

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH**

**C.P. No.(IB) 402/9/NCLT/AHM/2019**

[Application for initiation of Corporate Insolvency Resolution Process  
under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the matter of:**

**M/s. Mirambica Infrastructure Private Limited.**                      **Petitioner**  
[Operational      Creditor]

**Versus**

**M/s. Sanskrut Jewel Residency LLP...**                      **Respondent**  
[Corporate Debtor]

**Order pronounced on 04<sup>th</sup> March, 2022**

**Coram: Hon'ble Dr. Deepti Mukesh, Member (J).  
Hon'ble Kaushalendra Kumar Singh, Member (T)**

*KS*

**MEMO OF PARTIES**

**M/s. Mirambica Infrastructure Private Limited.**

F F – 24, Aditya Complex,  
Near SAL Hospital  
Opp. Sant Kabir School  
Thaltej,  
Ahmedabad 380 054 ...

**Petitioner**  
[Operational Creditor]

**Versus**

**M/s. Sanskrut Jewel Residency LLP**

Opp. Abhishri Corp Park  
Nr. Shell Petrol Pump  
Ambli BRTS Road  
Ambli Daskroi  
Ahmedabad 380 054  
Gujarat State ...

**Respondent**  
[Corporate Debtor]

**Appearance:**

For applicant : Advocate Mr. Maulik Nanavati  
For respondent : None

**ORDER**

**[Per: Kaushalendra Kumar Singh Member (Technical)]**

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **M/s. Mirambica Infrastructure Private Limited**, through its authorised signatory Mr. Babulal Amtharam Patel, authorised vide Board Resolution dated 27.03.2019 (for brevity 'Operational Creditor') with a prayer to

*Ka*

initiate the Corporate Insolvency process against **Sanskrit Jewel Residency LLP** (for brevity 'Corporate Debtor').

2. The applicant is a private limited company having identification number U45200GJ2012PTC071414 and having its registered office at Thaltej, Ahmedabad, Gujarat State.

3. The corporate debtor is a limited liability partnership firm having identification No. AAC-8944 incorporated on 10.11.2014 and having its registered office at Ambli, Ahmedabad, Gujarat State engaged in construction business. The composition of the LLP is as under:

Partnership in the LLP	Profit sharing ratio in the LLP	Remarks
1. Sanskrut Infrabuild LLP	73%	Majority partners
2. Ankit Savla (Partner in 1 above)	1%	
3. Nilang Vaidya (Partner in 1 above)	1%	
4. Tushar Dalal	24%	Minority partners
5. Ravi Dalal	1%	

4. It is submitted by the applicant operational creditor that the corporate debtor floated tender dated 22.03.2017 and awarded a contract to the applicant for civil and plumbing works for its housing project viz. Jewel Residency, Ambli Road, Ahmedabad. Accordingly, letter of intent containing the terms and conditions regulating the contractual relationship between the parties were issued by the corporate debtor on 25.04.2017. The contractual terms provided appointment of a Project Management Consultant (PMC) by the applicant to verify and confirm performance of the work. The applicant executed the work and the said work was inspected by PMC and the

*Ke*

PMC issued certificate for payment. On the basis of certificate issued by the PMC, the applicant raised invoices on corporate debtor for the period from 02.02.2018 to 13.03.2019. Contract between the parties contained a provision of interest at the rate of 12% per annum for delay upto two months and 18% per annum for delay beyond two months. As the corporate debtor did not make payment within 30 days, demand notice in form 3 under Section 8 of the Code was issued by the applicant calling upon the corporate debtor to make outstanding payment. As per the master data annexed to the application, the demand notice sent by speed post was delivered at the registered office of the corporate debtor. As a proof of service, copy of track report is annexed to the application.

5. The applicant filed application under Section 9 of the Code. As per part IV form 5 an amount of Rs. 9,52,83,343/- (Rupees nine crores fifty-two lacs eighty-three thousand three hundred forty-three only) is due and payable to the applicant by the corporate debtor which include interest of Rs. 1,20,54,720/-.

