

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

CP (IB) 3697/MB/C-II/2018

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 6 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

Sand Stone Constructions,
a Partnership firm represented by its
partner
Mr. Narendra Mohanlal Modi.
...Operational Creditor

Versus

Spenta Builders Private Limited
[CIN: U45200MH2000PTC128004]
...Corporate Debtor

Order Delivered on: 20.12.2019

Coram:

Hon'ble Member (Judicial) : Mr. M. K. Shrawat

Hon'ble Member (Technical) : Mr. Chandra Bhan Singh

Appearances:

For the Operational Creditor : Mr. Girish Kedia, Advocate a/w
Manoj Agre & Shivangi Kedia
Advocates

For the Corporate Debtor : Mr. Nimay Dave, Advocate a/w
Ms. Sana Khan i/b Dhaval
Vussonji & Associates a/w Mr.
Director Shrivallabh Rathi

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Sand Stone Constructions ("the Operational Creditor"), a Partnership firm represented by its partner Mr. Narendra Mohanlal Modi, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Spenta Builders Private Limited ("the Corporate Debtor"). The Corporate Debtor has furnished information in Form 5 under Rule 6 of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules 2016, in the capacity of Operational Creditor on 26.09.2018.

2. In the requisite Form, Under the Head Particulars of Operational Debt the total Debt is stated to be a sum of of Rs.3,33,65,443/- (Rupees three crores thirty-three lakh sixty-five thousand four hundred forty-three only). The date of default was 25.12.2016 (as last Bill raised on 14.12.2016).
3. The Corporate Debtor is a private company limited by shares and incorporated on 31.07.2000 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Pune. Its Corporate Identity Number (CIN) is U45200MH2000PTC128004. Its registered office is at 3-A/B, Raja Bahadur Mansion, 20, 1st floor, Ambalal Doshi Marg, Fort, Mumbai-400023. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by the Applicant/Operational Creditor: -

4. The Applicant has mentioned in his submissions that the Corporate Debtor had issued two Work Orders to the Applicant. The First Order was issued on 28.12.2010 and an amended order was issued on 22.05.2015 in favour of the Operational Creditor. A copy of this Work Orders has been placed in the submissions made by the Applicant. As per these Work Orders, the Corporate Debtor was required to make 95% payment within 10 days from the date of the submission of the Bills after deducting 5% of the retention amount from each of the Bill. 50% of the retention amount to be released along with the submission of the Final Bill and the balance 50% of the retention amount will be released after completion of the defect liability within a period of one year.
5. The Operational Creditor in the requisite form has mentioned that pursuant to this arrangement, the Operational Creditor has submitted 57 Bills aggregating to a sum of Rs. 26,30,81,446/- and also 14 Bills for Extra Work for an amount of Rs.2,64,61,301/-. The Operational Creditor submits that the bills were submitted from time to time

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

CP (IB) 3697/MB/C-II/2018

which were duly certified by the Site Engineer of the Corporate Debtor and after retaining the retention money and withheld payment towards 8 pending invoices the Corporate Debtor has made payment towards all other invoices.

6. The Operational Creditor has mentioned in his submission that the Corporate Debtor has paid TDS in respect of all the invoices and therefore, it is confirmed that it is undisputed liability on the part of the Corporate Debtor. The details of the amount claimed in default and the date on which such default has occurred, in respect of each of the bills has been duly furnished by the Operational Creditor. The computation of amounts and dates of defaults in tabular form has been furnished in the requisite form by the Corporate Debtor which is as under: -

Outstanding Bills – Main Building

Bill No.	Date	Bill Amount	Balance Bill Amt.	Retention	Total Balance Payment
RA	14.12.15	46,41,005	21,97,418		21,97,418
RA 55	09.02.16	54,02,087	487,88,869		487,88,869
RA 56	11.04.16	64,32,661	57,15,197		57,15,197
Final Bill 57	14.12.16	25,75,148	22,83,328		22,83,328
Total		1,90,50,901	1,49,84,812		1,49,84,812
50% retention claimed in 57 and Final Bill				58,72,500	58,72,500
Add : Remaining 50% of Retention				58,72,500	58,72,500
Total Outstanding till Date – (A)			1,49,84,812	1,17,45,000	2,67,29,812

