

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,  
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,  
HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 19/9/JPR/2022**

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)*

**IN THE MATTER OF:**

**MR. AKSHAY DUGGAD, PROP. OF M/S DUGGAD TRADEX &  
MINERALS** **...Operational Creditor**

**VERSUS**

**LUMEN HOUSING DEVELOPMENT & CONSTRUCTIONS PVT. LTD.**  
**...Corporate Debtor**

**MEMO OF PARTIES**

**MR. AKSHAY DUGGAD,  
PROP. OF M/s Duggad Tradex & Minerals**  
R/o: Baijnath Para, Rishabh  
Colony Road, Near Mahavir  
Colony, Durg, Chhattisgarh-  
491001

**...Operational Creditor**

**VERSUS**

**LUMEN HOUSING DEVELOPMENT & CONSTRUCTIONS PVT. LTD.**  
R/o: 406-407, Shekhawati  
Complex, Near Polo Victory,  
Station Road, Jaipur- 302015  
(Rajasthan)

**...Corporate Debtor**

**FOR THE OPERATIONAL CREDITOR:  
FOR THE CORPORATE DEBTOR :**

Vinay Kumar Jain, Adv.  
Mahesh Sharma, Adv.

Solr

Solr

**Order Pronounced On: 29.02.2024**

**ORDER**

**Per: Shri Rajeev Mehrotra, Technical Member**

1. The present Application numbered as *CP No. (IB)- 19/9/JPR/2022* has been filed under Section 9 of Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') by *M/s Duggad Tradex & Minerals* seeking Corporate Insolvency Resolution Process ('CIRP') of *M/s Lumen Housing Development and Constructions Pvt. Ltd.* on account of default in payment of Rs. 1,79,92,224/- (Rupees One Crore Seventy- Nine Lakhs Ninety-Two Thousand Two Hundred Twenty- Four Only).
2. The Corporate Debtor is a Private Limited company incorporated under the provisions of Companies Act, 1956 on 28.01.2009, holding CIN: U45201RJ2009PTC028184. The nominal/ authorized share capital and the paid-up share capital of the Corporate Debtor is Rs. 1,00,000/- (Rs. One Lakh only) each and the registered office of the Corporate Debtor is situated at Jaipur. Therefore, the Corporate Debtor falls within the territorial jurisdiction of this Adjudicating Authority.
3. The Application has been filed on the basis of the following set of facts:
  - 3.1. The Applicant being a proprietorship firm registered under Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act, 2006') is engaged in the business of Transport Services. The

Sd/-

Sd/-

Corporate Debtor entered into a Transport Agreement (hereinafter referred as 'Agreement') with the Applicant on 12.08.2020 for transportation service from *Balco Plant Fly Ash Dyke* to *Tarda Mines/* delivery locations. This Agreement superseded the earlier Agreement dated 08.07.2020.

3.2. The Applicant has been successfully providing transportation services to the Corporate Debtor in accordance with the terms of the Agreement. Pursuantly, a total of 6167.978 tons of *Fly Ash* were transported against which invoices worth Rs. 13,75,022/- (Rs. Thirteen Lakhs Seventy- Five Thousand Twenty-two Only) were raised. In accordance with the Agreement, the Corporate Debtor agreed to clear the invoice by 11<sup>th</sup> day after submission of invoice. Subsequently, the Corporate Debtor refused to pay the outstanding amount without any valid reason, thereby compelling the Applicant to stop providing its services. Despite multiple reminders and efforts to resolve the matter, the Corporate Debtor refused to pay and in a subsequent meeting, the Corporate Debtor asked the Applicant to stop the work, hence, the agreement came to an end.

