



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)- 271/(ND)/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:

M/s. Colliers International (India) Property Services Limited
(Formerly M/s. Synergy Property Development Services Private Limited)

.... Operational Creditor

Vs.

M/s. Pride Hotels Limited

.... Corporate Debtor

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Order Delivered on: 24.08.2022

ORDER

PER: SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

The instant petition was filed by M/s. Synergy Property Development Services Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') incorporated under the provisions of the erstwhile Companies Act, 1956 and having CIN: U74140KA2003PTC0314777 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Pride Hotel Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor').



2. The Respondent Company M/s. Pride Hotels Limited having CIN: U55200DL1983PLC219781 incorporated under the provisions of the provisions of the Companies Act, 1956 having its registered office situated at Asset 5A, Hospitality District, Delhi Aerocity, Indira Gandhi International Airport, New Delhi-110037. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. The brief facts of the case leading to the filing of this petition as averred by the applicant are as follows:
 - a. The applicant and corporate debtor had entered into an agreement dated 01.04.2010 where the applicant was appointed for Project Management and Construction Management Consultancy services for the development of Hotel Comprising of 400 keys at Plot 5 A at Delhi International Airport Limited.
 - b. The applicant submits that as per the said agreement, the project was to be completed within 21 months, i.e., before 31st December, 2021. The applicant further submits that due to various reasons attributable to the corporate debtor such as delay of decision of interior work package, delay in timely payments to contractors, holding MEP work package etc. the work could not be completed. The applicant further submits that the project was put on hold from November 2010 to September, 2011 due to non-compliance with statutory authorities.
 - c. The applicant submits that project could not be completed by 31.12.2011, an addendum was executed on 06.12.2013 for completing the work with all the other conditions to the contract remaining the same. The applicant further submits that the corporate debtor had made part payments during the execution of the contract and made promises to make further payments on completion of the contract.
 - d. The applicant submits that in spite of various breaches and delays committed by the corporate debtor, the applicant has adhered to the terms of the agreement and has successfully completed the

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- work entrusted to it and the project was successfully handed over to the corporate debtor on 31.05.2015.
- e. The applicant further submits that the applicant had in a timely manner raised invoices as per the terms of the payment mentioned in the contract and despite several reminders to release the payment, the corporate debtor has not been responsive in paying the dues to the applicant. The applicant adds that over the years the applicant send e-mails on 22.06.2016, 24.05.2016, 3.05.2016, 24.11.2015, 16.11.2015, 03.07.2014, 10.09.2012, 25.02.2012, 25.02.2012, 25.11.2011, 23.11.2011 and 09.11.2011 among others requesting the corporate debtor to make payments towards the invoices raised.
 - f. The applicant submits that applicant had issued demand notice dated 14.04.2017 under the provisions of the Insolvency and Bankruptcy Code, 2016 for payment of the outstanding due amounting Rs.56,08,101/- including interest @ 18% p.a., from the corporate debtor. The applicant further submits that the corporate debtor in response of the same has issued reply on 06.05.2017 and contended that the amount are disputed and no amounts are payable. The applicant adds that the disputes raised by the corporate debtor in its reply are for the first time and the defence is moonshine.
 - g. The applicant had provided the following documents on record to prove the claims:
 - i. Copy of the Agreement dated 01.04.2010
 - ii. Copy of the invoices raised by the applicant.
 - iii. Copy of the emails/ correspondence between the operational creditor and corporate debtor.
 - iv. Copy of the Demand Notice dated 14.04.2017 sent to the corporate debtor.
 - v. Copy of the reply issued by the Corporate Debtor dated 06.05.2017.
4. The corporate debtor had filed its reply and the averments of the corporate debtor in the reply are stated in brief as below:-
- a. The corporate debtor submits that vide agreement dated 01.04.2010, the applicant was awarded the contract in respect of administration, management, coordination of the project in favor of the applicant. The corporate debtor further submits that as per the schedule for completion of the project, the project was to be

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completed within 21 months including time to be taken for obtaining approvals from Government Authorities.

