



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 203
(IB)-166(ND)2024

IN THE MATTER OF:

Richifield Packaging Private Limited

Reg. Office at:
142, Small Factory Area, Kalmana Road
Nagpur Maharashtra-440008

**... Applicant/
Operational Creditor**

Versus

Almighty Advertising Private Limited

Reg. Office at:
2nd Floor, E-172, Masjid Moth, Greater Kailash-II,
South Delhi, New Delhi-110048

**... Respondent/
Corporate Debtor**

Section: 9 of the IBC, 2016

Order delivered on: 01.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. J C Badani and G S Badani

For the Liquidator :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

It is the case of the Applicant who has preferred the present petition under Section 9 of IBC, 2016 that it made advance payment of Rs. 1,05,00,000/- to the CD on 06.05.2022, which was duly acknowledged by it. The details of the amount have been mentioned in Part-IV of the application. According to Applicant, the aforementioned amount was paid to CD for providing the



construction service for raising an office building in Nagpur but the construction was not raised as per the terms of the contract. According to the Applicant, when the construction did not commence, it issued demand notice dated 16.09.2023 to the CD on 20.09.2023, but neither any reply to same was received nor the construction work was initiated. The Applicant has placed the ledger account statement qua the CD maintained by it at Annexure-10 to the application. The copy of work order is placed on record at Annexure-11 to the application. The copy of demand notice issued by the Applicant to CD in Form-3 of Insolvency and Bankruptcy Code (Application to Adjudicating Authority), Rules 2016, is available on record at Annexure-5 to the application. The Applicant has filed affidavit under Section 9(3)(b) of IBC, 2016, which is available on record at Annexure-13 to the application. Though the entry from the banker's book, showing disbursement of the amount given as advance by the Applicant to CD is not there on record, but the Ld. Counsel appearing for the Applicant could share a copy of statement of account maintained by her at ICICI Bank, to show the payment of amount of Rs. 1,05,00,000/- by the Applicant to CD through RTGS. The Part-IV (1) of the application indicating the disbursement of amount and the default committed by the Applicant reads thus:

PART - IV

PARTICULARS OF OPERATIONAL CREDITOR			
1.	TOTAL	AMOUNT	OF
	DEBT,	DETAILS	OF
	TRANSACTIONS	ON	
	ACCOUNT	OF	WHICH
	DEBT FELL DUE, AND THE		
I.	TOTAL	AMOUNT	OF DEBT:
	RS. 1,05,00,000/-	(RUPEES ONE	
	CRORES FIVE LAKHS ONLY)		
a)	Rs.1,05,00,000/-	Principal Amount	
	outstanding towards invoices.		



	DATE FROM WHICH SUCH DEBT FELL DUE	II. DETAILS OF TRANSACTION ON ACCOUNT OF WHICH DEBT FELL DUE:
		a) The Operational Creditor for the purpose of construction of their office building at Nagpur, invited estimate quotation from the Corporate Debtor vide their communication dated April 01, 2022. Against the same, the Corporate Debtor gave an estimate for the proposed office building dated April 05, 2022 to the Operational Creditor with a quotation of Rs.1,23,50879.02/-;
		b) After due revision, the Operational Creditor placed a Work Order upon Corporate Debtor for Construction and furnishing of building and Office complex at 142, Small Factory Area, Kalamna Road, Nagpur vide letter dated April 10, 2022 for an amount of Rs.1,25,00,000/- via which the basic terms were agreed such as advance
		to be paid within a month from the date of work order and work completion within four months from the date of advance payment; In accordance with the said terms, the advance payment to the Corporate Debtor for an amount of Rs.1,05,00,000/- was made on May 06, 2022;



		<p>c) That, in furtherance of the Work Order and the amount advanced, the Corporate Debtor was supposed to initiate construction work immediately as per designs agreed upon and complete the work within four months from the date of advance i.e. on or before September, 2022;</p> <p>d) That the said advance was paid on May 06, 2022 which was duly received and acknowledged by the</p>
		<p>Corporate Debtor without any demur;</p> <p>e) Despite being in knowledge of the huge amount standing due against the Corporate Debtor, no refund was further received on account of which the Operational Creditor was constrained to issue this demand notice under the provisions of Insolvency and Bankruptcy Code, 2016.;</p> <p>f) Despite repeated reminders made through various modes –verbal, written, electronic, to Corporate Debtor, the latter failed to make payments towards supplies under various invoices issued, and no satisfactory replies were received from the Corporate Debtor;</p> <p>g) The Operational Creditor is facing severe difficulty in making</p>



