



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**  
**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 64/9/JPR/2021**

(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 Lotus Builtech Private Limited**  
**CIN: U70101RJ2006PTC022120**  
D-340/A, Siddharth Nagar  
Jaipur-Rajasthan-302017.

**...Applicant / Operational Creditor**

**VERSUS**

**M/s Swastik Infracity Private Limited**  
**CIN: U70101RJ2012PTC037859**  
3/43, Parasram Nagar, Dher Ka Balaji,  
Sikar Road, Jaipur-302039.

**...Respondent / Corporate Debtor**

**For Petitioner (s) : Naresh Kumar Sejvani, Adv.**  
**For Respondent (s) : Susshil Daga, Adv.**

**ORDER PRONOUNCED ON: 19.04.2023**



## **ORDER**

**Per: Shri Prasanta Kumar Mohanty, Technical Member**

1. This Application is filed by M/s Lotus Bulidtech Private Limited ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') in the matter of M/s Swastik Infracity 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 Lotus Buildtech Private Limited, is a Private Limited Company. 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. 1,91,08,000.00/- (Rs. One Crore Ninety-One Lakh Eight Thousand Only).
3. The Corporate Debtor, M/s Sawastik Infracity Private Limited, is a private company incorporated under the Companies Act, 1956 in 2012. The Corporate Debtor has an Authorised Share Capital of Rs. 2,00,000/- (Rs. Two Lakh Only) and a Paid-Up Share Capital of Rs. 1,00,000/- (Rs. One Lakh Only).
4. The Corporate Debtor *vide* sale deed dated 04.03.2013 and 19.03.2014 purchased two lands 8+2 bigha for an amount of 3,50,00,000/- (Rupees Three



Crore Fifty Lakhs Only) and 92,00,000/- (Rupees Ninety-Two Lakh Only) respectively in total for an amount of Rs. 4,42,00,000/- (Rupees Four Crore Forty-Two Lakhs Only). Out of which an amount to the tune of Rs. 1,91,08,000/- (Rupees One Crore Ninety-One Lakh Eight Thousand Only) remains outstanding on the part of the Corporate Debtor.

5. The Applicant issued a Demand Notice under Section 8 of the Code on 17.08.2021 for the payment of money alongside interest, Rs. 1,91,08,000/- (Rupees One Crore Ninety-One Lakh Eight Thousand 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.	<b><u>Amount of Debt Due:</u></b> Rs. 1,91,08,000/- (Rupees One Crore Ninety-One Lakh Eight Thousand Only)
2.	Amount claimed to be in default and the date on which the default occurred	<b><u>Amount Claimed to be in default:</u></b> Rs. 9,59,22,160.00 (Rupees Nine Crore Fifty-Nine Lakh Twenty-Two Thousand One Hundred Sixty Only)  <b><u>Date on which the default occurred:</u></b> The default occurs from the date when the debt fell due, however for the purpose of computing the limitation the date of default is 24.07.2020, the latest date when the corporate debtor admits its



		liability towards the operational creditor in its audited financial statements.
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6. Consequent to notice issued by this Adjudicating Authority the Respondent filed its reply *vide* Dairy No. 969/2022 dated 30.03.2022, has stated that:
- a. The Respondent submits that the Applicant does not fall within the definition of Operational Creditor under section 5(20) of the Code.
  - b. It is contended by the Respondent that the present petition has been filed without any board resolution and authorization by the board of directors of the Applicant to file the present petition.
  - c. It is pertinent to note that the total outstanding amount stated by the Applicant in the petition is not even due to the Corporate Debtor as it was already paid even before filing the present petition.
  - d. As per the Demand Notice dated 17.08.2021 total outstanding amount is Rs. 9,59,22,160/- (Rupees Nine Crore Fifty-Nine Lakh Twenty-Two Thousand One Hundred Sixty Only) which includes the principal amount of Rs. 5,73,24,000/- (Five Crore Seventy-Three Lakh Twenty-Four Thousand) and interest is Rs. 3,85,98,160/- (Rupees Three Crore Eighty-Five Lakh Ninety-Eight Thousand One Hundred Sixty Only), whereas part-IV of the petition mentions total principal debt is only Rs. 1,91,08,000/- (Rupees One Crore Ninety-One Lakh Eight Thousand Only).



