

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

**CP (IB) No. 719/MB/2022 a/w IA 1792/2023**

*[Under Sec 60(5) Rule 11 of NCLT,2016 Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

**QUALITY HEIGHTCON PRIVATE LIMITED**

[CIN U70102MH2009PTC194344]

**Registered Office:** 612, Tower A-Kohinoor City Mall  
Kohinoor City Kiroi Road, Off L.B.S. Road  
Kurla West, Mumbai, Maharashtra- 400070.

**...Operational Creditor/Applicant**

V/s

**SQ INFRASTRUCTURE PRIVATE LIMITED**

[CIN U45400MH2001PTC13388]

**Registered Office:** 5, Floor - 1, Plot No. 7  
Sharda Sadan, Swami Gyanjivandas Marg  
Dadar Rly. Stn. Dadar (E), Mumbai  
Maharashtra-400014.

**...Corporate Debtor/Respondent**

Reserved: 11-09-2023  
Pronounced: 18-12- 2023

**CORAM:**

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

**HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)**

**Appearances: Hybrid**

Operational Creditor: Adv. Ajinkya Kurdukar i/b Adv. Bhavik Salia  
Corporate Debtor : Adv. Mayuri Ulhas Berde

**ORDER**

***[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]***

**1. Background**

- 1.1 This Application bearing C.P. (IB) No. 719/MB/2022 was filed on 20.06.2022 by Quality Heightcon Private Limited, the Operational Creditor (OC), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of SQ Infrastructure Private Limited, the Corporate Debtor (CD). The OC is involved in real estate activities with own or leased property and the CD is involved in building completion. A total amount of Rs. 13,23,88,147.00/- (Thirteen Crores Twenty-Three Lakhs Eighty Thousand One Hundred and Forty-Seven Rupees), fell due to the OC from CD with respect to construction work done by the OC.
- 1.2 The OC was appointed by the predecessor of the CD for construction of the project name "Sunshine Infinity" at Sumantai Janardan Mhatre Marg, Wadala, Mumbai and the CD has issued Work Order dated 20.06.2009 and 24.03.2011 to the OC.

**2. Contentions of OC**

- 2.1 The OC has claimed that the CD is in default of a sum of Rs. 12,43,97,666/- (Twelve Crores Forty-Three Lakhs Ninety-Seven Thousand Six Hundred and Sixty-Six Rupees) against the invoices issued from 31.03.2015 to 15.06.2021.
- 2.2 Further, it contends that as per the work order issued by the CD, an amount of 2.5% of the invoice amount, i.e., Rs. 79,90,481/- (Seventy-Nine Lakhs Ninety Thousand Four Hundred and Eighty-One Rupees), has been withheld by the CD as retention money, making an aggregate amount of debt Rs. 12,43,97,666/-.
- 2.3 The OC contends that the construction work of rehabilitation building and sale building is also complete except for 10% work pending for floors 31 and 32. The OC has periodically raised invoices for the completed work, and the CD, along with its predecessor, has made partial payments over a period of time.
- 2.4 The OC contends that it constantly pursued recovery of the said amounts from the date on which these fell due till the present dates *vide* emails and other means.
- 2.5 In view of the above events, the OC raised invoices against the CD on 12.03.2019, 11.02.2021, and 15.06.2021. On 28.01.2022, the OC issued a Demand Notice under Section 8 of the IBC to the CD. The CD acknowledged receipt of the Demand Notice on 29.01.2022 and has not raised any dispute regarding the notice or the amount owed.

2.6 The OC has annexed the bank accounts statement maintained, including copies of work orders dated 20.06.2009 and 24.03.2011, multiple invoices, the ledger account of the CD, a debit note and a copy of the deed of transfer of business undertaking dated 18.03.2019 with this Application.

2.7 The OC has submitted a copy of a certificate received from ICICI Bank, certifying that the last payment received from CD was on 27.02.2019 of Rs. 46,44,806/-.

### **3 Contentions of CD**

3.1 The CD filed affidavit in reply on 07.07.2022, admitting the claim amount. It stated that the business was affected by inflation in the real estate market and the COVID-19 pandemic, which created a slump in the market. The company has started experiencing a lack of funds and other issues, making it difficult to make payments to the OC. The CD contends that the failure to pay the money to the OC is not deliberate but is due to the company's monetary circumstances. It further states that 9 flats as available for sale with it will be sold and the proceeds would be used to repay the loan to the financial creditor, namely, the Axis Bank. The CD does not even have funds to pay TDS or the amount claimed by the OC. The debt due to the OC was acknowledged by the CD many times in the past and the failure

to clear the debt is not deliberate. Hence, the CD requested this Bench to reject the claim and grant any other reliefs, if any.

