

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

**CP (IB) No. 1389/MB-IV/2020**

Under **Section 9** of the I&B Code, 2016

In the matter of:

**Tejendrakumar Patel**

...Operational Creditor/Applicant

V/s

**Vikas Procon Private Limited**

[CIN: U45309MH2016PTC280060]

...Corporate Debtor/Respondent

Order Dated: 19.04.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Sanjay Kumar Ruia, PCA.

For the Respondent(s) : None present.

***Per: Kishore Vemulapalli (Member Judicial)***

1. This is an Application being C.P. (IB) No. 1389/MB/C-IV/2020 filed on 28.11.2020 by Mr. Tejendrakumar Patel, Proprietor of Comprehensive Design Architects, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Vikas Procon Private Limited,

Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Operational Creditor is a Sole Proprietor of Comprehensive Design Architects which is in the business of architecture and allied services. The Applicant formed business relations with the Vikas Group in February, 2012 for various architectural projects.

2.1 The Corporate Debtor appointed the Operational Creditor vide letter dated 20.05.2015 under the stipulation that it shall pay Rs. 10/- per square feet of saleable area as architect fee to the Operational Creditor for all projects from 20.02.2015 to 19.02.2016; in addition the Vikas Group shall pay Rs.3/- sq.ft. as additional fee payable at the end of any projects. The Operational Creditor on 12.02.2018 shared the invoicing protocols with stages of payments with the Corporate Debtor. The Corporate Debtor paid a total sum of Rs. 76,27,778/- to the Operational Creditor as part payments till 31.03.2019 with respect to payments relating to various projects.

2.2 The total amount claimed in the Part 4 is Rs.4,24,56,016/-, inclusive of interest under MSME Act. The date of default as mentioned in the Application is 01.07.2019.

2.3 The Operational Creditor on 13.06.2019 sent via email to the Corporate Debtor the Invoicing Protocol dated 12.02.2015 and Proforma Invoice for the outstanding amount on all the projects. The Operational Creditor raised the final tax invoice upon the Corporate Debtor on 01.07.2019 for Rs. 3,51,94,680/- including GST and emailed the same to the Corporate Debtor on 01.07.2019.

- 2.4 Further, the Corporate Debtor issued 2 letters to the Operational Creditor on 10.07.2019 thereby accepting the invoice and offered to pay a total of Rs. 1,18,97,000/- excluding GST which was rejected by the Operational Creditor vide email dated 30.10.2020 stating that the offer is too low and the dues should be cleared as per invoices.
- 2.5 The Operational Creditor received a payment of Rs. 2,00,000/- included in the total payments received from 01.04.2019 aggregating to Rs. 20,00,360/- adjusted against the outstanding invoice. The Corporate Debtor issued two more letters dated 08.02.2020 and 27.02.2020 signed separately by all the Directors with the subject “Repayment of outstanding amount for work done by various consultants” along with acknowledgement of invoice dated 01.07.2019. the total debt outstanding as on 12.11.2020 is Rs. 3,31,94,320/- alongwith interest of Rs. 92,61,696/-@18% per month as per the terms of the MSME Act, 2006.
- 2.6 The Applicant issued a Demand Notice u/s 8 of the Insolvency And Bankruptcy Code, 2016 dated 12.11.2020 upon the Corporate Debtor via email on 12.11.2020 and speed post on 13.11.2020. The demand notice was sent to the site address as well as the registered address of the Corporate Debtor by post, of which the one sent at the site office address was received but the one sent at the registered office address was returned with the remark “Door Locked”. The Corporate Debtor neither paid the outstanding amount nor replied to the said demand notice.

- 2.7 The ICICI Bank Limited issued a copy of the attested bank statement for the period of 12.11.2020 to 24.11.2020 and also issued a certificate u/s 9(3)(c) dated 23.11.2020.
- 2.8 The Applicant has attached the interest calculation chart as per MSME Act as on 27.02.2023 in the written submissions filed by it.
3. The Corporate Debtor was set *ex-parte* on 30.08.2022. Despite substituted service on the Corporate Debtor, it failed to appear for hearing held on several occasions.
4. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
- 4.1. As regards to the contentions of the Operational Creditor, there is Operational Debt as defined in section 2(51) of the Code. The debt fell due because of one unpaid invoice dated 01.07.2019 amounting to Rs. 3,51,94,680/-.
- 4.2. The Corporate Debtor has clearly admitted its liability and promised to repay the outstanding amount as per the repayment schedule given by it to the Operational Creditor in the letter dated 08.02.2020. The Corporate Debtor has not disputed in terms of the services received and the invoices raised by the Operational Creditor. This Bench is of considered view that the there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.
- 4.3. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/-

(Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant and there is default by the Corporate Debtor in payment of debt amount. The application is complete and has been filed under the proper form. Hence, the Application filed by the Operational Creditor is liable to be admitted.

5. The Applicant has proposed the name of Mr. Vinod Radhakrishnan Nair, Registered Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P-01352/2018-2019/12083 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

### **ORDER**

This Application being C.P. (IB) No. 1389/NCLT/MB/C-IV/2023 filed under Section 9 of I&B Code, 2016, filed by Tejendrakumar Patel, Operational Creditor/ Applicant against Vikas Procon Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 Operational Assets and Enforcement of Security Interest Act, 2002;
  - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench hereby appoints Mr. Vinod Radhakrishnan Nair, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-01352/2018-2019/12083], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Operational Creditor shall deposit a sum of Rs. 5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar  
Member (Technical)  
/LRA-Akshata/

Sd/-

Kishore Vemulapalli  
Member (Judicial)