

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

IB No. 726/ND/2018
TA No. 70/2018

CORAM: SHRI R. VARADHANRAJAN, MEMBER (JUDICIAL)

ORDER PRONOUNCED ON: 02.11.2018

IN THE MATTER OF SECTION 9 OF IBC, 2016.

IN THE MATTER OF:

**Manohar Karamchandani,
40, Katewa Mansion,
Shastri Nagar Shopping Centre,
Jaipur-302016 (Rajasthan)**

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

**Balajidham Buildestates Pvt. Ltd.
3rd Floor, E-295-296, Lalkothi Scheme,
Behind New Vidhan Sabha,
Jaipur-302015 (Rajasthan)**

...CORPORATE DEBTOR/RESPONDENT

FOR PETITIONER (S) : NARESH KUMAR SEJVANI, ADV.

FOR RESPONDENT(S) : AMOD AGARWAL, DIRECTOR



ORDER

1. This is an application filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter for the sake of 'brevity') IBC, 2016 by the petitioner in the capacity as an Operational Creditor against the respondent as a Corporate Debtor. The transaction leading to the claim, it is averred by the Operational Creditor arises out of a Selling Agent Agreement entered into between the Operational Creditor and the Corporate Debtor and that by virtue of the said Selling Agent Agreement the Operational Creditor is entitled to a sum of Rs. 6,49,575/- against invoices raised from 01.10.2015 to 30.06.2016 and towards interest at the rate of 12 per cent and that further a sum of Rs. 300,000/- is also required to be reimbursed, which was initially paid as a security deposit arising out of Selling Agent Agreement dated 01.06.2013 and that the aggregate amount thereby totals to Rs. 10,08,037/- being the claim made in the application.
2. It is further averred that the respondent-Corporate Debtor is engaged in the business of promotion of real estate projects and that the Operational Creditor was successful in selling sum of the properties/units developed by the Corporate Debtor and that the Operational Creditor is entitled to the agreed percentage of commission promised to him vide the agreement dated 01.06.2013 and that despite repeated reminders since the amount was not paid by the Corporate Debtor, a Notice of Demand under Section 8 of



IBC, 2016 was issued to the Corporate Debtor on 07.03.2018 and that despite service of the notice of demand, the Corporate Debtor has not paid the un-paid amount of the invoices raised nor reply to the notice by way of a Notice of Dispute as required to be done under the provisions of IBC, 2016 by a Corporate Debtor in order to stave off the process of Insolvency initiated by an Operational Creditor. In view of the non-payment or lack of any response on the part of the Corporate Debtor it is averred, this petition has been preferred before this Tribunal seeking for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

3. The matter was originally filed before the NCLT New Delhi, Bench of this Tribunal, however, consequent to the Constitution of Jaipur Bench, pursuant to Notification No. S.O 3145(E) dated 28.06.2018 issued by the Ministry of Corporate Affairs, Government of India, the above Company Petition came to be transferred from NCLT, New Delhi to NCLT, Jaipur Bench and pursuant to the transfer was listed before this Jaipur Bench of the Tribunal on 26.07.2018 wherein, it is seen from record of proceedings that both the parties were duly represented by the respective counsels and pleadings were directed to be completed and the matter was to be taken up on 23.08.2018.
4. It is seen that a representation in the meanwhile was made on behalf of the Corporate Debtor by its director, Mr. Amod Agarwal that the Corporate



Debtor is not in a position to answer the claim of the petitioner whereupon this Tribunal directed the Corporate Debtor to file its provisional financial statements as on 31.7.2018 and also stating by way of an affidavit that the Corporate Debtor is unable to pay or otherwise contest the claim. Finally, this matter was heard on 29.09.2018 and the petitioner was represented by its learned counsel and the Corporate Debtor by its director 'Amod Agarwal'. Submissions were heard on behalf of the petitioner as well as the Corporate Debtor. Learned counsel for the petitioner took us through the documents filed along with the application/petition, namely Selling Agent Agreement as entered into between the parties annexed as Annexure- A-7 giving rise to the claim which shows that it has been entered into between the parties on 01.06.2013 and as per Clause-A of the said agreement the Operational Creditor was required to make an effort in selling the units of the Corporate Debtor and by virtue of Clause-B for such an effort and the Corporate Debtor was required to pay a commission of Rs. 150 per sq. ft. on the total built-up area of the flats sold and in relation to a project titled "Weekend Campus" for which the rate of commission was fixed at 10 per cent of the total sale consideration and the commission become payable as per Clause-C.

