



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No.945/MB/2020

[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:

VL ASTRA ENGINEERS (INDIA) PRIVATE LIMITED

[CIN: U74210MH2003PTC13936]

208 Doshi Chambers

Plot No.29, Nandlal Jani Road

Dana Bunder, Masjid (East)

Mumbai-400009

Maharashtra.

...Operational Creditor

Vs.

AUBREY BUILDERS PRIVATE LIMITED

[CIN: U74900MH2015PTC260683]

Unit No.49/2360, Bandra Shri Sai Krupa CHS Ltd.

Gandhi Nagar, Bandra (East)

Mumbai-400051

Maharashtra.

...Corporate Debtor

Pronounced: 30.10.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Operational Creditor: Adv. Krupa Parekh.

Corporate Debtor : None.

**ORDER*****[PER: SANJIV DUTT, MEMBER (TECHNICAL)]*****1. BACKGROUND**

- 1.1 This Application bearing C.P.(IB) No.945/MB/2020 was filed by VL Astra Engineers (India) Private Limited, the Operational Creditor on 19.03.2020 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 hereinafter referred to as “the AAA Rules”) for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Aubrey Builders Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor is carrying on its business as electrical and mechanical engineers, designers and contractors. The Corporate Debtor is a builder and real estate developer. The Corporate Debtor issued two Amendment Work Orders on 17.10.2016 and 21.03.2017 to the Operational Creditor for supply, installation, testing and commissioning of Fire Fighting System at its project named “Delsol” located at Bandra West, Mumbai. The original work order was dated 18.04.2016.
- 1.3 Pursuant to the Fire Fighting work being done at the above project, the Operational Creditor raised several Invoices/RA Bills totalling Rs.88,01,531/- (rounded off) on the Corporate Debtor from July, 2016 onwards. The Corporate Debtor made payments from time to time but failed to clear the total dues of the Operational Creditor.



- 1.4 The Operational Creditor has claimed a sum of Rs.33,98,247/- (Thirty-Three Lakhs Ninety-Eight Thousand Two Hundred and Forty-Seven Rupees) to be in default in Part-IV of the Application till 23.03.2017 and further interest @24% p.a. from the date of default till the date of realisation. The dates of default are stated to be 06.02.2017 and 08.02.2017.
- 1.5 The Operational Creditor issued Demand Notice dated 29.10.2019 to the Corporate Debtor, as required under Section 8(1) of the Code seeking payment of outstanding operational debt within 10 days of receipt of the notice. The Demand Notice was sent through Speed Post on 04.12.2019 and delivered to the Corporate Debtor on 06.12.2019. However, the Corporate Debtor neither furnished any reply nor made any payment of the aforementioned operational debt that was due and payable to the Operational Creditor. Therefore, the Operational Creditor preferred the present Application seeking the commencement of CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF OPERATIONAL CREDITOR

- 2.1 The Corporate Debtor issued two Amendment Work Orders for the supply, installation, testing and commissioning of the Fire Fighting System from the Operational Creditor. Pursuant to the completion of the Fire Fighting work by the Operational Creditor, several invoices were raised on the Corporate Debtor the details of which are as follows:-

i. Amendment Work Order dated 17.10.2016:

S.NO.	DATE OF INVOICE	INVOICE NUMBER	AMOUNT
1.	16.07.2016	374 (RA 1)	Rs. 8,93,688.75/-
2.	16.07.2016	374 (RA 1)	Rs. 10,40,142.15/-
3.	28.10.2016	739 (RA 2)	Rs. 6,09,116.94/-
4.	14.11.2016	851 (RA 3)	Rs.17,23,674.60/-
5.	15.12.2016	1024 (RA 4)	Rs. 5,05,394.10/-
6.	23.12.2016	1045 (RA 5)	Rs. 6,80,743.13/-
7.	09.01.2017	1149 (RA 6)	Rs. 4,15,890.36/-