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

CP (IB) 3697/MB/C-II/2018

Extra Work Outstanding: -

Bill No.	Date	Bill Amount	Balance Bill Amt.	Retention	Total Balance Payment
RA 11	04.09.2015	12,68,389	11,47,737		11,47,737
RA 12	06.01.2016	24,85,904	22,96,101		22,96,101
RA 13	13.04.2016	16,42,517	14,20,138		14,20,138
Final Bill 14	02.12.2016	6,50,079	5,77,383		5,77,383
Total		60,46,889	54,41,359		54,41,359
50% retention claimed in 14 and Final Bill				5,97,136	5,97,136
Add : Remaining 50% of Retention				5,97,136	5,97,136
Total Outstanding till Date for Extra Work - (B)			54,41,359	11,94,272	66,35,631
Grand Total (A) + (B)			2,04,26,171	1,29,39,272	3,33,65,443

7. The Operational Creditor, therefore, mentions that the total claim due from the Corporate Debtor is Rs. 3,33,65,443/- (Rupees Three Crores Thirty-three Lakhs Sixty-five Thousand Four Hundred Forty-three only) and along with 12% per annum interest on the Principal amount from the date of issuance of Notice till payment or realization of the same.
8. After the completion of work on 14.12.2016, full and final bill Numbered 57 for the work done was duly verified, checked and certified for payment by the Project in charge of the Corporate Debtor. A photocopy of the bill certified by the respondent's Project

in charge and their Vice President Contract has been duly enclosed in its submissions by the Applicant Operational Creditor.

9. Invoices have been placed on record relating to Work Order and the Amended Work Order which provides for terms of payment within 10 days from submitting the bills.
10. The Operational Creditor has also in its Petition enclosed a copy of the Demand Notice in Form 3 dated 20.07.2018 on the Corporate Debtor in terms of section 8 of the IBC, which has been duly served on the Corporate Debtor by Registered Post.
11. In reply to the Demand Notice on 01.08.2018 Corporate Debtor states that there had been quality issues with your work which had been infirmed to Operational Creditor's on-site Supervisor orally and telephonically also there has been some leakage issues with some flats which were communicated to the Operational Creditor and for that the Bill amount was not paid. The Operational Creditor replied to Letter dated 01.08.2018 vide its rejoinder Letter on 14.08.2018, denied that there was no communication as regards to the quality of work. Bills were subject to the Certifying and approval of work by on-site Engineer of the Corporate Debtor. TDS on all the bills submitted has also been paid by the Corporate Debtor.
12. The copy of the Petition was served on the Corporate Debtor in advance and Learned Counsel appeared in behalf of Corporate Debtor. The Corporate Debtor has filed a reply to the Petition.

Submission by the Respondent/Corporate Debtor: -

13. The Respondent has disputed the present Application, mainly on the following grounds:
 - 13.1 The defective work done by the Applicant who has failed to construct the buildings in accordance with the specifications as agreed upon.
 - 13.2 The Applicant has disputed the R.A. Bill No. 11, as it is barred by Limitation.

- 13.3 That a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) was paid by the Respondent on 07.06.2016 which is not accounted by the Applicant and therefore, the alleged claim amount does not survive.
- 13.4 Out of the alleged claim amount of Rs. 3,33,65,443/- (Rupees Three Crores Thirty-three Lakhs Sixty-five Thousand Four Hundred Forty-three only) a sum of Rs. 16,81,306/- (Rupees Sixteen Lakhs Eighty-one Thousand Three Hundred Six only) should be deducted as the same is attributable towards the out of pocket expenses. The said out of pocket expenses were incurred by the Respondent on account of the works done which were supposed to be carried out by Applicant and were within the scope of the said work order.

