

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

(IB)-1316(ND)2019

IN THE MATTER OF:

M/s. RBCL Projects Private Limited

Registered office at :
Unit No. 641 & 649,
6th Floor, JMD Megapolis,
Sector-48, Sohna Road,
Gurgaon, Haryana - 122002

...Applicant/Operational Creditor

VERSUS

M/s. BPTP Limited

Registered office at :
M-11, Middle Circle
Connaught Circus,
New Delhi - 110001

...Respondent

Section: 9 of the IBC, 2016

Order Delivered on : 14.11.2022

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Sandeep Bajaj, Adv. Vipul Jai,
Adv. Devansh Jain, Adv. Mayank Biyani

For the Respondent : Sr. Adv. Manish Vashisht, Adv. Vijay Kaundal,
Adv. Nitish K. Sharma, Adv. Namami Jain

ORDER

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

M/s. RBCL Projects 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. BPTP Limited (for brevity, the **‘Respondent’**).

2. The Respondent namely, M/s. BPTP Limited is a Company incorporated on 11.08.2003 with CIN U45201DL2003PLC121733 under the provisions of the erstwhile Companies Act, 1956, having its registered Office at M-11, Middle Circle, Connaught Circus, New Delhi – 110001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs. 10,00,00,00,000/- and Paid-up Share Capital is Rs. 2,51,61,60,000/- as per the Master Data of the Respondent.

3. It is submitted by the Applicant that it is a registered MSME involved in infrastructure activities that contribute to the completion or finishing of a building under construction. The Respondent is a Real Estate Company which have allotted work to the Applicant by giving work orders.

4. It is further submitted by the Applicant that it was given work order dated 06.04.2015 for construction of the Group Housing Project "Park Sentosa" [4 Towers (G+24) including Stilt & two Basements] at Sector 77, Parklands, Faridabad having value of Rs.34,25,40,969/- for the project duration of 36 months.

5. It is added by the Applicant that on 13.09.2016, it was placed with another work order for the balance civil work at Tower J & K at Group Housing Project "Discovery Park" at sector 80, Faridabad, Haryana amounting to Rs.7,77,20,479/-. Thereafter, 5 amendments to this work order were issued on different dates.

6. It is stated by the Applicant that on 07.12.2016, Letter of Intent (LOI) was issued by BPTP to the Applicant for Project "Astaire Garden" and pursuant to that LOI, Work order dated 13.12.2016 amounting to Rs.3,75,20,339/- and Work order dated 19.01.2017 amounting to Rs.2,38,25,424/- were issued to the Applicant by the Respondent.

7. It is further stated by the Applicant that after execution of these work orders, the Applicant raised various bills to the Respondent. It is added that some part payments were made against the bills raised.

8. It is submitted by the Applicant that it had received an email from the Respondent on 06.07.2017 regarding demobilization of the project and submission of the final bills. Accordingly, the applicant submitted the final bills. which were duly acknowledged by the Respondent. The Applicant has provided the Project-wise dates of

submissions of the Final Bills and the amount outstanding against those Bills, which are summarized below:

Name of Project	Date of submission of Final Bill	Amount Outstanding against the Final Bill (Rs.)
Project – Sentosa (Faridabad)	28.03.2018	1,07,59,307
Project Astaire Garden	11.10.2018	95,58,374
Project – Discovery Park	04.10.2018	2,87,35,059
Total		4,90,52,740

9. It is also submitted that on 24.10.2018, the Applicant had filed first Section 9 Petition, No. (IB)-1450(ND)2018 before this Tribunal, against the same Respondent, under which on 23.01.2019, some part settlement was reached between the parties and accordingly, the said petition was withdrawn vide order dated 24.01.2019, which is reproduced below:

“Ld. Counsels submit the matter has been settled. In view of the same, Mr. Soayib Qureshi, Ld. Counsel appearing on behalf of the Operational Creditor submits that he has instructions to withdraw the present petition.

However, he seeks liberty to revive this petition in the event of default in the terms of the settlement. Liberty Granted.

Disposed off accordingly.”

