NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-684(ND)2020

IN THE MATTER OF:

Dharam Vir Gupta
D-701, Antriksh Apartments,
Plot No. 26, Sector 4, Dwarka
New Delhi – 110078 ...Applicant

VERSUS

SARE Realty Projects Private Limited
6, 383C Bank Street, Munirka
New Delhi-110067 ...Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 05.03.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Vatsalya Kumar, Advocate

For the Respondent : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Dharam Vir Gupta, with a prayer to initiate the Corporate Insolvency process against M/s SARE Realty Projects Private Limited (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s SARE Realty Projects Private Limited is a Company limited by Shares incorporated with CIN No. U45400DL2007PTC169466 on 16.10.2007 under the provisions of Companies Act, 2013, having its registered Office at 6, 383C Bank Street Munirka, New Delhi.

3. The Authorised Share Capital of the Corporate Debtor (CD) is Rs.5,00,00,000/- and Paid Up Share Capital of the Company is Rs.53,78,370/- as per the Master Data of the Company annexed.

4. It is averred by the Applicant/Operational Creditor that it was hired for hired him for his Professional Services as "Financial Controller-SPV" for CD w.e.f. 01.01.2018 for a period of 3 months. It is added that

a Consulting Agreement dated 29.12.2017 was executed between the parties for the purpose.

5. It is submitted by the Operational Creditor that his services were further extended vide Consulting Agreements dated 30.03.2018 and 31.05.2018 (placed as Annexure A3 (Colly) of the record) respectively.

6. It is further submitted by the Operational Creditor that it had rendered services till 31.08.2019. Thereafter, the Corporate Debtor relieved the Operational Creditor vide letter dated 31.08.2019. It is further stated that a No Objection Certificate (NOC) was also issued to the Operational Creditor. It is emphasized that NOC is a clear acknowledgement on the part of the Corporate Debtor of non-existence of any dispute between the Operational Creditor and the Corporate Debtor.

7. It is stated by the Operational Creditor that he had received regular month-wise remuneration from the Corporate Debtor. It is added the last payment was received on 05.09.2018 as remuneration for the month of July, 2018 as reflected in the Form 26AS of the Operational Creditor for the Financial Year 2018-19.

8. That the details of the unpaid invoice as submitted by the Operational Creditor in the part IV of its Application are :

Invoice Number	**Invoice Date**	**Amount**
DVCA/18-19/05	31.08.2018	3,27,281

9. It is stated by the Operational Creditor that the Principal Amount of the claim is to the tune of Rs 3,27,281/-. That the Operational Creditor has also claimed interest @12 % amounting to Rs 52,401/-.

10. It is further stated by the Operational Creditor that it had written various communications / reminders vide emails dated 13.11.2018, 06.12.2018, 08.12.2018, 02.01.2019, 13.02.2019, 16.04.2019 and 24.04.2019 as a follow up towards the payment but no payment was made.

11. It is stated that the Corporate Debtor vide email dated 06.12.2018 had written to the Operational Creditor stating that *"Your dues are in our priority list. Hopefully in this month you will get it."* The e mail is annexed as Annexure A8 to the Petition.

12. It is further stated by the Operational Creditor that since the Corporate Debtor had failed to liquidate its dues, it had sent a Demand Notice dated 06.01.2020, under Section 8 of IBC 2016 vide Registered Post at the Registered Office and the Branch of the Company of the Corporate Debtor. It is observed from the postal receipt and tracking report annexed at Page 56-58 that the demand notice was served at the registered office of the CD on 08.01.2020. That the Petitioner in its Affidavit under Section 9(3)(b) of IBC, 2016 has made specific averment regarding non-receipt of reply/ Notice of any dispute issued by the Corporate Debtor.

13. As despite notice, neither any reply was filed nor anyone appeared on behalf of the Corporate Debtor during the proceedings, the Corporate Debtor was proceeded ex-parte vide order dated 01.03.2021 passed by this Tribunal.

14. We are of the considered view that the email communication dated 06.12.2018 from the Corporate Debtor to the Operational Creditor stating that *"Your dues are in our priority list. Hopefully in this month you will get it"*....., is a clear cut acknowledgement of debt by the Corporate Debtor.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the operational debt by the Corporate Debtor beyond doubt, the Petitioner is entitled to claim its dues. The Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

(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 Securitisation 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.

16. As proposed by the Operational Creditor, this Bench appoints Sh. Pawan Kumar Goyal, IP with Registration No. IBBI/IPA-001/IP-P00875 2017-2018/11473 as IRP (email id-ca.pawangoyal@gmail.com) having Office at Gupta Road Karol Bagh, New Delhi – 110005 and subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Operational Creditor is directed to deposit Rs.1,00,000/- (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

18. In terms of the above, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Abni Ranjan Kumar Sinha)
Member (J)