3.3. As per Clause 2 (d) of the Agreement, the Corporate Debtor is liable to pay 10% of the total contract value which is Rs. 1,46,13,648/- (Rs. One Crore Forty- Six Lakhs Thirteen Thousand Six Hundred Forty-

Sdr

Sdr

Eight Only) on account of early termination of the Agreement. Being aggrieved by the action of the Corporate Debtor in not making payment, the Applicant preferred a Demand Notice under Section 8 of the Code on 15.09.2021 asking upon the Corporate Debtor to make payment of Rs. 1,79,92,224/- (Rupees One Crore Seventy-Nine Lakhs Ninety-Two Thousand Two Hundred Twenty- Four Only).

- 3.4. The aforementioned details as mentioned in PART IV of the Application are reiterated below:

<i>Sr. No.</i>	<i>Particulars of Operational Debt</i>	
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	The total amount of debt as on 15.09.2021 was Rs. 1,79,92,224 (Rupees One Crore Seventy- Nine Lakhs Ninety-Two Thousand Two Hundred Twenty- Four Only) which comprises of the outstanding principal amount of Rs. 1,59,88,670 (Rupees One Crore Fifty- Nine Lakhs Eighty- Eight Thousand Six Hundred Seventy Only) and compound interest @ 3 times bank rate as notified by RBI from time to time calculated from the date of default i.e, 15.10.2020 till 15.09.2021 amounting to Rs. 20,03,554/- (Rs. Twenty Lakhs Three Thousand Five Hundred Fifty-Four) as per Part-V of MSMED Act, 2006. Further applicable till the date of actual realization of pending amount.
2.	Amount claimed to be in default and the date on which the default occurred	The total amount of debt as on 15.09.2021 was Rs. 1,79,92,224 (Rupees One Crore Seventy- Nine Lakhs Ninety-Two Thousand Two Hundred Twenty- Four Only) which comprises of the outstanding principal amount of Rs. 1,59,88,670

Sdr

Sdr

		(Rupees One Crore Fifty- Nine Lakhs Eighty- Eight Thousand Six Hundred Seventy Only) and compound interest amounting to Rs. 20,03,554/- (Rs. Twenty Lakhs Three Thousand Five Hundred Fifty-Four) calculated on invoice amount @ 3 times that of current bank rate as notified by RBI from time to time as per Part-V, MSMED Act, 2006.
3.	Amount and dates of default in tabular form	<p><b>Total amount of debt:</b> As on 15.09.2021, Rs. 1,79,92,224 (including interest) (Rupees One Crore Seventy- Nine Lakhs Ninety-Two Thousand Two Hundred Twenty- Four Only)</p> <p><b>Principal amount:</b> Rs. 1,59,88,670 (Rupees One Crore Fifty- Nine Lakhs Eighty- Eight Thousand Six Hundred Seventy Only)</p> <p><b>Compound Interest</b> on principal amount as per MSMED Act, 2006 Rs. 20,03,554/- (Rs. Twenty Lakhs Three Thousand Five Hundred Fifty- Four) from date of default i.e., 15.10.2020 till 15.09.2021, further applicable and payable till the date of realization of default amount in full.</p>

4. The Corporate Debtor has preferred Reply *vide* Diary No. 1021/2023 dated 21.04.2023 and contended the following:

4.1. The Corporate Debtor submits that the subject matter of the petition is less than Rs. 1,00,00,000/- (Rs. One Crore Only) thereby it does not fulfil the threshold prescribed under the provisions of the Code. Also, no amount is outstanding against the Corporate Debtor of the Applicant. The Corporate Debtor has admitted that a Transportation

Sdr

Sdr

Agreement was executed between both the parties on 12.08.2020. However, the other contentions have been denied by the Corporate Debtor.