10. The Applicant has stated that thereafter, the respondent failed to make the payment of final and running bills in respect of all the 3 projects and release the performance guarantee despite repeated reminders. The particulars of the Debt claimed including the total amount of debt/default, the date of default is mentioned in Part IV of the application, which is reproduced below, for the sake of convenience:

PART-IV

Particulars Of Operational Debt		
1	(1) Total amount of debt,	(1) The amount of Debt is Rs. 4,90,52,740/- plus Interest @ 19.50% p.a. on Defaulted Payment Rs. 1,01,56,038.69/-. Thus total amount of claim is Rs. 5,92,08,778.69/- A statement showing calculation of amount in default, Date of default & Interest Calculation is attached herewith as Annexure- 4 (from page nos. 42 to 45).
	(2) Details of transactions on account of which debt fell due, and the date from which such debt fell due	(2) On April 6, 2015, A Work Order for Civil and Structure construction of 4 towers (G+24) including stilt & Two Basement was given at project site at Sentosa, Sector-77, Parklands, Faridabad for a total amount of Rs. 34,25,40,969. Further, work orders for Project Astaire Garden was given to complete the balance of works of 8 plots of Monet Floor (Full Finish) of 196 sq.yds. (Plot Nos. E-S2 to E-S9) vide Work Order No. BPTPIRBCLPPL/AG-MF/17/WO-202 dated 19.01.2017 and balance of works for construction of 5 plots of Monet Floor (Full

		Finish) of 250 Sq. Yard (Plot Nos. B-77, B-83, C-33, C-179 and C191) vide Work Order No. <i>BPTP/RBCLPPL/AG-MFI16/WO-200</i> dated 13.12.2016 and purchase order dated 20.07.2017 bearing number <i>4S00003601</i> for the said project, i.e. to complete the balance of works for the 13 plots for the agreed contract value of Rs. <i>2,38,25,424/-</i> and Rs. <i>3,75,20,339/-</i> respectively on terms and conditions agreed in such Works Orders. However, inspite of agreed settlement for the Sentosa project in pursuance to the submission of application before the Hon'ble NCLT, CD executed the Settlement Deed to make payment on Jan. 23, 2019 except the running and final bill by issue of PDC cheques. However, till date, there were no discussion on the remaining bills and payment thereof. Similarly, for Discovery Project, Applicant has completed the work order and submitted all the RA bills to CD on 04/10/2018 thereby occurring the date of default thereof as Oct. 4, 2018. Further, Applicant has also allotted the
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		another work order for Project Astaire, which was transferred to some other contractor after obtaining 5th and 6th RA bills on Oct. 11, 2018. Further, there have been taken various steps for settlement for other two projects at Astaire and Discovery, inspite of in-principal settlement, no payment has been received from the Corporate Debtor. The debt is due against all three project are from March 10, 2018; March 22, 2018 and May 22, 2018 respectively. Details are provided in Annexure 4.
	(3) the date from which such debt fell due	Since, all the projects are related with the same operational creditor, therefore, the date of default is taken as Jan. 23, 2019 i.e the last date of settlement.
2	Amount claimed to be in default and the date on which the default occurred (attach the	The amount of Debt is Rs. 4,90,52,740/- plus Interest @ 19.50% p.a. on Defaulted PaymentRs. 1,01,56,038.69/-. Thus total amount of claim is Rs. 5,92,08,778.69/-

	workings for computation of amount and dates of default in tabular form)	A Statement showing calculation of amount in default, Date of default & Interest Calculation is attached herewith as Annexure- 4 (from page nos. ⁴²to⁴⁵). Since, all the projects are related with the same operational creditor, therefore, the date of default is taken as Jan. 23, 2019 i.e the last date of settlement.
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11. On perusal of the Part IV of the Application, it is seen that the Applicant has claimed an amount of Rs.04,90,52,740/- plus Rs.01,01,56,039/- as interest @ 19.50% per annum on the defaulted payment. Thus, the total amount claimed is Rs.05,92,08,779/- and the date of default relied by the Applicant is 23.01.2019.

12. It is stated by the Applicant that since the Respondent did not make the payment of its operational debt due, it had issued a Demand Notice dated 02.04.2019 under Section 8 of IBC 2016 at the registered office of the Respondent vide speed post, which was delivered to it on 08.04.2019. The Applicant has averred that no reply to the demand notice was received by him. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016 on record stating that no notice of dispute has been received by it.

13. On issuance of notice, the Respondent has filed its reply and written submissions stating that:

13.1. The demand notice is not in the proper format and the Applicant has failed to supply the copy of the invoice along with the demand notice.

