



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI COURT III**

Item No. 11
IB-2765(ND)/2019

IN THE MATTER OF:

S.P. Town Planner Pvt. Ltd.

VS

VRP Buildtech Pvt.Ltd.

.....APPLICANT/PETITIONER

.....RESPONDENTS

SECTION

U/s 9 of IBC, 2016

Order Pronounced on 30.05.2023

CORAM:

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

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Mr. Sandeep Chilana, Mr. Shekhar Sharma,
Mr. Prem Kandpal, Mr. Jordhan R.,
Mr. Snehil Sharma, Ms. Anjali Jain,
Ms. Jagrati Rastogi, Advocates.

For the Respondent

: Mr. Sudhanshu Batra, Sr. Advocate,
Mr. Rohan Gupta, Advocate.

ORDER

Order pronounced in open court vide separate sheets. IB-2765(ND)/2019 is **admitted**.

**Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

**Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III**

IB-2765(ND)/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF:

M/s. S.P. Town Planner Private Limited
...Applicant/Operational Creditor

Versus

M/s. VRP Buildtech Private Limited
...Respondent/Corporate Debtor

Judgment delivered on: 30.05.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Sandeep Chilana, Mr. Shekhar Sharma,
Mr. Prem Kandpal, Mr. Jordhan R.,
Mr. Snehil Sharma, Ms. Anjali Jain,
Ms. Jagrati Rastogi, Advocates.
For the Respondent : Mr. Sudhanshu Batra, Sr. Advocate,
Mr. Rohan Gupta, Advocate.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present petition i.e., CP (IB)-2765(ND)/2019 has been filed by Operational Creditor i.e, *M/s. S.P. Town Planner Private Limited* under Section 9 of the IBC, 2016 with the prayer to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz, *M/s. VRP Buildtech Private Limited*, declare the Moratorium and appoint the Interim Resolution Professional (“IRP”).



2. The Corporate Debtor is engaged in the business of development of Real Estate Projects and is developing a project called Happy Homes, in Faridabad, Haryana and appointed the Operational Creditor for providing constructions related services including masonry works for the purpose of development of the project.

3. The Corporate Debtor issued work order No. VRP/HAPPYHOMES GRAND/SEC-85, FBD, dated 01.04.2017 for Civil Construction (Structural Work) and Work Order No. VRP/HAPPYHOMES GRAND/SEC-85, FBD, dated 01.08.2018 for Civil Constructions (Finishing Work). It is also submitted that Clause 4 to the Work Orders clearly provided that the invoices of the Operational Creditors shall be paid within a period of 15 days from the date of invoice.

4. The Operational Creditor was duly executing the work as per the specification for Corporate Debtor till August 2018 and was raising the relevant invoices. The Operational Creditor raised following Running Bill invoices on Corporate Debtor as follows: -

Sr. No.	Invoice No.	Amount (in Rs.)
1.	R/A Bill No. 04 (Structure)	25,34,539.00
2.	R/A Bill No. 05 (Structure)	26,65,757.00
3.	R/A Bill No. 06 (Structure)	24,78,189.00
4.	R/A Bill No. 07 (Structure)	34,77,224.00
5.	R/A Final Bill (Structure)	10,191,720.00
6.	R/A Bill No. 03 (Brick Plaster)	12,56,536.00



7.	R/A Bill No. 04 (B/W, Plaster, Misc.)	4,055,909.00
8.	R/A Final Bill (B/W, Plaster, Misc.)	1,80,90,054.00

The Running Account Bills were duly approved by the project manager and an approved copy of the invoice was sent back by the project manager through email to the Operational Creditor.

5. Despite several requests to the Corporate Debtor, the Corporate Debtor defaulted for making the payment to the Operational Creditor. No dispute existed between the Operational Creditor and the Corporate Debtor with respect to works quality till issuance of Demand Notice.