- e. The Corporate Debtor has submitted that Rs. 1,91,08,000/- is already being paid to the Applicant in various installments commencing from 07.12.2020 to 02.12.2021 same is evident from the ledger account and bank statement of the Corporate Debtor. Copy of the ledger account maintained by the Corporate Debtor along with the bank statements are annexed as Annexure-R/1 (Colly) of the reply filed by the Corporate Debtor.
- f. Further the same is evident from the bank statements and ledger account shared by the Applicant with the Corporate Debtor, the Applicant had received the entire unpaid operational debt till 02.01.2021 which is much prior to filing the present petition. Copy of the ledger account and bank statement of the Applicant are annexed as Annexure- R/2 (Colly).
- g. It is submitted that the amount allegedly claimed by the Applicant does not fall under the definition of a claim as defined under Section 3(6) of IBC, 2016 since the Corporate Debtor has already made the entire payment to the Applicant for the sale consideration of the land purchased by the Corporate Debtor.
7. The Applicant has filed written submission *vide* Dairy No. 484/2023 dated 21.02.2023 whereby it is stated the following:



- a. It is stated that Mrs. Urmila Samota had filed the present Application in the capacity of director of the Company and the other three directors of the Applicant are in collusion with the Corporate Debtor as the sale transaction which has taken place for the sale of the land is entered fraudulently and the same piece of the land has been sold by other three directors of the Operational Creditor to their associate entity i.e. Dreamax Shipping and Logistics Private Limited.
- b. Further the Corporate Debtor took a reference to the ledger account statement in the reply and stated that all the alleged claim amount has been transferred to the Applicant however the entries show that the amount has been received from the associate entity of the Applicant and the same amount has been routed to the Applicant Company.
- c. It is submitted that as per the demand notice total amount of a claim is Rs. 9.59 Cr. further, it is stated that the director of Applicant's Company being a derivative action can file a petition without any board resolution.
- d. The Applicant in order to support the above submissions relied on the following case laws:

*A. Rashmi Mehra & Ors. Vs The EAC Trading Ltd. Ors. [Bombay High Court-08.11.2006]*

*B. Rajeev Saumitra Vs Neetu Singh & Ors. [Delhi High Court-27.01.2016]*



- C. Onyx Musicabsolute.com Pvt. Ltd. Vs Yash Raj Films Pvt. Ltd.  
[Bombay HC-04.07.2008]*
- D. Welspun Enterprises Limited Vs ARSS Infrastructure Projects  
Limited [Bombay High Court-03.08.2015]*
- E. Rajiv Vyas Vs Johnwin Manavalan Groge Mandavalan & Ors.  
[Bombay High Court-06.07.2009]*
- F. PPN Power Generating Co. Ltd. Vs PPN (Mauritius) Co.  
[Madras High Court-08.10.2004]*
- G. Lotus Buildtech Pvt. Ltd. Vs Green Triveni Developers  
Commercial Court, Jaipur-15.07.2022*

8. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Written Submissions, and the Documents enclosed with the Application.
9. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of the Laws of Limitation, as the last payment has been made in 2021, and the Application was filed before this Adjudicating Authority in 2021. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.



10. On the perusal of the matter in hand as per Section 9(5)(ii) of the IBC, 2016 the Adjudicating Authority can reject the Application if there has been payment of the unpaid Operational Debt.