13.2. Prior to the issue of demand notice dated 02.04.2019, there was pre-existing dispute between the parties. The Respondent had already issued Legal Notices dated 22.10.2018 and 25.10.2018 claiming recovery of the excess amount payable by the Applicant for

the Astaire and Discovery Park projects. No reply is given by the Applicant.

13.3. The Respondent entered a Settlement Deed dated 23.01.2019 and agreed to pay an amount of Rs. 81 Lakhs towards full and final settlement of the outstanding dues with respect to Sentosa Project.

13.4. The Applicant was to carry out certain balance works at the "Project Sentosa" as per the Work Order dated 06.04.2015. However, the Applicant started causing hindrances and delays in execution of the works at all the three projects.

13.5. The Respondent has made a total payment of Rs. 2,85,00,576/-, however, the Applicant carried out works and supplied goods only worth Rs. 1,34,04,572/-. Therefore, as such there stands an excess payment of Rs. 1,50,96,004/- made to the Operational Creditor.

13.6. Owing to the aforesaid reasons, the Respondent was constrained to terminate the contract vide letter dated 22.05.2018.

13.7. The Applicant has also failed in complying with the requirement of the Provident Fund payments with respect to its employees working at the project sites of the Respondent. Owing to the said failure of the Applicant, the EPFO has initiated proceedings against under Section 7A directing the Respondent to produce the proofs of PF subscriptions in respect of contractual employees. The

estimated PF liability on the Respondent on account of non-compliance by the Applicant is Rs. 01,88,63,743/-.

13.8. The Applicant has already invoked the Arbitration Clause vide its letter dated 09.02.2021 with respect to the projects namely, Astaire Garden and Discovery Park.

13.9. The Applicant has concealed the reply sent in response to the Demand Notice dated 02.04.2019.

14. The Applicant has also filed its Written Submissions and stated the following:

14.1. In 2018, an interim Invoice for the Project Sentosa had fallen due and the Respondent had failed to make the payment thereof. Consequently, the Applicant was constrained to file the First Petition under Section 9 of the Code against the Respondent being CP No. (IB) 1450(ND)2018 before this Tribunal on 24.10.2018.

14.2. During the course of the said proceedings, the Respondent came forward with a settlement proposal of Rs.81,00,000/- to put an end to the NCLT Litigation. It is pertinent to note that such settlement was only with respect to the Interim Invoice, for which the First Petition was preferred. A bare perusal of Clause C of the Settlement Agreement dated 23.01.2019 shows that the settlement in question was exclusive of the dues payable by the Respondent with respect to the RA Bills and the Final Bill.

14.3. On 31.08.2018, the Applicant had raised the 15th RA Bill for the "Project Discovery Park". Thereafter, a meeting was held between the Applicant and the Respondent on 14.09.2018, wherein the Respondent admitted an amount of Rs.63,71,319/- as outstanding towards the Applicant and thereby, raised an invoice certificate pertaining to the said amount. It is pertinent to note that the said invoice certificate bears the signature of the Project Manager (Billing) and the Senior Project Manager (Billing) of the Respondent.

14.4. The dispute raised by the Respondent is moonshine. A perusal of the EPFO Order would show that the name of the Applicant is not even reflected therein. Even the establishments covered under the EPFO Order are different from the Projects, on which the Applicant was working.

14.5. Applicant demanded the payment of its debt from the Corporate Debtor vide the Demand Notice dated 02.04.2019 under section 8 of the Code. However, the invocation of Arbitration by the Applicant in terms of Clause DD of the Work Orders was done as late as on 09.02.2021 only because the limitation period for the same was coming to an end while the captioned petition was still pending.

15. After hearing submissions of both the parties, perusing the documents and Written Submissions placed on record, this Bench observes that the Applicant had on earlier occasion, filed the first (IB)-1450/ND/2018 on 24.10.2018, which was withdrawn on 24.01.2019

on the ground of execution of settlement agreement by and between the parties. Whereas the Applicant has argued that the settlement took place only in respect of the project - Sentosa (Faridabad), the Respondent has contended that the settlement for Rs.81,00,000/- took place in terms of full and final amount payable to the Applicant.

