

Scr. No- 226/2019

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR (COURT NO. 1)

CORAM: DR. POONDLA BHASKARA MOHAN,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

Company Petition No. (IB)-45/9/JPR/2019

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

IN THE MATTER OF:

M/s. Rajputana Constructions Private Limited

...Operational Creditor/Applicant

VERSUS

M/s. Flamingo Landbase Private Limited

[Handwritten Signature]
Assistant Registrar
National Company Law Tribunal
Jaipur
25/9/2019

...Corporate Debtor/Respondent

For the Applicant:

Prashant Agarwal, CA

For the Corporate Debtor:

Samit Bishnoi, Adv.



Rajputana Constructions Private Limited
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Flamingo Landbase Private Limited

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MEMO OF PARTIES

M/s. Rajputana Constructions Private Limited
Through its Authorised Representative Mr. Ravindra Tambi
Office At: 13, Parivahan Marg,
Civil Lines, Jaipur-302006

...Operational Creditor/Applicant

VERSUS

M/s. Flamingo Landbase Private Limited
Through its Principal Officer
Registered Office at: 1st Floor,
LIC Jeevan Nidhi Building, Ambedkar Circle,
Bhawani Singh Marg, Jaipur-302005

...Corporate Debtor/Respondent

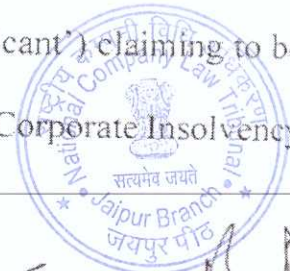
Order Pronounced On: 24.09.2019

ORDER

1. The present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Rajputana Constructions Private Limited ('Applicant') claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency

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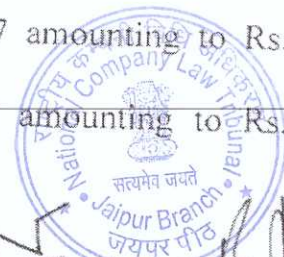
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Resolution Process ('CIRP') against M/s. Flamingo Landbase Private Limited ('Corporate Debtor').

2. The Applicant has filed this Application through Mr. Ravindra Tambi, the Director of M/s. Rajputana Constructions Private Limited. His address is 369, Nemi Sagar Colony, Vaishali Nagar, Jaipur-302021, Rajasthan.
3. The Corporate Debtor is a Private Limited Company, incorporated under the provisions of Companies Act, 1956 on 19.09.2008, duly registered with Registrar of Companies, Jaipur bearing CIN: U45201RJ2008PTC027419, and its Registered Office is located at 1st Floor, LIC Jeevan Nidhi Building, Ambedkar Circle, Bhawani Singh Marg, Jaipur-302005, Rajasthan. The Authorized share capital of the Corporate Debtor is Rs. 1,00,000 and Issued, Subscribed and Paid up share capital of the company is Rs. 1,00,000/-.
4. It is the case of the Applicant that it received a work order vide No. WO/KSG/EF/2017 dated 15.09.2017 from the Corporate Debtor to carry out earth filling, site cleaning and levelling at the land situated at village Khatauli, Kishangarh, Rajasthan. The Applicant has submitted that it has provided the services mentioned in the said Purchase Order and raised two tax invoices vide invoice no. 002 dated 30.09.2017 amounting to Rs. 54,52,898/- and invoice no. 005 dated 04.12.2017 amounting to Rs.

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54,52,898/-, aggregate total amounting to Rs. 1,09,05,796/- (Rs. 92,42,200 basic amounts plus 16,63,596 /- GST) against the said Purchase Order. The copies of Purchase Order and invoices are annexed as Annexure 3 and Annexure 5, respectively to the Petition. The Corporate Debtor duly deducted and deposited TDS of Rs. 1,84,844/- in relation to the above-mentioned tax invoices of Rs. 92,42,200/- (excluding GST) that also confirms the liability of the Corporate Debtor, which is corroborated by a copy of Form 26AS of the Operational Creditor.

5. The Applicant has submitted that it had sent two e-mails dated 07.10.2017 and 08.02.2018 along with the tax invoices requesting to release the payment. The Operational Creditor also requested to the Corporate Debtor to provide the balance confirmation in its books of accounts. The Corporate Debtor vide its letter dated 03.01.2019 issued the balance confirmation letter of Rs. 90,57,356/-, which excludes the GST amount of Rs. 16,63,598/- charged on the abovesaid tax invoices. Therefore, the Corporate Debtor has confirmed the full amount of Rs. 1,07,20,952/- (including GST) to be payable to the Operational Creditor by the Corporate Debtor.



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It was submitted that the Corporate Debtor has failed to make the payment.

