IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.100/BB/2021
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Shapoorji Pallonji and Company Private Limited,
Registered Office at:
70, Nagindas Master Road
Fort, Mumbai MH 400 023

... Petitioner/Operational Creditor

Versus

Ozone Urbana Infra Developers Private Limited,
Registered Office at:
No. 38, Ulsoor Road
Bangalore 560 042 ... Respondent/Corporate Debtor

Order delivered on: 13th December,2022

Coram: Hon'ble Shri. Kishore Vemulapalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Ms. M. Sanjana

For the Respondent : Shri Perikal K Arjun

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 30.08.2021 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Shapoorji Pallonji and Company Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate

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Corporate Insolvency Resolution Process against M/s. Ozone Urbana Infra Developers Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 2,00,85,907/-(Rupees, Two Crore Eighty-Five Thousand, Nine Hundred and Seven only).

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:

3. The Operational Creditor is a company incorporated on 23.01.1943 under the Provisions of the Companies Act, 1913, and is a global leader in engineering and construction, infrastructure, real estate, water, energy and financial services. The Corporate Debtor was incorporate in 2006 under the provisions of the Companies Act, 1956 and is engaged in the construction and development of residential and commercial projects.

4. It is submitted that on 26.06.2015, the Petitioner entered into a construction contract ("Belvedere Contract"/ "Contract") with the Respondent for the construction of "Urbana Belvedere Bangalore" ("Belvedere Project" or "Project"), a residential project in Bangalore, at a total Contract value of INR 23,02,39,124/-.

5. It is further submitted that the Respondent has certified the Belvedere Project as complete to its satisfaction as on 02.12.2019 after inspection of the works executed by the Petitioner. Further, the respondent did not raise any pending defects or any other issues with the performance of the works by the Petitioner.

6. It is submitted that the Petitioner had raised Running Account Bills on a monthly basis through the course of the Belvedere Project, and under the terms of the contract, the RA bills were required to be certified and 75% of amounts have to be paid by the Respondent within 15 days of presentation of the said Bill. Further, the remaining 25% of each RA Bill was to be paid within 28 days of certification of the Bill, which was to be certified within 15 days from the date of presentation of the said Bill.

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7. It is submitted that despite having certified all RA Bills issued in respect of Belvedere Project by the Petitioner, the Respondent has failed to make payments under RA Bills 39 to RA Bill 44 (Final RA Bill) issued during the period February 2019 to July 2019 for a total amount of INR 2,00,85,907/-. The details of the date from which the debt fell due are as follows:

RA Bill No	Bill Submission date	Outstanding dues (INR)	For 75% (15 days from submission)	For 25% (43 days from submission)
39	01.01.2019	2,23,774	16.01.2019	13.02.2019
40	01.02.2019	84,72,624	16.02.2019	16.03.2019
41	01.03.2019	41,39,197	16.03.2019	13.04.2019
42	20.03.2019	13,82,246	04.04.2019	02.05.2019
43	30.04.2019	17,98,639	15.05.2019	12.06.2019
44 (final)	12.07.2019	40,78,429		12.08.2019

8. It is submitted the Corporate Debtor had repeatedly admitted its liability to pay the outstanding dues in respect of the said Project. Further, on 12.03.2020, the Corporate Debtor addressed a letter to the Operational creditor admitting its liability to make payments to the Operational Creditor under the Belvedere and Pavilion Contracts to a combined total principal amount of INR 5.07 crore and agreeing to compensate the operational creditor towards interest calculated on delayed payments. Further, in spite of several reminders, the dues remain outstanding. The Petitioner issued demand notice on 27.07.2021 to the Respondent demanding payment in respect of unpaid operational debt for a sum of INR 2,00,85,907/-. It is submitted that the Respondent neither responded to the said demand notice nor paid the outstanding operational debt.

9. On 25.03.2022, the Present Petition was disposed of as withdrawn on the basis of settlement arrived at by the parties. The relevant portion of the order dated 25.03.2022 in I.A 108 of 2022 is extracted below:

"the instant I.A is allowed and accordingly, C.P. (IB) No. 100/BB/2021 is disposed of in terms of the Settlement Agreement dated 19.02.2022 with a liberty to Petitioner to seek revival of the C.P, if the

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Respondent/ Corporate Debtor fail to comply any terms of the Settlement Agreement."