6. Since, the Corporate Debtor was not making payments for a considerably long period, it became difficult for the Operational Creditor to continue work on the site and therefore a Final Invoice was raised by the Operational Creditor on 05.08.2019 and was handed over to the project manager who refused to acknowledge the same. The Operational Creditor discontinued work at the site since the total dues towards Corporate Debtor were more than Rs. 4,51,66,746/- as on 05.08.2019.

7. The Operational Creditor sent a demand notice under Section 8 of IBC, 2016 to the Corporate Debtor on 10.09.2019 calling upon the Corporate Debtor to pay the Operational debt amounting to Rs.4,68,97,627/- along with interest which was received by the Corporate Debtor on 16.09.2019. The Operational Creditor issued a revised demand notice under Section 8 of IBC, 2016 in Form 3 on 03.10.2019 re-computing the interest component to Rs. 9,88,444 /- to the Corporate Debtor. The Corporate Debtor replied to the demand Notice under Section 8 sent by the Operational Creditor on 23.09.2019 and 14.10.2019.

8. The Corporate Debtor had filed a detailed reply affidavit denying the various allegations and contentions raised by the Operational Creditor. The Corporate Debtor has raised certain disputes with regard to the calculation table filed by the Operational Creditor and calculation of interest on various



amounts mentioned in the demand notice dated 10.09.2019 as well as in the corrigendum notice dated 03.10.2019. It is submitted by the Corporate Debtor that he had filed an application bearing No. 2785 dated 18.11.2019 under Section 12-A of the Commercial Courts Act, 2015 for pre-mediation in respect to the disputes arising out of Work Order-1 and 2 before the Chief Judicial Magistrate, Secretary-cum-Nodal Officer, District Legal Services Authority, Mediation and Conciliation Centre, Gurugram, Haryana.

9. The Corporate Debtor has further submitted that several discrepancies in the ledger statement as well as with regard to the amount of TDS deducted against various payments were made by the Corporate Debtor. Further, the Corporate Debtor has submitted that the Operational Creditor had sent a legal notice on 25.11.2019 under the provisions of MSME Act, 2006 to the Corporate Debtor wherein the Operational Creditor had annexed the copies of two invoices i.e., Final RA Bill dated 05.08.2019 (Final RA (Structure) for the period 01.04.2017 to 31.07.2019 under Work Order – 1 and other being invoice No. Final RA Bill (B/W, Plaster, Misc. dated 05.08.2019) for the period 01.04.2017 to 31.07.2019 under Work Order – 2. Therefore, the Corporate Debtor has submitted that the Operational Creditor relied upon just two invoices for claiming the alleged principal sum of Rs. 4,51,66,746/- from the Corporate Debtor which shows that the claim made in the present petition is false and bogus without any basis and supporting invoices.

10. It is also submitted by the Corporate Debtor that the Operational Creditor did not complete the work in accordance with the terms of the Work Orders and surrendered the work since April, 2019 and therefore, the Corporate Debtor was forced and compelled to get the unfinished works completed entirely at their costs.

11. Further, it is submitted by the Corporate Debtor that the Corporate Debtor gave a reply on 23.09.2019 to the Demand Notice under Section 8 of IBC, 2016 sent by the Operational Creditor, wherein Corporate Debtor raised several disputes and counter claims against the Operational Creditor. The Corporate Debtor also sent a reply on 14.10.2019 to the Corrigendum dated 03.10.2019.



12. We have clearly perused the various Works Order executed between the Operational Creditor and the Corporate Debtor, Bank Statements of the Operational Creditor, interest computation table, email correspondence towards acceptance of Running Accounts Bill by the Corporate Debtor, copies of the unpaid invoices which have been accepted by the Corporate Debtor. We have also perused the demand notice issued by the Operational Creditor as well as the reply given by the Corporate Debtor to the said demand notice.

