



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No.506
IB/663/ND/2021

IN THE MATTER OF:

Fox Mandal & CO.	...	Applicant
Versus		
Blue Marlin Buildcon Limited	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 16.10.2023

Coram:

Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IB/663/ND/2021 stands admitted.

Sd/-

DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-

P.S.N. PRASAD,
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW ADJUDICATING AUTHORITY
NEW DELHI SPECIAL BENCH
COURT-IV
C.P. IB NO. 663 OF 2021**

IN THE MATTER OF:

FOX MANDAL AND CO.

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

BLUE MARLIN BUILDCON LIMITED

...CORPORATE DEBTOR

Order Delivered on: 16.10.2023

CORAM

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Meghna Rao & Ms. Deepika Gupta, Advs.

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

1. This instant application was filed by M/s Fox Mandal & Co. (hereinafter referred as 'Applicant'/ 'Operational Creditor'), having office at FM House, A-9, Sector 9, Noida 201301 and providing legal services and consultation, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s Blue Marlin Buildcon Limited (formely known as Ansal Seagull SEZ Developers Limited) (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for



defaulting the payment of outstanding amount of Rs. 1,50,00,000/- only.

2. The Respondent Company M/s Blue Marlin Buildcon Limited having CIN: U45200DL2006PLC154165 was incorporated on 21.09.2006 under the provisions of the Companies Act, 1956 having its registered office situated at Half Mezzanine No. 2, 15, East of Kailash Community Centre, Sandhya Deep Building New Delhi South Delhi-110065. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Adjudicating Authority having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.
3. The present petition was filed on 12.10.2021 before this Adjudicating Authority by Ms. Sangeeta Mandal, Partner at Fox Mandal & Co. and authorized vide Authority Letter executed on 08.10.2021 by the Managing Partner of the Operational Creditor/Applicant. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 1,50,00,000/-.
4. Briefly stated the facts of the present case as averred by the applicant are: -
 - a. The Operational Creditor/Applicant is a partnership firm and deals in rendering legal services. The Corporate Debtor is the Company



incorporated under the Companies Act, 1956 and engaged in the business of construction.

- b. The Operational Creditor was approached by the Corporate Debtor for availing advisory services of setting up Special Economic Zone across India and related advisory; for investment strategy and Taxation advisory service; for conducting legal due diligence with respect to such companies in such jurisdictions within India and in respect of conducting legal due diligence with respect to such lands in such jurisdiction within India. The Operational Creditor/Applicant started rendering services to the Corporate Debtor as per the terms and conditions of the Engagement Letters dated 07.04.2021, 12.05.2021, 16.06.2021 and 13.07.2021.
- c. That pursuant to the acceptance letters, operational creditor carried out the work and provided Letters enclosing reports dated 18.05.2021, 09.06.2021, 18.07.2021 and 02.08.2021 to the Corporate Debtor and duly acknowledged by the Corporate Debtor by way of acknowledgment letters dated 21.05.2021, 11.06.2021, 22.07.2021 and 04.08.2021.
- d. According to the terms of the engagement letter, the applicant then issued invoices dated 28.05.2021, 21.06.2021, 30.07.2021 and 12.08.2021 for the work done in four transactions. The total amount of invoice for the following services are under the below mentioned four invoices: -
 - i. Invoice bearing No. L-009/3500/2021-22 for an amount of Rs. 40,00,000 in respect of providing advisory services for setting



- up Special Economic Zone across India and related advisory dated 28.05.2021.
- ii. Invoice bearing No. L-011/3500/2021-22 for an amount of Rs. 40,00,000 in respect of providing Investment strategy and Taxation advisory services dated 21.06.2021.
 - iii. Invoice bearing No. L-014/3500/2021-22 for an amount of Rs. 30,00,000 in respect of conducting legal due diligence with respect to such companies in such jurisdictions within India dated 30.07.2021.
 - iv. Invoice bearing No. L-018/3500/2021-22 for an amount of Rs. 40,00,000 in respect of conducting legal due diligence with respect to such lands in such jurisdictions within India dated 12.08.2021.
- e. There was a specific condition mentioned for each and every invoice that the payment for the invoices so raised shall be made within 5 days of signing the Engagement Letter of an amount half the total amount for each service and the remaining half of the total amount at the time of submission of the draft report of the proposed transaction.
- f. In reference to the invoices raised by the operational creditor/applicant, the corporate debtor failed to pay the claim amount, due to which the operational creditor had to send reminder to the corporate debtor. Pursuant to the reminders sent, the corporate debtor did not pay nor sent any communication regarding



the payment because of which the applicant had to send a second reminder for the payment due.

