IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH - V
Company Petition (IB) No. 882/ND/2022

In the matter of:

Sections 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

AND

In the matter of:

M/s Ahluwalia Contracts (India) Limited
Through its Authorized Representative
Mr. M.K. Hingorani
Registered Office at:
A-177, Okhla Industrial Area,
Phase-1, New Delhi- 110020

...OPERATIONAL CREDITOR/PETITIONER

Versus

M/s Logix Infratech Private Limited
Registered office at
301-A, World Trade Tower,
Barakhamba Lane,
Connaught Place,
New Delhi, -110001

Also at:
A-4 & 5, Sector – 16,
Noida, U.P.-201301

...CORPORATE DEBTOR/ RESPONDENT

ORDER DELIVERED ON: 29.09.2022

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CORAM :
Sh. P.S.N. Prasad, Hon'ble Member (Judicial)
Sh. Rahul Bhatnagar, Hon'ble Member (Technical)

For the Applicant: Adv. Dhruv Rohatgi and Adv. Mritunjay Kumar Singh
For the Respondent: Adv. Nitish Sharma

ORDER

AS PER: SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. ***"M/s Ahluwali Contracts (India) Ltd."*** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company ***"M/s Logix Infratech Private Limited"***.

2. The Operational Creditor is a construction company. The Corporate debtor is a company engaged in the business of real estate development.

3. Brief Facts of the case are as follows:

i. The Corporate Debtor is developing a group housing project namely, 'Blossom Greens' situated at, Sector 143, Noida (hereinafter referred to as "Project").

ii. The Corporate debtor vide Letter of Intent dated 06.09.2010 (LOI) awarded the work of civil and structural

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works for the said project, as mentioned in the tender document for a contract price of Rs. 235,00,00,000/- excluding taxes to the operational creditor.

iii. Accordingly, the operational creditor submitted Bill of Quantities (BOQ) matching to the contract price vide Letter No. ACIL/TS/ LCC/ 10/ 355 dated 16.09.2010. Thereafter, pursuant to the documents stated above, an Agreement bearing no. M880314 dated 31.12.2010 was executed between the Operational Creditor and the Corporate Debtor which was later amended by Memorandum of Understanding No. AD211608/AD211610 dated 05.10.2012 (hereinafter referred to as "Main Contract").

iv. Thereafter, in addition to above, Corporate Debtor awarded a Work Order bearing No. L-I/Tech/264/2014 dated 11.07.2014 (hereinafter referred to as "Work Order") to the Operational Creditor to construct balance work of Non-Tower Area for the said Project for an amount of Rs.24,80,47,690/- excluding taxes. The Main Contract and the Work Order hereinafter collectively referred to as "Work Contracts".

v. The Operational Creditor successfully completed the works as mentioned in the Work Contracts on 01.10.2015 and submitted its final bill dated 07.03.2016.

vi. Out of the total invoiced amount submitted by Operational Creditor for the Work Contracts,

   a. An amount of Rs.10,10,52,519/- was certified and which remained unpaid for about more than 2 years by the Corporate Debtor to the Operational Creditor, and

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b. An amount of Rs, 4,02,00,000/- remained uncertified/ unresolved between the Operational creditor and the corporate debtor.

vii. Thereafter, a meeting was held on 05.09.2019 between the Corporate Debtor and the Operational Creditor at the Corporate Debtor's office with regard to the unresolved amount mentioned above.

viii. The said meeting was conducted in the presence of Synergy Property Development Services Private Limited ("Synergy"), wherein it was agreed by the Corporate Debtor to settle the unresolved amount for an aggregate amount of Rs. 2,00,00,000/- (Being almost 50 percent of the total unresolved amount of Rs. 4,02,00,000/-.

ix. Pursuant to the same, a minute of the meeting held on 05.09.2019 was issued by Synergy to both the Operational Creditor and Corporate Debtor vide email dated 06.09.2019.

x. The final bills for the Work Contracts were certified by the PMC, Synergy, on 24.09.2019, for an aggregate amount of Rs. 11,55,93,501/- ("PMC Certified Amount") and the break-up of the same is explained below:

a. The final bill (excluding taxes) in respect of the Main Contract was certified for Rs.171,95,81,790/- for the total value of work done towards Main Contract with current payable amount of Rs. 9,06,21,824/- which included unpaid previous certified amount of Rs. 1,47,22,832/-, release of retention money of Rs.

