

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

(IB)-2582(ND)2019

IN THE MATTER OF:

Jakson Limited

626, 6th Floor, Tower A, DLF Tower

Jasola, New Delhi-110076

...Operational Creditor

VERSUS

Three C Universal Developers Private Limited

C-23, Greater Kailash Enclave, Part-I

New Delhi- 110048

... Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 17.12.2019

CORAM:

CH. MOHD. SHARIEF TARIQ, HON'BLE MEMBER (J)

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

PRESENT:

For the Petitioner : Mr. Siddharth Shankar Dev, Advocate

For the Respondent : Mr. Nikhil Jain, Advocate

(IB)-2582(ND)2019

Jakson Limited Vs. Three C Universal Developers Pvt. Ltd.

ORDER

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

The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Jakson Limited (for brevity 'Operational Creditor') through its authorized representative Mr. Rajib Kumar Routray, who is duly authorized vide Board Resolution dated 12.06.2016, with a prayer to initiate the Corporate Insolvency process against Three C Universal Developers Private Limited (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, Jakson Limited is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U74899DL1997PLC088808, having its registered office at 626, 6th Floor, Tower-A, DLF Tower, Jasola, New Delhi-110076.

3. The Corporate Debtor namely, Three C Universal Developers Private Limited is a Company incorporated on 02.03.2007 under the provisions of Companies Act, 2013 with CIN No. U45200DL2007 PTC160055, having its registered Office 806. C-23, Greater Kailash Enclave, Part I, New Delhi – 110048.



4. The Authorised Share Capital of the Respondent Company is Rs.50,00,000 and Paid-up Share Capital of the Company is Rs.9,08,330 as per the Master Data of the Company annexed.

5. It is averred by the Operational Creditor that :

"03. On 3rd March 2016, the Operational Creditor and the Corporate Debtor entered into an Understanding/Agreement dated 03.03.2016, valid till 02.03.2017, under which the Corporate Debtor was under obligation to identify suitable real estate development opportunities in the NCR for the Operational Creditor. In compliance of the said Undertaking/Agreement, the Operational Creditor agreed to pay an interest-free refundable security/performance deposit of Rs.12,50,00,000 (Rupees Twelve Crore Fifty Lakhs Only) to the Corporate Debtor. In consideration of the said Undertaking/Agreement, the Corporate Debtor was to receive a success fee of Rs 1,00,000.00 (Rupees One Lakh Only) per acre of land which was to be adjusted in trenches from interest-free refundable security/performance deposit of Rs. 12,50,00,000.00 (Rupees Twelve Crore Fifty Lakh Only). True Copy of Understanding/Agreement dated 03.03.2016 is annexed herewith for ready reference. During 04.03.2016 to 28.04.2016, the Operational Creditor gave Rs.12,50,00,000 (Rupees Twelve Crore Fifty Lakh Only) to the Corporate Debtor as interest-free refundable security/performance deposits in terms of Understanding/Agreement dated 03.03.2016."



6. It is further submitted by the Operational Creditor that on 12.07.2016, the Operational Creditor and the Corporate Debtor again entered into another Understanding/Agreement dated 12.07.2016 which was valid till 11.07.2017. It is added by the Operational Creditor that the Operational Creditor agreed to pay an interest-free refundable security/performance deposit of Rs.7,75,00,000.00 to the Corporate Debtor. In consideration of the said Undertaking/ Agreement, the Corporate Debtor was to receive a success fee of Rs. 1,00,000.00 per acre of land which was to be adjusted in trenches from interest free refundable security/performance deposit of Rs.7,75,00,000.

7 It is stated by the Operational Creditor that, in compliance of the Undertakings/Agreements dated 03.03.2016 and 12.07.2016, it had paid an amount of Rs.16,99,00,000 in totality, as an interest free refundable security/performance deposit. It is added by the Operational Creditor that till 23rd February 2018, the Corporate Debtor could not identify any suitable real estate development opportunities due to depressed real estate market and therefore, the tenure of Understandings/Agreement dated 03.03.2016 and 12.07.2016 was extended till 28th February, 2019 by the Operational Creditor through its letter dated 23rd February 2018.



8. It is further submitted by the Operational Creditor that the Liability of Rs.16,99,00,000 has been acknowledged by the Corporate Debtor vide their Acknowledgement Letter dated 22.05.2018.
9. It is stated by the Operational Creditor that since the Corporate Debtor had failed to liquidate its dues, it had sent a Demand Notice dated 04.07.2019, under Section 8 of IBC 2016 vide Speed Post. It is submitted by the Operational Creditor that the Demand Notice was served through Speed Post on 05.07.2019.
10. That the Operational Creditor in their Affidavit filed under Section 9(3)(b) of IBC, 2016 had made specific averment regarding non-receipt of Notice of any dispute issued by the Corporate Debtor.
11. That during the final hearing on 13.12.2019, the Counsel for the Corporate Debtor clearly admitted the operational debt and submitted that they do not wish to file any reply. He added that the Corporate Debtor is not in a position to make the payment of dues of the Operational Creditor.
12. In view of the clear admission of debt made by the Corporate Debtor & the documents placed on record by the Operational Creditor and the present petition being complete in establishing the default in payment of the operational debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of the default being above

Rs.1,00,000, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, 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:

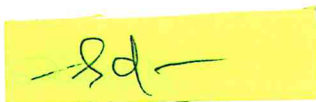
- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate 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 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.”

13. As proposed by the Petitioner, this Bench appoints Sh. Rajesh Kumar Gupta as an IRP, having his office at F-701 Vikrant Tower, Rajendra Place, New Delhi (email id- rkg.delhi.ca@gmail.com) and Registration No. IBBI/IPA-001/IP-P00833/2017-18/11418, subject to the condition that no disciplinary proceedings are pending against the

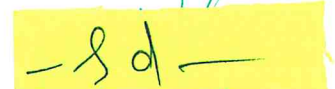
IRP so named and disclosures as required under IBBI Regulations, 2016
✓ are made ^{by} him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

14. The Operational Creditor is directed to deposit Rs.2,00,000 (Two Lakhs) 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 the Interim Resolution Professional and shall be paid back to the Operational Creditor.

15. In terms of the above, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of this Order shall be communicated to the Applicant, the Respondent and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ch. Mohd. Sharief Tariq)
Member (J)