

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(through Web-based Video Conferencing Platform)

CP (IB) No.153/BB/2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Amirsons Scaffolding Private Limited,

Registered Office at:
TK- 1, Third Floor,
Living Style Mall, Jasola
New Delhi – 110 076.

... Petitioner/Operational Creditor

Versus

Buildmet Private Limited,

Registered Office at:
'KKR PEARL' survey No. 58/1,
Nagashetty Halli, Kasaba Hobli,
Hebbal-Tumkur Outer
Ring Road,
Bangalore- 560 094.

... Respondent/Corporate Debtor

Order delivered on: 22nd November, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri Gursat Singh, Adv
For the Respondent : None

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 05.01.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w.

Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Amirsons Scaffolding Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Buildmet Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 3,88,21,560/-. (Rupees Three Crore Eighty Eight Lakhs Twenty One Thousand Five Hundred and Sixty Only).

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor and the Corporate Debtor are companies incorporated under the provisions of the Companies Act, 1956. The parties had entered into an agreement vide work order dated 20.09.2018 and 10.06.2019, for the supply of shuttering and scaffolding material from the Operational Creditor to the project sites of the Corporate Debtor. Thereon, in pursuance of the Work Order, the Operational Creditor commenced with the supply of shuttering and scaffolding material on hire basis at the project sites of corporate debtor.
4. Accordingly the petitioner started with the supply of shuttering and scaffolding material at the project sites of the Corporate Debtor, and thereafter, started raising monthly invoices from 01.11.2018. Further, during the commencement of the business the corporate debtor made promises to pay against the invoices that were generated by the operational creditor on time.
5. It is submitted that on the pursuance made by the corporate debtor, the Petitioner continued to supply the shuttering and scaffolding material on the site of corporate debtor. However, gradually the dues were mounting up and aggregated to a total sum of Rs. 2,48,91,086/- the amount which is reflecting in the ledger account of the corporate debtor maintained in the books of Accounts of operational creditor. The respondent has not paid the default amount till date. Therefore, in total as on date of filing of this Petition a sum of Rs. 3,13,94,852/- [Site-1 (OCL Cement, Rajangapur, Sundargarh District, Odisha)- (63,45,193/-

Principal+11,40,293/- interest), SITE-2 (JK Cement in Balasinor, Mahisagar District, Gujarat); (35,43,441/- Principal+15,24,579/- interest) and SITE-3 (RCCPL Pvt Ltd Mukutban Village Yavatmal District Maharashtra); (1,50,02,452/- Principal+ 38,38,894/- interest)] along with material cost Rs. 74,26,708/- is due and payable as outstanding liability of the corporate debtor to the Petitioner.

6. It is submitted that the corporate debtor had made a part payment, in response to the constant communications which were underway between the respondent and the petitioner. However, after 07.01.2021, till date, no payments had been credited in favour of the petitioner, thereby resulting in an outstanding operational debt of Rs. 2,48,91,086/- in favour of the petitioner. Further as per the policy of Petitioner any delay in clearance of outstanding amount would attract an interest at 24% per annum. Consequently, the interest amount on the 2 sites has amounted to – SITE-1 (OCL Cement, Rajgangapur, Sundargarh District, Odisha) Rs. 11,40,293/- interest; SITE-2 (JK Cemet in Balasinor, Mahisagar District, Gujarat) Rs. 15,24,579/- interest , and SITE-3 (RCCPL Pvt Ltd Mukutban Village Yavatmal District, Maharashtra) Rs. 38,38,894/- interest was due and payable by the Corporate Debtor in favour of the Petitioner.
7. It is submitted that due to the stoic silence which was been evidenced from the conduct of the corporate debtor, since 07.01.2021, the petitioner was forced to issue demand notice under Section 8 of the IBC, 2016 on 03.12.2021 which was sent via speed post as well as through e-mail to the registered address and email address mentioned in the MCA. The soft copy of the Demand Notice was issued through email on 03.12.2021, and the same had not been received back undelivered/bounced.
8. It is submitted that total outstanding debt that is due from the Corporate Debtor to the Operational creditor is Rs. 3,88,21,560/-.
9. It is submitted that the petitioner has complied with all the mandatory provisions of Section 9 (3) (a), (b) and (c) of IBC, 2016. Further, the respondent has not replied to the Demand Notice dated 12.08.2021 issued under 8 of IBC, which is attached with the Company Petition.

