

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No.(IB)-783(ND)/2022

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:

M/s. Conquerent Control Systems Private Limited
.... **Applicant/ Operational Creditor**
Vs.

M/s. Ansal Crown Infrabuild Private Limited
.... **Corporate Debtor**

CORAM:

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

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 21.04.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application is filed by M/s. Conquerent Control Systems Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') having CIN: U31903HR2006PTC036256 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Ansal Crown Infrabuild Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs 2,52,19,405/- (Rupees Two



Crores Fifty Two Lakhs Nineteen Thousand Four Hundred and Five Only) which includes Rs.1,21,19,242/- as principal amount due and Rs. 1,31,00,163/- as outstanding interest.

2. The Respondent Company M/s. Ansal Crown Infrabuild Private Limited having CIN: U45201DL2006PTC147058 was incorporated under the provisions of the Companies Act, 1956 and is having its registered office situated at 118, UFF, Prakash Deep Building 7, Tolystoy Marg, New Delhi – 110001. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Succinctly stated, facts of the present case as averred by the applicant are that the Corporate Debtor had placed various purchase orders with the Operational Creditor/Applicant for procurement of electrical equipment including spares of control panel from 2015 till 2022. It is submitted that, against the said purchase orders, the Operational Creditor/applicant had duly supplied the electrical equipment to the Corporate Debtor, the quality of which was never disputed by the Corporate Debtor.
4. Further, it is submitted that the applicant had raised several invoices, to the tune of Rs.5,04,12,534/-, the first invoice being raised on 18.08.2015 and the last invoice dated 19.05.2022, towards the supply of electrical equipment pursuant to purchase orders and the said invoices are due immediately for the payment. It is submitted that there is a running account maintained with the Corporate Debtor and the Corporate Debtor had made a total payment of Rs.3,82,93,292/- till date against the total outstanding amount and as such an amount of Rs. 1,21,19,242/- is outstanding towards principal amount.



5. It is submitted that despite repeated reminders and requests from the Operational Creditor, the Corporate Debtor failed to make any payment in respect of the outstanding invoices. The applicant had sent a Demand Notice dated 06.10.2022 to the Corporate Debtor under Section 8(1) of the Code, 2016 demanding the outstanding operational debt of Rs. 2,52,19,405/-. The Corporate Debtor had sent a reply dated 13.10.2022, in which the Corporate Debtor has not denied the said debt and has merely raised a vague and unsubstantiated dispute with respect to the quality of goods supplied. Accordingly, admission of the present Application under Section 9 of the Code, 2016 is prayed.
6. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor submits that the Corporate Debtor is a well-known company and is currently developing a project namely "Ansal Crown Heights" situated at Faridabad, Haryana and a sum of INR 263.38 Crores is invested in the project which has gainfully employed 350 people. It is submitted that because of reasons beyond the control of the Corporate Debtor, there were certain delays in completion of the project, owing to which certain homebuyers had filed a Consumer Complaint before the Hon'ble NCDRC and Consumer Case No, 86/2018 was partly allowed vide order dated 28.02.2022 wherein a heavy delay compensation was imposed on the Corporate Debtor. It is submitted that because of the said order by Hon'ble NCDRC, the funding facility as availed by the Corporate Debtor from SWAMIH was recalled because of which the Corporate Debtor is unable to make payments to its vendors and labours.
7. Further, it is submitted that the alleged default amount as alleged in the Company Application consists of an exorbitant interest amount of Rs.1,31,00,163/- at the rate of 18% which is not payable by the Corporate Debtor as the interest component was never agreed upon between the parties. It is submitted that at the time of agreement, charging interest on



delayed payment was never agreed upon between the parties and no agreement or document is presented by the applicant to show that the interest was payable to the applicant by the Corporate Debtor.