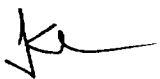
6. Corporate Debtor filed affidavit in reply through its partner Nilang Vaidya inter alia stating that:

- due to disputes between the partners of LLP, the minority partners of the corporate debtor had approached the Learned Commercial Court, Ahmedabad seeking various reliefs and the Court vide order dated 01.05.2018 had passed an interim order against the corporate debtor granting stay on the construction activity;

Ke

- the present application under Section 9 of the Code suffers from lack of bona fides. That the present application has been preferred by the operational creditor with mala fide intention of fraudulently initiating CIRP to serve illegal objectives of the applicant company.
- statutory notice was never served upon the corporate debtor, therefore, the present application is not maintainable and deserves to be dismissed solely on the said ground;
- invoice No. 34 and 35 dated 12.03.2019 and 13.03.2019 qua construction work are false and spurious, that the corporate debtor has neither received any such invoices nor have availed such services from the applicant company;
- the corporate debtor is a viable company and it has great commercial aspects;

7. It is noted from the record that Shri Hamesh Naidu, Advocate and Vivek H Shah, Advocate had appeared for the Corporate Debtor. The Vakalatnama, which is placed on record, has been signed by Shri Nilang Vaidhya, one of the majority Partner of the Corporate Debtor. It is also noted from the record that the minority partners had also objected to the admission of Section 9 petition by filing an Interlocutory Application 540 of 2019. Shri Navin Pahwa, Sr. Advocate, and then Shri Rasesh Sanjanwala, Sr. Advocate along with Shri Parth Contractor and Shri Pranjal Buch, Advocates appeared before this Adjudicating Authority from time to time for the minority partners. It is also noted from the record that the Operational Creditor was represented by the FCA Shri Kiran Shah, who at one



stage during the proceedings had withdrawn himself and thereafter PCS Shri Sachin Sinha represented the Operational Creditor. Finally, Shri Maulik Nanavati, Advocate also appeared for the Operational Creditor. At one stage, Shri Harmesh Naidu and Shri Vivek Shah, who were appearing for the corporate debtor had sought withdrawal from their appearance in view of the order dated 06.06.2020 of the Hon'ble Arbitral Tribunal (Hon'ble Mr. Justice J. M. Panchal, Former Judge, Supreme Court of India) whereby the majority partners were restrained from representing the corporate debtor LLP. Their withdrawal from appearance was allowed vide order dated 09.02.2021.

8. Vide order dated 19.02.2021, the minority partners Shri Tushar Dalal and Shri Ravi Dalal were allowed to file their replies by serving advance copy to the other sides. Following that Shri Ravi Dalal, one of the minority partners and also the applicant No. 2 in the IA 504 of 2019 filed their affidavit in reply to the Section 9 application. The submissions made therein is summarised here as under:

(i) there are several disputes between the minority partners and the majority partners of LLP pertaining, inter alia to gross management of LLP by the majority partners; siphoning of Rs. 21.88 crores infused by the minority partners into the LLP; serious financial and accounting irregularities, including but not limited to effectuating hawala transactions by the majority partners; non-infusion of funds by the majority partners into the LLP and creation of bogus un secured debts by the majority partners.

(ii) The Learned Commercial Court, after considering the submissions of minority partners in CMA No. 34 of 2018, vide

order dated 01.05.2018 was pleased to grant stay on further construction activity by the LLP and the stay continues.

(iii) Following that the minority partners have initiated Arbitration Proceedings and the Hon'ble' Arbitral Tribunal (Hon'ble Mr. Justice J.M. Panchal, Former Judge, Supreme Court of India) vide its orders dated 06.06.2020 inter alia restrained the majority partners from representing the Corporate Debtor LLP; directed a forensic audit of the accounts of the Corporate Debtor LLP and the partners by an independent Chartered Accountant; and also directed the majority partners to deposit a sum of Rs. 33.65 crores into the Corporate Debtor LLP so as to repay the debts, if any, of the Corporate Debtor LLP.

(iv) The demand notice as per Section 8 of the Code has not been served upon the Corporate Debtor LLP at the registered office. In the context, it has been submitted that the last tracking information, as filed by the operational creditor, shows the remarks "despatched to BO"; and that clearly indicates that the articles so shipped through the postal department was not delivered to the corporate debtor LLP; and the petition as such deserves to be dismissed on that ground alone.

(v) It is on 12.07.2018 that the address of the registered office of the LLP came to be changed to the address of the site office; and the site office as such has remained closed on account of stay granted vide order dated 01.05.2018 by the Commercial Court. That to effectuate a change in registered office of LLP, a copy of the minutes of the resolution passed by the partners of LLP need to be furnished, however, they are not aware of any such meeting called by the majority partners.

