

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.133/Chd/CHD/2022

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Manoj Kumar, Proprietor of M/s Volunteer Associates,
(PAN No.APQPK6716A)
Office at Plot No.50, Sector 47,
Gurgaon- 122002 (Haryana)
E-mail:- volunteerassociates11@gmail.com

...Petitioner/Operational Creditor

Versus

Sarv Awas Housing Bhiwadi Private Limited
(CIN No.U70100HR2013PTC048795)
Regd. Office at C-40, 3rd Floor, Vyapar Kendra, Palam Vihar,
Gurgaon- 122017, Haryana
Also at
House No.81, Tribune Colony,
Raipur Khurd, Chandigarh- 160004
E-mail:- info@sarvawas.com

...Respondent/Corporate Debtor

Judgment delivered on: 15.09.2022

**CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Operational Creditor : Ms. Pridhi Singla, Advocate proxy
for Mr. Nahush Jain, Advocate

For the respondent/corporate debtor : Mr. Puru Gupta, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as the 'Code') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 (for short hereinafter referred to as the '**Rules**') by Mr. Manoj Kumar, Proprietor of M/s Volunteer Associates (for short hereinafter referred to as the '**operational creditor/petitioner**') for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against Sarv Awas Housing Bhiwadi Private Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Manoj Kumar and the same is at page 17 of the petition.

2. The corporate debtor, namely, Sarv Awas Housing Bhiwadi Private Limited, is a company incorporated on 10.04.2013 under the Companies Act, 1956, having CIN U70100HR2013PTC048795 and its registered office is at C-40, Third Floor, Vyapar Kendra, Palam Vihar Gurgaon, Haryana- 122017. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at 28 of the petition.

3. The brief facts, as stated in the petition, are that the operational creditor is a proprietorship firm primarily engaged in civil construction work, security and facility management services. The operational creditor and the corporate debtor enjoyed business relations since the period of March 2016 and the operational creditor is engaged in the construction of flats at the site of the corporate debtor in Bhiwadi and was also supplying the security guards for the security of the building material, which belongs to the corporate debtor, at the construction site. It has been stated in the petition that the corporate debtor had issued work order for temporary construction of boundary wall at its project named 'Aravali Garden Project' in Bhiwadi, Rajasthan on 15.03.2016 and the initial work order was for an amount of Rs.7,00,000/-.

4. Further, it has been stated that on completion of work by the operational creditor, the business relations between the parties started to prosper and the corporate debtor approached the operational creditor and assigned the work of construction of flats at its project named Aravali Garden Project in Bhiwadi, Rajasthan and that the corporate debtor had released a single payment of Rs.5,00,000/- on 27.10.2016. In Part-IV of Form 5, it has been stated that the amount of debt fell due against unpaid Bills for the transactions held during the period from May 2016 to November 2019 for the supply of goods/materials & services and is still due up to the date of demand notice, the details whereof are as under:-

1 st April, 2013 to 31 st March, 2021		
Date	Particulars	Amount
02.05.2016	RA Bill	21,85,639.00
04.06.2016	RA Bill	16,20,311.00
20.06.2016	RA Bill	13,29,844.00
20.06.2016	RA Bill	15,55,610.00
31.08.2016	Final Bill	53,04,592.00
31.08.2016	Final Bill	1,90,505.00
31.08.2016	Final Bill	26,95,716.00
24.10.2016	SAHBPL HDFC	20,000.00
27.10.2016	Debit Note	22,290.00
20.05.2019	Supply of Security Guards	1,88,550.00
20.08.2019	Supply of Security Guards	1,88,550.00
18.11.2019	Supply of Security Guards	1,88,550.00
Less:- Payments Received		19,75,000.00
Net Amount		1,35,15,157.00

Copies of the invoices have been annexed as Annexure P-2 with the petition.

5. It has been averred on behalf of the operational creditor that it had approached the corporate debtor through various modes of communication on various occasions, but all in vain. The operational creditor had also personally visited the office of the corporate debtor several times, however, the

respondent/corporate debtor showed its inability to clear the outstanding amount due to the decreased demand of real estate in the market resulting into very poor financial condition of the corporate debtor. It has been further averred that to resolve the matter pertaining to outstanding dues, the corporate debtor agreed to handover the finished flats to the operational creditor in the project in consideration of the amount due. Therefore, both the parties signed a Memorandum of Understanding ('MOU') on 08.03.2019 (Annexure P-8) agreeing on the terms and conditions for clearing the outstanding dues by way of delivering the finished flats from the Aravali Garden Project in consideration to the outstanding dues of the operational creditor. However, still the corporate debtor failed to deliver and breached the terms and conditions in the MOU. Thus, in the petition, the operational creditor is claiming an amount of Rs.1,35,15,157/- out of which Rs.1,29,49,507/- is towards construction material supplied for the construction of flats and Rs.5,65,650/- is towards supply of security guards provided to the corporate debtor from 02.05.2016.

