

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.308
C.P.(IB)/189(AHM)2021

Order under Section 9 IBC

IN THE MATTER OF:

SS Infra
V/s
Sadbhav Engineering Ltd

.....Applicant

.....Respondent

Order delivered on 22/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -1, AHMEDABAD**

CP (IB)/189 (AHM) 2021

(An application 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 M/s. Sadbhav Engineering Limited

M/s S.S. Infra,

A Partnership Firm duly

Registered under the Indian Partnership Act, 1932,

SCO-3, New Grain Market, Bye Pass Road,

Jagadhri, Yamuna Nagar, Haryana-135001

Email:- ssinfra71@gmail.com

...Applicant/Operational Creditor

VERSUS

M/s. Sadbhav Engineering Ltd.

Having its registered office at

Sadbhav House, Opposite Law Garden Police Chowki,

Ellisbridge, Ahmedabad,-Gujarat-380006.

...Respondent/ Corporate Debtor

Order Pronounced On: 22.04.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant

: Mr. Anurag Agrawal. Advocate

For the Respondent

: Mr. Navin Pahwa, Sr. Adv. ib

Mr. Ravi Pahwa, Adv.

ORDER

1. The present application is filed on 18.10.2021 by the Applicant M/s S.S. Infra (hereinafter referred to as ‘**Operational Creditor**’) against the Respondent M/s Sadbhav Engineering Ltd. (hereinafter referred to as ‘**Corporate Debtor**’) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “**IB (AAA) Rules, 2016**”) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of the operational debt of Rs.3,97,10,723/-.
2. A perusal of Part-I of the Form-5 reveals that affidavit in support of application is affirmed by one Mr. Pradeep Kumar in his capacity as Authorized Signatory of the Operational Creditor duly authorized by way of Power of Attorney executed by the partners of the firm on 20.09.2021 and attached at page 28 of the application.
3. A perusal of the Part II of Form-5 reveals that the Respondent/Corporate Debtor is one M/s Sadbhav Engineering Ltd. is a company incorporated on

03.10.1988 with CIN No. L45400GJ1988PLC011322 and is having its registered office at Sadbhav House, Opp. Law Garden Police Chowki, Ellisbridge, Ahmedabad-380006.

4. On perusal of Part-III of the Form-5 reveals that the Applicant/Operational Creditor has nominated Mr. Sanjay Kumar Agarwal having Registration No. as IBBI/IPA-001/IP-P00494/2017-2018/10882 (AFA Valid upto 12/12/2024) under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).
5. On perusal of Part-IV of the Form-5 reveals that total operational debt as claimed by the Applicant/Operational Creditor is Rs.3,97,10,723/- alongwith interest @ 18.00% per annum on the aforesaid amount w.e.f. 08.03.2019 till the actual payment. The date of default is mentioned as 08.03.2019.
6. It is stated that the Respondent had awarded to the Applicant Work Order bearing Ref. No. SEI/Y-P/UTILITY/FY-16-17/1 dated 15.08.2016 for shifting of electrical utilities upto 33 KV under Uttar Haryana Bijli Vitran Nigam Ltd. (UHBVNL) and fixing with all new material as per approved estimates of UHBVNL and estimates approved by competent authority of NHAI at Four lanning of Yamuna Nagar-Panchkula Section of NH-73 in

the state of Haryana under NHDP Phase-III on EPC basis-Package -1 (from KM 70830 to 115.400) and Package 2 (from KM 115.400 to 145.000).

7. It is stated that post issue of work order, the Applicant had completed the work as per the order and raised the running bills from time to time.
8. It is stated that UHBVNL had issued various completion certificates in respect of work done by the Applicant.
9. It is stated that the Respondent had paid to the Applicant a total sum of Rs. 26,43,11,254/- and a sum of Rs.3,97,10,723/- is still due and payable.
10. It is stated that upon the request by the Applicant, the Respondent has provided the statement of account through email dated 09.10.2020 in which the above amount is acknowledged by the Respondent.
11. It is stated that despite repeated request the Respondent failed to pay the Applicant. Hence, the Applicant as a last resort, served a Demand Notice dated 15.07.2021 under covering letter dated 04.08.2021 which was delivered to the Respondent on 09.08.2021 calling upon the Respondent to clear the outstanding debt of Rs.3,97,10,723/- (Rupees Three Crore Ninety Seven Lakh Ten Thousand Seven Hundred Twenty Three only). However,

the Respondent did not reply to the said demand Notice and neither paid the amount. Hence, this petition was filed on 18.10.2021.