Section 9 (5)(ii) of the IBC is reproduced below for ease of reference:

*“Section 9(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-*

*(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*

*(a) the application made under sub-section (2) is incomplete;*

*(b) there has been 1[payment] of the unpaid operational debt; ...”*

11. The issue for our consideration is whether there is an unpaid operational debt. The present petition is filed by the Operational Creditor for claiming an alleged amount of Rs. 1,91,08,000/- (Rupees One Crore Ninety-One Lakh Eight Thousand Only) at one place. Furthermore, at another place, the Applicant has mentioned the alleged amount in default Rs. 9,59,22,160/- (Rupees Nine Crore Fifty-Nine Lakh Twenty-Two Thousand One Sixty Only).

12. Upon the scrutiny of the ledger account of the Corporate Debtor in the records it is seen that the entire alleged claim of Rs. 1,91,08,000/- (Rupees One Crore Ninety-One Lakh Eight Thousand Only) has been paid to the Applicant in the various installments commencing from 07.12.2020 to 02.01.2021. Copy the Ledger account maintained by the Corporate Debtor



are annexed as Annexure-R/1 (Colly) of the reply filed by the Corporate Debtor.

13. Moreover, the alleged amount in default Rs. 9,59,22,160/- (Rupees Nine Crore Fifty-Nine Lakh Twenty-Two Thousand One Sixty Only) is inclusive of the interest amount as per the calculation sheet attached to the present petition at page no. 85. Calculation of the amount claimed as mentioned below:

**COMPUTATION OF AMOUNT TO BE CLAIMED FROM CORPORATE DEBTOR**  
**M/S SWASTIK INFRACITY PRIVATE LIMITED**

<b>S. No.</b>	<b>Period</b>	<b>No. of Months</b>	<b>Principal Amount Due</b>	<b>Interest Amount @ 24.00% p.a.</b>	<b>Total Amount Claimed</b>
1	From 04.03.2013 to 31.03.2013	1	Rs. 1,91,08,000.00	Rs. 3,82,160.00	Rs.1,94,90,160.00
2	From 01.04.2013 to 31.03.2021	96	Rs. 1,91,08,000.00	Rs. 3,66,87,360.00	Rs. 5,57,95,360.00
3	From 01.04.2021 to 31.07.2021	4	Rs. 1,91,08,000.00	Rs. 15,28,640.00	Rs. 2,06,36,640.00
<b>Total</b>			<b>Rs.</b> 5,73,24,000.00	<b>Rs.</b> 3,85,98,160.00	<b>Rs.</b> 9,59,22,160.00

14. Hence, declaring the Corporate Debtor as insolvent by ordering CIRP only because of the default in paying interest which is not agreed upon, would be against the spirit of IBC. The Operational Creditor would nevertheless have the right to claim and recover interest if it is permitted under any other law, by moving an appropriate forum. The Adjudicating Authority does not decide the amount that is due to the Operational Creditor.



15. At this juncture, we consider it relevant to refer to the Judgment of Hon'ble NCLAT in the matter of *S. S. Polymers v. Kanodia Technoplast Ltd. in Company Appeal (AT) (Insolvency) No. 1227 of 2019, dated 13.11.2019*. The relevant extracts are given below:

*“5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the ‘Corporate Debtor’ and which is barred in view of Section 65 of the I&B Code.”*

16. In view of the aforesaid discussion, it can be inferred that the “interest” component alone cannot be claimed or pursued without the debt to trigger a CIR process against the Corporate Debtor. Further, the application pursued for the realization of the interest amount alone is against the intent of the IBC, 2016.

17. We, therefore conclude there is no debt due on the Corporate Debtor of which default can be imputed on the Corporate Debtor to enable the Operational Creditor to initiate Section 9 proceedings.

18. Hence, in the view of above we are not inclined to commence CIRP of the Corporate Debtor. The present Petition is Dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016, and based



on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.

19. Accordingly, CP No. (IB)64/9/JPR/2021 is dismissed.

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A JOSHI

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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**