

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

C.P. (IB) 349/MB/2023

Under section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**Atal Realtech Limited
(Formerly known as Atal Realtech Private
Limited)**

Having its address at Unit No.301 and 302,
ABH Developers Town Square, S. No. 744,
Nashik, Maharashtra- 422002

..... Petitioner/ Operational Creditor

Versus

**Vivaan Multisttructures Limited
(Formerly Known as Vivaan Multisttructure
Private Limited)**

Having its address at Office No -14, Suyojit
Modern Point, Opposite Police Parade
Ground, Sharanpur Road,
Nashik, Maharashtra- 422002

..... Respondent/Corporate Debtor

Order Delivered on :- 13/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Vidisha Rohia

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Atal Realtech Limited (Formerly known as Atal Realtech Private Limited)** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Vivaan Multistructures Limited (Formerly Known as Vivaan Multistructure Private Limited)** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 2,46,15,112.92 (Two Crores Forty-Six Lacs Fifteen Thousand One Hundred and Twelve Rupees and Ninety-Two Paise Only).

The submissions of the Operational Creditor are as follows:

2. It is submitted by the Petitioner that the present Petition has been filed by the Operational Creditor for default committed by the Corporate Debtor for an amount of Rs. 2,46, 15, 112.92 (Two Crores Forty-Six Lacs Fifteen Thousand One Hundred and Twelve Rupees and Ninety-Two paise only) for the invoices raised by the Operational Creditor to the Corporate Debtor towards various works contracts performed by the Operational Creditor.
3. It is further submitted that the Operational Creditor issued a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 26.12.2022 via Speed Post and Email demanding an amount of Rs. 2,46, 15,112.92 (Two Crores Forty-Six Lacs Fifteen Thousand One Hundred and Twelve Rupees and Ninety-Two paise only), being due and payable by the Corporate Debtor to the Operational Creditor till date. The Corporate Debtor received the Demand Notice dated 26.12.2022 along with its annexures on 31.12.2022.
4. It is further stated that the Corporate Debtor replied to the Demand Notice dated 22.12.2022 on 06.01.2023 and admitted the amount claimed by the Operational creditor.
5. The Operational Creditor has claimed that the date of default is 16.12.2019 when the debt became due. Since the outstanding amount was not paid by the Corporate Debtor despite demand notice, this necessitated the filing of the present Petition.

Analysis and Findings:

6. Notice of the Petition was given to the Corporate Debtor, but none appeared on its behalf to contest the proceedings. Under the circumstances, the Corporate Debtor was proceeded against ex-parte vide order dated 14.09.2023.
7. We have heard the Counsel for the Petitioner and have also gone through the record.
8. During the course of arguments, Counsel for the Operational Creditor has pointed that as per invoice dated 16.11.2019, a total sum of Rs. 2,80,00,000/- crores was due and payable by the Corporate Debtor. Counsel for the Operational Creditor has further pointed that as per the statement (Exhibit d) annexed with the Petition, a total sum of Rs. 2,46,15,112.92 was outstanding at the time of the filing of the Petition. Counsel for the Petitioner has referred to the demand notice dated 26.12.2022 which was served upon the Corporate Debtor. The Corporate Debtor replied to the demand notice vide letter dated 06.01.2023 whereby no dispute was raised and instead, the liability to pay Rs. 2,46,15,112.92/- was also admitted. Thus, according to the Counsel for the Operational Creditor, the question of factum of existence of operational debt and its default stands proved on record and therefore, the same should be admitted.
9. We have considered the aforesaid contentions raised by the Counsel for the Petitioner and have also gone through the record.
10. No formal reply has been filed on behalf of the Corporate Debtor. Even otherwise, the liability to pay an operational debt has been candidly admitted

by the Corporate Debtor. It has been stated in the reply dated 06.01.2023 that the Corporate Debtor was trying its best to come out of the circumstances of extreme financial stress and was not in a position to settle the outstanding dues.

11. The Corporate Debtor has further issued confirmation of account acknowledging its liability to pay Rs. 2, 46,15,112.92/- as on 31.03.2020, 31.03.2021, 31.03.2022 and 30.09.2022 which are annexed with the Petition. Therefore, it has been established that the Corporate Debtor owed an operational debt of Rs. 2, 46,15,112.92/- which has not been paid despite having been served upon the demand notice under Section 8 of the Code. It has also been proved on record that the present Petition under Section 9 of the IB Code, 2016 has been filed within the period of limitation.
12. As a result of above discussion, we hold that the petitioner has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

ORDER

- a. **The above Company Petition No. (IB) 349/(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Vivaan Multistructures Limited**

(Formerly Known as Vivaan Multistrukture Private Limited)

- b. This Bench hereby appoints Mr. Harshad Shamkant Deshpande , Registration No: IBBI/IPA-001/IP-P00166/2017-2018/10335 as the Interim Resolution Professional having his address at Flat No- 403, Kumar Millennium, Jaibhavani Nagar, Paud Road, Near Rohan Corner, Kothrud, Pune, Maharashtra- 411038 ; Email:- harshadde@hotmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. 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 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.

- e. 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.
- f. 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.
- g. 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. 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.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
13. **Accordingly, this Petition is admitted.**
14. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)