5. Thus, upon registration of the property and the payment of commission was required to be made by the Corporate Debtor after sixty days of

receiving the bill. It also disclosed in the agreement that a sum of Rs. 3,00,000/- was deposited by the Operational Creditor to the Corporate Debtor and the said deposit was to interest free and repayable.

6. Pursuant to the said agreement it is also pointed out that invoices were duly raised in view of successful completion of sale of units and that the same has been annexed as Annexure-5 to the typed set filed along with the application. A copy of the demand notice is also annexed as Annexure-6, the tracking report evidencing its service upon the Corporate Debtor is annexed at Page No. 59, which shows that the item has been delivered to the Corporate Debtor. From the records as brought out before this Tribunal it clearly shows that the Corporate Debtor is not in a position to oppose the claim as raised by the Operational Creditor and as disclosed in the affidavit filed by Mr. Amod Agarwal, son of Mr. Ramesh Chand Agarwal who is a director of the Company, dated 23.08.2018 and as per the admission of the Corporate Debtor. It is evident that the Corporate Debtor is not in a position to answer to the claim of the Operational Creditor, which clearly points out to Insolvency of the Corporate Debtor. Documents in support of the petition also reinforces the same as required under the provision of IBC, 2016 read along with the attendant rules.
7. The Operational Creditor in Part III of the application filed, has proposed the name of Miss. Sarita Duck having Registration No. IBBI/IPA-002/IP-

N00409/2017-2018/11201. The consent of the proposed Interim Resolution Professional (IRP) is also annexed as Annexure-4 along with the typed set filed along with the application along with the certificate of registration issued by IBBI and it is also seen from the perusal of the certificate of registration that the registration of the proposed IRP is effective from 28th November, 2017.

8. Taking into consideration all the aspects and the records as well as the statements made by the Corporate Debtor based on affidavit that it is unable to satisfy the claim as made by the Operational Creditor, this petition stands admitted as envisaged by Section 9 of the IBC, 2016 as against the Corporate Debtor. Moratorium in terms of Section 14 of IBC, 2016 will commence from the date of this order admitting the petition and the proposed Interim Resolution Professional (IRP) proposed by the Operational Creditor, namely, Miss. Sarita Duck with Registration No. as noted above is appointed as an Interim Resolution Professional (IRP) to commence and carry forward the CIRP against the Corporate Debtor. In terms of Section 17 of IBC, 2016, the powers of the Board of Directors of the Corporate Debtor shall stand suspended and the IRP appointed by this Tribunal as proposed by the Operational Creditor will take charge of affairs of the Company henceforth.



9. In terms of Section 19 of IBC, 2016, the Board of Directors of the Corporate Debtor whose powers stands suspended as well as its personnel shall fully co-operate with the IRP appointed herein and due co-operation shall also be extended to the IRP by the employees, associates and professionals rendering their service to the Corporate Debtor. IRP to exercise the powers within the confines of IBC, 2016 and shall perform all duties as behoved upon IRP under the provisions of IBC, 2016 as well as all attendant rules and regulations. without any let and shall also file the status report in relation to the progress of the CIRP of the Corporate Debtor. A copy of this order shall be duly communicated to the Operational Creditor, Corporate Debtor as well as to learned IRP, namely, Miss Sarita Duck at the earliest not later than three days from today. Copy of this order shall also be forwarded to IBBI for its records. Under the above circumstances, this application stands admitted.

—Sd—

(R.Varadharajn)
Member (Judicial)

Vishwajeet Singh