



IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH COURT III

C.P. No. (IB) 326/MB/C-III/2024

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

Tricon Infra Buildtech Pvt Ltd.

Having registered address at:

Shop No 2s-3 First Floor, Konark Baugh New Hub, First Floor, Indrayu Mall, Near Konark Pooram, Kondhwa, Pune, Maharastra-411048.

...Operational Creditor/Petitioner

Versus

Xrbia Chakan Developers Pvt Ltd

Having registered address at:

Office No.125/126, Patil Plaza, Mitramandal Chowk, Parvati, Pune, Maharashtra, India-411009.

...Corporate Debtor/Respondent

Order pronounced on: 01.08.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

**Appearances:**

For the Operational Creditor: Adv. Aditya Sharma

For the Corporate Debtor: Adv. Jill Rodricks

Per: MS. LAKSHMI GURUNG MEMBER (JUDICIAL)

1. This Petition has been filed by M/s Tricon Infra Buildtech Pvt Ltd (**“the Petitioner/Operational Creditor”**) to initiate Corporate Insolvency Resolution Process (**“CIRP”**) against M/s Xrbia Chakan Developers Pvt Ltd (**“the Respondent”/ “Corporate Debtor”**) under **Section 9** of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an alleged default of **Rs.2,00,26,690/- Rupees Two Crore Twenty-Six Thousand Six Hundred and Ninety Only**).

Relevant Brief Facts leading to filing of the present petition:

2. The Petitioner is engaged in the business of civil and building construction work on contractual basis and the Respondent is engaged in development and construction sector carrying out construction projects for sale to flat purchasers.
3. The Respondent issued a Service Work Order dated 14.12.2021 bearing P.O. ID: 5500088911 to the Operational Creditor. According to the Service work order the Operational Creditor was to render following services:

S. No.	Particulars of Work	Amount in Rs.
1.	Compaction of Earth	14,00,000/-
2.	Excavation (Soft)	6,65,000/-
3.	Excavation (Hard)	22,50,000/-



4.	Back Filling (L)	7,00,000/-
5.	Levelling (L)	3,06,250/-
6.	WBM(L+M) Road Work	8,12,500/-
7.	Road Concrete Work	38,75,000/-
8.	Rubble Soling	20,40,000/-
9.	RCC Pipe Laying	8,10,000/-
	Subtotal	1,28,58,750/- + GST 23,14,575/-
	TOTAL	1,51,73,325/-

Copy of the Work Order dated 14.12.2021 is annexed to the petition.

4. The Operational Creditor executed the work as enumerated in the work order dated 14.12.2021 and raised following invoices:

S. N.	Invoice No.	Date	Amount
1	XCDPLRA001INFR	15.02.2022	60,37,912.50/-
2	ACDPLRA002INFR	24.03.2022	91,35,412.50/-
	TOTAL		151,73,325/-

5. It is submitted that the Operational Creditor continuously followed up with the Corporate Debtor and made several reminders regarding the payment of outstanding dues. However, the officers in charge of the Corporate Debtor avoided meeting executives of the Operational Creditor or answering their calls.
6. The Operational Creditor sent various letters dated 29.07.2022, 28.12.2022 and 20.09.2023 regarding non-payment of the dues and requested the Corporate Debtor to pay the amount due at the earliest. However, the Corporate Debtor even after acknowledging the letters had purposely neglected to make payments due to the Operational Creditor.



7. The Operational Creditor had also issued two letters dated 14.04.2022 and 11.04.2023 to the Corporate Debtor confirming that the outstanding balance payable as on 31.03.2022 and 31.03.2023 was Rs. 1,49,16,150/- (Rupees One Crore Forty-Nine Lakhs Sixteen Thousand One Hundred and Fifty Only) and the same has been acknowledged by the Corporate Debtor.
8. Thereafter, the Operational Creditor Demand Notice dated 09.12.2023 under Section 8 of the Code in FORM 3, to the Corporate Debtor for payment of an outstanding amount of Rs. 2,00,26,690/- (Rupees Two Crore Twenty-Six Thousand Six Hundred and Ninety Only) including the principal amount of invoices and interest thereon. The same was received by the Accounts Department of the Corporate Debtor on 11.12.2023.
9. The Respondent, in response the Demand Notice addressed a letter dated 14.12.2023 acknowledging its liability to the Petitioner, and further ensured that it would pay the entire dues of all the Creditors for completing the work.
10. It is submitted that the debt of the Corporate Debtor had become due on 02.03.2022 and 09.04.2022, as per the terms and conditions of the Work Order. It is further submitted that the invoices raised by the Operational Creditor were, from time to time, acknowledged by the Corporate Debtor by the way of balance confirmation dated 20.04.2022 and 15.04.2023, therefore the Petition is well within limitation.
11. Despite admitting the liabilities, the Corporate Debtor has failed to pay the admitted dues of the Operational Creditor. As the Corporate Debtor has failed to pay its debt, present petition under section 9 of the Code has been filed.

