

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAIBENCH**

**CP (IB) NO. 3723 OF 2019**

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE  
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER  
THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(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**

**Nuvoco Vistas Corporation Limited**  
Equinox Business Park Tower-3,  
East Wing, 4<sup>th</sup> Floor, Off. BandraKurla  
Complex, LBS Marg, Kurla (West),  
Mumbai-400070

....Operational Creditor

versus

**Deserve Construction Private Limited**  
Having its registered office address at:  
Deserve, CST Road Junction, Opp.  
University of Mumbai Premises,  
KalinaSantacruz (E), Mumbai-400098

....Corporate Debtor

**Order dated: 30.04.2021**

**Coram:**

**Hon'ble Shri. H.V. Subba Rao, Member (Judicial)**

**Hon'ble Shri. Shyam Babu Gautam, Member (Technical)**

**Appearance:**

**For the Operational Creditor:** Ms. Saloni Sulakhe, Advocate

**For the Corporate Debtor:** Ms. Shraddha Swarup, Advocate

i/b Bathiya Legal

**Per: Shri. Shyam Babu Gautam, Member**

**ORDER**

1. The above company petition is filed by Nuvoco Vistas Corporation Limited (hereinafter called as 'Operational Creditor') against Deserve Construction Private Limited(hereinafter called as 'Corporate Debtor') for initiation of Corporate Insolvency Resolution Process (CIRP) for non-payment of the due amount in respect of the invoices raised and interest thereon total amounting to Rs.39,91,336/-. The representatives for the Corporate Debtor were present on various occasions there was no reply filed in the present

matter by the Corporate Debtor even though the matter came up on board for several times since its filing in the year 2019.

2. The brief facts of the case are as below:
  - i. The Operational Creditor is a part of the Indian Construction landscape since 1999 and is engaged in the business of, *inter alia*, transporting and marketing of cement in the state of Maharashtra. The Corporate Debtor is a Private Limited Company incorporated on 15.12.2010 and is involved in manufacture of chemical products.
  - ii. The Corporate Debtor required supply of cement slurry and ready-mix concrete of M-25 (Goods) for its construction site at Lucknow. For this purpose the Operational Creditor submitted its quotation to the Corporate Debtor for the supply of Goods at the aforementioned site. Based on this quotation, the Corporate Debtor issued a Purchase Order dated 22.06.2018 in favour of the Operational Creditor for supply of the said Goods.
  - iii. Accordingly, from time to time as per the instructions of the Corporate Debtor, the Operational Creditor sold, supplied and delivered the requisite goods at the site of the Corporate Debtor and this all was acknowledged by the representatives of the Corporate Debtor. Invoices were raised for the same and as per the invoices, the payment would have to be made within 30 days from the date of each invoice. But the amounts were not paid by the Corporate Debtor.
  - iv. Therefore, as per the requirement of accounting practice, the Operational Creditor vide its email dated 11.04.2019 intimated the Corporate Debtor that as per their books of account, a debit balance of Rs.32,03,100/- as on 31.03.2019 is reflecting and therefore, a request for payment of the said amount was made. In response to this email, the Corporate Debtor replied vide its email dated 11.04.2019 *inter alia* confirming the credit balance of Rs.32,03,100/-. A copy of these emails is annexed as Annexures 'E' and 'F' respectively.
  - v. Despite several reminders and requests for payment of the due amount, the Corporate Debtor failed to make payments and thus, the Operational Creditor sent a Demand Notice dated 14.08.2019. To this Demand Notice, the Corporate Debtor

replied on 22.08.2019 seeking time to verify its contents and seek advice from their advocates and later on 29.08.2019, the Corporate Debtor replied to the Demand Notice thereby admitting the claim and seeking time to pay the same in two installments i.e. Rs.15,00,000/- by 15.10.2019 and balance 17,00,000/- by 15.12.2019.

- vi. The Advocates of the Operational Creditor vide their letter dated 09.09.2019 responded to the said letter of the Corporate Debtor dated 29.08.2019 thereby granting time to the Corporate Debtor to pay the 1<sup>st</sup> installment within 7 days and the 2<sup>nd</sup> within 15 days from the date of receipt of the said letter. But this letter was undelivered with a remark "Left" and therefore, the advocates of the Operational Creditor sent an email dated 19.09.2019 on the registered email address of the Corporate Debtor as was available on the MCA Records. To this email, the Corporate Debtor responded vide an email dated 20.09.2019 stating that the said letter dated 09.09.2019 has been forwarded to management for their consideration and they will respond in due course of time. But the Corporate Debtor has not till date responded to the said letter.
  - vii. Therefore, this petition was filed by the Operational Creditor and after filing of this present petition, the Corporate Debtor has paid an amount of Rs.16,00,000/- which is admitted by both the parties.
3. The date of default is 01.08.2018 i.e. 30 days from the date of issuance of the first outstanding invoice dated 01.06.2018. The debt amount when the petition was filed totaled to Rs.39,91,336/- (comprising of outstanding principal sum of Rs.32,03,100/- and interest of Rs.7,88,236/- upto 13.08.2019 together with interest at the rate of 24% per annum from 14.08.2019 on the principal amount till payment of dues by the Corporate Debtor). Later after the filing of this petition an amount of Rs.16,00,000/- was paid by the Corporate Debtor. This Bench vide its order dated 16.04.2021 has recorded the same. The order runs as follows:

*"Counsels on both sides are present through virtual hearing. It is an admitted case on both sides that the respondent has paid to amount of Rs. 16 lakhs after filing the above company petition*

*and the respondent/corporate debtor's proposes to pay the remaining amount in instalment is not accepted by the petitioner. Therefore, nothing is to be adjudicated in the above company petition. List this matter on 30.04.2021 for order."*

It is clear from the above that 16,00,000/- has been paid and remaining 16 lakh odd amount is due and payable by the Corporate Debtor. We believe that by paying the said amount of Rs.16,00,000/-, the Corporate Debtor has accepted its liability and also had accepted its liability vide its letter dated 29.08.2019 i.e. the letter in response to the Demand Notice.

4. Therefore, this is an admitted case of debt and default and also, there is no reply filed by the Corporate Debtor despite of listing this matter on several occasions since its filing in the year 2019. It is also observed that the Corporate Debtor was buying time under the garb of settlement and sought time to file consent terms. In view of the facts and circumstances, this bench is of the considered opinion that nothing has to be adjudicated in the above company petition and is liable to be admitted.
5. Accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- (a) The above Company Petition No. (IB) -3723(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Deserve Construction Private Limited.
- (b) The applicant has annexed Form-2 along with the consent from the proposed Interim Resolution Professional (IRP) in the petition. Therefore, this Bench is appointing **Mr. Hemantprakash Shyamsundar Jain** (hpsjca@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00883/2017-2018/11480 as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- (c) The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (g) That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- (j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

**Sd/-**

**H V SUBBA RAO**  
**Member (Judicial)**