		<p>payments, taxes and other expenses since a huge amount remains outstanding against the Corporate Debtor;</p> <p>h) Despite being in knowledge of the huge amount standing due against the Corporate Debtor, no payments were further received on account of which the Operational Creditor was constrained to issue demand notice under the provisions of Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2019. Copy of Form 3 is annexed as ANNEXURE-V.</p> <p>i) The Demand Notice was duly served upon the Corporate Debtor at the Registered Office situated at 02nd Floor, E-172, Masjid Moth, Greater Kailash II, South Delhi, New Delhi,</p>
		<p>Delhi, India, 110048, sent via speed post A.D. on 16th September, 2022 and delivered on 20th September, 2022. Copy of Track Report and the postal receipts are enclosed as ANNEXURE-VI.</p> <p>j) No reply was received from Corporate Debtor regarding the Demand Notice issued in Form 3 of the Insolvency and Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2018.</p>



		Dates from which the Debt fell due: Day of Advance- May 6 th , 2022
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF	Rs. 1,05,00,000/- (Rupees One Crores Five Lakhs Only) as on 31/10/2023.
	AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	The workings of computation of amount and days in default are enclosed as ANNEXURE-VII.

2. During the course of hearing, an issue could be raised by us as to whether an advance payment made by OC to CD can be treated as an amount due to the OC, if the required service is not provided by the CD. To meet the issue, the Ld. Counsel appearing for the Applicant could rely upon the judgment given by the Hon'ble Supreme Court in Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited (Civil Appeal No. 2839 of 2020), Para 43 of the judgment read thus:-

"43 First, Section 5(21) defines 'operational debt' as a "claim in respect of the provision of goods or services". The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. Such an interpretation is also supported by the observations in the BLRC Report, which specifies that operational debt is in relation to operational requirements of an entity. Second, Section 8(1) of the IBC read with Rule 5(1) and Form 3 of the 2016 Application Rules makes it abundantly clear that an operational creditor can issue a notice in relation to an operational debt either through a demand notice or an invoice. As such, the presence of an invoice (for having supplied goods or services) is not a sine qua non, since a demand notice can



also be issued on the basis of other documents which prove the existence of the debt. This is made even more clear by Regulation 7(2)(b)(i) and (ii) of the CIRP Regulations 2016 which provides an operational creditor, seeking to claim an operational debt in a CIRP, an option between relying on a contract for the supply of goods and services with the corporate debtor or an invoice demanding payment for the goods and services supplied to the corporate debtor. While the latter indicates that the operational creditor should have supplied goods or services to the corporate debtor, the former is broad enough to include all forms of contracts for the supply of goods and services between the operational creditor and corporate debtor, including ones where the operational creditor may have been the receiver of goods or services from the corporate debtor. Finally, the judgment of this Court in **Pioneer Urban** (supra), in comparing allottees in real estate projects to operational creditors, has noted that the latter do not receive any time value for their money as consideration but only provide it in exchange for goods or services. Indeed, the decision notes that “[e]xamples given of advance payments being made for turnkey projects and capital goods, where customisation and uniqueness of such goods are important by reason of which advance payments are made, are wholly inapposite as examples vis-à-vis advance payments made by allottees”. Hence, this leaves no doubt that a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt.”

3. As can be seen from Section 9(3) of IBC, 2016, while considering an application filed by OC for initiation of CIRP qua the CD, this Tribunal need to satisfy itself as to whether a copy of invoice demanding payment or demand notice delivered by the Operational Creditor to the CD, an affidavit to the effect that there is no notice given by the Corporate Debtor related to the dispute of the unpaid operation debt and a copy of certificate from the financial