16. Per Contra, it is contended by the Applicant, in its written submissions, that the earlier (the first) IB petition was filed on the basis of an interim invoice only and the settlement was for "*except the running and final bill*". In this context, the Applicant has emphasized on Clause "C" of the Settlement Agreement dated 23.01.2019, which is reproduced below:

- C. Parties herein have decided to arrive at a settlement in order to end all dispute between them raised before the National Company Law Tribunal, New Delhi for Sentosa project situated at Sector 77, Faridabad (except the running and final bill) ("NCLT Litigation") and arrive at a mutual compromise to end the NCLT Litigation once and forever on such terms and conditions as agreed under this Agreement. The Parties have agreed that in lieu of the First Party withdrawing the NCLT Litigation and discharging all its obligations under this Agreement, the Second Party have agreed to pay the First Party a settlement amount of Rs. 81,00,000/- plus GST ("Settlement Amount") as per details below:

For RBCL PROJECTS PVT. LTD.

Director

Page 2 of 4

For BPTP Limited

Director

17. In order to examine the contention made by the Respondent, at the cost of repetition, we would like to refer to the table (given in para 8 above) indicating the dates of submissions of final bills and amount outstanding as per the Applicant:

Name of Project	Date of submission of Final Bill	Amount Outstanding against the Final Bill (RS.)
Project – Sentosa (Faridabad)	28.03.2018	1,07,59,307
Project Astaire Garden	11.10.2018	95,58,374
Project – Discovery Park	04.10.2018	2,87,35,059
Total		4,90,52,740

18. From perusal of the above, we observe that the Operational Debt of the Applicant is arising out of the Final Bills. Further, as we have already observed in Para 17 above, the Clause ‘C’ of the Settlement Agreement dated 23.01.2019 entered in respect of the “Project Sentosa (Faridabad)” clearly mentions that the settlement is for “*except the running and final bill*”. Hence, we find no force in the contention of the Corporate Debtor that the Applicant is barred from claiming the final amount of the Project- Sentosa (Faridabad).

19. It is further contended by the Respondent that the Applicant has already invoked the Arbitration Proceedings in respect of Project Astaire Garden and Project Discovery Park.

20. On perusal of the record, it is observed that the demand notice for the present Application was issued on 02.04.2019, whereas the Arbitration clause was invoked on 09.02.2021, which is much after the date of issuance of the demand notice. Hence in our view, the invocation of Arbitration Proceedings by the Applicant after the issuance of demand notice, does not constitute a pre-existing dispute in any manner.

21. It is further contended by the Respondent that the Applicant has concealed the Reply of the Respondent dated 12.04.2019 issued in response to the Demand Notice. However, on perusal of record, we find no proof in support of service of the Reply dated 12.04.2019 to the Applicant. Hence, in the absence of any supporting evidence, the contention of the Respondent merits no consideration.

22. Further, the Respondent had contended that EPFO has initiated proceedings under Section 7A under the EPFO Act. In our view, the same has no bearing on the present Application. Hence, this cannot be the ground for rejection of the present Application.

23. It is further contended by the Respondent that prior to the issuance of the demand notice dated 02.04.2019, it had sent two legal notices dated 22.10.2018 and 25.10.2018, in respect of the projects Astaire Garden and Discovery Park. One such e-mail dated 25.10.2018 is reproduced overleaf:



WITHOUT PREJUDICE

October 25, 2018

RBCL Projects Private Limited
Unit No. 641, 6th Floor
JMD Megapolis, Sector 48
Sohna Road, Gurugram
Haryana

Attn: Mr. Deepak Bansal

Re: Work Order Nos. BPTP/PARKLANDS/DISCOVERY PARK/WO-1608 ('WO-1') dated 13.09.2016 and BPTP/PARKLANDS/DISCOVERY PARK/WO-1610 ('WO-2') dated 10.10.2016 (collectively WOs) at our project Discovery Park - Faridabad.

Email dated 20.02.2017
Email dated 10.04.2017
Email dated 14.11.2017
Email dated 18.01.2018
Email dated 05.07.2018
Email dated 30.07.2018
Email dated 04.08.2018
Email dated 21.08.2018
Email dated 04.10.2018

The contents of this present demand letter may kindly be noted as under:

1. That you were awarded the above referenced work orders (WOs) for completion of balance civil works at our project Discovery Park, Sector 80, Faridabad, Haryana. The WO-1 pertains to 02 towers, Tower J and Tower K (Contract value Rs. 7,77,20,479/-) and the WO-2 pertains to Construction of Boundary Wall (Contract value Rs. 1,08,62,838/-) to be completed within 18 months and 6 months from the date of the issuance of the respective WOs.
2. That the specific timeline for completion of civil works pertaining to WO-1 and WO-2 expired on 12.03.2018 and 09.04.2017. Despite the expiry of the specific timelines, you failed to complete the works undertaken by you under the WOs. You assured us to complete the works undertaken within the agreed timelines. However, you miserably failed in adhering to promises, representations and warranties, timelines being the essence of the contract, including contractual

BPTP Limited
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CIN - U45201DL2003PLC121733

obligations in terms of the WOs. The completion timeline has long expired and still the works are nowhere near completion.

