



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI MANOJ KUMAR DUBEY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 14/9/JPR/2020

(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 RG Colonizers Private Limited
Through Authorized Representative

Mr. Mohammed Ali

At 4, Tirupati Trade Centre,
Sansar Chand Road, Jaipur-Rajasthan-302001

...Applicant / Operational Creditor

VERSUS

1. M/s Macro Infra Contractors Private Limited

The Crest" F. N: 101, Plot No. A-4,
Airport Enclave Scheme, Durgapura,
Tonk Road, Jaipur, Rajasthan-302018.

...Respondent / Corporate Debtor

2. Union Of India Ministry of Corporate Affairs

Through The Secretary

Office At: 5th Floor, A-Wing,
Shastri Bhawan, New Delhi-110001.

..... Respondent

For Petitioner (s) : Aditya Vijay, Adv.

CP No. (IB) - 14/9/JPR/2020



For Respondent (s) : Pradeep Kumar Choudhary, Adv.

ORDER PRONOUNCED ON: 04.07.2023

ORDER

Per: Shri Deep Chandra, Judicial Member

1. This Application is filed by M/s RG Colonizers Private Limited ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') in the matter of M/s Macro Infra Contractors Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Applicant, M/s RG Colonizers Private Limited, has performed some construction work at the site and raised various invoices against the work performed by the Applicant. Their registered office is in Jaipur, Rajasthan. The alleged default on the part of the Respondent for the non-payment of operational dues amounts to Rs. 2,23,06,363/- (Rupees Two Crore Twenty-Three Lakh Six Thousand Three Hundred Sixty-Three Only) is inclusive of interest.
3. The Corporate Debtor, M/s Macro Infra Contractors Private Limited, is a private company incorporated under the Companies Act, 1956 in 2004. The Corporate Debtor has an Authorised Share Capital of Rs. 8,00,00,000/-



(Rupees Eight Crore Only) and a Paid-Up Share Capital of Rs. 7,81,00,000/- (Rupees Seven Crore Eighty-One Lakh Only).

4. The Applicant and the Corporate Debtor entered into Sub-contractor Agreement on 17.01.2018 where the Applicant undertook to complete the construction of a project named 'Suvaas Pranay' situated at Khasra No. 1968 & 1969, Village Siroli, Tehsil-Sanganer, Jaipur, having total construction area of approximately 1.55. Lacs sq. ft. Subsequently the Applicant has commissioned the work at the site and raised various invoices against the Corporate Debtor. The details of the invoices are as follows:

- i. Invoice Number RA-01 dated April 26, 2018 amounting to INR 88,22,781/- (Eighty-Eight Lakh Twenty-Two Thousand Seven Hundred and Eighty-One Only) against Work done in Block "A" and Block "B" for Raft & Foundation as per the Schedule including GST payable and verified by the Corporate Debtor. A true copy of invoice number RA-01 is annexed as Annexure-1 of the Petition.*
- ii. Invoice Number RA-01 (Extra Work) dated April 26, 2018 amounting to INR 1,99,672/- (Rupees One Lakh Ninety-Nine Thousand Six Hundred and Seventy-Two Only) against side retaining walls and construction of the marketing room including GST payable and verified by the Corporate Debtor. A true copy of invoice number RA-01 (Extra Work) is as Annexure-2 of the Petition.*



- iii. *Invoice Number RA-02 dated July 02, 2018 amounting to INR 49,57,994/- (Rupees Forty-Nine Lakh Fifty-Seven Thousand Nine Hundred and Ninety-Four Only) against Work Done in Block “A” and Block “B” for structure up to plinth level, Community Hall including GST payable and verified by the Corporate Debtor. A true copy of the invoice number RA-02 is annexed as Annexure-3 of the Petition.*
- iv. *An agreement dated 04.04.2018 was executed for the construction of the boundary wall. An Invoice No. RA-01 (Boundary Wall) dated July 02, 2018 amounting to INR 13,11,866/- (Rupees Thirteen Lakh Eleven Thousand Eight Hundred and Sixty-Six Only) against construction of the boundary Wall including GST payable and verified by the Corporate Debtor. A true copy of the invoice number RA-01 (Boundary Wall) is annexed as Annexure-4 of the Petition.*
- v. *Invoice Number RA-03 dated June 27, 2019 amounting to INR 32,12,726/- (Rupees Thirty-Two Lakh Twelve Thousand Seven Hundred and Twenty-Six Only) against Earth brought from outside, Structure Column, boring etc. A true copy of the invoice number RA-03 is annexed as Annexure-5 of the Petition.*
- vi. *Invoice dated September 30, 2019 amounting to INR 7,35,183 (Rupees Seven Lakh Thirty-Five Thousand One Hundred and Eighty-Three only) against site facilities, Services, Utilities, Cement Godown, Store,*



