

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENCH-VI, MUMBAI

CP (IB) No. 3591/MB-VI/2018

[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:

ULTRATECH CEMENT LIMITED

[CIN-L26940MH2000PLC128420]

Registered office: B-Wing, Ahura Centre,

2nd Floor, Mahakali Caves Road

Andheri (East), Mumbai

Maharashtra-400093.

...Operational Creditor

Versus

WATERFRONT BUILDCON LLP

[LLPIN-AAB-3911]

Registered office: 7th Floor,

Sun Plaza, Hari Om Nagar,

Off Eastern Express Highway

Mulund (East), Mumbai

Maharashtra-400081.

...Corporate Debtor

Order Reserved on: 14.09.2023

Order Pronounced on :13.12.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances:

Operational Creditor: Adv. Karishma Mungekar i/b Mahajan & Mahajan

Corporate Debtor: None. (ex-parte)

ORDER***[Per: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. Background**

- 1.1 This Application bearing C.P.(IB) No.3591/MB/2018 was filed on 12.09.2018 by Ultratech Cement Limited, the Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in the case of Waterfront Buildcon LLP, the Corporate Debtor.
- 1.2 The Operational Creditor is a company carrying on the business of manufacturing and sale of various grades of cement, Ready Mix Concrete material, etc. The Corporate Debtor is a Limited Liability Partnership (LLP) carrying on the business of building construction.
- 1.3 The Operational Creditor had supplied materials to the Corporate Debtor against orders placed by the latter from time to time during the normal course of business. As per the said orders, the goods were delivered to the Corporate Debtor and the invoices were also raised in the name of the Corporate Debtor.
- 1.4 An amount of Rs.15,67,790/- fell due to the Operational Creditor from the Corporate Debtor against 21 pending invoices in respect of delivery of materials from 17.02.2018 to 06.04.2018. The Operational Creditor has also claimed interest of Rs.1,28,590/- at the rate of 21% per annum from due dates of the said invoices till 15.07.2018, making the total amount of operational debt to be **Rs.16,96,380/-** due and payable by the Corporate Debtor.

- 1.5 The date of default as mentioned in Part-IV of the Application is different for 21 invoices since the said invoices are of different dates and they became due within 30 days from the date of receipt of the invoices. The Operational Creditor has furnished the details of unpaid invoices and respective dates of default which fall within the period from 18.03.2018 to 05.05.2018.
- 1.6 The default on the part of the Corporate Debtor in payment of aforesaid amount of operational debt to the Operational Creditor remained unpaid even after service of the statutory Demand Notice dated 25.07.2018 on the Corporate Debtor on 31.07.2018. This led to the filing of the present Application by the Operational Creditor seeking initiation of CIRP against the Corporate Debtor.

2. Averments of the Operational Creditor

- 2.1 The Operational Creditor submits that during the ordinary course of business, the materials ordered by the Corporate Debtor were duly received by the Corporate Debtor without raising any dispute or objection.
- 2.2 The Operational Creditor states that the total outstanding amount for the unpaid invoices as on **02.04.2018** was **Rs.22,17,790/-** due from the Corporate Debtor. In order to discharge its liability, the Corporate Debtor issued three cheques in favour of the Operational Creditor details of which are as follows: -

S. No.	Cheque Date	Cheque No	Name of Bank	Amount (Rs.)
1.	27.04.2018	508810	State Bank of India, Malad (West), Mumbai	3,54,879.25/-
2.	04.05.2018	508811	-do-	3,54,879.25/-
3.	11.05.2018	508812	-do-	3,54,879.25/-
Total: Rs. 10,64,637.75/-				

However, when the Operational Creditor presented the above-mentioned cheques for encashment, they were dishonoured with the endorsement "Funds Insufficient" *vide* bank memos dated 03.05.2018, 07.05.2018 and 01.06.2018 respectively.

2.3 When the Operational Creditor informed the Corporate Debtor about the dishonour of the aforesaid cheques, the Corporate Debtor requested for grant of time for payment of outstanding dues and also pleaded not to initiate legal proceedings against the Corporate Debtor. The Operational Creditor submits that in spite of the requests and reminders of the Operational Creditor, the Corporate Debtor failed to pay the outstanding dues.

2.4 The Operational Creditor further states that it had issued Demand Notice dated 25.07.2018 through its Advocate under the Code calling upon the Corporate Debtor to pay the Operational Creditor a sum of Rs.16,96,380/-(Rupees Sixteen Lakhs Ninety-Six Thousand Three Hundred and Eighty Only) comprising Rs.15,67,790/-

towards unpaid invoices and Rs.1,28,590/- towards interest @ 21% p.a. from due date of invoices till 18.07.2018.

- 2.5 The Operational Creditor submits that the Demand Notice dated 25.07.2018 was duly received by the Corporate Debtor on 31.07.2018. However, there was no response from the Corporate Debtor in this regard.
- 2.6 The Operational Creditor also submits that the Corporate Debtor has failed to bring to the notice of the Operational Creditor existence of any dispute or the pendency of any suit or arbitration proceedings filed before the service of the Demand Notice dated 25.07.2018. Further, the Corporate Debtor has also failed to pay the amount of unpaid operational debt.