- 4.2. It is contended that the Applicant had worked under the Agreement only for 2 months and thereafter he wilfully stopped the work of transportation. The Applicant has actually transported a total of 5228.16 tonnes of Fly Ash against which he raised 2 invoices i.e., Invoice No. 11 dated 03.08.2020 and invoice No. 12 dated 15.08.2020. Invoice No. 12 is inclusive of the diesel escalation. The transportation charges as per the Agreement of the aforesaid 5228.16 Tonnes of Fly Ash amounting to Rs. 7,31,948/- (Rs. Seven Lakhs Thirty- One Thousand Nine Hundred Forty- Eight Only). The said amount was paid to the Applicant and the payment advise has been annexed with the Reply. Further, it has been mentioned that no payment is outstanding against any invoice towards the Applicant.
- 4.3. It is contended that the Applicant after working for 2 months with the Corporate Debtor started working with *Blacksmith Corporation Mining and Allied Pvt. Ltd., Bilaspur (Chhattisgarh)*. Due to violation of Agreement, the Applicant denied its services which resulted in heavy losses to the Corporate Debtor. Hence, the Applicant is not entitled to claim the amount as mentioned in Part

Sd-

Sd-

IV of the Application. With respect to demand notice, it has been contended that the same was not in the knowledge of the Corporate Debtor.

5. The Applicant filed its Rejoinder *vide* Diary No. 2209/2023 dated 11.09.2023 and reiterated the following:

5.1. It had entered into a Transportation Agreement on 12.08.2020 and provided transportation services raising invoices worth of Rs. 13,75,022/(Rs. Thirteen Lakhs Seventy- Five Thousand Twenty-two Only). As per the Agreement, the Corporate Debtor had to pay invoices by the 11<sup>th</sup> day after submission of invoices which he refused to pay. Since, the Corporate Debtor breached the terms and conditions, it led the Applicant to stop providing services as per the payment terms of the Agreement. The Corporate Debtor had to pay Rs. 140 per ton to the Applicant as transportation charges and as per completion period, it was mentioned that the Applicant will shift a minimum of 10,50,000 tonnes in 3 years. Hence, the total contract value is Rs. 14,70,00,000/- (Rs. Fourteen Crores Seventy Lakhs Only) thereby making the 10% of the contract value as 1,47,00,000/- (Rs. One Crore Forty- Seven Lakhs Only).

5.2. It has been contended that on account of transportation of 6167.978 tonnes of Fly Ash, the Applicant raised 3 invoices i.e. Bill No. 11

Sdr

Sdr

dated 03.08.2020, Bill No. 12 dated 15.08.2020 and dated 04.09.2020, whereas, the Corporate Debtor has acknowledged only 2 bills and not paid the outstanding amount of Rs. 6,23,629/- (Rs. Six Lakhs Twenty- three Thousand Six Hundred Twenty- Nine Only). Another bill i.e. Bill No. 14 dated 10.09.2020 was raised but the same never got acknowledged. With respect to work with lack of co-operation, the Applicant submitted that the Corporate Debtor was separately doing all the transaction with the Blacksmith Corporation and the Applicant.

5.3. It is submitted that there was no transaction between Applicant and *Blacksmith Corporation* as an affidavit was executed between Corporate Debtor and *Blacksmith Corporation* that they can make payment to 3<sup>rd</sup> party but the Corporate Debtor has strictly instructed the *Blacksmith Corporation* to not pay any amount to the Applicant. The Applicant had a chat with *Blacksmith* where they also refused to pay any amount to the Applicant, as they contended that they have paid amount to Corporate Debtor and only on request of Corporate Debtor can pay amount to the Applicant.

6. The Written Submissions have been filed by the Corporate Debtor *vide* Diary No. 406/2024 dated 15.02.2024 wherein they have stated that while relying on the Agreement, it has cleared that the delay in disbursement of

Sdr

Sdr

payment is not in and is not a component of the term of Clause 2 (d) of this Agreement. Hence, the Applicant is not entitled to charge 10% of the work amount from the Corporate Debtor and the Applicant has made invocation Clause 2 (d) of the Agreement as the basis of the claim, whereas the Applicant had himself voluntarily abandoned the agreement and stopped execution of the work. Further, the Corporate Debtor stated that the intention of the Code is not to declare commercially viable enterprises as insolvent and bankrupt and CIRP should not be initiated to penalise solvent companies for payment of disputed dues claimed by an Operational Creditor. The reliance has been placed on the judgment of the Hon'ble Supreme Court in *S. S. Engineers vs. Hindustan Petroleum Corporation Ltd. and Ors. reported in MANU/SC/1146/2022 (Para No. 31): (2022) 234 CompCas 95 (SC)*.