Site Civil Laboratory, Tanks for Cubes and water storage etc. A true copy of the Invoice is annexed as Annexure-6 of the Petition.

vii. *Invoice dated from July 2018 to August 2019 amounting to Rs. 504000/- (Rupees Five Lakh Four Thousand Only) against Watchman Work at Site after work halted. A true copy of the Invoice dated July 2018 to August 2019 is annexed as Annexure-7 of the Petition.*

5. The Applicant issued a Demand Notice under Form-3 under Rule 5 of the Code on 04.11.2019 for the payment of money alongside interest, Rs. 2,23,06,363/- (Rs. Two Crore Twenty-Three Lakh Six Thousand Three Hundred Sixty-Three Only), which is enumerated in Part IV of the Application:

Part IV

Particulars of Operational Debt

1.	Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.	<u>Amount of Debt Due:</u> Rs. 2,23,06,363/- (Rupees Two Crore Twenty-Three Lakh Six Thousand Three Hundred Sixty-Three Only)
2.	Amount claimed to be in default and the date on which the default occurred	The total amount to be in the default is Rs. 2,23,06,363/- (Rupees Two Crore Twenty-Three Lakh Six Thousand Three Hundred Sixty-Three Only) The date of default is 22.01.2018.



6. The Respondent, in its reply, filed *vide* Diary No. 2262/2021 dated 01.11.2021, has stated the following:
- a. The Applicant was supposed to carry out the construction work as per the terms of the work order dated 04.04.2018 however the Applicant failed to complete the work within stipulated timelines. There is a serious dispute between the parties regarding the services provided by the Applicant at the site.
 - b. The Respondent further submits that a notice of dispute dated 24.10.2020 has been given to the Applicant. Copy of notice of dispute dated 24.10.2020 is annexed as Annexure-R1 of the reply.
 - c. The Applicant calculated 18% of the interest on the alleged claim however it was never agreed between the parties therefore it is arbitrary. Further, the bills which are raised by the Applicant are not subject to the terms and conditions of the work order dated 04.04.2018.
 - d. It is pertinent to note that the work which is carried out by the Applicant was not found to be satisfactory and as per the terms and conditions of the Agreement dated 17.10.2018.
 - e. There is no default that occurred as per the requirements of Section 9 of the Code, 2016. Further, there is no document filed by the Applicant that establishes that there is a time value of money and moreover, there is no commercial effect of borrowing.,



- f. Lastly the Respondent states that there is no default in the repayment of the debt and the present Application has been filed with malafide intent under the Code, 2016
7. The Applicant *vide* Dairy No. 2565/2021 dated 02.12.2021 has filed its rejoinder and stated the following:
- a. The work order received by the Applicant on 17.01.2018 is for the construction of the project “Suvaas Pranay” situated at Khasra No. 1968 & 1969, Village Siroli, Tehsil Sanganer, Jaipur further the Applicant filed all the supportive documents on records and the bills were verified and checked as per the condition of the Contract.
 - b. The impugned work was to be completed within 15 months however due to non-payment of the running bills by the Respondent the completion of the work has been hampered. The Applicant has written many emails and letters to the Respondent to pay the due amounts however the Respondent pays no heed to it.
 - c. Further there is no communication regarding the dispute in the bills and in the invoices of the Applicant and the bills have been checked and verified by the Respondent.
 - d. As per one of the clauses of the said Contract the Right and Obligation of the party the running bill of the amount will be paid by the Corporate Debtor to Applicant within 30 days of the approval of the running bill by the technical person.



- e. The Applicant draw its first invoice RA-01 on 26.04.2018 for an amount of Rs. 88,22,781/- (Rupees Eighty-Eight Lakh Twenty-Two Thousand Seven Hundred Eighty-One Only) and the same has been verified and confirmed by the technical person however the Respondent has not deposited the TDS and not even released the GST amount to the Applicant. Nevertheless, in order to avoid any complications in the business and to avoid any notices from the GST department, the Applicant paid the GST on the work even though the due amount is not been paid by the Corporate Debtor.
- f. Further the Applicant wrote several emails to pay the due amount along with interest still no response has been received from the Corporate Debtor. The Applicant states that a letter dated 09.09.2019 has also been written to the Respondent with respect to the salary dues of the watchman for an amount of Rs. 5,04,000/- (Rupees Five Lakh and Four Thousand Only).
- g. It is pertinent to note that the Applicant has taken a loan from the Bank in order to complete the project since there is a non-payment on the part of the Respondent. Resultantly, the Bank Account of the Applicant was declared as NPA.
- h. Further it is submitted that there was no pre-existence of dispute and the amount was acknowledged by the Corporate Debtor as all the bills verified and are part of the ledger.



