

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

(IB)-505(ND)2022

IN THE MATTER OF:

Mahi Buildhome Private Limited

Having registered office at :

Office : G-496, GAMA-II,

Greater Noida UP-201306,

... Applicant/Operational Creditor

VERSUS

M/s. Unibera Developers Private Limited

Office: 2 Jay House Bihari Park,

Devli Road Khanpur,

New Delhi -110062

... Respondent

Section: 9 of the IBC, 2016

Order Delivered on : 13.01.2023

CORAM:

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

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Pranav Gupta, Adv. Aditya Shankar Prasad
Adv. Shahrukh

For the Respondent : Adv. Amar Vivek, Adv. Aditiya Gauri and Adv.
Dhananjaya Sud

ORDER

PER: SHRI L. N. GUPTA, MEMBER (T)

M/s. Mahi Buildhome Private Limited (for brevity, the **'Applicant/Operational Creditor'**) has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Unibera Developers Private Limited (for brevity, the **'Respondent'**).

2. The Respondent namely, M/s. Unibera Developers Private Limited is a Company incorporated on 10.01.2012 with CIN U70102DL2012 PTC229805 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 2 Jay House, Bihari Park, Devli Road Khanpur, Delhi - 110062, which is coming within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent is Rs.1,00,00,000/- and Paid-up Share Capital is Rs. 25,00,000/-, as per the Master Data of the Respondent annexed.

3. It is submitted by the Applicant that it is involved in the business of construction and real estate development with various eminent companies throughout the country, whereas the Respondent is engaged in the development and construction of real estate projects including residential, commercial and government projects. It is further submitted by the Applicant that it had executed work orders dated

30.04.2015 & 01.10.2021 for civil construction work in the Respondent's residential project situated at Plot GH-16F, Sector-1, Greater NOIDA (west) U.P, for which the Applicant raised Invoices/Bills. Though the Respondent acknowledged the receipt of the invoices issued by the Applicant but never made the payment. The particulars of the Operational Debt claimed and date of default are mentioned in the Part IV of the application, which is reproduced below:

PART-IV		
PARTICULARS OF OPERATIONAL DEBT		
1.	TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE	<p>The Operational Creditor was engaged as a "Contractor" by the Corporate Debtor for the construction-related works that were to be done in the real estate project(s) of the Corporate Debtor with all in terms and conditions as agreed between the parties vide work orders dated 30th April 2015 & 1st October 2021.</p> <p>The Operational Creditor performed its job with the best of its professional skills and the corporate debtor has never raised any objection to the quality of work done by the Operational Creditor.</p> <p>Further, the Operational Creditor had been working under the contractual terms in the real estate project of the Corporate Debtor, and all the bills issued against the work done were duly acknowledged invoices by the Corporate Debtor. The Operational Creditor raised RA bills for every work done, although the Corporate Debtor has acknowledged the receipt of such RA bills raised by the Operational Creditor.</p> <p>The total work done by the Operational Creditor since its engagement with the Corporate Debtor has reached Rs. 37,36,59,614/- (Rupees Thirty-Seven Crore Thirty Six Lakh Fifty-Nine Thousand Six Hundred Fourteen Only). In this regard, the total amount paid to the Operational Creditor is Rs.</p>

		<p>13,46,61,197/- (Rupees Thirteen Crore Forty-Six Lakh Sixty One Thousand One Hundred Ninety-Seven Only) [Rs. 11,53,64,437/- has been paid to the Cement & Steel Suppliers directly] and a huge amount of Rs. 6,22,43,451/- (Rupees Six Crore Twenty Two Lakh Forty-Three Thousand Four Hundred Fifty-One Only) has been adjusted by the Corporate Debtor by issuing allotments of flats in the name of the Operational Creditor. In view of the above, in spite of acknowledging the liability of admitted operational debt of Rs. 6,13,90,529/- (Rupees Six Crore Thirteen Lakh Ninety Thousand Five Hundred Twenty Nine Only), the Corporate Debtor has miserably failed to make payment of the admitted dues to the Operational Creditor. The Corporate Debtor made the last payment on 03.11.2020 and no further payment has been done after said date.</p> <p>The Corporate Debtor has an admitted liability of operational debt tune to Rs. 6,13,90,529/-</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>Rs. 6,13,90,529/- (Rupees Six Crore Thirteen Lakh Ninety Thousand Five Hundred Twenty Nine Only).</p> <p>Default date: 03.11.2022 (Annexure A4: Ledger)</p>

4. Thus, as per Part IV of the Application, the Applicant has claimed an amount of Rs.6,13,90,529/- as an operational debt in default and 3.11.2022 to be the date of default.

5. It is stated by the Applicant that a Demand Notice dated 25.05.2022, under Section 8 of IBC 2016, was sent at the registered office of the Respondent via courier, which was delivered to the Respondent on 30.05.2022. The Applicant has further stated it has not received any reply of the demand notice. The same is averred by the applicant in the Affidavit filed under Section 9(3)(b) of IBC, 2016.

6. On issuance of the notice, the Respondent has filed its reply. Though the Respondent has denied its liability in its reply, however, during the course of hearing on 23.12.2022, the Ld. Counsel Mr. Dhananjaya Sud appearing for the Respondent admitted the liability on behalf of the Corporate Debtor and sought time to clear the dues of the Operational Creditor.

7. We have heard the submissions of both the parties and perused the documents on record. In view of the admission of the debt made on behalf of the Respondent, we are not inclined to consider the objections raised by the Respondents in the reply. As regards the question of allowing time to the Respondent to clear the dues of the Applicant, we are of the view that even after admission of the application, the exit routes are available under Section 12A of IBC, 2016 read with

Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

8. In the given circumstances and the fact that the Respondent has admitted its liability before this Tribunal, **the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), 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 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;
- (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.”

9. As proposed by the Operational Creditor, this Bench appoints Mr. Ashok Kumar Jalan (Email:akjalan@jalanca.com) having

Registration No. IBBI/IPA-001/IP-P00168/2017-18/10337 as IRP subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that:

“Mr. Ashok Kumar Jalan (Email id: akjalan@jalanca.com Registration No. IBBI/IPA-001/IP-P00168/2017-1810337), IRP is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

10. The Operational Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

11. A copy of this Order shall immediately be communicated by the Registry/Court Officer to the Operational Creditor, the Corporate Debtor and the IRP mentioned above.

12. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their record.

Sd/-
(L. N. GUPTA)
MEMBER (T)

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