- g. Consequently, the Corporate Debtor vide its letters seeking time for payment dated 11.06.2021, 05.07.2021, 12.08.2021 and 31.08.2021 respectively addressed to the applicant/operational creditor had sought time for payment of the amount due. Since, the corporate debtor failed to make the payment within the given period, the Operational Creditor is entitled to charge interest @15%p.a. from the default date of respective invoices till the actual payment. Thus, the total outstanding amount payable by Corporate Debtor to Operational Creditor is Rs.1,50,00,000/- exclusive of interest.
- h. The Operational Creditor, therefore, issued a Demand Notice in Form 3 dated 15.09.2021 under section 8 of the IBC, which was sent through its Advocates delivered by hand on 15.09.2021. Receiving was duly given of the said delivery by the Corporate Debtor. However, no reply has been received from the Corporate Debtor to the aforesaid statutory demand notice, nor the payment due has been made.
5. Notice was issued by this Adjudicating Authority to the Corporate Debtor on 22.03.2022. Vide order dated 07.06.2022 passed by this Adjudicating Authority, the Respondent/Corporate Debtor had appeared and stated that the reply has been filed on 30.05.2022 but the same is not reflecting on e-portal of the Adjudicating Authority. The Ld. Counsel of Operational Creditor appeared and stated that copy of reply filed by the corporate debtor has been received. Further, vide order



dated 04.07.2022 none appeared on behalf of the respondent. Even, on that date, the reply was not reflected on the e-portal of this Adjudicating Authority. Despite repeated calls, no one had turned up on behalf of the respondent and the Corporate Debtor did not make sufficient efforts to bring its reply on the e-portal of this Adjudicating Authority. Therefore, vide order dated 04.07.2022, the Corporate Debtor has been set as ex-parte.

6. It transpires that the copy of the reply of the corporate debtor was received by the operational creditor. The operational creditor was directed by this Adjudicating Authority vide order dated 14.07.2023 to file a copy of the reply of the Corporate Debtor with an affidavit so as to enable us to consider the contention raised by the Corporate Debtor in its reply, in the interest of justice. In compliance of order dated 14.07.2023, an affidavit of compliance has been filed by the Operational Creditor along with the copy of reply on behalf of the Corporate Debtor. In this reply, the Corporate Debtor has raised the following contention.

7. **REPLY ON BEHALF OF CORPORATE DEBTOR**

a. In the reply filed by the Corporate Debtor, it is admitted that the Corporate Debtor had approached the Operational Creditor for availing advisory services for setting up (i) Special Economic Zone across India and related advisory; (ii) for Investment strategy and Taxation advisory services; (iii) for conducting legal due diligence with respect to such companies such jurisdiction within India and (iv) in respect of conducting legal due diligence with respect to such lands in such jurisdictions within India. For the said purposes,



engagement letters dated 05.04.2021, 11.05.2021, 15.06.2021 and 09.07.2021 were executed between the Corporate Debtor and the Operational Creditor for the proposed transactions.

- b. The Corporate Debtor further submitted that after the acceptance of engagement letters, the Operational Creditor started performing their scope of work as defined in the respective engagement letters and issued the invoices.
- c. The Corporate Debtor has also submitted that in discharge of its obligations, it had to make payments from time to time as agreed in the engagement letters, however, the Corporate Debtor could not make the necessary payments to the Operational Creditor due to the financial constraints faced by the Corporate Debtor due to the adverse effects of covid-19 pandemic on Corporate Debtor's business. The said fact was also brought to the notice of the Operational Creditor vide letters dated 11.06.2021, 05.07.2021, 12.08.2021 and 31.08.2021 which are already placed on record.
- d. That despite the best possible efforts, the corporate debtor has not been able to regain its financial position till date and is still not in a financial condition to pay off the debts of the operational creditor.

