

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 3
CP IB: 139/ND/2023

IN THE MATTER OF:

M/s. Euphoria Construction Pvt. Ltd. V/s. M/s. Aarcity Infrastructure Pvt. Ltd.

Order under Section 9 of Insolvency and Bankruptcy Code, 2016

Order delivered on 18.07.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

CP IB 139/ND/2023 stands allowed.

SD/-
(Rahul Bhatnagar)
Member Technical

SD/-
(Bachu Venkat Balaram Das)
Member Judicial

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-139/(ND)/2023

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Euphoria Constructions Private Limited.

Registered Office at:

E-16 Jawahar Park, Laxmi Nagar

Delhi - 110092

...Petitioner/Operational Creditor

Versus

M/s. AAR City Infrastructure Private Limited

Registered Office at:

Unit No 552, 5th Floor Terrace

Tower B, D-4, 5, 6 Krishna Apra Business Square

NSP, New Delhi- 110034

...Respondent/Corporate Debtor

CORAM:

SHRI BACHU VENKAT BALARAM DAS MEMBER (JUDICIAL)

SHRI.RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Counsel for Operational Creditor: Mr. Vaibhav Tyagi, Adv


Counsel for Corporate Debtor: Mr. Kartik Pant, Mr. Shubhanshu
Gupta an Mr. Chaitanya, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)


Date: 18.07.2023

1. This is an application filed by the Applicant M/s. Euphoria Constructions Private Limited. through Authorised Representative, Mr. Manoj Singh, duly Authorised vide Board Resolution dated 24.01.2023, to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent. M/s. AAR City Infrastructure Private Limited for the alleged default on the




part of the Respondent in clearing the debt of Rs. 2,19,60,566 (Rupees Two Crores Nineteen Lakhs Sixty Thousand Five Hundred and Sixty Six). The details of transactions leading to the filing of this application as averred by the Petitioner/Operational Creditor are as follows:

- a) The Corporate Debtor was desirous of constructing a housing project named Regency at Plot No. GH-03B, Sector-16C, Greater Noida (Project). The Operational Creditor represented that it had the capacity and know-how, and as a result, the OC was selected by the Corporate Debtor.
- b) That the Operational Creditor was awarded Contract for construction of tower B, C, D & E at the housing project of the Corporate Debtor Project.
- c) For the aforementioned services, a contract was executed between the Corporate Debtor and the Operational Creditor on 04.08.2014. According to the contract, the Operational Creditor was responsible for constructing towers B, C, D, and E of the Project. The contract included all the



necessary details regarding the services to be provided by the Operational Creditor, such as the terms and conditions, scope of work, covered area rate, schedule of payment, and the status of work, among others. That as per the contract, the entire work was to be completed with a period of 18 months.


- d) Clause 23 of the aforementioned agreement states that 80% of the payment shall be released within 15 days of the submission of the monthly R.A. Bill by the Operational Creditor. The remaining balance payment shall be released after the bill is checked by the Corporate Debtor. Additionally, a retention money of 5% was to be deducted from each running bill, with a maximum security deposit of Rs. 20 Lakhs. The 50% retention money was to be released after the completion of the scope of work.
- e) Based on the assurances from the Corporate Debtor regarding regular payments and support, as well as the assurance that the terms of the contract would be upheld, the Operational Creditor initiated the work. To carry out



the work, the Operational Creditor mobilized significant equipment, labor, and other resources. The construction work was being carried out according to the agreed timeline, and the time period specified in the contract was mutually extended as necessary.

f) The Operational Creditor was raising regular invoices, however, there was always a delay in making payments. The Operational Creditor had during the course of the Contract raised regular invoices for an amount of Rs. 12,63,34,030/-. However, till date only an amount of Rs. 10,43,73,464/- has been received, whereas the work for an amount of Rs. 12,53,34,238/- is already completed. The final bills for an amount of Rs. 12,53,34,238/- was raised on 30.11.2017.

g) Despite several assurances from the Corporate Debtor, it has failed to settle the undisputed debt. The Corporate Debtor has repeatedly delayed payments, citing various reasons including the Covid pandemic. The assurances also included the promise of 5 (five) flats in another project of



the Corporate Debtor's company. However, to this day, the Corporate Debtor has not paid the remaining amount, and an outstanding sum of Rs. 2,19,60,566.00/- (Rs. Two Crores, Nineteen Lakhs, Sixty Thousand, Five Hundred and Sixty-Six) remains pending for collection from the Corporate Debtor.

h) The Operational Creditor issued Demand Notice to the Corporate Debtor on 07.12.2022. The CD has replied to the Demand Notice and admitted the debt and sought more time till March 2023 and no dispute has been raised by the Corporate Debtor with respect to the services provided by the Operational Creditor.

2. The Corporate Debtor has filed its reply and made following submissions: -


A. That there was delay on the part of OC in completing the construction work and the CD had suffered huge losses on account of delay caused by OC. However, the disputes were resolved amicably and keeping in mind the relationship between the parties.

B. That, owing to the uncertainties in the real estate sector during covid period the CD was facing financial hardships.

C. That despite facing such hardships, the CD had paid an amount of Rs 10,437,3464/- to the OC. Furthermore, it was specifically agreed between the parties that the CD would pay the entire pending amount along with interest to the OC, or alternatively, provide flats to the OC in another project. This agreement was made orally between the OC and CD.

D. That it was agreed orally that the OC would withdraw the Demand notice and the matter could be amicably settled. However, the OC has filed the present petition

- 3.** We have gone through the documents filed by both the parties and heard the arguments advanced by the counsel for the Operational Creditor and Corporate Debtor. The applicant has claimed the default on part of the Respondent for amount of Rs. 2,19,60,566 (Rupees Two Crores Nineteen Lakhs Sixty Thousand Five Hundred and Sixty Six). It is pertinent to mention here that the Corporate Debtor has not denied its



liability for the outstanding debt in its reply. However, it has pointed out a few incidents where there was an oral agreement between the parties regarding certain issues. It is interesting to note that the Corporate Debtor has not filed a single document to substantiate its claims. It is a well-settled proposition of law that mere averment in a reply is insufficient unless it is backed by supporting documents. In fact, the Corporate Debtor has never denied its liability in response to the demand notice and has assured the Operational Creditor that it will repay the debt. The relevant extract of letter dated 15.12.2022, issued by the Corporate Debtor in reply to the demand notice, is reproduced as under: -


Dear Manoj Ji,


*We are in receipt of the demand notice issued by your Advocate. In this regard, **we assure you that the payment shall be released as per the provisions of the contract. We request you to grant time till March, 2023 as till that time we will be in a position to pay.** The Company's sister project in Hisar will soon receive the Occupation Certificate and remaining payment due from the allottees will also be received subsequently.*

Warm Regards

Rajendra Prasad Mittal

Director

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4. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as Corporate Debtor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any pre-existing dispute, this Tribunal **admits** this petition and **initiates CIRP** on the Corporate Debtor with immediate effect.
 5. The petitioner has proposed the name of Mr. Manish Agarwal for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00223/2017-2018/10904 The Proposed IP has a valid AFA which is valid upto 17.03.2024. Accordingly, this Adjudicating Authority, hereby appoints Mr. Manish Agarwal (Mobile – 9412705345) to act as Interim Resolution professional. He shall take such other




and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.


6. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

7. 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, tribunal, arbitration panel or other authority;

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- (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.”

8. 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.

9. 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'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. 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.

10.The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Let copy of the order be served to the parties

SD/-

Rahul Bhatnagar)
Member (Technical)

SD/-

(Bachu Venkat Balaram Das)
Member (Judicial)