



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.72/BB/2021
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

ACE ENVIRO TECH PRIVATE LIMITED,

Basava Sadana
No.117,3rd Floor
Coles Road,FraserTown
Bangalore-560005

-Petitioner/Operational Creditor

Versus

TARUN REALTORS PRIVATE LIMITED

No.41, Vittal Mallya Road
Bangalore-560001

- Respondent/Corporate Debtor

Order delivered on: 20th July 2023

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

PRESENT:

For the Petitioner :Shri Chandramouli Prabhakar
For the Respondent : Shri Dylan Dominic

O R D E R

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 02.02.2021 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 Ace Enviro Tech Private Limited (for brevity 'Operational Creditor/Petitioner') *inter alia* seeking to initiate Corporate Insolvency Resolution Process against M/s. Tarun Realtors Private Limited (hereinafter referred as 'Respondent/Respondent') on the ground that the Respondent has committed a default for a total outstanding amount of Rs.5,19,48,628/- (Rupees Five Crore Nineteen Lakhs Forty-Eight Thousand Six



Hundred and Twenty-Eight Only comprising Principal amount of Rs. 4,83,36,008/-.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner in the petition and the written submission are as follows:

- a) The Petitioner had rendered HVAC Services (Heating, Ventilation & Air Conditioning) as well as Waterproofing Services to the Respondent.
- b) The total amount of pending payments due to the Petitioner towards invoices raised upon the Respondent as on 15.02.2020 is a sum of Rs.4,83,36,008/- which is the outstanding due and payable to the Petitioner after giving credit to all monies paid by the Respondent in the running account and ledger maintained by the Petitioner. The details of such invoices have been given in Item 2 of Part IV of Form 5 filed with the application. Copies of invoices raised by the Operational Creditor is attached to the application as Annexure 2.
- c) The Respondent had issued Work Order No.113 dated 23.08.2017 and Work Order No.233 dated 02.08.2018 upon the Petitioner towards various HVAC Works to be executed at Mantri Arena Mall developed by the Respondent in Kanakapura Main Road, Bangalore.
- d) The Petitioner had duly executed all such works by January 2020 and had raised numerous invoices. The tax invoices of the Petitioner have been duly acknowledged by the respondent without any protest.
- e) It is stated that after giving credit to payments made, the balance amount of pending payments due to the Petitioner towards invoices raised upon the Respondent is a sum of Rs.4,83,36,008. In the Petition, the total default amount is stated to be Rs.5,19,48,628/- which is inclusive of interest.
- f) The date of default mentioned in the petition is 15.02.2020. The Petitioner had duly issued a remainder dated 15.03.2020 which was also duly acknowledged by the Respondent. However, in spite of acknowledging all the invoices and the remainder dated 15.03.2020, no payments were made thereafter by the respondents to the Petitioner.



g) The Petitioner had duly issued a demand notice in Form 3 dated 15.03.2020 and Form 4 upon the Respondent, to which the Respondent has not issued any reply.

3. The respondent has filed objection vide diary no 1394 dated 01.04.2023 inter alia stating as follows :-

- 1) It is submitted that no documents has produced by the Petitioner to substantiate the Directorship of Mr.Sudesh Kumar .The Board resolution produced along with the application at Page no 86 of the application, finds no mention of authorising Mr.Sudesh Kumar to institute the proceedings.
- 2) It is stated that no amounts are due, whatsoever, against the invoices produced by the Applicant at Annexure 2 of the application. No shred of evidence has been produced by the Applicant to substantiate its claim that any sums are due on the said invoices.Mere production of invoices and purchase orders can by no stretch of imagine be construed as the existence of an operational debt.It is settled position of law that not every claim is a debt, and a debt, if any, does not automatically become a default as defined under the IBC, Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *Pioneer Urban Land & Infrastructure Ltd v.Union of India*,(2019) 8 SCC 416. The Petitioner has not produced any material on record to demonstrate that there exists any liability on the part of the respondent to pay the sums claimed in the petition.
- 3) It is further stated that the mechanism provided under the IBC cannot be abused to recover monies, same was reiterated by the Hon'ble Supreme Court in (2018) 1 SCC 353; *Mobilox Innovations Private Limited v.Kirusa Software Pvt Ltd*, and (2019) 12 SCC 697; *Transmission Corporation of Andhra Pradesh Limited v.Equipment Conductors and Cables Limited*, that proceedings under the IBC is not a recovery mechanism.