(vi) As a part of a collusive strategy between the applicant operational creditor and the majority partners that a so-called demand notice came to be purportedly issued at the new registered office of the LLP; and the applicant being construction contractor is well aware that there has been absolutely no activity at the site on and from 01.05.2018, and is also well aware that the site office (which is now the registered office) is non-operational since then.

(vii) The applicant operational creditor in collusion with the majority partners have engineered a situation whereby the so-called demand notice was purportedly remained un-responded and a collusive and sponsored petition under Section 9 of the Code came to be filed with this Hon'ble Tribunal falsely claiming an amount of Rs. 9,52,83,343/- solely with a view to provide a safe exit to the majority partners from their obligations and to further try and derail the arbitration process. That the aforesaid also needs to be viewed from the prospective that the market value of the only asset of LLP is approximately Rs. 150 crores as against the claim of Rs. 9,52,83,343/-.

(ix) The invoice No. 34 and 35 dated 12.03.2019 and 13.03.2019, which are forming part of the present petition, came to be surreptitiously raised by the applicant operational creditor and purportedly signed and approved by the majority partners, allegedly on behalf of the LLP, which fact is evidence enough to demonstrate collusion beyond doubt of the majority partners with the applicant.

9. It is also noted from the record that the operational creditor had challenged the order dated 19.02.2021 of this Adjudicating

Authority whereby the minority partners were allowed to file their reply. The Hon'ble' NCLAT vide its order dated 24.03.2021 has disposed of the said appeal. The relevant paras of the NCLAT's order are reproduced hereunder:

*"2. It is submitted by Mr. Sachin Naveen Sinha, PCS representing the appellant-operational creditor that the application filed under Section 9 of the I & B Code in the year 2019 is still pending consideration for admission and the order has been reserved on 23.03.2021 only to decide the intervention application.*

*3. After hearing Mr. Sachin Naveen Sinha, PCS we deem it appropriate to dispose of this appeal emphasizing upon the Adjudicating Authority to abide by the mandate of Section 9 (5) of the I&B Code, which provides for passing of an order of 'admission' or 'rejection' of the application of operational creditor filed under Section 9 of the I&B Code within 14 days of the receipt of such application. The Adjudicating Authority, not being a Civil Court and it being enjoined upon it to conduct the Corporate Insolvency Resolution Process in a time bound manner as delineated by the I&B Code, should not allow the pre-admission proceedings to be converted into an adversarial litigation. Speed being the pass-word in CIRP proceedings, the Adjudicating Authority has to act in a swift manner and not allow the proceedings to be hijacked by a person or entities to put a spoke in the wheel, so as to render the process nugatory. The Adjudicating Authority would do well by focussing upon the issue in regard to admission or otherwise to consider the*

*application on merit and pass an order in that regard most expeditiously, preferably within 10 days."*

10. In its rejoinder the applicant operational creditor has once again furnished copies of invoices No. 15 dated 02.02.2018, #19 dated 25.03.2018, #34 dated 12.03.2019 and #35 dated 13.03.2019, duly acknowledged by the corporate debtor. The operational creditor has also relied onto the following decisions:

*(i) Hon'ble' NCLAT's order in Company Appeal (AT) (Insolvency) No. 246 of 2018 "Axis Bank Ltd. vs. Lotus Three Developments Ltd. & Ors.) wherein it was held that the Adjudicating Authority is only to satisfy that the default has occurred and that the corporate debtor is entitled to point out that the default has not been occurred in the sense the debt is not due; and that no other person has a right to be held at the stage of admission of the application under section 7 and 9 of the I&B Code including the shareholders or the personal guarantors etc.*

*(ii) Hon'ble NCLAT's order in Company Appeal (AT) (Insolvency) No. 51 of 2019 "IDBI Bank Ltd. vs. Odisha Slurry Pipeline & Ors. Wherein it was held that "further we may observe that except the applicant (financial creditor) and the corporate debtor, there is no requirement of hearing a third party including intervener at the stage of admission. The order is required to be passed as per decision of the Hon'ble Supreme Court, as quoted above."*

*(iii) Hon'ble' NCLAT's order in Company Appeal (AT) (Insolvency) Nos. 436-437 of 2019 "Damont Developers vs.*

*Ke*

*Bank of Baroda wherein it was held that "from the aforesaid decision it is clear that the Adjudicating Authority is required to go through the record to find if there is a debt and default and while doing so it was open for the corporate debtor to show that there is no debt payable and no default, at the stage of admission of the petition. Except the corporate debtor, no other party has right to intervene at the stage of admission of a petition under Section 7 or 9. However, an aggrieved party may prefer an appeal if the order of admission affects the person."*