8. It is further submitted that the present Company Application do not aim to resolution of the Corporate Debtor but is a malafide attempt of the applicant to recover money from the Corporate Debtor. To support the contention, the Corporate Debtor had placed reliance on case **Prowess International Private Limited v. Parker Hannifin India Private Limited [2017 SCC OnLine NCLAT 388]** and **Om Logistics Ltd. & Anr. V. Ryder India Pvt Ltd. [I.A. No. 2038/ND/2020 in C.P. No. (IB) 1724(ND)/2019] dated 29.07.2021.**
9. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.
10. From perusal of the records and going through the submissions of the parties, it is apparent that the factum of debt exceeding the pecuniary threshold and default in respect thereof has not been denied by the Corporate Debtor. The sum and substance of the defence put forth by the Corporate Debtor in its reply is that the Corporate Debtor is in the process of building a project namely "Ansal Crown Heights", construction of which got delayed due to reasons beyond its control and consequently on a complaint filed by a certain group of homebuyers, the Hon'ble NCDRC had imposed a delay compensation on the Corporate Debtor. We are of the considered view that the defence put forth is not relevant to consider the maintainability of the present application. It is a settled position of law, that an application under Section 9 of the Code, 2016 has to be



mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.

11. The Hon'ble Supreme Court judgement in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34]**, have categorically laid down what the Adjudicating Authority has to examine in an Application under Section 9, which is as follows:-

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

12. From the records, it is seen that the applicant had raised invoices towards the supply of electrical equipment to the Corporate Debtor pursuant to the purchase orders and the receipt of the invoices were duly signed and stamped by the Corporate Debtor. Moreover, the Corporate Debtor had failed to place on record any document or correspondence to show that there exists a pre-existing dispute as to the quality, quantity or existence of debt between the parties any time prior to the issuance of the statutory Demand Notice dated 06.10.2022 to the Corporate Debtor.



13. Further, on perusal of the Corporate Debtor's Reply to the Demand Notice dated 13.10.2022, we observe that in this reply a mere statement was made by the Corporate Debtor that the goods were defective. However, the Corporate Debtor had neither in the Demand Notice's reply dated 13.10.2022 nor in the counter affidavit dated 19.12.2022 to the present application had placed on record any correspondence or document to substantiate their defence of pre-existing dispute. Therefore, the contention of the pre-existing dispute attempted to be raised by the corporate debtor is a feeble one, unsupported by any evidence and is nothing but a moonshine which cannot be held to be a valid ground of rejection of the instant application.
14. With regard to the corporate debtor's submission of charging of unilateral interest @ 18% on the delayed payment, we observe that the covenants of the invoices clearly mention that the Interest as per MSME Act, 2005 shall be applicable. The Hon'ble NCLAT in case **Prashat Agarwal v. Vikash Parasrampuria, [Company Appeal (AT) (Ins) No. 690 of 2022, judgement dated 15.07.2022]**, observed that *"it is clear from the facts that the total amount for maintainability of claim will include both principal debt amount as well as interest on delayed payment which was clearly stipulated in the invoice itself."* Therefore, the contention of the Corporate Debtor that the interest amount cannot be charged is not acceptable. Furthermore, even if for argument's sake, the amount of interest claimed by the Applicant herein is subtracted from the total claim, the principal amount (Rs.1,21,19,242/-) itself is above the mandatory pecuniary threshold of Rs.1 Crore as stipulated under Section 4 of the Code, 2016.
15. Thus, having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements



as prescribed under Section 9(5)(i) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)-783/(ND)/2022)** stands admitted and the CIRP is hereby commenced against M/s. Ansal Crown Infrabuild Private Limited.

16. The applicant in Part -III of the application has proposed the name of Mr. Shamsher Bahadur Singh as IRP. Accordingly, this bench appoints Mr. Shamsher Bahadur Singh having registration number IBBI/IPA-003/0341/2021-2022/13623 and email id – shamsher_cs@yahoo.co.in as the Interim Resolution Professional of the corporate debtor. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and valid AFA is attached with the application.
17. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Shamsher Bahadur Singh to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor
18. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
“(a)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;



(b) Transferring, encumbering, alienating or disposing of by the corporate debtor 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 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;

(d) 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) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

19. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
20. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and



cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.

21. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
22. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
23. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **C.P.(IB)/783/2022 stands admitted.**

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)