4. The Petitioner has filed written submission vide diary no 1346 dated 09.03.2023 *inter alia* stating as follows :-

- a) The Petitioner has duly presented its Master Data as downloaded from the MCA Website, wherein it is evident that Mr.Sudesh Kumar is



a Director of the Petitioner. The Board Resolution of the Petitioner Company through which all Directors have been duly authorised to initiate proceedings under the Code. Therefore, the authorisation in favour of the Director Mr.Sudesh Kumar is fully valid and the Respondent's defence is spurious and merely illusory.

- b)** The Respondent, while acknowledging the fact that services have been rendered by the Petitioner has not disputed a single Invoice/Document produced by the Petitioner in the Application. The respondent has failed to show how any of such invoices, all of which were acknowledged by it were cleared by it. Similarly, the respondent has neither disputed the Ledger Account produced by the Petitioner at Page 46-58 of the Application nor replied to the Demand Notice dated 15.03.2020.
- c)** The Petitioner after raising all invoices had further sent a Payment Reminder dated 15.03.2020. The respondent, having duly acknowledged such remainder and not having responded to the same is now estopped from disputing the lack of any pending payments.
- d)** Any allegations regarding "inordinate delay" is an afterthought. No objections whatsoever had been raised during the receipt of such invoices or in response to the payment remainder send by the Petitioner. During the execution of such works or until January 2020 when all such works were completed, the Petitioner had neither send any communications/correspondences regarding any such delays nor alleged losses.
- e)** No documents have been filed by the respondent along with its reply in order to substantiate any alleged disputes in response to the documentary evidence on record produced by the Petitioner.

- 5.** Heard the Learned Counsels for the Petitioner and the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code, and the Rules made thereunder.
- 6.** The Petitioner had supplied and rendering services of application of waterproofing services followed by plastering, cinder & concerting service to the Corporate Debtor. However, the Corporate Debtor failed to make payment of the



invoices raised by the petitioner. Demand notice dated 15.03.2020 is duly served on the Corporate Debtor.

7. The present petition is filed by M/s Ace Enviro Tech Private Limited against M/s Tarun Realtors Private Limited for a default of Rs 4,83,36,008/- along with 8 % interest per annum amounting to Rs. 36,12,620/- .Therefore the threshold requirement for the debt is satisfied. It is seen from the petition that the date of default is on 15.02.2020 and the petition is filed on 02.02.2021, which is well within the limitation.

8. Accordingly, 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 the Respondent, M/s Tarun Realtors Private Limited. Therefore, the instant Company Petition bearing CP (IB) No. 72/BB/2021 is admitted 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 Respondent 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 Respondent 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 Respondent 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 Respondent.
- f.** It is further directed that the supply of essential goods or services to the Respondent 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 Respondent;
- 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 Respondent under Section 33 as the case may be;

9. In Part-III of Form No.5, Mr. Venkata Subbarao Kalva bearing Registration No.IBBI/IPA-002/IP-N00179/2017-2018/10655 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated has been filed along with the C.P are found at Page Nos.60-66B of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr.Venkata Subbarao Kalva there is nothing adverse against him. In view of the above, we appoint Mr.Venkata Subbarao Kalva bearing Registration No. IBBI /IPA-002/IP-N00179/2017-2018/10655,having registered address at 41/1, 2nd Floor, 11th Cross, 8th Main, Jayanagar 2nd Block ,Bengaluru- 560011, email- subbaraoocs@gmail.coms and Contact No.8147238639, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

10. 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

11. The Interim Resolution Professional shall after collation of all the claims received against the Respondent and the determination of the financial position of the Respondent 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.



12. 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)**