6. It has been alleged that corporate debtor issued a letter pertaining to balance confirmation in its book of accounts dated 10.05.2021, thereby confirming that the amount due is unpaid. Since, the respondent/corporate debtor failed to make the payment, the operational creditor sent a Demand Notice dated 19.02.2022 in Form 3 (Annexure P-7) on the registered office of the corporate debtor as well as at the address of its Director and also through e-mail, calling upon the corporate debtor to repay the unpaid operational debt in full within 10 days from the date of receipt of notice and the same was duly delivered 21.02.2022. Copy of demand notice, postal receipts, tracking details and email have been annexed as Annexure P-7.

7. When the matter was listed before this Bench on 02.06.2022, Mr. Puru Gupta, learned counsel appeared on receipt of advance notice on behalf of the respondent/corporate debtor and sought some time to file the reply. In compliance thereof, reply was filed by the respondent/corporate debtor vide Diary No.00757/1 dated 01.09.2022, through Mr. Amit Puri, Authorized Signatory of the respondent/corporate debtor, who had been authorized by the respondent corporate debtor vide Board Resolution dated 22.08.2022 (Annexure A-1) to file the reply on its behalf.

8. In the reply filed by the respondent/corporate debtor, it has been submitted that the operational creditor worked on the project and raised bills for the same. Further, it has submitted that real estate sector has been facing a period of depression due to poor demand in the market by end user and also the impact of Covid-19 pandemic has further worsened the situation of real estate sector in general and housing projects in particular due to negative demand by the customers. Therefore, resultantly, the respondent/corporate debtor had faced huge amount of losses in its business. Thus, it has been categorically admitted that the respondent/corporate debtor failed to make payments as agreed and has defaulted in making payments since 2016. Not only this, it has also been stated the corporate debtor had shown its *bona fide* intentions and entered into MOU on 08.03.2019 with the operational creditor to handover the finished flats in the project in consideration of the due amount. However, due to the decreased demand of the real estate in the market resulting into a poor financial condition, showed its inability to clear the outstanding dues thereby resulting into failure to adhere to the terms and conditions as agreed in the MOU.

9. We have heard the learned counsel for the petitioner and learned counsel for the respondent and have gone through the records carefully.

10. The first issue for consideration is whether the demand notice in Form 3 dated 19.02.2022 was properly served. As discussed above, demand notice dated 19.02.2022 was sent through courier on the registered office of the respondent/corporate debtor and the same was delivered on 21.02.2022. Demand notice was also sent through e-mail on 07.03.2022 at the registered e-mail address of the corporate debtor as available on the master data of the MCA.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit under Section 9(3)(b) of the Code, wherein it has been deposed that the it has not received any reply to the demand notice dated 19.02.2022 and that no notice has been given by the corporate debtor relating to a dispute of the unpaid operational debt and there is no pre-existing dispute between the parties.

12. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the application was filed vide Diary No.00757 dated 22.04.2022 (refiled on 20.05.2022), whereas the date of default is 17.12.2019, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

13. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹1,35,15,157/-. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copy of ledger account statement, and invoices. Accordingly, the

petitioner/operational creditor has established the debt and the default, which is more than Rupees one lakh i.e. the threshold limit (pre-revised).

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed and primarily admitted. Also, there is no rebuttal to the claim filed by the petitioner. Accordingly, the petitioner proved the debt and the default which is above threshold limit.

15. In Part-III of Form No. 5, Mr. Parminder Singh Bhullar, has been proposed as Interim Resolution Professional by the petitioner/operational creditor. Form No. 2 dated 18.04.2022 submitted by the proposed IRP has been annexed with the petition, wherein it has been stated that there are no disciplinary proceedings pending against the professional with the Board or with the Indian Institute of Insolvency Professionals of ICSI.

16. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIRP in the case of the corporate debtor, Sarv Awas Housing Bhiwadi Private Limited.

17. We also direct moratorium in terms of sub-section (1) of Section 14 of the Code as under:-

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till 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.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Parminder Singh Bhullar from the online database provided by the IBBI and there is nothing adverse against him. In view of the above, we appoint Mr. Parminder Singh Bhullar, having Registration No. IBBI/IPA-002/IP-PN01127/2021-2022/13700, E-mail: advocate.psb@gmail.com, Mobile No.9988001158, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Parminder Singh Bhullar shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor

etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. The Interim Resolution professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.
- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a

report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

21. The petitioner is directed to deposit an amount of ₹80,000/- (Rupees Eighty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

22. This petition is accordingly allowed and admitted.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

September, 15th, 2022