- i. The Respondent intentionally sent the letter of Arbitration that too after the filing of the present Petition before this Adjudicating Authority. Further, the Corporate Debtor neither brought any dispute on record nor replied to the Demand Notice sent by the Applicant under section 8 of the Code.
8. The Respondent has filed written submissions *vide* diary No. 1352/2023 dated 29.05.2023 that state the following:
- i. The Respondent submitted that the Applicant failed to carry out the work within the stipulated timeline and abandoned the work incompletely resultantly disputes arose between the parties.
 - ii. No measurement book or certificate of the due amount has been filed by the Applicant in support of its alleged unpaid claim.
 - iii. Lastly, the Respondent stated that all the bills were not verified by the Corporate Debtor and the said bill was also not mentioned in the ledger statement.
 - iv. Additionally, the Respondent relied on the following Judgements:
 - I. *Greymatter Entertainment Pvt. Ltd. Through its Authorized representative Chandra Dev Bhagat Vs Pro Sportify Pvt. Ltd. 2023SCC OnLine NCLAT 82*
 - II. *Gandhar oil Refinery (India) Limited vs City Oil Private Limited, NCLT Kolkata Bench in CP(IB) No. 150/KB/2021*



9. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, Written Submissions, and the Documents enclosed with the Application.
10. The registered office of the Corporate Debtor is situated in Jaipur, Rajasthan, therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, the Applicant has alleged that the debt became due on 22.01.2018 and the Application has been filed before this Adjudicating Authority on 03.01.2020, hence the period of three years after the default occurred has not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
11. It is abundantly clear from the documents produced before us that the Respondent has defaulted in making full payments against the services rendered by the Operational Creditor.
12. The Operational Creditor has annexed invoices raised for the services rendered from Page No. 16-87 of the Petition.
13. The Corporate Debtor ambiguously states in its Reply that the Operational Creditor failed to complete the work within stipulated timelines. However, neither any correspondence to the same has been annexed, nor there is any specific pleading which utters about the non-completion of the work.
14. It is evident from the above that the Corporate Debtor has defaulted in payment of the Debt to the Operational Creditor. Further, it has raised the



contention of the dispute flouts the principle of law, which states that if there is a pre-existing dispute between the parties, an Application filed under Section 9 is not maintainable.

15. The first issue for consideration is whether the Demand Notice in Form-3 dated 04.11.2019 was served upon the Respondent. The Demand Notice was sent via a registered post on 05.11.2019 to the Respondent. The postal receipt is attached on Page No. 164-65 of the Petition.
16. The next issue for consideration is whether the Respondent disputed the operational Debt. The Respondent / Corporate Debtor has filed a Reply and argued that the work has not been completed by the Corporate Debtor within the stipulated timelines. However, they have not submitted any authentic communication to substantiate the same. Thus, as per the documents placed on record with the Adjudicating Authority, there is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.
17. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

“34. Therefore, the 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)*



(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 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 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?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. 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.”

However, the defence must be plausible, and while not examining it on merits, it must not appear as a moonshine defence. Therefore, in the present matter at hand, there is a debt, repayment of which has been defaulted by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute seems to be confirmed.

18. We have gone through the contents of the Application filed in Form No.5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in Default) of Rs. 2,23,06,363/- (Rupees Two Crore Twenty-Three Lakh Six Thousand Three Hundred Sixty-Three Only). It is observed that the Operational Creditor has issued various invoices (Pages No. 16-87 of the Petition) for services supplied to the Respondent Corporate Debtor. Applicant Operational Creditor has given Demand Notice in Form No. 3 dated 04.11.2019, duly served on the Respondent Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly



delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.

19. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the IBC stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
20. The Applicant has named one Mr. Babu Lal Sharma with Registration No. IBBI/IPA-001/IP-P01151/2018-19/11832 with the e-mail address tejgati@yahoo.com duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record. A copy of the Written Consent of the IRP is annexed as Annexure – 17 of the Petition.
21. Consequences of initiation of CIRP shall be inter-alia as follows:
 - i. The Insolvency Resolution Professional proposed by the Applicant, Mr. Babu Lal Sharma, is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issuance of publication



in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same shall be done.

- ii. Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.
- iii. The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor.
- iv. In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.



- v. In terms of Section 9 of IBC, 2016, this Order shall be communicated at the earliest, not exceeding one week from today to the Applicant, Corporate Debtor, and the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this Order shall also be communicated to IBBI for its records.
22. Accordingly, CP No. (IB) 14/9/JPR/2020 is admitted in the abovementioned circumstances.
23. Copy of this order is to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Interim Resolution Professional by all modes for information.

-Sd-

**MANOJ KUMAR DUBEY,
TECHNICAL MEMBER**

-Sd-

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**