment of the amount of Rs.97,57,294/- for the work done by them; the

Corporate Debtor in its email dated 16.02.2023, replied to the above emails of the Operational Creditor stating that, “*we hereby assure you that we shall be clearing all your dues by this month end. Till then, you are requested to hold on for a few more days*”. Despite this acknowledgment and promise to pay the Corporate Debtor failed to make any payment.

7. Hence, the Operational Creditor on 15.06.2023 served a demand notice in *Form- 3* and *Form 4* under *section 8* of the *Insolvency and Bankruptcy Code 2016*.
8. The Advocates for the Corporate Debtor replied to the said demand Notice on 22.06.2023, denying for the first time their liability to pay, without assigning any reasons for the refusal to pay the amount due to the OC. Hence the present petition.
9. The Corporate Debtor in its reply to the present petition submits that the Corporate Debtor is a Special-Purpose Vehicle (“**SPV**”) incorporated and promoted by the “Ahuja Hive Private Limited” now known as Hive Carbon –Zero Developers Private Limited (“**HCZ**”) for the development of Project “Verona” at Jogeshwari. Hive-Carbon-Zero Developers Private Limited is incorporated and promoted by Mr. Gautam Ahuja in which “Agape

Team Holdings Limited” has invested through various deeds and documents, based on the representation made by the Ahuja’s.

10. The Corporate Debtor stated that Mr. Gautam Ahuja was the CEO of the HCZ till January 2022. In 2022, it was discovered that the Mr. Gautam Ahuja has committed fraud in the respect of SPV i.e. M/s. Sankalp Siddhi Developers Private Limited by cheating multiple investors across India. The said facts had come in light via articles published in ‘Times of India’, ‘Indian Express’ etc. also reporting arrest and booking of the Ahujas by the police and Economic Offences Wing. It was submitted that owing to these fraudulent acts committed by the Ahuja’s, at present Mr. Gautam Ahuja is absconding and Mr. Jagdish Ahuja is behind bars. Thus the contention of the Corporate Debtor is that the Ahuja’s abandoned the joint venture with Agape and also with Verona Project, and due to this act of the Ahuja’s the Corporate Debtor was left high and dry and continues to face various adversaries commercially as well as monetarily.
11. The Corporate Dentor states that despite having no Malafide intention, it has not been able to meet its obligations by paying the outstanding amount to the Operational Creditor.

- 12.** Further the Corporate Debtor submits it is trying to engage with third party developers for the purposes of development of the Verona Project and other projects in the view of the fact that the Ahuja's have abandoned the Corporate Debtor.

Findings/Conclusion

We have heard the arguments of the Learned Counsel for Operational Creditors as well as the Corporate Debtor and have gone through the records placed before the Hon'ble Tribunal.

13. The present petition has been filed by the Operational Creditor under Section 9 against the respondent for recovery of an amount of Rs.97,57,294/- (principal) + Rs.4,90,907.63/- interest leading to a total of Rs.1,02,48,202/- only, comprising of 13 outstanding invoices of the period from 14.12.2022 to 12.05.2023. The due dates of the default are stated to be the date of the invoice itself i.e. 14.12.2022 to 12.05.2023. The case of the Petitioner is for initiation of CIRP under Section 9 of IBC 2016, against Corporate Debtor for the above stated debt which till date has remained unpaid.
14. The Counsel for the Corporate Debtor submitted that Corporate Debtor is Special-Purpose Vehicle ("SPV") promoted by Ahuja Hive Private Limited now

known as Hive-Carbon-Zero Developers Private Limited for the development of the Verona Project at Jogeshwari. The Corporate Debtor submits that in 2022 it was discovered that Ahujas had committed fraud in respect of Special-Purpose Vehicle (“SPV”) i.e. the Corporate Debtor. Ahujas were booked by police and also Economic Offence Wing (EOW) and Gautam Ahuja was arrested. In this background Ahujas abandoned the Corporate Debtor. The Corporate Debtor has been left to face the present adversarial situation. It was further submitted that Corporate Debtor has no malafide intend to wriggle out of its legal obligation but it has been unable to pay to the Operational Creditor. It was further submitted that Corporate Debtor is attempting to engage with 3rd party developers for the purpose of development of Verona Project.

15. Hence, it is evident to note that there is a debt due by the Corporate Debtor to the Operational Creditor. The nature of the debt further establishes that the said due amount is an operational debt as the Corporate Debtor had admittedly engaged the services of the Operational Creditor for development of Verona Project located at Jogeshwari.
16. In view of the above contention this Bench is of the considered view that it is an undisputed fact that

the Corporate Debtor has availed the services of the Operational Creditor and had raised RA bills numbers 4 to 6 between December 2022 up to 12th May 2023. Further the bills raised by the Operational Creditor were also acknowledged by the Corporate Debtor via email dated 16.02.2023 seeking more time from the Operational Creditor to clear the dues. However, the Corporate Debtor failed to make the payment of the outstanding dues.

17. Hence in our opinion the two essential qualifications required for admission under Section 9 of the IBC, i.e., the existence of **debt** and **default** in this case are proved.
18. Further in view of the admission of the due debt by the Corporate Debtor and the reason so stipulated by the Corporate Debtor stating non-availability of fund, there is a clear default, thus in terms of the objectives of the IBC 2016, the case deserves to be admitted to CIRP so as to resolve and revive the Corporate Debtor. In view of the above stated the present Company Petition stands admitted.

ORDER

19. The above Company Petition No. 807/IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is

ordered against Sankalp Siddhi Developers Private Limited.

20. Mr. Rajkumar Jaiswal having registration No IBBI/IPA- 001/IP-P-02598/2021-2022/13975, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
21. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
22. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act,

2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

23. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
24. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
25. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
26. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.
27. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their

possession and furnish every information in their knowledge to the IRP/RP.

28. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
29. Accordingly, CP (IB) No. 807 of 2023 is admitted.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)
/Aakansha/

SD/-

REETA KOHLI
MEMBER (JUDICIAL)