**Submissions by the Corporate Debtor:**

12. The Corporate Debtor submits that it is involved in the business of building constructions and development since the year 2012 and had issued a work order dated 14.12.2021 to the Operational Creditor which was executed by the Operational Creditor at its project site i.e., "Xrbia-Eiffel City".
13. The Respondent has not denied any of the facts narrated by the Petitioner. It has elaborated the reasons for its default in making payment to the Operational Creditors as follows:
 - a. Due to the strain of unpaid payments and lack of sale of flats and completion of projects during and post Covid-19 period, the business of the Corporate Debtor was badly hit, which in turn affected the Corporate Debtor from releasing funds towards the work done by the Operational Creditor.
 - b. The business of the Corporate Debtor suffered irreversible losses, as most of its projects are either being stalled or were drained out of money flow during the peak Covid-19 period of 2020 to 2022. The Corporate Debtor heavily relied on the general public, being flat purchasers in its projects, but due to Covid-19 the buyers too were unable to fetch out any payments for the flats, as they themselves faced difficulty in getting loans or monies arranged to pay the consideration amount to the Corporate Debtor. The assurances given before were turned down with the onset of buyers backing off from the projects.
 - c. The funds collected by the Corporate Debtor were being used towards Bankers interest payment. The Corporate Debtor was unable to source its funds from any loans offered by the Banks or financial institutes to invest in its projects, as the same would be



stripped of in the form of interest cuts or reduce in amount disbursement due to restrain in policy factors by the Banks.

- d. It was submitted that due to less collection and higher interest burden, the interest payment was delayed and the account of the Corporate Debtor turned NPA in the month of March, 2023, which in turn stalled many of its projects and any other sources of income that were retained by the Corporate Debtor had to be utilized towards further interest payment, as no cash flow could be generated towards profiting or paying of any of its Creditors including the present Operational Creditor.
 - e. The Corporate Debtor further submitted that its Financial Creditors i.e. L&T Finance Ltd. L&T Housing Finance Ltd had assigned the outstanding Loan to Asset Reconstruction Company India Limited ("ARCIL") in March 2023. In order to revive the business of Corporate Debtor and start construction at full pace, the Corporate Debtor had submitted restructuring plan in the month of June 2023. The said plan was discussed on multiple occasions in the past one year and the Corporate Debtor was only able to receive the restructuring draft documents, by which point the interest had further accumulated and had ended up eating the entire profit of the Corporate Debtor's business which in turn increased the cost factor of the business.
 - f. For the last three years the Corporate Debtor has been severely restrained from carrying out its business and its obligations towards its Creditors, due to decline in cash flow and untethered usage of profits towards payment of interest.
14. Under the above circumstances, it is submitted that despite putting efforts to pay the debt of Rs. 1,51,73,325/- (Rupees One Crore Fifty-One Lakhs Seventy- Three Thousand Three Hundred and Twenty-Five Only) to the Operational Creditor for the work completed as per the



Work Order dated 14.12.2021, the Corporate Debtor has not been able to meet its commitments due to its inability to source funds which has led to default of the payment.

FINDINGS/OBSERVATIONS

15. Heard Ld. Counsel for the parties.
16. It is an admitted position that a Service Work Order dated 14.12.2021 was issued by the Corporate Debtor. The Operational Creditor completed the work as per the work order and raised two invoices dated 15.02.2022 for Rs. 60,37,912.50/- and dated 24.03.2022 for Rs.91,35,412.50/- aggregating to Rs.1,51,73,325.
17. It is also admitted that the Corporate Debtor could not make payment due to its deteriorating business and financial conditions. Therefore, the Operational Creditor issued demand notice dated 09.12.2023 to the Corporate Debtor for a total amount of Rs.2,00,26,690.43 including interest @18 % p.a.
18. The Corporate Debtor in response to the said demand notice sent a reply dated 14.12.2023 stating as follows:

“We are acknowledging the liability and we are ensuring that all our creditors should get repayment of the entire dues. We appreciate completion of your work at our Xrbia-Eiffel City project site and your necessary cooperation during the construction. We hereby inform you that due to lockdown imposed by the government of India because of covid all our project sites stopped construction work and we faced major working capital crunch as entire cash flow stuck in these projects.”



19. Moreover, the Corporate Debtor in its reply has also admitted that despite its efforts to pay off the debt amount of Rs. 1,51,73,325/- to the Operational Creditor for the work completed as per the Work Order dated 14.12.2021, the Corporate Debtor has been unable to meet its commitments.
20. In the above facts and circumstances, the debt and default is clearly established. We are not examining whether the interest is payable as per the Work order or not. As long as the default amount is more than threshold limit of Rs. 1,00,00,000/- under section 4 of the Code and the petition has been filed within limitation, the petition deserves to be admitted and is hereby **admitted**.

ORDER

21. The above Company Petition No. (IB) 326 (MB)/2024 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Xrbia Chakan Developers Pvt Ltd**.
22. The Petitioner has proposed the name of **Mr. Vakati Balasubramanyam Reddy** having **Registration No. IBBI/IPA-001/IP-P00662/2017-2018/11131**, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 18.04.2024 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 07.11.2023. On verification of the validity of the AFA of the proposed IRP, we found that the same is valid upto 06.11.2024. Accordingly, we appoint Mr. Vakati Balasubramanyam Reddy (vbsreddy7@gmail.com) as the Interim Resolution Professional (IRP) to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.



23. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) 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 the Committee of Creditors.

24. **MORATORIUM**

- (1) There shall be a moratorium under section 14 of the Code prohibiting the following:
 - 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.
- (2) 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) The provisions of sub-section (1) of Section 14 shall not apply to such transactions, agreements or arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.



25. Further ordered:

- i. 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.
- ii. The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- iii. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- iv. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- v. The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.
- vi. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
- vii. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

26. The Company Petition No. 326 of 2024 is accordingly **admitted**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

LRA Apurva Surve

Sd/-

Lakshmi Gurung
Member(Judicial)