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4,00,00,000/- and unresolved settled amount of Rs. 2,00,00,000/-.

b. The final bill (excluding taxes) in respect of the Work Order was certified for Rs. 5,87,12,200/- for total value of work done towards Work Order with current payable amount of Rs. 2,49,71,677/- which includes unpaid previous certified amounts of Rs. 1,85,67,208/-, release of retention money of Rs. 29,10,079/- and credit for return of reinforcement steel amounting to Rs. 34,94,390/-.

xi. Pursuant to above, it was agreed between the parties that out of the PMC Certified Amount mentioned above, an amount of Rs. 55,93,501/- on account of IMCM Audit Report, Labour Cess, Insurance, Material Supply Debit, EPF, Malba removal and taxes shall be deducted.

xii. Finally, the parties arrived at a settlement of lump sum amount of Rs. 11,00,00,000/-, payable by Corporate Debtor to the Operational Creditor against the full and final settlement of money payable against work done by the Operational Creditor under the Work Contracts.

xiii. In the terms of the understanding explained above, a Memorandum of Understanding/Settlement Agreement dated 30.09.2019 was executed between the Corporate Debtor and Operational Creditor wherein amongst various other things, following terms for payment as per settlement between the parties were recorded:

a. Under the Agreement, the corporate debtor agreed to pay a sum of Rs. 11,00,00,000/-(hereinafter referred to

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as "Settlement Amount"), against the work done under the Work Contract, to the Operational Creditor, in tranches, over a period of Six months from the execution of the Agreement.

b. As part payment of the Settlement Amount, the Corporate Debtor agreed to allot and grant unhindered /unencumbered possession of 7 flats/inventories, being 2 bedrooms plus study apartment having super area of 1234 square feet each, having aggregate value of Rs. 3,28,00,000/- in the said Project, in favour of Operational Creditor within 10 days of entering of the Agreement.

c. Further, it was agreed under the Agreement that the Corporate Debtor shall pay the remaining Settlement Amount of Rs. 7,72,00,000/- in 6 instalments (first five instalments of Rs. 1,25,00,000/- each and the 6th instalment of Rs. 1,47,00,000/-) on monthly basis by the 25th of every month commencing from October, 2019.

xiv. Vide email dated 14.10.2019, the operational creditor reminded the corporate debtor to pay first instalment of Rs. 1,25,00,000/- of remaining settlement amount by 25.10.2019.

xv. Vide email dated 26.10.2019, the operational creditor apprised the corporate debtor of his failure to release first instalment by the due date.

xvi. Thereafter, a letter dated 05.11.2019 was further issued by the Operational Creditor to Corporate Debtor whereby the

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Corporate Debtor was again reminded to adhere to terms of Agreement dated 30.09.2019 and requested to pay the first instalment amount within seven days of receipt of the said letter.

xvii. Thereafter, the Corporate Debtor vide email dated 15.11.2019 admitted to its failure to honour its commitment as per the Agreement and further blamed the non-payment of first instalment amount on slow down and bad shape of Real Estate market. It is submitted that the contents of the email dated 15.11.2019 proves the undisputed admission of the corporate debtor to pay the amounts of first instalment.

xviii. The Operational Creditor vide letter dated 30.11.2019 (sent via email dated 30.11.2019) replied to email dated 15.11.2019 sent by the Corporate Debtor. Under the said letter, the Operational Creditor again reminded the Corporate Debtor of its failure in payment of first as well as second instalment which became due and payable on 25.11.2019 and further mentioned that the payment against the work done by the Operational Creditor had been due since March 2017 and due to the financial difficulties expressed by the Corporate Debtor, the Operational Creditor agreed to enter the Agreement dated 30.09.2019 and did not insist on payment of staggered payment amounts corporate debtor. Also, the operational creditor gave one more opportunity to the corporate debtor to pay the pending amounts of first and second instalment within 7 days of the receipt of the said letter.

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xix. Consequentially, the operational creditor issued a Notice dated 09.01.2020 to the Corporate Debtor whereby the Operational creditor requested to clear an amount of Rs. 3,75,00,000/- which became due and payable by the corporate debtor under first, second and third instalment within 7 days of receipt of the notice and further put notice of legal action to the corporate debtor in event of failure in payment of amounts as mentioned above.

xx. The Corporate Debtor vide email/letter dated 17.01.2020 replied to the Notice dated 09.01.2020 issued by the Operational Creditor whereby the Corporate Debtor acknowledged and admitted its liability to pay the amounts as agreed under the Agreement dated 30.09.2019 and further reiterated the contents of email dated 15.11.2019 as the reasons for failure to clear the necessary payments. Further, vide said reply the Corporate Debtor stated that it is in the process of negotiation and in advance talks with certain financial companies/ banks for obtaining loan which would allow the Corporate Debtor to release funds required to ensure payments to the Operational Creditor in terms of Agreement dated 30.09.2019. The Corporate Debtor also requested the Operational Creditor to not initiate any legal action as the same would further hinder its ability to make payment of amounts as agreed under the said Agreement.

4. The Operational Creditor issued a Demand Notice dated 15.02.2020 under Section 8 of the Insolvency and

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Bankruptcy Code, 2016 demanding payment of an unpaid operational debt amounting to Rs. 7,72,00,000/- which is due and payable by the corporate debtor.