3. Contentions of Corporate Debtor

- 3.1 Although the Corporate Debtor was represented by Counsel on many occasions, it was set ex-parte for its absence on 28.06.2021. It was recorded on the Order sheet dated 28.06.2021 that the Director of the Corporate Debtor was present and promised to make payment. However, no such payment was made to the Operational Creditor. The Corporate Debtor has neither furnished its written reply in the course of present proceedings nor appeared before us to make oral or written submissions, at the time of the hearing of the Application on 14.09.2023.
- 3.2 Several opportunities were given to the Corporate Debtor to appear and make submissions. In the absence of any pleadings/reply by the Corporate Debtor, the Operational Creditor was heard and the

matter was taken for disposal on the basis of the pleadings of the Operational Creditor and the materials available on record.

4. Analysis and Findings

Upon due consideration of the pleadings along with the materials available on record and hearing the Counsel for the Operational Creditor, our findings in the matter are as under:-

- 4.1.** We find that the debt of Rs.16,96,380/- owed by the Corporate Debtor to the Operational Creditor against the supply of concrete falls within the meaning of “operational debt” under Section 5(21) of the Code. The Operational Creditor has placed on record copies of its 21 (twenty one) unpaid invoices and delivery challans for the period from 17.02.2018 to 06.04.2018 along with copies of ledger account of the Corporate Debtor in the books of account of the Operational Creditor for FY 2017-18 and FY 2018-19.
- 4.2.** We also find that the Corporate Debtor defaulted in payment of dues of the Operational Creditor and, therefore, the Operational Creditor issued a Demand Notice dated 25.07.2018 to the Corporate Debtor as mandated under Section 8(1) of the Code in the prescribed Form demanding payment of the outstanding amount. The said Demand Notice was delivered to the Corporate Debtor on 31.07.2018. However, the Corporate Debtor neither responded to the aforesaid Demand Notice nor made payment of the outstanding operational debt.
- 4.3.** On perusal of the materials available on record, we find that there is nothing to show that any dispute existed between the parties before the

issuance of the Demand Notice. The Operational Creditor has filed an Affidavit dated 10.09.2018 under Section 9(3)(b) of the Code, *inter alia*, affirming that the Corporate Debtor had not given any notice of existence of a dispute or the pendency of any suit or arbitration proceedings filed before the service of the Demand Notice dated 25.07.2018. Hence, it can safely be inferred that there is no pre-existing dispute between the parties regarding the amount of operational debt in default.

- 4.4.** There is nothing on record to demonstrate that the Corporate Debtor had made payment of the unpaid operational debt to the Operational Creditor subsequent to the receipt of the Demand Notice. In its affidavit dated 10.09.2018 under Section 9(3)(b) of the Code, the Operational Creditor has affirmed that it had not received any payment from the Corporate Debtor within a period of 10 days from the date of delivery of the Demand Notice.
- 4.5.** On perusal of Affidavit of Service dated 20.09.2019 filed by the Operational Creditor, it is noticed that the Corporate Debtor had initially tried to settle the matter with the Operational Creditor after filing of the present Application. It is stated that the Corporate Debtor had issued a cheque bearing No.126477 dated 03.03.2019 drawn on Axis Bank Limited, Thane for an amount of Rs.15,85,290/- in favour of the Operational Creditor. However, when the Operational Creditor presented the aforesaid cheque for encashment, it was dishonoured and returned to the Operational Creditor along with Bank Memo dated 14.03.2019 with the remark "Drawer's Sign to Operate A/c Not

received". Thus, it is clear that the Corporate Debtor had no bona fide intention to clear or settle the outstanding dues of the Operational Creditor and that the default on part of the former in payment of unpaid operational debt owed to the latter continued even after the filing of the present Application.

- 4.6.** Despite numerous opportunities afforded by this Adjudicating Authority to the Corporate Debtor to appear and to present its case, the Corporate Debtor failed to take any steps to furnish any reply or to present any defence. Consequently, the Corporate Debtor was set *ex parte* on 28.06.2021 and the matter was heard on the basis of the pleadings made in the Application and arguments put forth by the Counsel for the Operational Creditor on 14.09.2023.
- 4.7.** From the above discussion, it is very clear that there was a default on the part of the Corporate Debtor in payment of undisputed operational debt to the Operational Creditor of more than Rs.1,00,000/- (Rupees One Lakh) being the threshold monetary limit under Section 4 of Code prevailing on the date of present Application. Thus, this Application preferred by the Operational Creditor under Section 9 of the Code is found to be maintainable. The Application is complete and has been filed in the prescribed form. In view of the above, we find that the matter is fit for admission under Section 9(5)(i) of the Code.

ORDER

This Application bearing C.P.(IB) No.3591/MB/2018 filed under Section 9 of the Code by Ultratech Cement Limited, the Operational Creditor, for

initiating CIRP in respect of Waterfront Buildcon LLP, the Corporate Debtor is hereby **admitted**.

We further declare moratorium under Section 14 of Code with consequential directions as follows:

I. We prohibit-

- 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 of 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 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 order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for the liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.
- IV. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Pawan Madhav Shetty, a registered Insolvency Professional having Registration Number-IBBI/IPA-001/IP-P02606/2021-2022/14001 and Email ID-capawanshetty7@gmail.com** as the Interim Resolution Professional (IRP) to carry out the functions under the Code. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, under the Code. 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.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) 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, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the Committee of Creditors (CoC) becoming available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the CoC.

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP including by way of email and WhatsApp.
- X. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
//TANMAY JAIN//

Sd/-
K. R. SAJI KUMAR
MEMBER(JUDICIAL)