- b. The corporate debtor submits that the professional fee charged by the applicant as per the agreement was Rs.2.25 crores, however the completion of project was substantially delayed on account of inactions on part of the applicant and the corporate debtor was left with no option but to accede to various illegal demands of the applicant regarding the increase in timelines, project cost and professional fees to be paid to the Operational Creditor.
- c. The corporate debtor further submits that the in addition to the agreement dated 01.04.2010, three (3) addendums were executed between the parties wherein the corporate debtor was forced and coerced to increase the fee payable to the applicant to Rs.3.9crores whereas the original fee agreed between the parties was Rs.2.25crores.The corporate debtor adds that after execution of the above said addendums the applicant made another attempt to escalate its professional fee to INR 4,09,90,000/- which was out rightly rejected by the corporate debtor.
- d. The corporate debtor submits that there is ambiguity regarding the amount of the operational debt itself as the amounts admitted as received by the applicant do not match with the statement of reconciliation of accounts signed by the applicant which confirms that the applicant has received an amount of Rs.3,62,00,000/- as on 06.12.2013 which is contrary to the statement/certificate issued by the bank of the applicant.
- e. The corporate debtor further submits that the applicant inPoint 1 of Part IV stated that operational debt is INR 56,08,101/- including interest at the rate of 18% p.a. whereas in Point 16 of Part IV, the operational creditor has mentioned the debt of INR 48,09,707/-. The corporate debtor adds that the invoices enclosed by the applicant are only to the tune of INR 25,88,865/- as against the claim made by the applicant under its application.
- f. The corporate debtor submits that there are, multiple communications sent by the corporate debtor which demonstrates that the services are rendered in an unprofessional manner by the applicant and the staff deployed by the applicant was not adequate in number and does not possess adequate skills and experience to handle the project.
- g. The corporate debtor further submits that there exists another dispute between the parties in respect of payment of labor cess to the concerned labor department and corporate debtor had filed a suit bearing no. 889/2017 which is pending before the Senior

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Civil Judge(West District), Tis Hazari Courts, Delhi wherein the applicant is the Defendant No.3 along with Joint Labor Commissioner (Dist. South West) (Defendant No.1) and M/s. B.L. Kashyap & Sons (Defendant No.2). The corporate debtor adds that the crux of the above said dispute between the parties is that the corporate debtor had awarded a contract to BLK for entire civil work of the project and it was the duty of the operational creditor to certify that BLK deposits the labor cess with concerned labor departments and certify all monthly bills.

5. The applicant filed the rejoinder to the reply submitted by the respondent corporate debtor. The submissions of the applicant in the rejoinder are stated herein in brief:-

- a. The applicant submits that the project was delayed due to delays attributable to the corporate debtor mainly because of delay in decision making towards interior work package, delay in timely payment to contractors, and other delays attributable to the corporate debtor. The applicant further submits that as per the scope of the work defined in the agreement dated 01.04.2010 does not state that statutory approvals were to be obtained by the applicant and it was the obligation of the Corporate Debtor to obtain such approvals.
- b. The applicant submits that the amount admitted as received by the applicant and the invoices produced do match with the certificates issued by the Bank and the claim made by the applicant. The applicant further submits that the statement of reconciliation produced by the corporate debtor is a handmade statement and not signed by the applicant. The applicant adds that the corporate debtor in utter breach of the contractual terms had failed and neglected to make payment against certain invoices raised after April 2014.
- c. The applicant state that the debt payable to the applicant has never been in dispute and the corporate debtor has never raised such contentions prior to the initiation of the insolvency proceeding. The applicant further submits that the applicant has deployed adequate skilled and competent staff as per the requirement of the project and the same was discussed with and agreed by the corporate debtor.
- d. The applicant submits that the corporate debtor had instituted proceedings against the office of the Joint Labour Commissioner (Defendant No.1) in which the applicant is the Defendant No.3 in