5. The total amount of debt claimed to be in default is Rs. 7,72,00,000/- and default in payment of opertional debt due and payable began from 25.10.2019.

6. The Corporate Debtor in its reply dated 27.10.2020 has submitted that:

i. The Memorandum of Understanding/Settlement Agreement dated 30.09.2019 was executed by the Corporate Debtor only after considering all the prevalent real estate conditions wherein Corporate Debtor was confident that the above mentioned project shall be finished on time and the proceeds from the sales of the said project would then be utilized towards the payment of the installment amounts to the Operational Creditor as per the Settlement Agreement.

ii. However, the delay in payment of installment amounts was caused due to the fact that the construction of the said project was stopped due to the various EPCA/ NGT Orders in the month of October 2019 and thereafter unprecedented conditions created due to COVID-19 pandemic.

iii. Due to poor air quality and air pollution in the National Capital Region ('NCR'), the Environment Pollution (Prevention & Control) Authority ('EPCA') vide its Notification dated 09.10.2019 suggested measures and

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efforts to be made in order to ensure that the levels of air pollution do not rise further even with adverse weather conditions so that the pollution level in the NCR can be contained. Thereafter vide EPCA Notification dated 25.10.2019, construction activities were banned between 6:00 AM to 6:00 PM during 26th October 2019 to 30th October 2019 in Delhi and satellite towns namely Gurugram, Faridabad, Noida, Greater Noida, Ghaziabad, Sonipat and Bahadurgarh. Similarly, EPCA vide its Notifications dated 01.11.2019, 04.11.2019, 08.11.2019, 11.11.2019 and 18.11.2019 continued its ban of the construction activity in the NCR region till further orders of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide its Order dated 09.12.2019 lifted the complete ban and imposed a partial ban wherein the construction activities per permitted only during the day time from 6:00 AM to 6:00 PM only, subject to the criteria stipulated in GRAP, wherein strict enforcement of rules for dust control in construction activities and closure of non-compliant sites is mandated in moderate to poor AQI category.

iv. Further due to the construction banned imposed by the various authorities and institutions, the daily wage laborers and construction workers also becomes unemployed. Resultantly many of these daily wage laborers and construction workers then relocate to a new construction site due to their financial reasons. It is due to this reason (construction ban alongwith relocation

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worker/laborers), the Corporate Debtor has to deal with another burden to find skilled construction worker/laborers for the completion of the project in effective and efficient manner and the same takes considerable time. Even the Hon'ble National Green Tribunal admitted the fact that due to the construction ban, the daily wage laborers and construction workers are the worst sufferers and further suggested allowance to laborers hit by construction ban.

v. It is only in late February 2020, the Corporate Debtor was able to begin construction activity again, which became possible only after finding skilled construction laborers and workers.

vi. No operational debt is due and payable on behalf of Corporate Debtor, however, the Corporate Debtor in terms of Settlement Agreement dated 30.09.2019 is ready and willing to pay the Operational Creditor as per the Settlement Agreement.

vii. The Corporate Debtor pray for the leniency of this Hon'ble Tribunal to provide further reasonable time to make payments to the Operational Creditor as the Corporate Debtor is always ready and willing to make the payments in terms of the Settlement Agreement.

7. The Applicant has filed IA 4505/2022 on 16.09.2022. Upon perusal of the Application, it is observed that this Tribunal has dismissed the captioned petition vide order dated 03.06.2022. The Applicant had preferred an appeal against

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the aforesaid order of dismissal of petition passed by this Tribunal before the Hon'ble NCLAT. Vide order dated 08.09.2022, the Hon'ble Appellate Tribunal has set aside the order dated 03.06.2022 with directions to this Tribunal to pass an order of admission and other consequential order. Therefore, this Tribunal, vide order dated 20.09.2022, has restored the captioned petition.

8. In the light of the aforesaid facts, we find that the Letter of Intent dated 06.09.2010 was executed between the Operational Creditor and the Corporate Debtor clearly substantiate the Operational Creditor's claim that the Corporate Debtor has defaulted on repayment which is duly admitted by Corporate Debtor. Vide order dated 20.09.2022, the Ld. Counsel for Corporate Debtor has admitted the liability of the Corporate Debtor.

9. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this

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petition and **initiates** CIRP on the Corporate Debtor with immediate effect.

10. The Applicant has proposed the name of IRP. Accordingly, this Adjudicating Authority, hereby appoints Mr. Atul Mittal, Reg. No: IBBI/IPA-001/IP-P00439/2017-18/10762 to act as Insolvency Resolution Professional. The Authorization for Assignment of IRP is also filed which is valid upto 30.01.2023. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

11. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate and initial expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP. The operational creditor may fix the IRP fee and expenses, if not done so far.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by

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Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(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;

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(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.

14. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and

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Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution

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Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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Rahul Bhatnagar
(Member Technical)

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P.S.N. Prasad
(Member Judicial)