Therefore, the Operational Creditor issued a Demand Notice dated

11.01.2019 to the Corporate Debtor under Section 8 of the IBC, 2016 as per

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Form 3 demanding unpaid Operational Debt of Rs. 1,07,20,952/- within a statutory period of 10 days. The Corporate Debtor has neither submitted a reply to the said notice nor made any payment towards the outstanding dues.

7. In Part-IV of the present Application, the Operational Creditor has given the details of the total amount of the Operational debt and the transactions on account of which the debt fell due:

PART IV

Sr. No.	Particulars of Operational Debt	
1.	Total amount of debt	Rs. 1,07,20,952
2.	Amount claimed to be in default and the date on which the default occurred	Amount claimed to be in default is Rs. 1,07,20,952/- and Date of default is 20.12.2017

The Corporate Debtor has filed reply through its authorised representative on 10.06.2019. It has been mainly submitted in the reply that the Corporate Debtor is a wholly owned subsidiary of M/s. Rajasthan Land Holdings Limited ('RLHL'), which is a wholly owned subsidiary of M/s. Pario Developers Pvt. Ltd and which in turn is group company of Infrastructure

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Leasing & Financial Services Limited (IL&FS). The Corporate Debtor has further submitted that the National Company Law Appellate Tribunal ('NCLAT') vide its order dated 15.10.2018, inter-alia restrained any party or person or bank or company etc. to continue any suit or other proceedings against IL&FS and its 348 Group Companies. The operative part of the cited order is extracted below:

Taking into consideration the nature of the case, larger public interest and economy of the nation and interest of the Company and 348 group companies, there shall be stay of

- (i) *The institution or continuation of suits or any other proceedings by any party or person or Bank or Company, etc. against 'IL&FS' and its 348 group companies in any Court of Law/Tribunal/Arbitration Panel or Arbitration Authority; and*
- (ii) *Any action by any party or person or Bank or Company, etc. to foreclose, recover or enforce any security interest created over the assets of 'IL&FS' and its 348 group companies including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*



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(iii) The acceleration, premature withdrawal or other withdrawal, invocation of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits, guarantees, letter of support, commitment or comfort and other financial facilities or obligations vailed by 'IL&FS' and its 348 group companies whether in respect of the principal or interest or hedge liability or any other amount contained therein.

(iv) Suspension of temporarily the acceleration of any term loan, corporate loan, bridge loan, commercial paper, debentures, fixed deposits and any other financial facility by the 'IL&FS' and its 348 group companies by any party or person or Bank or Company, etc. as of the date of first default.

(v) Any and all banks, financial institutions from exercising the right to set off or lien against any amounts lying with any creditor against any dues whether principal or interest or otherwise against the balance lying in any bank accounts and deposits, whether current or savings or otherwise of the 'IL&FS' and its 348 group companies.



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9. The Corporate Debtor has submitted that Moratorium order has been passed to preserve the value of IL&FS, its group Companies and in the public interest. The intention behind passing the said order was to assist the newly constituted Board of Directors of IL&FS appointed vide order dated 01.10.2018 passed by NCLT, Mumbai in its effort to evaluate and prepare a Resolution Plan keeping in mind the interest of various stake holders.
10. It has further been submitted that the Corporate Debtor's parent Company Rajasthan Land Holding Limited is a subsidiary of Pario Developers Private Limited which is one of the 348 companies in IL&FS group and is covered by the protection provided in the Moratorium order of NCLT. The fate of the Respondent depends very much on the resolution plan for Pario and the overall IL&FS Group. The Corporate Debtor has also submitted that the demand notice sent by the Petitioner is not in the format prescribed under the IBC, 2016 and failed to attach a certificate from an information utility as required under the IBC, 2016.

The Applicant has filed Rejoinder on 17.07.2019 and submitted that though the Corporate Debtor is a wholly owned subsidiary of Rajasthan Land Holdings Limited, which is wholly owned subsidiary of Pario Developers Private Limited, which is a downstream subsidiary entity of IF&LS group, however it has no bearing on the petition filed by the Applicant for initiation



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of CIRP against the Corporate Debtor. The Applicant has further submitted that the Corporate Debtor is not included in IL&FS and its 348 group companies.

12. The Applicant has also submitted that a holding/Parent Company and a subsidiary Company are distinct legal entities and should not be considered as the same. The CIRP against the two entities, however related to each other, are actually separate proceedings since they both have a different debt and default thereof. Therefore, the CIRP against the subsidiary Company will be outside the purview of Moratorium Under Section 14 of the IBC, 2016 on holding Company.