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CS SCJ No. 889/17 seeking the direction against the defendant no.3 i.e., applicant to deposit an amount of Rs.21,68,374/- with the Defendant No.1. The applicant adds that the corporate debtor has at no point of time raised any claims with regard to the damages, compensation etc. and the defenses raised by the corporate debtor are moonshine defense

6. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been examined in detail. Before embarking upon the detailed discussion it would be appropriate to mention that the applicant had moved an I.A. 2100.ND/2022 to change the name of the applicant from M/s. Synergy Property Development Services Private Limited to M/s. Colliers International (India) Property Services Private Limited as M/s. Synergy Property Development Services Private Limited is amalgamated into M/s. Colliers International (India) Property Services Private Limited vide order dated 09.09.2021 passed by the Hon'ble NCLT, Mumbai. This Adjudicating Authority vide order dated 09.05.2022 had allowed the I.A/2100/ND/2022 and taken the amended memo on record.
7. We observe that the applicant in pt. 2 of Part IV of the Form-5 had claimed operational debt of Rs.48,09,707/- (principal amount) due towards the invoices dated 1.06.2014, 01.07.14, 02.02.2015, 02.03.2015, 01.04.2015, 01.05.2015 and 01.06.2015, which are placed on record and in pt. 1 of Part IV of the Form-5 had claimed outstanding operational debt amounting Rs.56,08,101/- including interest at 18% p.a. towards the Project Management and Consultancy Services. Since the instant petition was filed on 16.03.2018 pursuant to the demand notice dated 14.04.2017, therefore the test of the pecuniary threshold limit of Rs.1 Lakh as envisaged under Section 4 of the Code, 2016 prior to the MCA notification dated 24.03.2020. We are satisfied that the debt of Rs.56,08,101/- which includes outstanding principal amount of Rs.48,09,707/- was due and in

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default towards the Project Management and Consultancy Services rendered by the applicant in compliance of the agreement dated 01.04.2010 and addendums thereto.

8. As far as the corporate debtor's contention regarding the communications sent by the corporate debtor, which demonstrates that the services are rendered in an unprofessional manner and therefore constitutes pre-existing dispute, we find that no communication was exchanged between the parties evidencing the issue of deficient services rendered by the applicant and the e-mails for the deficiency of services were exchanged on 05.02.2018 which was after the issue of the Demand notice dated 14.04.2017 by the parties.
9. Further, the corporate debtor had failed to bring on record any material to indicate that there are pre-existing disputes in existence prior to the issuance of demand notice under Section 8 of the Code, 2016 in the reply dated 06.05.2017 to the demand notice. On a perusal of the corporate debtor's reply dated 06.05.2017, we observe that the corporate debtor had not raised any dispute in terms of the essential ingredients of Section 8(2) of the Code, 2016 and the subject of the said reply was "Final Service Agreement Closer –Pride Hotel-Delhi" wherein the corporate debtor had majorly raised counter claims, lack of experienced staff and labor cess issues. We are of the opinion that said reply/ notice dated 06.05.2017 of the corporate debtor does not constitute a pre-existing dispute.
10. At this juncture, it is relevant to refer the Hon'ble Supreme Court's judgement in **M/s. Innoventive Industries Limited v. ICICI Bank & Anr. [Civil Appeal No.s 8337-8338 of 2017]** wherein in para 29 it was held that:-

"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the

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Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”

11. As far as the corporate debtor’s contention regarding the dispute of payment of labor cess to the concerned labor department and adjudication of suit bearing no. 889/2017 before the Senior Civil Judge(West District), Tis Hazari Courts, Delhi is concerned, on a perusal of agreement dated 01.04.2010 between the applicant and the corporate debtor and the orders in suit bearing no. 889/2017, we find that there was no obligation on the applicant to collect the labor cess and the suit bearing no. 889/2017 was filed by the corporate debtor against the contractor i.e., (M/s. B.L. Kashyap & Sons) and applicant has no role in the dispute regarding the payment and collection of labor cess. The applicant has been dragged in the said litigation and no specific relief was ever sought against the applicant. Moreover, if any labour cess is not paid that is a matter between the labour department and the corporate debtor and the applicant has no role to play in it. Further, the Hon’ble Civil Court in CS SCJ/889/17 vide order dated 18.09.2019 had disposed off an application under Section 8 of the Arbitration and Conciliation Act, 1996 filed on behalf of defendant no.2 (M/s. B.L. Kashyap & Sons) .The relevant part of the said order is reproduced below:-

