

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB)/269/MB/2023

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

ADI Aqua Projects Private Limited, a Company having its address for correspondence at: Flat No. 408, Block No. B-3, Aakriti Greens, Gram Salaiya, Bhopal, Madhya Pradesh- 462 042.

**..... Applicant/ Operational
Creditor**

Versus

Deepmala Infrastructure Private Limited, having its registered office at: - 03rd Floor, Plot No. 3/8, Hamilton House, J.N. Heredia Marg, Ballard Estate, Mumbai-400 059.

.... Corporate Debtor

Order Delivered on :- 23.07.2024.

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances (in Hybrid Mode):

For the Operational Creditor : Adv. Prutha Bhavsar appeared through VC.

For the Corporate Debtor : Adv. P.G. Sabnis.

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial).

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. **ADI Aqua Projects Private Limited** (hereinafter referred to as "**Operational Creditor**") seeking initiation of Corporate Insolvency Resolution Process (CIRP) of the **Corporate Debtor** viz. M/s. **Deepmala Infrastructure Private Limited** (hereinafter referred to as the "Corporate Debtor"). The amount claimed by the Operational Creditor to be in default by the Corporate Debtor is INR 21,09,765/- (Rupees Twenty-One Lakhs, Nine Thousand, Seven Hundred and Sixty-Five only) and the date of default stated in the application is 09.01.2017.
2. Since the Petition fails to meet the minimum threshold of INR 1 crore, as prescribed u/s 4 of the Code, it is not necessary to give detailed facts of the matter. However, briefly stated, the facts of the case are concisely given hereunder:
 - a. The Applicant is engaged in the business of civil construction as a contractor and executes construction work for the customer as per their requirements and needs.

b. The Respondent approached the Applicant with a request to offer sub-contracting of the projects as per its requirements. The Applicant in its course of business, had executed the construction work from time to time delivered to the Corporate Debtor under various invoice numbers against the work orders issued by the Respondent. However, the Corporate Debtor defaulted in making payments to the Applicant/Operational Creditor.

c. The Applicant issued a Demand Notice dated 10th April, 2019 to the Corporate Debtor seeking payment of outstanding sum of INR 21,09,765/- within 10 days of receipt, failing which the insolvency proceedings against the Corporate Debtor shall be initiated. The Demand Notice was delivered to the Corporate Debtor on 25.04.2019 by way of post.

d. The Applicant states that thereafter, the application u/s 9 of the Code was filed with the Registry on 15.01.2020; however, the same has not been listed till date. The Applicant states that the Applicant was informed by the Registry that the application was returned on the ground of non-clearance of defects by the Applicant. However, the Applicant states that they have not received the application upon purported failure to rectify the defects, if any, raised by the Registry as contemplated under Rule 28 of the NCLT Rules, 2016 read with Rule 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Applicant states that the Applicant addressed a letter dated 09.11.2022 to the Registry, for urgent listing of the matter filed on 15.01.2020. However, the same remains unaddressed till date.

e. In view of the aforesaid, the Applicant is constrained to file the present application again.

3. In order to inquire if any Company Petition u/s 9 of the Code was filed by the Operational Creditor against the Corporate Debtor on or about 15.01.2020 or any time in the month of January 2020, this Bench vide its Order dated 05.06.2024, had directed the Registry as under:

“Adv. Natasha Dhruvan Shah appeared for the Operational Creditor. Adv. P.G Sabnis a/w Adv. Kashmira Khedekar appeared for the Corporate Debtor. Registry is directed to inform this Bench whether any Company Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 was filed by the Operational Creditor in this case on 15.01.2020 or any time in the month of January, 2020. Let the report by the Registry be filed well before the next date of hearing. List the matter on 14.06.2024 for hearing.”

4. In pursuance of the Order dated 05.06.2024, the Registry has given its Report stating that as per the records of Company Petition Register, it is observed that no petition was filed by the Petitioner against the Corporate Debtor in the month of January, 2020. We also observe that the Applicant has not annexed the copy of Petition allegedly filed on 15.01.2020 or the copy of challan/payment receipt showing payment of fees in respect of such old petition. The Applicant has also not shown the diary number of such petition. Therefore, we are unable to believe that the Applicant had filed an application u/s 9 of the Code against the Corporate Debtor on or about 15.01.2020. If the said Petition was not being numbered by the Registry, the Applicant could have removed the scrutiny defects, if any, raised by the Registry in order to get it numbered. If the said Petition was either not traceable or was not being numbered despite compliance with the office objections, the Applicant could have taken appropriate steps in accordance with law to trace the lost petition or to reconstruct the same or to get the Petition numbered, as the case may be. However, the same was not done and the Applicant

chose to file a fresh petition i.e. the above-captioned Company Petition, against the Corporate Debtor on 27.01.2023.

5. By virtue of Notification vide S.O. 1205(E) dated 24th March 2020 issued u/s 4 of the Code, the minimum amount of default for the purpose of the said section was increased from Rs. 1 lakh to Rs. 1 crore.
6. The above-captioned Company Petition was filed on 27th January, 2023 when the minimum amount of default required to trigger the CIRP of the Corporate Debtor, as prescribed u/s 4 of the Code, is INR 1,00,00,000/- (Rupees One Crore only). However, since the amount claimed to be in default is INR 21,09,765/- (Rupees Twenty-One Lakhs, Nine Thousand, Seven Hundred and Sixty-Five only), we hold that the above-captioned Company Petition filed by the Applicant u/s 9 of the Code fails to meet the minimum threshold of INR 1 crore prescribed u/s 4 of the Code and thus, the present petition is liable to be dismissed. Accordingly, we order as follows:

ORDER

- i. **Company Petition (IB) No. 269(MB)/2023 is hereby dismissed.**
- ii. Parties to bear their own costs.
- iii. Let the file be consigned to records.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**