7. We have heard the Ld. Counsels for the parties and perused the averments made in the Petition, Reply, Rejoinders and Written Submissions along with the documents enclosed therein.
8. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down the conditions precedent for triggering the CIRP under Section 9 of the Code. Para 34 is as follows: -

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

Sdr

Sdr

- (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 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 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.”*

9. Therefore, to initiate CIRP in the present matter these conditions have to be satisfied. At this juncture it is also important to quote the judgment of the Hon’ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:

*“32. .... On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”*

10. The petitioner submitted that an amount of Rs. 1,79,92,224/ comprising of the following has not been paid by the CD (refer page 26 Annexure 5) of the petition:

Sdr

Sdr

- i) Invoices for transportation of 6167.978 tones of fly ash; Rs. 13,75,022/-
  - ii) Compensation @ 10% of the contract value as per clause 2(d) for failure to make the payment of invoice within the stipulated time and for early closure of the agreement; Rs. 1,46,13,648/-
  - iii) Compound interest on principal; Rs. 20,03,554/-
- Total: Rs. 1,79,92,224/-

11. The Respondent had disputed the maintainability of the petition on the ground that the amount claimed under Clause 2(d) of the Agreement as claimed by the Applicant is not at all due, as the same has been claimed on account of delay in payments and the petitioner at his own stopped executing the contract. Also, the interest calculation has been at exorbitant rate as 'compound interest on 3 times the current bank rate as notified by RBI from time to time as per section which is not as per Section 16 of the MSMED Act, 2006 from the date of default i.e. 15.10.2020 till 18.03.2021, and not as per the terms of the contract.

12. If these two disputed amounts are excluded, the value of invoices raised is Rs. 13,75,022/- (Rs. Thirteen Lakhs Seventy-Five Thousand Twenty-Two Only). The respondents have alleged that the Applicant after working for two months with them, started working with *Blacksmith Corporation Mining And Allied Pvt. Ltd.* directly and at his own, stopped executing the contract with the Respondent. The Applicant has deliberately and willfully mentioned wrong facts before this Tribunal and this petition deserves to be dismissed with exemplary cost.

Sd/-

Sd/-

13. It appears that there is a dispute regarding invocation of Clause 2 (d) of the contract through which the Applicant is claiming 10 % of the contract amount due to delay in payment and early closure of the contract and the Respondent has not admitted this as payable amount to the Applicant. When this disputed item amount is excluded, the net invoiced amount by the Applicant is Rs. 13,75,022/- (Rs. Thirteen Lakhs Seventy- Five Thousand Twenty- Two Only) plus interest thereon, which is below the threshold limit for invoking provision of IBC under Section 9. In view of the above facts and circumstances, we are not admitting *CP No. (IB)- 19/9/JPR/2022* and rejecting request for initiation of CIRP against Lumen Housing Development Construction Pvt. Ltd.

14. The Hon'ble Supreme Court in *Swiss Ribbons Vs Union Of India in Writ Petitions Civil Nos. 99/2018* held that:

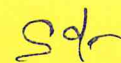
*"12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all*

Sdr

Sdr

*its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”*

15. IBC is not a recovery proceeding. The provisions of the Code cannot be allowed to prevail as a recovery mechanism or to enforce the recovery of claim by the Operational Creditor. The Application under Section 9 cannot be converted into proceedings for recovery, which is contrary to the objective of IBC. The object of the IBC is to resolve the insolvency of the Corporate Debtor and to bring back the Corporate Debtor on its feet.
16. Therefore, the Application numbered as *CP No. (IB)- 19/9/JPR/2022* is dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016 and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.
17. Let the copy of the Order be served to the parties.



**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,  
TECHNICAL MEMBER**