10. However, a fresh application vide I.A 283/2022 was filed by the Operational Creditor on 18.07.2022 for reviving the company petition alleging that the Respondent failed to company with the terms of the settlement agreement. It is further submitted in the I.A that the petitioner has received a total of INR 50,00,000/- as part of the Settlement Amount. Further, the said sum has been adjusted against the Belvedere principal operational debt of INR 2,00,85,907 in the present proceedings. The outstanding principal operational debt in the present proceedings is INR 1,50,85,907/- which continues to remain in excess of the threshold of INR 1,00,00,000/- prescribed under Section 4 of the Code for initiation of CIRP. In the circumstances the said I.A was allowed and disposed of vide order dated 22.08.2022, and the Company Petition was restored to its original files.

11. The notice is this revived Company Petition was issued on 22.08.2022 and the Learned counsel of the respondent accepts notice and sought time to file reply. The matter was listed on 27.09.2022 and 16.11.2022 The counsel for the respondent despite availing substantial time to file his reply chose not to file the same.

12. Heard Learned Counsels for the Petitioner and the Respondent and the matter was reserved for orders on 16.11.2022, directing the Petitioner to file two-page note regarding the relevant documents along with Page Nos and dates, relied upon. The compliance to the said order was made vide diary No 4971 and the same is taken on record.

13. It is observed by this Tribunal that as per Part IV of Form No.5 the Amount in default was Rs. 2,00,85,907/-, and interest amount is Rs. 78,27,684/- as on 30.06.2021 calculated at the rate of 18% per annum on the unpaid Principal Amount. Further, even after the entering into the settlement agreement by the parties, the Corporate Debtor managed to repay only an amount of Rs 50,00,000/- which has been adjusted against the Belvedere Project Principal Operational Debt by the Petitioner. Further in the revived petition the outstanding amount

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is Rs 1,50,85,907/- which continues to remain in excess of the threshold limit as prescribed under Section 4 of the Code.

14. It is further observed that the Respondent were required to certify the RA Bills and 75% of amounts therein to be paid within 15 days of presentation of the said Bill and the remaining 25% of each RA bill was to be paid within 28 days of certification of the bill. Further the date of default falls on the following dates: 16.01.2019- 13.02.2019, 16.02.2019-16.03.2019, 16.03.2019- 13.04.2019, 04.04.2019-02.05.2019, 15.05.2019- 12.06.2019 and 12.08.2019. The final RA bill fall due on 12.08.2019. The Company Petition was filed on 30.08.2021 which is well within the limitation. The Demand Notice under section 8 of the IBC, 2016 was served to the Respondent on 27.07.2021.

15. Further, at no stage of the proceeding the respondent has raised any dispute with regard to the amount outstanding. And it is seen from the various email communications produced by the petitioner that the respondent has acknowledged the liability to pay the unpaid debt in respect of the Belvedere Project. The Petition is complete and has been filed under proper form. The debt amount is more than Rupees One Crore and Default of the Corporate Debtor to repay the unpaid debt in respect of Belvedere Project is established

16. Accordingly this adjudicating authority is of the considerate opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against the Belvedere Project of the Corporate Debtor. Therefore, the instant Company Petition bearing CP (IB) No. 100/BB/2021 is admitted against the Belvedere Project of the Corporate Debtor and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

a. The institution of suits or continuation of pending suits or proceedings against the Project of Corporate Debtor including execution of any judgment, decree or order in

b. any court of law, tribunal, arbitration panel or other authority;

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c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein,

d. 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;

e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;

g. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;

h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

17. This bench appoints Mr G.S Narasimha Prasad Registration No. IBBI/IPA-003/IP-N00325/2020-2021/13459 having registered address: F 3, Vijay Enclave, 33/2-4, 8th Main, Malleshwaram, Bangalore, Karnataka ,560003 Contact No: 9902027031 e-mail gsnprasad@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section

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15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.

18. 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 approval by the Committee of Creditors.

19. The Interim Resolution Professional shall after collation of all the claims received against Belvedere Project of the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

20. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)