12. The Applicant has relied upon the following documents which are as under:-

- i) Copy of Form A & C.
- ii) Copy of power of attorney
- iii) Copy of Master Data of Respondent
- iv) Copy of 'Work Order' bearing ref. No. SEI/Y-P/UTILITY/FY-16-17/1 dt.15/08/2016
- v) Copy of Invoices
- vi) Copy of completion certificates
- vii) Copy of statement of account.
- viii) Copy of email dt.07.10.2020, sent by Applicant to Respondent for providing the statement of account of the Applicant Company.
- ix) Copy of email dt.09.10.2020 along with statement of account sent by Respondent to Applicant.
- x) Copy of Demand Notice dated 15.07.2021 alongwith WhatsApp Screen shots, Postal receipt & e-mail.
- xi) Copy of track reports.
- xii) Copy of covering letter Dt. 04.08.2021 through Speed Post-Dt. 05.08.2021 and E-mail Dt.06.08.2021.
- xiii) Copy of track reports.
- xiv) Certificate U/s 65-B of Indian Evidence act.
- xv) Affidavit U/s 9(3)b of the IBC, 2016
- xvi) Form-D was filed on 05.02.2024 being record of debt and default.

13. The Applicant/Operational Creditor has filed Form-D on 05.02.2024 being record of debt and default issued by National E-Governance Services Limited (“NeSL”) in which date of default is reordered as 08.03.2019 with status “Disputed”.
14. That on issuance of the notice, the Respondent has appeared and filed its reply under diary no. D956 dated 30.03.2023 which is affirmed by one Mr. Milan Buch in his capacity as Authorized Signatory, duly authorized under board resolution dated 17.12.2022. The respondent denied various averments made in the Application. The main contentions of the Respondent are summarized below :-
- a) Application filed by Partnership Firm and there is no description of partners and partnership deed is not attached.
 - b) Under para 5 of the reply the Respondent has stated that the Respondent had offered settlement to settle the complete outstanding amount of Rs. 3.97 Crores in 16 instalments ending 20.5.2024. In support of this respondent has attached Whatsapp chat dated 03.03.2023 at Annexure – R-1.
 - c) The Applicant however rejected the settlement proposal and has asked for less instalments.
 - d) Respondent is a viable going concern with large orders and unbilled revenue of more than Rs. 4000 Crores as on 31.12.2022. Respondent

has won several Arbitral Awards against NHAI and is awaiting implementation of these awards.

e) Respondent is facing liquidity crunch which is temporary.

15. Rejoinder was filed on 17.04.2023 under diary no. D1280. In rejoinder the Applicant briefly states as under :-

- a) Applicant has never refused the proposal for settlement, but only made a counter offer and for which the Respondent never reverted.
- b) Applicant has annexed Form A and Form C at Annexure A along with petition which provide details of partners of firm and there was no need to provide separate partnership deed.

16. Respondent has filed a purshis on 17.04.2024 during the hearing, the contents of the same are reproduced below :-

“Pending the petition, the respondent has made payment of Rs.1,92,89,621/- to Applicant. The Respondent begs to produce the chart reflecting the payments made by Respondent to Applicant which may please be taken on record.”

17. We have heard the arguments of Ld. Counsel for the Applicant, Ld. Counsel for the Respondent and perused the material available on record.

- a. It is not in dispute that the Applicant has supplied goods and services to the Respondent. The Applicant had raised various invoices which were duly received by the respondent.

- b. As per the invoices, the Respondent was required to clear the invoice in terms of the work order & invoices and were never disputed by the Respondent.
- c. However, the Respondent failed to clear the invoices as per terms stated therein and defaulted its repayment which is considered as a date of default against each invoice.
- d. The Applicant served Demand Notice dated 15.07.2021 under covering letter dated 04.08.2021 which was delivered to the Respondent on 09.08.2021 and was never replied by the Respondent.
- e. Further, there is no communication from the side of the Respondent which speaks about any defect in the present application. Hence, there is no pre-existing dispute exists in the matter in terms of Section 8(2)(a) of the IB Code.
- f. However, in its reply the Respondent has in feeble voice raised technical objections which have been duly covered under the Rejoinder regarding partnership deed.
- g. The Respondent has in the reply more particularly under para 5 have admitted the debt of Rs. 3.97 Crores. Further to this the Respondent has filed a purshis on 17.04.2023 contents of which are reproduced above which affirms and confirms the debt and default.

- h. As regards affidavit u/s 9 (3) (b), the same is placed on record as per page 110 to 111 of the application.
18. Therefore, in our view present application is complete in terms of Section 9 of the Code. As the Applicant has proved before us that outstanding Operational Debt is of more than rupees one crore which is due to the Applicant by the Respondent and that the Respondent has defaulted in payment of the same. It meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
19. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-
- (i) The Respondent/Corporate Debtor **M/s Sadbhav Engineering Ltd.** is **admitted** to Corporate Insolvency Resolution Process under section 9(5) of the Code.
 - (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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 Securitisation 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.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As proposed by the Applicant/Operational Creditor, we appoint **Mr. Sanjay Kumar Agarwal**, Registered Insolvency Professional having registration number as **IBBI/IPA-001/IP-00494/2017-2018/10882** under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application

to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.3,00,000/- (Rupees Three Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of

necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

20. Accordingly, this Application **CP(IB)/189/AHM/2021** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)