3. That in performance of our payment obligations under the WOs, we paid mobilization advance and various further amounts to you. Despite payments being made to you since inception, you failed to honor the terms of the WOs while deliberately causing hindrances and delays in the completion of the works, to our detriment. The factum of delay and slow progress of the work was brought to your knowledge on various occasions through oral as well as written communication and is compiled hereinbelow:
 - a. **Shortage of manpower:** You omitted to deploy adequate manpower at the project site deliberately, despite various reminders and requests and excess payment of advance. This lack of adequate manpower was the root cause of delay in execution and completion of works. As evident from the communication exchanged, you have miserably failed to mobilize adequate resources to complete the works at the project site in a timely manner. Not only this despite receipt of regular payments from us and your repeated assurances, you failed to make requisite payments to your labour employed and petty sub-contractors. Your unpaid labour and petty sub-contractors, in turn, are creating issues at the project site regularly causing delay in construction.
 - b. **Non-Compliance of the terms of WOs:** You failed to comply with the provisions of Clause N of the WOs on account of your failure to adhere to the bye-laws regulations, obtaining local licenses, permits and procuring insurance of material / manpower engaged at the project site. You failed to submit the Contractor's All Risk Insurance Policy and Employee Compensation Policy to us, till date, in breach of your compliance obligations as per Clause N. You failed to provide a security cheques towards the mobilization advances provided to you under the Clause E of WOs.
 - c. **Stretching deadlines:** In terms of clause V of the WOs, the detailed construction schedule, cash flow, construction methodology, details of men, material & tool and plants and machinery deployed for timely completion of the work was to be submitted by you within 07 days from the date of the issuance of the WOs. But, you have deliberately not provided us with any such information and willfully delayed the project.
 - d. **Quality of Construction:** As per Clauses O, W and X of the WOs, you were obligated to adhere to the BIS code and to get the designs approved from the Engineer-in-charge. You deliberately omitted such adherence

requirement and initiated the construction, without any requisite compliances. Further, upon inspections being conducted at the project site, whenever any lacunae / snags were pointed out either by us or by any external agency, you failed to carry out rectification in breach of your obligations under the WOs. The incomplete works done by you at the project site reek of poor workmanship.

c. Compliances not adhered to by you: .

- i. **Clause W:** That in terms of the Clause W, you were also obligated to provide sample of designs and to get the same approved by the engineer-in-charge. Without the written consent of the engineer-in-charge or its representative, no material could be used / incorporated for the project works. As a matter of fact, no sample was ever submitted by you and that no consent was ever taken by you from engineer-in-charge or its representative.
- ii. **Clause AA:** In accordance with Clause AA, you miserably failed to provide temporary lighting at the project site. Not only this, although as per the WO, lighting was your responsibility, yet the same was provided by us to ensure the early completion of works.
- iii. **Clause FF:** In accordance with Clause FF of the WOs specifically and categorically states that contractor shall at its own cost provide and install the equipment, tool and plants to get the work executed within agreed time schedule and as per the agreed list of material and tools and plants to be deployed. No cooperation in this regard was ever made by you and you never deployed adequate manpower and machinery at the project site. As such, you never intended to complete the said project works on time right from the inception.
- iv. **Clause HH:** In accordance with Clause HH, you were obligated to observe and implement SHE plan i.e. Environmental, health and safety plan, which was to be prepared by you and subsequently approved by us. Further, you have also failed in adhering to labour law compliances and regulations undertaken by you as per Clause HH of the WOs. You were to maintain records depicting that all requisite compliances have been duly met and to submit all the relevant documents along with their proofs before the initiation of works.
- v. **Clause II:** In accordance with Clause II, you were obligated to arrange for and provide adequate number of security personnel for

guarding the site, material and equipment. Not only the fact that you failed to make such arrangements, you deliberately did not comply with this clause of the Agreement, you used the security personnel employed by us at the project site.

