



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III

Item No.04

(IB) -116(ND)/2022

IN THE MATTER OF:

M/s. ORRIS PROJECTS PRIVATE LIMITED

..... Operational Creditor

VERSUS

M/s. GNEX HOUSING PRIVATE LIMITED

..... Corporate Debtor

Order Pronounced On: 04.10.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Ranjana Roy Gawai, Mr. Pervinder, Mr.
Shikher Upadhyay, Advs.

For the Respondent : ex-parte

ORDER

Order pronounced in open court vide separate sheets. **(IB) -116(ND)/2022**

is **allowed**

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) –116(ND)/2022**

Order 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. ORRIS PROJECTS PRIVATE LIMITED

Having Its Registered Office at:

C-3/260, Janakpuri, New Delhi – 110058.

Through Its Authorised Signatory

Mr. Naveen Sharma

..... Operational Creditor

VERSUS

M/s. GNEX HOUSING PRIVATE LIMITED

Having Its Registered Office at:

DLF Capital Greens, 15,

Shivaji Marg, New Delhi-110015.

..... Corporate Debtor

Order Pronounced On: 04.10.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Ranjana Roy Gawai, Mr. Pervinder, Mr.
Shikher Upadhyay, Advs.

For the Respondent : ex-parte

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

(IB) – 116(ND)/2022

Date of Order: 04.10.2023



1. This Application has been filed by M/s. Orris Projects Private Limited, the Applicant/Operational Creditor on 12.02.2022 before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”) for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”) against M/s. GNEX Housing Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 3,52,00,000/- (Rupees Three Crore Fifty Two Lakh Only) along with penal interest @ 18% p.a. The Date of Default in the present matter is 06.09.2021.
2. The Corporate Debtor approached the Operational Creditor representing that the Corporate Debtor is a Land Aggregator and claimed to have finalized deals for various renowned developers and thus induced the Operational Creditor to avail professional services for acquiring land parcels in and around Gurgaon to undertake real estate development projects from the Corporate Debtor.
3. For the purpose of clarity, it is made clear that originally the payment was made by M/s. The Thyme Land and Housing Pvt. Ltd. (TLHPL) to M/s. GNEX Housing Private Limited, the Corporate Debtor. The Thyme Land and Housing Pvt. Ltd. has amalgamated with M/s. Orris Projects Pvt. Ltd. on 05.07.2021 and therefore all rights and titles of M/s. Thyme Land and Housing Pvt. Ltd. now lies with M/s. Orris Projects Pvt. Ltd. (Operational Creditor), being the Successor Company.
4. The Corporate Debtor made false representations that he would identify, approach, discuss and negotiate with land-owners on behalf of the Operational Creditor and will find suitable opportunities for acquiring land parcels. Based on the false



representations and believing the same to be true, the Operational Creditor availed the services of Corporate Debtor and paid the sum of Rs. 3,52,00,000/- (Three Crore Fifty Two Lakhs Only) on 28.11.2018 for acquiring suitable parcel of Land.

5. It is the case of the Operational Creditor that despite payment of Rs. 3,52,00,000/- ("Advance"), the Corporate Debtor failed to procure any parcel of land for the Operational Creditor.
6. The said amount was duly recorded in the balance sheet of the Corporate Debtor. After, the disbursement of the advanced amount, the Applicant made multiple requests to the Corporate Debtor for the repayment of the advanced money to the tune of Rs. 3,52,00,000/-
7. The Applicant vide Legal Notice dated 26.08.2021 made a demand for refund of the abovementioned amount due from the Corporate Debtor to the Operational Creditor (M/s. Thyme Land and Housing Pvt. Ltd.). The Corporate Debtor did not reply to the said legal notice. The debt has also been admitted by the Corporate Debtor vide its Balance Sheet.
8. The Operational Creditor issued a demand notice dated 18.01.2022 under Section 8 of the Code against the Corporate Debtor at its registered office address vide a registered speed Post and vide email dated 18.01.2022 of the Respondent Company under the provisions of the Code. However, the Demand Notice sent by registered post was returned stating the reason as Address Incomplete on 24.01.2022. There was no response from the side of the Corporate Debtor to the demand notice dated 18.01.2022 under Section 8 of the Code.
9. In the present matter, the Corporate Debtor has been proceeded ex-parte vide order dated 20.07.2022 passed by this Adjudicating Authority.
10. We have heard the Ld. Counsel for Operational Creditor and also perused the documents available on record.
11. The scope of IBC is limited to see whether there is a debt due and if any default has occurred in the payment/re-payment.

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12. It is relevant to mention that in the present Application, the claim of the Operational Creditor arises for acquiring land parcels on behalf of the Operational Creditor. However, despite several requests by the Operational Creditor, the Corporate Debtor failed to make payment of the initial advance and failed to acquire land parcels.
13. We find that the debt arises out of the advance paid by the Operational Creditor to the Corporate Debtor. The said amount is a debt disbursed against the consideration owned by the Operational Creditor, hence it is covered under the definition of "Operational Debt" as defined under Section 5(21) of IBC, 2016 and the Applicant will be treated as "Operational Creditor" as defined under Section 5(20) of IBC, 2016.
14. From the bare perusal of the definition of "Operational Debt", it is amply clear that for a debt to be classified as an Operational debt, the claim amount should be in respect of sales of any goods or rendering of contractual services or employment. Admittedly, the claim made by the Applicant is in respect of the provision of services. Accordingly, the advance paid by the Operational Creditor to the Corporate Debtor be treated as an "Operational Debt" as defined under section 5(21) of the Code.
15. A bare perusal of the present application shows that it does not indicate any pre-existing dispute. Further, there are no other documents on record to show that any pre-existing dispute was raised by the Respondent/Corporate Debtor prior to the issuance of the demand notice under Section 8 of IBC, 2016. We, therefore, accept the submissions that there was not a pre-existing dispute between the Respondent/Corporate Debtor and the Applicant/Operational Creditor.
16. The Operational Creditor has established that the advance payment has been made by the Operational Creditor to the Corporate Debtor and the Corporate Debtor has failed to make the payments due to the Operational Creditor.



17. Having considered the facts and circumstances of the case, we are of the considered view that the Operational Creditor has established that the debt is due and there is a default committed by the Corporate Debtor and there is no pre-existing dispute pending on the date when the Operational Creditor sent the demand notice under Section 8 of IBC, 2016.

Therefore, we are of the view that the present application under Section 9 of the IBC, 2016 ought to be admitted.

18. In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present application fulfills the criteria laid down under Section 9 of the Code. It is accordingly, ordered as follows: -

a) The Application bearing **IB-116/ND/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **admitted**.

b) We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- i. *“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;*
- ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. *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 Financial Assets and Enforcement of Security Interest Act, 2002;*



- iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- c) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- d) Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Rajiv Malik, as the Insolvency Resolution Professional of the Corporate Debtor from the



available list of panel of Resolution Professionals as maintained by the IBBI. The registration number of the IRP is IBBI/IPA-002/IP-N00391/2018-2019/12115, the address of the IRP is B-7/18, Mianwali Nagar, Delhi Rohtak Road, Near Peera Gari Metro Station, National Capital Territory of Delhi, New Delhi-110087 and the e-mail id of the IRP is iprmalik2009@gmail.com.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, Mr. Rajiv Malik is appointed as IRP.

- e) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- h)** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
- j)** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- k)** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

No order as to costs.

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**