“12. Perusal of the record shows that the dispute is primarily between the plaintiff and defendant no.2 and which pertains to the terms and conditions of the contract which was executed by the plaintiff and defendant no.2. Execution of said agreement is not denied by the plaintiff and the plaintiff has instead placed reliance upon the said agreement. The perusal of the said agreement reveals that the agreement contains the arbitration clause therein.

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In these circumstances, the application filed by the defendant no.2 stands allowed. Parties are at liberty to initiate arbitration proceedings in terms of the agreement”

12. Thus, the Ld. Civil Court also arrived at the finding that primarily the dispute was between the Defendant No.2 i.e, M/s. B.L. Kashyap & Sons and the corporate debtor and not with the applicant herein. Further, the corporate debtor made major chunk of payments to the operational creditor. Had the corporate debtor not been satisfied with the quality and delay, the said work would not have been continued and payment would not have been made. Though on the part of the corporate debtor, it is contended that there was delay on the part of the applicant in handing over the project, but the corporate debtor itself pleaded that certain government approvals were to be taken. Hence the said delay cannot be attributed to the applicant. Further, subsequent to the main agreement, the addendums were executed, whereby the fees was escalated from 2.25 crores to 3.39 crores. The said act on the part of the corporate debtor tantamounts to waiver of all previous acts of delay, if any, on the part of the applicant. Furthermore, the outstanding invoices to the tune of Rs.25,88,685/- itself are admitted on the part of the corporate debtor.

13. We are of the opinion that the corporate debtor had failed to raise any plausible contention and the pre-existing dispute attempted to be raised by the corporate debtor is a feeble one, unsupported by any evidence, is a moonshine and nothing else. In this regard, the reliance is placed on the citation **Mobilox Innovations Pvt Ltd V. Kirusa Software Pvt Ltd, C.A. No.9405/2017 decided on 21/09/2017** at paragraph 25 it is observed as under:

“Adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

*(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh?
(See Section 4 of the Act)*

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(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

14. As far as the corporate debtor's contention regarding 'quantum of debt' is considered, we are of the earnest view that the same does not fall for consideration before the Adjudicating Authority at the stage of 'admission' of the Application under Section 9 of the Code. The only requirement is that the minimum outstanding debt should be more than the pecuniary threshold limit provided under Section 4 of the Code, 2016. The actual amount of 'Claim' is to be ascertained by the Resolution Professional after collating the 'Claims' and their verification which comes at a later stage.
15. In view of the foregoing averments and the discussions made, we are of the considered view that operational debt above the threshold limit of Rs. 1 Lakh was due and there was default on the part of the corporate debtor in pursuance of invoices raised on behalf of the applicant. Further, keeping in view all the aforementioned reasons, this Adjudicating Authority is satisfied that there is an admission of 'debt' and 'default' as defined under the Code, 2016.
16. Thus the present petition **(IB)-271/(ND)/2018** filed by the applicant under Section 9 of the Code, 2016 **stands admitted** in terms of Section 9(5) of the Code and **CIRP is hereby ordered to be initiated** against the Corporate Debtor i.e., M/s. Pride Hotels Limited

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17. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Prassan Navin Kumar Sinha, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01197/2021-2022/13971 and email id - csprassan@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures be made as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
18. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Prassan Navin Kumar Sinha to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor
19. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- “(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 Financial Assets and Enforcement of Security Interest Act, 2002;

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(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.”

(e)The IB Code 2016 also prohibits *Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*”

20. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

21. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the ‘Corporate Debtor’. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’

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as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

22. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.
Consign the file to the record room.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)