8.	17.02.2017	1278	Rs.17,75,485.80/-
Total			Rs.76,44,135.83/-

ii. **Amendment Work Order Dated 21.03.2017:**

S.NO.	DATE OF INVOICE	INVOICE NUMBER	AMOUNT
1.	23.03.2017	1440	Rs. 1,06,304.70/-

- 2.2 The Operational Creditor consistently reminded the Corporate Debtor to clear the dues in respect of invoices bearing Nos. 374 (RA 1); 374 (RA 1); 739 (RA 2); 851 (RA 3); 1024 (RA 4); 1045 (RA 5); 1049 (RA 6); 1278 and 1440. However, the Corporate Debtor failed to respond to any of the requests made by the Operational Creditor.
- 2.3 The outstanding dues amount to Rs.33,98,247/- which became due between 16.07.2016 and 23.03.2017, invoice-wise. Additionally, interest at the rate of 24% per annum is claimed from the date of default until the date of realisation. The dates of default, as stated in Part-IV of the Application are 06.02.2017 and 08.02.2017.
- 2.4 As the dues of the Operational Creditor were not cleared by the Corporate Debtor, the Operational Creditor issued the statutory Demand Notice in Form 3 and Form 4 to the registered address of the Corporate Debtor on 11.11.2020. Delivery was also effected by hand, but no reply was received. Hence, this Application has been filed praying for initiation of CIRP in respect of Corporate Debtor.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 It is noticed from the record that the Operational Creditor duly served notice of hearing before Court-III Mumbai Bench to the Corporate Debtor through speed post/registered post. Despite proper service of notice, the Corporate Debtor



remained absent. In view of non-appearance, the Corporate Debtor was set *ex-parte* by Court-III first on 15.04.2021 and then again on 04.11.2022 pursuant to change of constitution.

- 3.2 The Company Petition was transferred from Court-III *vide* its order dated 10.04.2024 to this Court. As the Corporate Debtor was already set *ex-parte*, this Bench heard Counsel for the Operational Creditor on 29.04.2024.
- 3.3 The Corporate Debtor failed to provide a written reply during the ongoing proceedings and did not appear either personally or through authorised representative to make oral or written submissions. In the absence of any pleadings or reply by the Corporate Debtor, the Application is disposed of based on the pleadings of the Operational Creditor and the materials available on record.

4. ANALYSIS AND FINDINGS

- 4.1 Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor, our findings in the matter are as under:-
- 4.2 As stated above, the Corporate Debtor failed to take any steps to furnish its reply or present any defence. Consequently, the Corporate Debtor was set *ex-parte* on 15.04.2021 and the matter was heard based on the pleadings available in the Application and the arguments presented by the Ld. Counsel for the Operational Creditor.
- 4.3 On perusal of the Application, we find that the principal debt of Rs.33,98,247/- (rounded off) claimed to be in default in Part-IV is on account of supply, installation, testing and commissioning of Fire Fighting System at the project



executed by the Corporate Debtor under various invoices and thus the same constitutes “operational debt” within the meaning of Section 5(21) of the Code.

- 4.4 It is noted that the project “Delsol” was initially being developed by Dheeraj Housing Private Limited (DHPL) which had issued the Amendment Work Order dated 17.10.2016 to the Operational Creditor. During the course of proceedings, the Operational Creditor by way of an Additional Affidavit dated 23.03.2022 placed on record a letter dated 27.10.2016 evidencing that the Corporate Debtor communicated to the Operational Creditor that the project “Delsol” would be executed by Aubrey Builders Private Limited (ABPL), the present Corporate Debtor and, accordingly, all rights and responsibilities under the contract stood transferred from DHPL to the Corporate Debtor with all future correspondences including billing to be done in the name of the Corporate Debtor.
- 4.5 In order to prove the existence of operational debt and the amount in default, it is noticed that the Operational Creditor has produced on record, *inter alia*, copies of Amendment Work Orders, relevant tax invoices along with delivery challans raised by the Operational Creditor for the goods supplied to the Corporate Debtor, material test certificate, measurement sheets, drawings, Ledger Account of the Corporate Debtor and statutory Demand Notice dated 29.10.2019 addressed to the Corporate Debtor under the Code. In this manner, the Operational Creditor has been able to discharge the onus to establish the existence of operational debt and default in payment thereof by the Corporate Debtor.
- 4.6 As per Part-IV of the Application, it is noted that the dates of default are mentioned as 06.02.2017 and 08.02.2017. On perusal of the work orders, it is seen that as per the payment terms specified therein, payment was to be “*made within 30*



working days from the date of submission of invoice, duly certified by the Project-in-charge, in the following stages:

- 1) 60% of the item rate against delivery of material on site,*
- 2) 20% against completion of installation work on site,*
- 3) 20% against final testing and commissioning.”*

However, the Corporate Debtor failed to abide by the agreed terms of payment and committed default. There is nothing on record to show that the invoices in question were not certified by the Project Incharge or that installation work was not completed on site or that the final testing and commissioning of fire fighting system was not carried out by the Operational Creditor. Thus, both the operational debt and the default in payment thereof stand substantiated.