#### **4 Analysis & Findings**

- 4.1 We have perused all the documents and pleadings by both OC and the CD and heard their Counsel. We find that the predecessor of the CD transferred the entire 'Sunshine Infinity Project' to the CD along with all the liabilities of the project *vide* Deed of transfer of Business Undertaking dated 18.03.2019 and further, the CD as per Clause 1 of the said agreement (on page 16 of the agreement) is bound to all the liabilities of the project, as it is transferred as going concern with all assets and liabilities.
- 4.2 Upon examination, it is apparent that the CD has inherited the obligations and commitments of its predecessor through the business transfer agreement but failed to fulfill the agreed terms, leading to the outstanding dues to the OC. Hence, the OC initiated the process by sending a Demand Notice on 27.01.2022 to the CD under section 8 of the IBC.
- 4.3 We find that the CD after receiving the Notice has made payment of Rs. 10,00,000/- (Ten Lakhs Rupees) to the OC on 03.03.2022 but has not deposited TDS of Rs. 5,58,585/-. Accordingly, the CD is liable to make payment of Rs. 13,23,88,147.00/- with retention money to the OC.

- 4.4 Since the CD has filed affidavit in reply, admitting the claim amount and urging this Tribunal to either reject or admit the Application, we do not have any other option but to proceed with the Application for an order as prayed for by the OC without getting into any other contention of the OC except maintainability.
- 4.5 We find that the date of default mentioned by the OC in Part IV of the Application is 15.07.2021, which is 30 days from the date of the final Bill dated 15.06.2021. The Demand Notice also states the same date of default. The OC has produced ledger account of the CD and its predecessor, relevant tax invoices and statement of account maintained by the OC and certificates obtained from the banks. We find that the present Application was filed on 20.06.2022, i.e., within t 3 years from the date of default. Hence, it is maintainable to be adjudicated by us under Section 238A read with Article 137 of the Limitation Act, 1963.
- 4.6 It is clear that the operational debt in the matter is more than one crore rupee and is due and payable by the CD to the OC under section 4 of the IBC, which is not paid and has thus resulted in default by the CD. Therefore, this Application under section 9 of the IBC is maintainable. The Application is complete and has been filed under the proper form. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.

4.7 We find that I.A. No. 1792 of 2023 is preferred by the Applicant under Section 60(5) of the IBC read with Rule 11 of NCLT Rules, 2016 (NCLT Rules) for seeking direction for replacement of the Insolvency Professional (IP) suggested earlier by the OC as he expressed inability to act as Resolution Professional (RP) by another IP, Ms. Chetana Paresh Sutaria bearing Registration No. IBBI/IPA-001/IP-P00395/2017-18/10713. However, we find that she does not have valid AFA as on date. Hence, we are unable to appoint her and thus this IA is disposed of accordingly.

### **ORDER**

In the result, this Application bearing C.P. (IB) No. 719/MB/2022 under Section 9 of the IBC, filed by Quality Heightcon Private Limited, the OC, for initiating CIRP in respect of SQ Infrastructure Private Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 foreclosure, recovery or enforcing any security interest created by the CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, 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 Tribunal approves a resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of the CD under section 33 of the IBC, as the case may be.
- IV. That public announcement of the CIRP shall be made in accordance with the IBC, the Rules and Regulations made thereunder.

- V. That this Bench hereby appoint IP Mr. Abhijit Shrikrishna Gokhale, Registration No. IBBI / IPA-002 / IP-N 00964 / 2020-2021 / 13092, Email [abhijitgokhale07@gmail.com](mailto:abhijitgokhale07@gmail.com) having valid AFA up to 24.04.2024 to be the IRP from the panel of Insolvency Professional's for Mumbai Zone circulated by the IBBI 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 CD shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the CD 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, and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC 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 OC

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).

- VIII. The IRP/IP shall submit to this Adjudicatory Authority periodical reports with regard to the progress of the CIRP in respect of the CD.
- IX. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- X. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.
- XI. C.P. (IB) No. 719/MB/2022 to come up on 20.01.2014 for filing the periodical report before the Bench as may be notified by the Registry.
- XII. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**  
**SANJIV DUTT**  
**MEMBER (TECHNICAL)**

//Deepa//

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