

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH- III**

IB-292/ND/2021

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Balaji Durobuild Private Limited

...Petitioner/Operational Creditor.

Versus

M/s Sandwoods Infratech Projects Pvt. Ltd.

...Corporate Debtor.

Delivered on 25.10.2021

Coram:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

Appearances:

Operational Creditor : Mr. Madhusudan Sharma (Advocate)

Corporate Debtor: Mr. Parminder Singh Bhullar (Advocate)



ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-292/ND/2021 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Sandwoods Infratech Projects Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

- a. The operational creditor has constructed flats at the site of the Corporate Debtor and raised invoices from time to time in terms of tender agreement dated 28.08.2014 awarded by the Corporate Debtor.
- b. It is submitted that the outstanding amount of debt to the tune of Rs. 2,39,63,134.58/- fell due against unpaid bills raised by the operational creditor up to 30.06.2019. The demand notice u/s 8 read with clause (a) of sub-rule 5 of the Code sent on 22.05.2021 remained unanswered.



- c. It is further submitted that no dispute for outstanding demand was ever raised by the Corporate Debtor. The corporate debtor has failed to pay its operational debt. Hence, prayed that the application under consideration may be admitted.
3. The Corporate Debtor has also appeared and filed the reply to the petition under consideration and submitted that the corporate debtor has failed to make payments as agreed has defaulted in making payments since 2018. It is stated that the Corporate Debtor has faced a huge amount of loss in its business due to poor demand in the market and the impact of Covid-19 pandemic because of that the corporate debtor could not clear the bills of operational creditor. The Corporate Debtor has also relied on the judgment of Hon'ble NCLAT in the matter of **Om Logistics Limited & Anr. Vs. M/s Ryder India Pvt. Ltd.** It is held by the Hon'ble Appellate Tribunal that:

"the operational creditor has used this forum for recovery and got CIR process kickstarted with malicious intent for the purpose other than the resolution of insolvency of the Corporate Debtor, which is not permissible under the IBC, 2016. As per the Code, if any person [as defined under Section 3(23) of the IBC] initiates the Insolvency Process fraudulently or with malicious intent for any purpose other than for the resolution of the insolvency, or liquidation, such an act is punishable under Section 65(1) of IBC, 2016."



4. We have perused the petition of the Operational Creditor and Reply filed by the Corporate Debtor. The Corporate Debtor has relied on Hon'ble NCLAT judgment, however, it failed to prove the malicious intention of the Operational Creditor behind the filing of the captioned Petition, hence, the judgment of Hon'ble Appellate Tribunal is not applicable in the present case. Furthermore, the Corporate Debtor has admitted the default in making payments since 2018, therefore, this adjudicating authority is inclined to admit this application and initiates the process of CIRP of the Corporate Debtor. The Operational Creditor has proposed the insolvency resolution professional namely, Mr. Ravinder Kumar Goel and Form-2, Consent form along with valid AFA is also annexed with the Petition. This Adjudicating Authority, hereby, appoints Insolvency Professional namely, Mr. Ravinder Kumar Goel having IBBI registration IBBI/IPA-001/IP-P00705/2017-2018/11252 with e-mail ravinderkumargoel@yahoo.in as Interim Resolution Professional.
5. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.

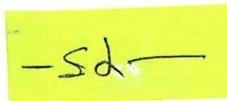


6. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
7. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016



shall not apply to such transactions, as notified by the central government.

8. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.
9. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
10. The order is pronounced by the Adjudicating Authority through video conferencing.



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



(P.S.N. PRASAD)
MEMBER (JUDICIAL)