- 4.7 Further, it is observed that the Operational Creditor filed an Additional Affidavit on 18.12.2022 placing on record confirmation of its Ledger Account for financial years 2016-17 and 2017-18 by the Corporate Debtor on 20.06.2018. The latest Ledger Account confirmation from 2019 shows an outstanding amount of Rs.35,08,434/- as on 31.03.2018 duly acknowledged by the Corporate Debtor by affixing its seal and signature, with an additional note stating that "*We confirm to pay by 07.02.2019.*" This amounts to clear and unequivocal admission or acknowledgement of the debt owed by the Corporate Debtor to the Operational Creditor which remains due and unpaid till date. On perusal of Ledger Account, it is seen that the Corporate Debtor made last payment of Rs.15,00,000/- on 18.04.2017 and thereafter, an amount of Rs.35,08,434/- was outstanding in the books of the Operational Creditor. Therefore, both the part payment made on 18.04.2017 and the Ledger Account confirmation on 20.06.2018 will have the



effect of initiating a fresh limitation period. Consequently, the present Application filed on 19.03.2020 is found to have been filed well within the limitation period.

- 4.8 It is observed from the record that there was no provision for charging interest in the tax invoices raised by the Operational Creditor or in the work orders. It is a well-settled principle that interest cannot be claimed as a matter of right unless there is an agreement between the parties stipulating the same. Therefore, in the absence of a mutual agreement, the claim for interest by the Operational Creditor is found to be unsustainable.
- 4.9 Upon perusal of the materials available on record, it is clear that no dispute was raised by the Corporate Debtor prior to the receipt of the Demand Notice. The Operational Creditor has filed an affidavit under Section 9(3)(b) of the Code, affirming that the Corporate Debtor did not raise any dispute regarding the outstanding operational debt before receiving the Demand Notice. Further, the Corporate Debtor did not provide any proof of repayment of the unpaid operational debt as required under Section 8(2) of the Code.
- 4.10 It is also observed that the Operational Creditor filed another Additional Affidavit dated 12.01.2024 seeking correction in the claim amount stating that due to human error, the amount claimed was mistakenly mentioned as Rs.33,98,246/- instead of Rs.35,08,434/- which is in accordance with the Ledger confirmation of Corporate Debtor provided by the Operational Creditor. The Operational Creditor has left it to this Tribunal to grant the correct amount. However, we believe that it is not within our jurisdiction to determine the exact amount to be granted to the Operational Creditor as this is the duty of the Resolution Professional (RP). In the context of a Section 9 application like the present one, our concern is limited to ensuring that the claimed amount of operational debt is above the threshold of



one lakh rupees, as it then was; that a default has occurred in payment thereof and that no dispute has been raised by the corporate debtor in this regard prior to the service of the statutory demand notice.

4.11 From the above discussions, it is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt owed to the Operational Creditor exceeding Rs. 1,00,000/- (One Lakh Rupees), which is the threshold monetary limit under Section 4 of the Code, as applicable on the date of filing this Application. Thus, this Application under Section 9 of the Code, preferred by the Operational Creditor, is found to be maintainable. The Application is complete and has been filed in the prescribed form. To date, there has been no payment of the unpaid operational debt. The Demand Notice was duly delivered to the Corporate Debtor and no notice of dispute has been received by the Operational Creditor. In view of the above, we find that all pre-requisite conditions for initiating CIRP against the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

4.12 The Operational Creditor has not proposed name of any Resolution Professional (RP) to act as the Interim Resolution Professional (IRP). In these circumstances, the IRP shall be appointed from the panel of Insolvency Professionals for the Mumbai Zone as circulated by the Insolvency and Bankruptcy Board of India (IBBI).

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.945/MB/2020 filed under Section 9 of the Code by VL Astra Engineers (India)



Private Limited, the Operational Creditor, for initiating CIRP in respect of Aubrey Builders Private Limited, the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of Code with consequential directions as follows:

1. We prohibit-
 - 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 SARFAESI Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
2. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
3. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.



4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and other Rules and Regulations made thereunder.
5. That this Bench hereby appoints **Ms. Nidhi Amit Poddar a registered Insolvency Professional** having **Registration Number IBBI/IPA-001/IP-P-02829/2023-2024/14381** and **e-mail address nidhipoddar.ip@gmail.com** having valid Authorisation for Assignment up to 30.06.2025 as the IRP to carry out the functions under the Code.
6. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
7. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor is directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.



8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Operational Creditor is directed to deposit a sum of Rs.4,00,000/- (Four Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon the funds available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
11. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
12. The Registry is directed to immediately communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
13. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

//Deepa//

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**