*(iv) Hon'ble' NCLAT's order in Company Appeal (AT) (Insolvency) No. 630 of 2019 "ICCI Bank Ltd. vz. Jaiprakash Associates Ltd." wherein it was held that "the appeal is not maintainable in absence of any order passed by the Adjudicating Authority as there is no cause of action.*

11. On 26.10.2021, while hearing the IA 540 of 2019 filed by the intervener (Minority Partners) to intervene in application filed under Section 9 of IBC, Shri Sachin Sinha, learned PCS for the applicant operational creditor stated that in Appeal No. 229 of 2021, issue of allowing the intervention and/or disposing of main application under Insolvency Proceedings was considered and the Hon'ble' NCLAT vide order dated 24.03.2021 has disposed of that appeal. Keeping in view that order of the Hon'ble NCLAT, vide order dated 26.10.2021, it was held that the IA 540 of 2019 does not require any consideration at the stage of admission of Section 9 application and as such the same was disposed of. Following that the main matter was taken up.

*Ke*

12. The registered office of the corporate debtor is situated in Ahmedabad and, therefore, this Tribunal has jurisdiction to entertain and try this application.

13. As per part IV, form 5 date of default is 04.03.2018 and the application is filed on 12.06.2019. Therefore, the application is well within limitation.

14. Heard the learned counsel Mr. Maulik Nanavati for the applicant operational creditor and perused the documents on record. The present application is complete and the applicant is entitled to claim its dues. The services provided by the applicant is not disputed. The question of limitation or jurisdiction is also not raised by the corporate debtor.

15. Further, on perusal of the records it is found that all the four invoices dated 02.02.2018, 25.03.2018, 12.03.2019 and 13.03.2019 raised by the applicant bear the seal and signature of the corporate debtor evidencing that the debt is acknowledged by the corporate debtor. The invoices Nos. 15 dated 02.02.2018 and No. 19 dated 25.03.2018 are not at all in dispute. The total amount of debt on account of only these two invoices amounts to Rs. 5,80,58,071/- [39747668 + 18310403] which itself is more than the threshold limit. The plea raised by the corporate debtor that due to disputes between the partners, minority partners of the corporate debtor had approached the Learned Commercial Court, Ahmedabad seeking various reliefs and the Court vide order dated 01.05.2018 had passed an interim order against the corporate debtor granting stay on the

Ke

construction activity cannot be considered as a reason to reject the instant application. It is pertinent to mention that filing of the CMA and the Learned Commercial Court granting a stay on the construction activity subsequently, has nothing to do with the operational debt due and payable to the applicant by the corporate debtor. The statutory notice has been duly served upon the corporate debtor at the Registered Office as is evidenced from copy of the delivery manifest provided by Department of Posts- India obtained under Right to Information Act, 2005. Learned Senior Counsel Mr. Yatin Oza for minority partners of the corporate debtor had sought indulgence on the ground of receiving finances and holding meetings with the applicant and the same was also considered but all the efforts failed, needless to say that debt and default stands admitted. It is also noted that none had appeared formally for the corporate debtor after withdrawal of Shri Harmesh Naidu and Shri Vivek Shah, Advocates from appearance.

16. In the given facts and circumstances, the present application is complete and the applicant is entitled to claim its dues. The present application is admitted in terms of Section 9 (5) of the IB Code, 2016.

17. The applicant/operational creditor has proposed the name of Mr. Ramachandra Dallaram Choudhary to act as Interim Resolution Professional who is hereby appointed as IRP having address at 9-B, Vardan Complex, Nr. Vimal House, Lakhudi Circle, Navrangpura, Ahmedabad ([rdc\\_rca@yahoo.com](mailto:rdc_rca@yahoo.com)) having registration No. IBBI/IPA-001/IP-P00157/2017-2018/10326 subject to the condition that no disciplinary proceedings are pending against him. Specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India

Ke

(Application to Adjudicating Authority) Rule, 2016 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is on record.

18. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. R.D. Chaudhary to meet out the expenses 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. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

20. 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 be also sent to the ROC for

updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**Kaushalendra Kumar Singh**  
**Member (Technical)**

nair



**Dr. Deepti Mukesh**  
**Member (Judicial)**