vi. **Clause JJ:** In accordance with Clause JJ, you failed to provide adequate safety equipment like belts, helmets, safety boots /shoes, nets and protective clothing as well as emergency vehicle. You even failed to provide complete safety organizational chart.

vii. **Clause KK:** In accordance with Clause KK, you failed to provide a first aid centre at the project site. You further failed to make necessary arrangements with local hospitals for prompt medical treatment of injured workmen.

f. As a consequence thereto, and owing to your failures in performing your obligations under the WOs as stated above but not limiting to the same, we have been constrained to get the works within your scope of work from other vendors at our own cost by payment of additional amounts towards continuation and rectification of works. We are further suffering from the regular issues caused at the project site by your unpaid labour and unpaid petty sub-contractors.

g. Due to your willful default, negligence, intention to default since inception of the project works, we are compelled to get the remaining works and rectification works completed by through other vendors resultantly incurring additional financial burden. Not only this, but it has been unfurled that we have made various excess payments to you than what was due and payable. The details of the additional financial burden on account of excess payment and amounts paid to other vendors by us are summarized as under:

Sr. No.	Particulars	Amount (in Lakhs) INR	Remarks
1.	Recovery against rectification of faulty works	14.20	
2.	Recovery against UPVC fitting	7	

The damages suffered by us on your account are being substantiated under other heads, as per below:

Sr. No.	Particulars	Amount (in Lakhs) INR	Remarks
1.	Penalty against non-compliance of labour license, CAR Policy, WCP & ESI, PF etc.	15	

2.	Liquidated damages	44.29	
3.	Idling charges of employees	18	
4.	Idling charges on account of T&P	4.29	
5.	Penalty paid due to delay in handing over of the units to customers	69.22	
6.	Recovery against temporary lighting	0.10	Clause AA
7.	Recovery against labour compliances	40	Clause FF
8.	Recovery against SHE	0.30	Clause HH
9.	Recovery against security	0.30	Clause II
10.	Recovery against safety equipment	0.30	Clause JJ
11.	Recovery against First aid	0.30	Clause KK
12.	Recovery against NGT	0.60	
TOTAL		213.90	

Further, we reserve our right to recover against excess payment against RA Bills, escalation of costs on account of works done by substitute contractor, loss of profits and cost of capital due to your delay in execution of work. You are hereby called upon to pay us an amount of Rs. 2,13,90,000/- (Rupees Two Crores Thirteen Lakhs and Ninety Thousand Only), towards damages on account of losses incurred by us as explained above, within 07 days from the date of this letter, failing which we shall be constrained to initiate appropriate legal action against you, both civil and criminal, needless to say at your sole risk as to costs and consequences.

For BPTP Limited


Deep Nath Sharma
Vice President

24. On the other hand, the Applicant has rebutted the contention of the Respondent that the aforesaid mails were written, only once and after the Applicant had withdrawn the earlier filed (the first) petition number (IB)-1450/ND/2018 on 24.01.2019. Therefore, the dispute is an afterthought and moonshine.

25. In our considered view, the aforesaid e-mails raising alleged disputes are in respect of the projects Astaire Garden and Discovery Park only. There is no pre-existing dispute placed on record or produced by the Respondent with respect to the Project - Sentosa (Faridabad). As we have already noted above, the claim of the Applicant in respect of the Project - Sentosa (Faridabad) is Rs.1,07,59,307/-. Since the present petition was filed on 17.05.2019, when the minimum threshold applicable was Rs 1 (one) Lakh only, we are inclined to initiate CIR Process against the Corporate Debtor.

26. On perusal of the material available on record, we are of the considered view that the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt being above the minimum threshold limit. The Petition filed under Section 9 fulfills all the requirements of law. **Therefore, 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.”

27. As proposed by the Applicant, this Bench appoints Mr. Rakesh Kumar Gupta, IP (Email: rkg.delhi.ca@gmail.com) having Registration No. IBBI/IPA-001/IP-P00833/2017-2018/11418, 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. Rakesh Kumar Gupta, IRP having Registration No. IBBI/IPA-001/IP-P00833/2017-2018/11418, (Email: rkg.delhi.ca@gmail.com) 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

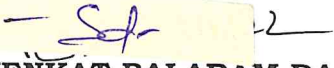
specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

28. The Applicant 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 Financial Creditor.

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

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


(L. N. GUPTA)
MEMBER (T)


(BACHU VENKAT BALARAM DAS)
MEMBER (J)