

Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of CALYX LENORA REALTY LLP, Corporate Debtor.

- 1.1. The total amount claimed by the Operational Creditor, as specified in the Part IV of the Company Petition is Rs. 1,61,86,302/-, comprising of Rs.1,23,25,252/- towards the principal amount due and Rs. 38,61,049/- towards interest @ 24% which is due and payable by the Corporate Debtor. The demand notice was issued claiming only the principal amount. The debt of default is not clearly mentioned in Part IV of the petition.
2. The Operational Creditor is engaged in the business of undertaking turnkey contracts in the Construction and Infrastructure sector relating to building, civil work, RCC, structural work, plaster, water proofing and other such work on lumpsum basis thereby providing complete solutions to big housing and other commercial projects relating to Civil and Structural work.
 - 2.1. The Corporate Debtor is a Developer/Builder and appointed the Applicant as its Contractor to undertake lumpsum/turnkey contract for construction of one of its sites in the name and style of "ATULYA RAGHUKUL" located at Wadmukhwadi, Charholi, Pune-412 105, a residential site ("the Project").
 - 2.2. On 19-01-2019, the Corporate Debtor vide Letter of Intent (LOI) dated 19-01-2019 appointed the Applicant/Operational Creditor as its contractor for specified scope of work for Building 'D'. The Project cost totally amounted to Rs. 7,00,44,910/-.
 - 2.3. On 09-05-2019 the Operational Creditor raised its 1st Proforma Invoice for work done on Building 'D' bearing No. MIEPL/PI/19-20/02 which included costs of labour, material, slab, RCC and other services. The Proforma Invoice was accepted, and a Tax Invoice was raised bearing No.

MIEPL/19-20/08 Dated 10-06-2019. The Operational Creditor received part payment towards this invoice. Similarly, further Invoices were raised by the Operational Creditor towards work done on Building 'D' and 'E' on 12-08-2019, 03-12- 2019 and the last Invoice was raised on 01-03-2020. The Operational Debtor has not made any part payments towards these invoices.

2.4. The Corporate Debtor being satisfied with the progress of work done by the Operational Creditor on Building 'D' entered into another Letter of Intent (LOI) hearing Ref. No. PL1127/LOI/AtulyaRaghukul/007 dated 25-07-2019 once again appointing the Operational Creditor as its Contractor for specified 'scope of work for Building "E". The Project cost totally amounted to Rs. 7,05,40,870/-.

2.5. On 10-12-2019 the Operational Debtor offered to make part payment towards its liability. by issuing Cheque No. 847114 dated 10-12-2019 amounting to Rs. 19,60,000/-, however, the Cheque offered by the Operational Debtor was returned back with a remark "payment stopped by drawer".

2.6. On 24-11-2020 a Demand Notice in Form-3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 was sent by email and speed post by the Operational Creditor to the Corporate Debtor demanding the outstanding payment of Rs. 1,23,25,252/- along with interest. The Operational Creditor confirms that it has not received any reply nor has the Corporate Debtor disputed the claims/amounts made in the said Demand Notice.

2.7. On 18-01-2021 another certificate certifying the invoice amounts and the outstanding bill value of the Operational Creditor issued by the Project Manager.

3. The Corporate debtor filed affidavit in reply stating that the said Petition under Section 8 and Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as the “Code”) is absolutely frivolous, baseless and without any cogent legal basis; and the present Petition does not comply with the requirement, rules and regulation as laid down under the Code and its allied Rules and Regulation on the said ground the present Petition ought to be dismissed; the Operational Creditors have some frivolous documents to mislead the Hon'ble Tribunal and trying to make out their case under section 8 of the I & B Code by claiming the amounts as "operational debt" by suppressing the true facts of the entire transaction entered into between the Operational Creditor and the Corporate Debtor; the Operational Creditor have failed to perform their part of the contract as undertaken by them under the tender floated by the Respondent for construction of certain buildings and pursuant thereto the Operational Creditor have agreed to complete the construction of the entire buildings and within time, however the said the Operational Creditor have neglected and failed to construct the said buildings even after repeated requests and further even the project management consultant ("PMC") appointed under the said tender document have issued a false and fabricated certificate without even mentioning the basis of arriving at completion of work as alleged by the Operational Creditor in their submissions and the said certificate is denied; there is a pre-existing dispute between the Operational Creditor and the Corporate Debtor; the Operational Creditor has failed to prove the basis of calculation of interest @24%; the Operational Creditor consistently failed to complete the Scope of Work as per as per approved progress plan despite after repeated requests of the Respondent and PMC, and moreover the Operational Creditors have neglected to perform and execute the Scope of Work.
4. The Operational Creditor has filed Rejoinder and has denied the allegations being raised by the Corporate Debtor in its reply.

Findings:

5. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.
 - 5.1. Based on the documents placed on record it is clearly evident that as per the email correspondence dated 17.01.2020 which clearly shows admission to pay outstanding dues to the suppliers of the Operational Creditor. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.
 - 5.2. During the course of hearing, the counsel for the Corporate Debtor was asked to confirm the certificate from the Project Management Consultant certifying the work of the Operational Creditor. The Counsel objected to the reliance on such certificate as it was not on the letter head and sought one-week time to file the affidavit on the veracity of such certificate. This bench granted time vide order dated 28.04.2023. However, no such affidavit has been placed on record till date. This bench feels that the Corporate Debtor has nothing to add to its submission in this relation.
6. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, this Bench finds it a fit case for initiation of CIRP in the case of the Corporate Debtor.
7. The petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and

default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC,2016.

8. Considering the facts placed before us, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process is initiated against the Corporate Debtor and this petition is **allowed**.

ORDER

9. The petition bearing C.P. (IB) No. 204/MB/2021 filed by MADHURA INFRA ENGINEERING LIMITED, the Operational Creditor/Applicant, under Section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of CALYX LENORA REALTY LLP, Corporate Debtor is **Admitted**.

- I. That this Bench as a result of this prohibits:
- 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 Securitization and Reconstruction of Operational 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 possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Atul Tansukhlal Mehta, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01020/2017-2018/11670 Email: mehtaatul@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
06.06.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)