10. On 26.05.2023 it is noticed by this Tribunal that in Part- IV of Form No. 5 of C.P instead of 'Date of Default' it is mentioned as 'Debt fell due from 30.07.2019. Therefore, the Learned Counsel for the petitioner was directed to rectify the defect in Part- IV of Form-5 and to file revised Form. The compliance to the same was made vide diary No. 3201 dated 19.06.2023 wherein the date of default was mentioned as 30.07.2019. And the same is taken on record. Further, on 05.07.2023, tribunal directed the counsel to file Form -D of the NeSL Report to ascertain the correct date of default. And the same is compiled vide diary No. 3748 dated 17.07.2023 wherein the date of default mentioned is 30.07.2019.
11. It was noticed by this Tribunal that, court notice in the present case was issued on 14.09.2022. On 13.02.2023 it is observed by this Tribunal that proof of service of the notice was filed vide diary dated 02.11.2022. However, it is noticed that there is no proper delivery of notice on the respondent as per tracking report. Therefore tribunal directed the petitioner to adopt substituted mode of service by way of paper publication in two daily newspapers and the same was complied and the copy of paper publication was filed vide diary dated 17.04.2023.
12. It is observed that inspite of availing substantial time the respondent did not appear nor filed any objection hence on 20.07.2023 the matter was decided to be proceeded with on exparte basis. And the matter was reserved for orders on 26.09.2023.
13. Heard the counsel for the Petitioner and perused the records available.
14. The Present Petition was filed on 05.01.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 by M/s Amirsons Scaffolding Private Limited inter alia seeking to initiate Corporate Insolvency Resolution Process against M/s. Buildmet Private Limited on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 3,88,21,560/-. (Rupees Three Crore Eighty Eight Lakhs Twenty One Thousand Five Hundred and Sixty Only).
15. The amount in default mentioned in Form 5 is Rs. 3,88,21,560/- out of which the Principal amount is Rs. 2,48,91,086/- and therefore the threshold requirement of Rs. 1 Crore at the time of filing of Petition is

fulfilled. This Tribunal has perused the work order dated 10.06.2019 attached along with the petition and bank account statements of HDFC Bank Ltd of the petitioner and the debt is established.

16. The Learned Counsel for the petitioner has attached Demand Notice dated 03.12.2021 and the copy of tracking report confirming the service is also attached. Further, no reply to the demand notice is received. Moreover, no dispute has been raised by the respondent nor any appearance was made before this Tribunal. The Petitioner had filed affidavit dated 29.04.2022 affirming that that no notice of dispute to the unpaid operational debt has been given by the Corporate Debtor.
17. The date of default as per Form 5 and NeSI report is on 30.07.2019 and the Petition is filed on 05.01.2022, hence the Petition is filed well within the limitation.
18. Accordingly, considering the facts and circumstances of the cases this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the IBC, 2016 by the Operational Creditor to initiate CIRP against M/s Buildmet Private Limited. Therefore, the instant Company Petition bearing **CP (IB) No. 153/BB/2022 is admitted** against the Corporate Debtor and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
 - 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
 - b. any court of law, tribunal, arbitration panel or other authority;
 - c. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - d. 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;

- e. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
 - f. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
 - g. The provisions of Section 14(3) shall however, not apply to such transactions 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;
 - h. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
- 19.** This bench appoints **Mr. Chidambar Chikkerur**. Registration No. IBBI/IPA-001/IP-P-02610/2021-2022/14005 having registered address: 37, 18th main, M C layout, Vijayanagar ,near Udaya School, Bangalore, Karnataka ,560040, e-mail ip.cachiks@yahoo.com as Phone Number: 9844317480 Interim Resolution Professional to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC. The IRP shall file his written consent within one week from today.
- 20.** The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.

21. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
22. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**