institution maintaining account of the Operational Creditor confirming that there is no payment of unpaid operational debt are enclosed with the petition. We could see from the record that the applicant has enclosed with the application the affidavit under Section 9(3)(b) as also the certificate from the financial institution regarding non- payment of the amount paid by the OC as advance to the CD. In terms of the provisions of Section 9(5) of IBC, 2016, this Tribunal would admit the application filed by the OC if the application is complete, there is no payment of unpaid operational debt, the invoice or notice of payment to the CD has been delivered by the OC and no notice of dispute has been received by the OC. As far as the satisfaction of requirement of Section 9(5)(e) is concerned, the Applicant has not suggested the name of any RP. Regarding the requirement of invoice being raised by the OC, the present is a case where the default alleged is qua no refund of the advanced payment, thus the question of any invoice being raised by the OC would not arise. We do not find any deficiency in the application. As far as the CD is concerned, it did not enter any appearance despite service of notice either on 18.04.2024 or today. The order dated 18.04.2024 reads thus:

“Affidavit of service is on record. There is no appearance on behalf of the Corporate Debtor despite the service of notice. In the wake, the proceedings qua CD are set ex parte. List for hearing on 16.05.2024.”

4. In view of the aforementioned, we are left with no option but to order commencement of CIRP qua the CD. Ordered accordingly.

5. The Operational Creditor has established the default in payment of debt of such amount as mentioned in Section 4 of IBC, 2016, on part of the



Corporate Debtor. The affidavit as required in terms of the provisions of Section 9 (3) (b) of IBC, 2016 has been filed by the Operational Creditor. In the wake of discussions and findings as above and there being no opposition to the plea raised in the petition, we are left with no option but to admit the Corporate Debtor to CIRP. **The Petition stands admitted in terms of the provisions Section 9(5) of the IBC, 2016. Resultantly, moratorium in terms of the provision of Section 13 for the purposes referred to in Section 14 of the IBC, 2016 is declared.** As the Operational Creditor has not proposed name of any Insolvency Professional to be appointed as IRP, in terms of the provisions of Section 13(1)(c) read with Section 16(3)(a) of the IBC, 2016, the Insolvency Professional namely, Mr. Mansij Arya, having IBBI Registration No. IBBI/IPA-002/IP-N00907/2019-20/12939, email id: pcsmansij@gmail.com is appointed as IRP in the matter. The Court Officer/Registrar of this Tribunal/Adjudicating Authority is directed to inform the IRP about confirmation of his appointment forthwith. The term of the Interim Resolution Professional shall continue till the date of appointment of the Resolution Professional under Section 22 of the IBC, 2016 or the development if any under Section 12A of the Code or otherwise, whichever is earlier. The IRP is directed to act in terms of the provisions 13(1)(b) and Section 13(2) read with Section 15 of the IBC, 2016 immediately. In other words, the IRP shall cause a public announcement of initiation of Corporate Insolvency Process be made qua the Corporate Debtor and call for submission of claim under Section 15 immediately. The public announcement shall contain the information stipulated in Section 15(1) of the IBC, 2016. We are sanguine that the IRP shall act in due deference to the provisions of IBC,



2016, particularly Section 12,15,17,18, 20 & 21 thereof as also Regulation 6, 6A, 12A, 13, 14, 16A and 17 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 inter alia. It goes without saying that in the wake of the moratorium, there shall be prohibition of all the following: -

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing off 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.

6. Nevertheless, it is made clear that a license, permit, registration, quota, concession, clearance or similar grant or right (if any) given by the Central Government, State Government, Local Authority, Sectoral Regulator or any Authority constituted under any other law for the time being in force shall not be suspended or terminated qua the Corporate Debtor on the ground of Insolvency, subject to the conditions that there is no default in payment of current dues arising for the use of continuation of the license, permit,



registration, quota, concession, clearance or similar grant or right during the moratorium period. Besides, the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, except where the Corporate Debtor does not pay the dues arising from such supply during the moratorium period or any other explainable situation.

7. The Operational Creditor shall deposit an amount of Rs. 2,00,000/- with the IRP to enable him to meet the expenses to be incurred at the initial stage of the CIRP. The expenses shall be reimbursed by the Committee of Creditors, to the extent the same are ratified by it. The amount of expenses ratified by the Committee of Creditors shall be treated as CIRP cost. It goes without saying that in terms of Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the CoC shall fix the expenses to be incurred by the IRP/ RP and the expenses shall constitute IRP cost.

8. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Adjudicating Authority. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

UPASANA/TARUN