13. The Applicant has relied upon the judgement given by the NCLT, Mumbai in the case of *Axis Bank Ltd vs Alok Infrastructure Limited in CP (IB)-2047/MB/2018*, wherein the NCLT while dealing with the similar issue, has held that the initiation of CIRP against a subsidiary of a Corporate Debtor (under CIRP) will not be hit by Section 14(1)(a) Moratorium by any stretch of imagination. A subsidiary company is a distinct entity just like how a holding company is a distinct legal entity. The operative portion of the said order is extracted as below: -

"7. The above section of the Code speaks about moratorium for prohibiting institution of suits or continuation of pending suits against the Corporate Debtor including execution of

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any judgment, etc. It does not speak about initiation of CIRP against the subsidiary of the Corporate Debtor. Initiation of CIRP against a subsidiary of a Corporate Debtor (under CIRP) will not be hit by Section 14(1)(a) moratorium by any stretch of imagination. Further, in the eyes of law a subsidiary company is a distinct entity just like how a holding company is a distinct legal entity. In view of this the contention of the Corporate Debtor herein is far-fetching and cannot be accepted. Further, the present proceeding is completely different and as far as the Corporate Debtor is concerned there is a debt and there is a default. This is what is required to be seen as per law."

14. The aforesaid Order was challenged by the erstwhile director of M/s. Alok Industries Limited before the Hon'ble NCLAT. Hon'ble NCLAT vide its order dated 16.01.2109 in *Ashok B. Jiwrajka, Director of Alok Infrastructure Ltd. Vs Axis Bank Ltd.*, Company Appeal (AT) (Insolvency) No. 683 of 2018, dismissed the Appeal and held that NCLT, Mumbai will continue with the CIRP initiated against M/s. Alok Infrastructure Limited.

15. The Applicant has submitted that in view of the above mentioned orders of NCLT and NCLAT, it is very much clear that contention of Corporate Debtor

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stating that “the fate of the Respondent depends very much on the resolution plan for Pario and the overall IL&FS Group” does not affect admission of application under Section 9(5)(i) of the IBC, 2016.

16. In response to the defective demand notice, the Applicant has submitted that as per Section 9(3)(d) of the IBC, 2016, it is not mandatory to file record with information utility, therefore the contention of the Respondent is strictly denied.

17. The Applicant/Operational Creditor has also filed an affidavit in reference to the order dated 05.08.2019 and 08.08.2019 and submitted therein that the above Moratorium dated 15.10.2018 of Hon’ble NCLAT is only effective against IL&FS and its 348 identified group companies, not with respect to any associates or subsidiaries of IL&FS and its 348 group companies’, Otherwise, Hon’ble NCLAT could have included other entities too in its order.

18. The Applicant has filed the bank statements during the period from 03.01.2019 to 21.02.2019 evidencing that no payment received by the Operational Creditor from the Corporate Debtor. The ledger sheet in the books of Operational Creditor pertaining to the periods from 01.04.2012 to 21.02.2019, evidencing transactions between the Operational Creditor and Corporate Debtor, has been filed by the Applicant Operational Creditor.



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19. In the given facts and circumstances, the present Application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the Operational Debt beyond doubt. In the light of above facts and records the present Application deserves to be admitted and this Application is hereby admitted.

20. The Applicant has proposed the name of Mrs. Anuradha Gupta to be appointed as Interim Resolution Professional ('IRP'). She is qualified Resolution Professional with no IBBI restraint and has given her consent in Form 2 to act as IRP. In view of the same, this Tribunal appoints Mrs. Anuradha Gupta, having Registration No. IBBI/IPA-001/IP-P01495/2018-2019/12296 and email address anuradhagupta70@gmail.com, as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the IBC, 2016.

21. The consequences of initiation of CIRP shall be inter alia are as follows: -

- (i) The Resolution Professional Mrs. Anuradha Gupta, having Registration No. IBBI/IPA-001/IP-P01495/2018-2019/12296 is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by her under the Provisions of IBC, 2016, including issue of publication in widely circulated newspapers,



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including one in English and one in vernacular in Jaipur and its hinterland, as contemplated under the Provisions of IBC, 2016 and calling for the claims from the creditors of the Corporate Debtor and collating of the same shall be done.

(ii) Further as a consequence of admission, Moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during CIRP of the Corporate Debtor. The IRP shall carry out Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the Provisions of IBC, 2016 in relation to the Corporate Debtor.

(iii) The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray her expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Two Lakh only) to the account of IRP within 3 days from the date of this order. The IRP shall duly file the status report appraising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all personnel of the Corporate Debtor including its promoters and Board of Directors, whose powers shall stand suspended will extend all cooperation to the IRP during her tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.



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(iv) In terms of Section 9 of IBC, 2016 a copy of this order shall be communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this order shall also be communicated to IBBI for its records.

22. In the circumstances this Application is admitted.

Sd—

SH. RAGHU NAYYAR,
MEMBER (TECHNICAL)

Sd—

DR. POONDLA BHASKARA MOHAN
MEMBER (JUDICIAL)



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