Findings: -

14. This Bench heard the arguments of both sides and perused the records.
15. The Applicant i.e. the Operational Creditor as per Work Order dated 28.12.2010 which was amended by Work Order dated 22.05.2015 by the Respondent, carried out construction work and submitted various bills. It is also clear from the submission that the completed project was handed over to the Respondent i.e. the Corporate Debtor in December 2016 and the Corporate Debtors have accepted the said project as complete way back in December 2016 without raising any grievance in respect of quality of construction carried out by the Applicant.
16. Before handing over all project certain grievances were pointed out vide Letter dated 28.01.2014 by the Respondents to the Applicant. This was raised during the time when construction was going on. This was sorted out by the Applicant and was duly accepted by the Respondent prior to finally handing over all the project in the year 2016. It is also on record that all the Bills of the Applicant have been checked and certified for payment by the Site Constructor and based

on that it has also been certified by the Vice President (Contract) of the Corporate Debtor. Therefore, it is very clear that the project was complete in all respects and there was no dispute regarding the veracity of the claim.

17. It is evident from the records placed before this Bench and the submissions made that only after the Demand Notice sent by the Respondents for the payment of unpaid operational debt of Rs. 3,33,65,443/- (Rupees Three Crores Thirty-three Lakhs Sixty-five Thousand Four Hundred Forty-three only) that the Corporate debtor raised contentions regarding quality of work for the first-time grievance was made. Therefore, it is beyond doubt that there is no dispute in respect of undisputed debt due and payable and also that the disputes regarding question of construction are being made only after the demand notice was sent on 20.07.2018.
18. The Corporate Debtor raised several contentions regarding quality of work of the Operational Creditor but that is just an afterthought of the Corporate Debtor. As per Reply to Demand Notice dated 01.08.2018 the Corporate Debtor accepted that they are in 'Debt' of the Operational Creditor.
19. As far as the contention regarding non-adjustment of Rs. 50,00,000/- (Rupees Fifty Lakhs only) paid by the respondent is concerned the Applicant clearly brings out in his submissions which is in turn is corroborated by the Bank statement that this amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) has been given credit for in the total outstanding due from the Corporate debtor.
20. The contention of the Respondent that they are entitled to the claim of Rs. 16,81,306/- (Rupees Sixteen Lakhs Eighty-one Thousand Three Hundred Six only) towards out of pocket expenses is not substantiated by any records. On the contrary, it is neither provided in the Work Orders nor there is any mention in the Reply of dated 01.08.2018 of the Corporate debtor. Therefore, an erroneous claim preferred by the Corporate debtor of the Applicant.

21. The very fact that the Respondents have deducted the TDS on the Bills submitted by the Applicants and have been paid to the Income Tax Authorities, prima facie the Respondents have acknowledged and admitted the amount due to the Applicant.
22. As per section 9(3)(b) of the I&B Code, the Operational Creditor has stated on affidavit that in response to the Demand Notice the Corporate Debtor had raised dispute pertaining to work carried out by the Operational creditor which was not raised while bills were certified and accepted by the Corporate Debtor. Further, Operational Creditor states that there is no dispute in existence about the unpaid operational debt.
23. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
24. The petition bearing **CP (IB) 3697/MB/C-II/2018** filed by **Sand Stone Constructions**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Spenta Builders Private Limited [CIN: U45200MH2000PTC128004]**, the Corporate Debtor, is **admitted**.
25. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
26. Notwithstanding the above, during the period of moratorium: -
- i. 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;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
27. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
28. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
29. **Mr. Shrikant Madanlal Zawar**, Registration No. IBBI/IPA-001/IP-P-00156/2017-18/10325, having address at The Summit, Business Bay, Near Western Express Metro Station, Andheri (East), Mumbai

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

CP (IB) 3697/MB/C-II/2018

– 400093, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

30. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
31. The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one 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).
32. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
33. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
34. Ordered accordingly.

Sd/-

**CHANDRA BHAN SINGH
Member (Technical)**

20.12.2019
SAM

Sd/-

**M.K. SHRAWAT
Member (Judicial)**