13. On perusal of the aforesaid documents, we find that the Operational Creditor has done the work on the basis of the Works Order issued by the Corporate Debtor and raised invoices which were duly accepted and endorsed by the Corporate Debtor. Even though the Corporate Debtor has raised several issues and discrepancies in the amounts claimed under the invoices as well as in the ledger statements and RA Bills. However, the Corporate Debtor has not produced any letter or email or correspondence showing that there exists a existing disputes which were raised before the issuance of demand notice under Section 8 of the Code by the Operational Creditor. We are of the considered view that the nature of debt is a “Operational Debt” as defined under Section 5(21) of the Code and the amount of outstanding Operational Debt is above the pecuniary threshold limit of Rs.1 crore as envisaged under Section 4 of the Code, 2016. It has also been established that there is a “Default” as defined under Section 3 (12) of the Code on the part of the Corporate. Therefore, the two essential qualifications i.e., existence of ‘debt’ and ‘default’, for admission of a petition under Section 9 of the Code, 2016 have been met in this case. In this regard, we gather strength from the law laid down by the Hon’ble Supreme court in the following cases: -

“The Hon’ble Supreme Court judgement in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34,** wherein the Hon’ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9.

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) *Whether there is an “operational debt” as defined exceeding Rs 1 lakh?
(See Section 4 of the Act)*



- (ii) *Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) *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?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

With regard to the corporate debtor’s submission of seeking time to repay the operational debt due to the applicant, it is a settled preposition of law that an application under Section 9 of the Code, 2016 have to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.

At this juncture, it will be advantageous to refer the judgement dated 12.07.2022 of the Hon’ble Supreme Court in the case Vidharbha Industries Power Limited vs. Axis Bank Limited [Civil Appeal No. 4633 of 2021] wherein the Hon’ble Supreme Court observed as follow: -

“74. Sub-section (5) of Section 9 of the IBC provides that the Adjudicating Authority (NCLT) shall, within 14 days of the receipt of an application of an operational creditor under sub-section (2) of Section 9, admit the application and communicate the decision to the Operational Creditor and the Corporate Debtor, provided, the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied. The Adjudicating Authority (NCLT) must reject the application of the Operational Creditor in the circumstances specified in clauses (a) to (e) of Section 9(5)(ii) of the IBC.

An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the



Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.”

14. Having regard to the conspectus of facts of the present case and the judgments cited (supra), this Adjudicating Authority is of the considered view that the Corporate Debtor is in default of payment of the outstanding operational debt owed to the Applicant and the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied. Therefore, the present petition i.e, IB-2765/ND/2019 stands **admitted** and the CIRP is hereby initiated against the Corporate Debtor i.e, M/s. VRP Buildtech Private Limited.

15. The Operational Creditor has proposed the name of Resolution Professional viz, **Mr. Kamal Agarwal, having Registration No: IBBI / IPA-001 / IP-P00868 / 2017-2018 / 11466, Address: 487/27, School Road, Near Peeragarhi Metro Station, New Delhi, 110087.** As per the consent letter, no investigation is pending against the Resolution Professional and he agreed to accept the assignment as Interim Resolution Professional in the matter.

16. Therefore, all the legal requirements are fulfilled, hence, the application is hereby **admitted**. The CIRP is initiated against the Corporate Debtor viz., M/s. VRP Buildtech Private Limited. Mr. Kamal Agarwal is hereby appointed as IRP in the matter.

16. The moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

“(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;

(a) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;



(b) 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 (54 of 2002);

(c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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, concession, clearances or a similar grant or right during the moratorium period”.

17. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended, or interrupted during moratorium period. The provisions of Sub- section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

18. We hereby direct the Operational Creditor to pay a sum of Rs. 2,00,000/- to the IRP, as required under the provisions of the Code to meet out the initial 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 Persons) Regulations, 2016.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the IBC, 2016.



20. The Learned Counsel for the Operational Creditor and the Registry are directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. On receiving the order, the IRP is directed to communicate this Order the Corporate Debtor, and the concerned RoC.

The CP/IB-2765(ND)/2019 is **admitted.**

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)