

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-2304 (ND) 2019

In the matter of

M/s NCPL DEVELOPERS PRIVATE LIMITED

Registered Office at:

B-47, 2nd floor, C.E.L. Apartments,

Vasundhara Enclave,

New Delhi-110046

.....Applicant

VERSUS

M/s INDO WORLD INFRASTRUCTURE PRIVATE LIMITED

Having Its Registered Office At:

99, Patpar Ganj, New Delhi-110091

Email: caconsultancy01@gmail.com

Also At:

Plot No. 18, Sector-140A,

Noida-201305, U.P.

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 09.12.2019

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Mr. Aayush Agarwala for the Petitioner

None present on behalf of Respondent



ORDER

Per Justice (Retd.) Rajesh Dayal Khare (Member Judicial)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The Applicant has filed the present application on account of failure of the Corporate Debtor to pay its debts arising out of the Maintenance Agreement dated 03.07.2014 and Addendum to Lease Maintenance Agreement dated 22.05.2015.
3. The Applicant and M/s Villa Realtors Private Limited entered into a Maintenance Agreement dated 03.07.2014 towards maintenance service of the front half of the 2nd floor in the 'NCPL Web Tower' on lease for office space. M/s Indo World Infrastructure Pvt Ltd. (hereinafter referred to as "Corporate Debtor") is the sister concern of M/s Villa Realtors Private Limited. Subsequently, an Addendum to Maintenance Agreement dated 22.05.2015 was executed, thereby assigning the Maintenance Agreement dated 03.07.2014 to the Corporate Debtor.
4. The Applicant and Corporate Debtor had signed a confirmation of accounts dated 01.04.2018 evidencing the outstanding liability of Rs. 15,14,604.49/- towards maintenance charges and energy consumption charges payable by the Corporate Debtor. As per the

avermments made by the Applicant, in contravention of the terms of the Maintenance Agreement dated 03.07.2014 and despite several requests and undertakings, Corporate Debtor has failed to pay the monthly maintenance charges to the Applicant. Hence, an amount of Rs. 15,14,604.49/- towards maintenance charges and energy consumption charges are due from the Corporate Debtor

5. Demand Notice dated 30.07.2019 issued by the Applicant on registered address as well as e-mail address of Corporate Debtor U/Sec.8 of the Insolvency & Bankruptcy Code, 2016 demanding payment in respect of the operational debt due from Corporate Debtor to pay in full within ten days from the receipt of Demand Notice. No reply of the same has been received from the Corporate Debtor.
6. The Applicant, therefore, filed this petition as an Financial Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 15,14,604.49/-.
7. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) of Code are on record to corroborate his case. The requirement of Section 9(3)(c) of the code has not complied with.



8. It is observed by the Hon'ble Tribunal that the present petition has been filed under Section 9 of IBC for realization of outstanding dues of maintenance as it is contended that initially the Maintenance Agreement was entered into between the petitioner and M/s Villa Realtors Private Limited on 03.07.2014, copy of which has been annexed at Annexed A-5 of the petition and vide Addendum Agreement dated 22.05.2015, M/s Villa Realtors Private Limited herein assigned the maintenance job to their sister concern namely M/s Indoworld Infrastructure Pvt. Ltd.(Corporate Debtor), a copy of which has been annexed at Annexure A-6. Ld. Counsel for the petitioner has drawn attention of this Court to Annexure-7 which is the Confirmation of Accounts signed by both the parties and it is argued that the outstanding Maintenance dues payable to the petitioner is of the tune of Rs. 15,14,604.49/- which has not been paid inspite of Notice of Demand. It is further contended that inspite of advance service of notice served upon the Corporate Debtor, none appeared on behalf of Corporate Debtor and, therefore, this Tribunal directed to proceed the matter ex-parte against the Corporate Debtor vide orders dated 18.10.2019.

9. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) transferring, encumbering, alienating or disposing of by the corporate debt or 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.*

Further:

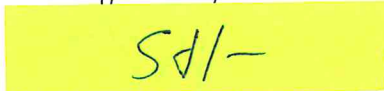
(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall

cease to have effect from the date of such approval or liquidation order, as the case may be."

10. The Applicant has not proposed the name of any IRP. Accordingly, we appoint Mr. Vinay Talwar, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00227/2017-18/10426 email- vinay@corporateconsultants.in duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
11. The Applicant is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
12. Petition is therefore admitted.


SUMITA PURKAYASTHA
Member (T)


JUSTICE RAJESH DAYAL KHARE
Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.

✓ SD/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER