



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V**

C.P. (I.B) No. 234/MB/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Life Construction Private Limited

Flat No 105, 1st Floor, Runwal & Omkar Esquare,
off. Easter Express Highway, Sion East Mumbai -
400022 (Maharashtra)

...Petitioner/Operational Creditor

Vs

VGS Realty Construction Private Limited

Omakr House, Off. Eastern Express Highway,
Opp. Sion Chunnabhatti Signal, Sion (East)
Mumbai - 400022, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated:14.08.2024

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Pawan Kulkarni (PH)

For the Corporate Debtor: Adv. Sonali Jain (VC)



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ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by **Life Construction Private Limited** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on 20.03.2023 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **VGS Realty Construction Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 19,63,46,629/-** , **date of default being on 15th March 2019.**
2. **Brief Facts and submissions of the Operational Creditor –**
 - I. The Operational Creditor is a company engaged in the business of construction and other related services. Through several work orders the Operational Creditor agreed to provide services like excavation and other construction related work to the Corporate Debtor.
 - II. The Operational Creditor carried out the work in accordance with the work orders and thereafter issued invoices to the Corporate Debtor. The said invoices were raised between the month of December 2014 to March 2019, amounting to a total of Rs. 78,57,01,345/- for services rendered to the Corporate Debtor.
 - III. Out of the total amount due, the Corporate Debtor paid Rs. 55,99,97,609 including TDS. However, the payment of the remaining balance amount which was due and payable to the Operational Creditor was neglected by the Corporate Debtor.



- IV. As submitted by the Operational Creditor, the Corporate Debtor has never raised any dispute regarding invoices raised by the Operational Creditor or with respect to the services rendered by the Operational Creditor in compliance of the abovementioned work order demonstrating any pre-existing dispute. The Corporate Debtor has also acknowledged the outstanding debt due and payable to the Operational Creditor.
- V. On 15th March 2022, a Demand Letter was issued by the Operational Creditor to call upon the Corporate Debtor to pay the amount of Rs. 23,07,03,736 along with 18% interest per annum, to be paid within 15 days from date of receipt of the Demand Letter.
- VI. On 23rd March 2022, 'Resonant Realtors Project Private Limited' made a part payment of Rs. 50,00,000/- on behalf of the Corporate Debtor towards the amount due and payable to the Operational Creditor.
- VII. As the Corporate Debtor failed to pay the outstanding debt due within the stipulated period, a Demand Notice was issued by the Operational Creditor on 13th May 2022, directing the Corporate Debtor to pay the amount of Rs. 22,57,03,736/-, including security deposit and retention monies, which remained due with respect to the services rendered by the Operational Creditor.
- VIII. The Corporate Debtor received the Demand Notice via post on 17th May 2022 and on 19th May 2022 sent an interim reply to the Demand Notice, denying any liability with respect to paying the said amount.
- IX. On 12th September 2022, a part payment of Rs. 75,00,000/- was made by the Corporate Debtor towards the debt due and payable to the Operational Creditor. On the same day, the Operational Creditor made a part payment of Rs. 75,00,000/- towards consideration of Unit no.- C-2903.
- X. It was stated by the Operational Creditor that before the issuance of Demand Notice, on 31st March 2022, the Corporate Debtor deducted



amount of Rs. 1,49,79,087/- and Rs. 1,43,78,020/- towards consideration of flat no. C-2903 and C-2904. Such deduction was done without prior approval and hence, the Operational Creditor was not aware of the same. The said amount, aggregating to Rs. 2,93,57,107/- was not deducted from the claim amount in the Demand Notice and therefore is deducted in the Company Petition.

- XI. The debt became due on 15th March 2019 as the last invoice for services rendered by the Operational Creditor was raised on 15th March 2019. As mentioned above, a part payment of Rs. 50,00,000/- was made on 23rd March 2022 and of Rs. 75,00,000/- on 12th September 2022 by the Corporate Debtor.
- XII. The Operational Creditor submitted that the Corporate Debtor has duly acknowledged the debt due and payable as there exists a balance confirmation ledger, bearing seal and signature of both parties, dated 26th October 2022.
- XIII. In the course of reconciliation between the parties, a balance confirmation ledger was duly signed by both parties on 1st July 2024, amounting to Corporate Debtor's acknowledgement of the debt due and payable to the Operational Creditor.
- XIV. It was further stated by the Operational Creditor that in furtherance of reconciliation of accounts as directed by the Hon'ble Tribunal, an email was addressed to the Corporate Debtor on 3rd June 2024 and on 25th June 2024.
- XV. In the light of the abovementioned submissions, The Operational Creditor prayed to allow the petition and initiate Corporate Insolvency Resolution Process against the Corporate Debtor.



Through their Learned Counsel, the following submissions were made by the Corporate Debtor:

I. The Corporate Debtor, at the outset, denied all contentions of the petitioner and further stated that the Operational Creditor has suppressed vital facts and made false claims. As submitted by the Corporate Debtor, the petition is not maintainable on account of the following grounds that-

- a) The Terms & Conditions set forth in the work orders state that the Operational Creditor is obligated to comply with the said terms and conditions before raising any claim with respect to payment. As contended by the Corporate Debtor, the Operational Creditor has not fulfilled all the contractual obligations as outlined in the abovementioned work orders.
- b) The Terms & Conditions specify certain requirements for work completion, including submission of a Final Bill/Tax Invoice, compliance with Site Handover procedures, and obtainment of a Work Completion Certificate. The Corporate Debtor submitted that these requirements remain unfulfilled by the Operational Creditor, and hence, the Defect Liability Period did not commence.
- c) The Security Deposits and Retention Amount, that is, 5% of the gross value of the bill can only be released after the expiry of the Defect Liability Period as mentioned in the Terms and Conditions of the work Orders.
- d) As alleged by the Corporate Debtor, Operational Creditor was approached for reconciliation of accounts to resolve any issues pertaining to final payment of dues. However, as contented, the Operational Creditor did not take the necessary steps to participate in this process of financial reconciliation.



- II. The Corporate Debtor submitted that the Operational Creditor first has to comply with payment terms and then only can raise the Final Bill. It was further stated that the said billing procedures and other required formalities were not duly complied with and the Final Bill was not submitted.
- III. As submitted by the Corporate Debtor, an interim reply was sent to Operational Creditor on 19th May 2022, through which the contentions made by the Operational Creditor were denied at the outset.
- IV. Furthermore, it was stated that a total of Rs. 56,56,13,499/- has already been paid by the Corporate Debtor to the Operational Creditor.
- V. On the basis of the abovementioned submissions, the Learned Counsel for the Corporate Debtor, contended that the petition is invalid and not maintainable, and thus, prayed for the dismissal of the Petition.

FINDINGS/CONCLUSION

4. After having heard the Ld. Counsel for the parties and perusing the documents on record, it is evident that the Corporate Debtor and the Operational Creditor were in a business relationship. The case of the Petitioner is with respect to the invoices pending from December-2014 to March-2019. The case of the Petitioner further is that part payment was made by the Respondent and it is the remaining amount for which the present petition has been preferred.
5. On perusal of the reply submitted by the Respondent and also in view of the arguments advanced, it is evident that the amount due to the Petitioner has been withheld by the Corporate Debtor. The Corporate Debtor has made attempts to justify the withholding of the said amount on various grounds such as; Petitioner's non-adherence to the terms and conditions of the work order, Petitioner's non-submission of the final bills and the completion certificate, and Petitioner's failure to hand over the site after completion of work. In the view of the non-submission of the completion certificate the case of the Respondent is that the defect liability period could not commence which authorised the Respondent to withhold the



amount in case of any failure on the part of the Operational Creditor. It deserves to be appreciated that Corporate Debtor has nowhere denied the admitted claims of the Operational Creditor. Rather the attempt has been to justify the non-payment. It further deserves to be appreciated that there is no document on record so as to show that these above-stated issues were ever raised by the Respondent with the Petitioner. The case of the Petitioner is that it is only before the Hon'ble Tribunal that the Corporate Debtor has attempted to justify the non-payment for the first time. Though, all the above-mentioned grounds are found to be frivolous.

6. As it is evident from the perusal of the records that Corporate Debtor has admitted the liability of the Operational Creditor. The reconciliation of the accounts in October-2022 and also in July-2024 is evidently signed by both the parties meaning thereby Corporate Debtor has acknowledged the debt due.
7. It is further pertinent to note that even after the issuance of Demand Notice by the Operational Creditor, the Corporate Debtor made partial payment of Rs. 75,000/- to the Operational Creditor which has been adjusted by the Petitioner at the time of the filing of the petition. Thus, this partial payment also amounts to the acknowledgment of Corporate Debtor's liability towards the Petitioner.
8. As far as the case of the Petitioner is that the invoices due towards the Respondent are of the year 2014 to 2019, but the fact that the Corporate Debtor as late as in the year 2022 and 2024 at the time of reconciliation of accounts has not only acknowledged the debt but even released partial payment in favour of the Operational Creditor is enough to hold that the stated debt is not barred by limitation; Thus, the issue of limitation stands closed and the petition is thus not barred by limitation.
9. In addition, the Corporate Debtor has also made partial payments from time to time, which have been taken note of and adjusted by the Operational Creditor.
10. Keeping in view of the totality of the circumstances of the present case and in view of the fact that there is an admitted debt due towards the Petitioner and



admittedly there is a default duly acknowledged by the Corporate Debtor, it is a fit case for admission. Though a failed attempt has been made by the Corporate Debtor to justify the delay but keeping in view of the fact that Corporate Debtor never raised any issue with respect to the same prior to the filing of the present petition and in fact Corporate Debtor made the partial payment after the issuance of Demand Notice. Otherwise, also the amounts stated to be due in this case is above the threshold limit as stipulated under Section 4 (1) of IBC and in view of the settled law wherein the Hon'ble Supreme Court has been pleased to hold in the matter of *M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407*

“28. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. Under sub-section (7), the Adjudicating Authority shall then communicate the order passed to the Financial Creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be.”

11. Therefore, the present petition is **admitted** to CIRP by passing the following order:

ORDER

- a. The above Company Petition No.234 /IBC/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **VGS Realty Construction Private Limited.**
- b. This Bench is hereby appointed **Mr. Manoj Kumar Babulal Agarwal**, having registration No. IBBI/IPA-001/IP-P00980/2017-2018/11613, having email Id: manojagarwal20@gmail.com as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.



- c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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 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.
- f. 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.



- g. 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.
- 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 board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the 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.
- k. Accordingly, C.P. No. 234/IBC/MB/2023 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

MADHU SINHA
Member (Technical)
/Jhanvi/

SD/-

REETA KOHLI
Member (Judicial)