ANALYSIS AND FINDINGS

- 8. We have heard the Ld. Counsel on behalf of the applicant/operational creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, and written submission presented by Operational Creditor. Since, the registered office of the respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority is having



territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

9. From the perusal of the material available on record, it transpires that the 'Operational Creditor' had sent a demand notice dated 15.09.2021 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs 1,50,00,000/- (Rupees One Crore Fifty Lacs Only). Therefore, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, in terms of Section 4 of the Code. The Applicant has tabulated a total of 4 invoices included in its claim as mentioned in Part IV of the Application. We observe that this notice was served through its Advocates delivered by hand on 15.09.2021, which was received by the Corporate Debtor. From the records placed before this Adjudicating Authority, it transpires that the Corporate Debtor neither replied to the Demand Notice nor paid the outstanding amount to the Operational Creditor.
10. In order to determine the admissibility of petition for initiating CIRP under section 9 of the Code, the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353***, is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:



- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (Rs. 1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
 - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
 - c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
11. In the first instance, to determine whether the impugned amount claimed by the Operational Creditor would fall under the ambit of Operational Debt, it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under the said section, 'Operational Debt' is defined as:
- “A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.*
12. While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the operational creditor was approached by the corporate debtor for availing legal and advisory services (i) for setting up Special Economic Zone across India and related advisory; (ii) for Investment strategy and Taxation advisory services; (iii) for conducting legal due diligence with respect to such



companies such jurisdiction within India and (iv) in respect of conducting legal due diligence with respect to such lands in such jurisdictions within India. For the said purposes, engagement letters dated 05.04.2021, 11.05.2021, 15.06.2021 and 09.07.2021 were executed between the Corporate Debtor and the Operational Creditor for the proposed transactions. After the acceptance of engagement letters, the Operational Creditor started performing their scope of work and issued the impugned invoices to the Corporate Debtor. Furthermore, the engagement letters and invoices raised by the Operational Creditor to the Corporate Debtor specifically reflect that there is an outstanding amount of Rs. 1,50,00,000/- payable by the Corporate Debtor to the Operational Creditor. Therefore, the outstanding debt which is due and payable to the Operational Creditor would fall under the ambit of 'Operational Debt' and hence, the said Creditor would be termed as the 'Operational Creditor' within the meaning of Section 5(20) of the Code.

13. Moreover, in the present case the Corporate Debtor has acknowledged in his reply that the Corporate Debtor had to make payments from time to time as agreed in the engagement letters, however, the Corporate Debtor could not make the payments to the Operational Creditor due to financial constraints due to adverse effect of covid-19 on Corporate Debtor's business which was also brought to the notice of the Operational Creditor vide letters dated 11.06.2021, 05.07.2021, 12.08.2021 and 31.08.2021 which are already placed on record by the Operational Creditor. Further, the Corporate Debtor has not taken the



defense of any pre-existing dispute, nor there is any intimation of any suit or arbitration proceeding regarding the present matter, pending before any forum.

14. It is further observed that on a query raised by this Adjudicating Authority regarding the nature of services rendered by the Operational Creditor, the Operational Creditor submitted copies of advisory reports prepared and delivered to the Corporate Debtor in a sealed cover, which have been perused by us and found in order. Further, the Corporate Debtor itself has admitted rendering of the legal and advisory services by the Operational Creditor in its letters/replies to the Operational Creditor dated 11.06.2021, 05.07.2021, 12.08.2021 and 31.08.2021. Thus, the Operational Creditor has justified/established the existence of an Operational Debt by annexing true copies of the invoices, and engagement letters, and acknowledgement letters by the Corporate Debtor. The said documents sufficiently justify that the Operational creditor had provided advisory services to the Corporate Debtor and that the amount exceeding Rs. 1 Crore is due and payable by the Corporate Debtor to the Operational Creditor and the same has not been paid yet. Therefore, we are of the view that there is a debt due and payable and that there has been default committed on the part of the Corporate Debtor.

15. The Operational Creditor has also filed an affidavit under section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 which shows that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.



16. In view of the above facts and circumstances, we are of the considered view that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petitioner has established that the Corporate Debtor is in default of a debt due arising out of professional services rendered by the operational creditor and the same is payable. Further, that the default amount is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows:

- I. The application bearing CP (IB) No. 663/ND/2021 filed by M/s Fox Mandal & Co., the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Blue Marlin Buildcon Pvt Ltd., the Corporate Debtor, is hereby admitted.
- II. The Applicant in Part-III of the application has proposed the name of Mr. Brahm Datt Verma having Registration Number IBBI/IPA-003/IP-N00056/2017-18/10496, email: adv.bdverma@gmail.com. Mr. Brahm Datt Verma is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within five working days (5) of pronouncement of this order.



III. We direct the applicant to deposit a sum of Rs. 3 lacs with the Interim Resolution Professional, namely Mr. Brahm Datt Verma, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

IV. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

(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, Adjudicating Authority, 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in



force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

- V. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.
- VI. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.



- VII. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- VIII. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- IX. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
- X. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing IB/663(ND)/2021 stands admitted.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(P.S.N. PRASAD)
MEMBER (JUDICIAL)