

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. IB/644/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

M/s. Kalindi Green Ventures

Shubh Milan, 1st Dixit X Road, Vile Parle (E), Mumbai 400057

**....Operational Creditor/
Petitioner**

Vs

DK Infrastructure Pvt Ltd.

(U45203MH2008PTC178804)

Flat No. 202 Shyam Kamal B, 27 Tajpal Road, Vile Parle East Mumbai, 400057, Maharashtra

....Corporate Debtor/Respondent

Order Pronounced On: 17.04.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Videoconferencing)

For the Applicant: Ms. Aabha Dogra, Advocate I/B Rignaya and Associates
LLP

For the Respondent: None

Per: Kuldip Kumar Kareer (Judicial)

ORDER

1. The above Company Petition is filed by M/s. Kalandi Green Ventures, (hereinafter called as the “**Operational Creditor**”), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against DK Infrastructure Pvt. Ltd, (hereinafter referred to as the “**Corporate Debtor**”) by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “**Code**”) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 12,78,320/-.

FACTS OF THE CASE

2. The Operational Creditor provided services pertaining to “Internal and External Painting work” to the Corporate Debtor pursuant to the Work Order dated 23.02.2016 placed by the Corporate Debtor and issued invoices for an amount of Rs. 26,30,177/-, which were duly accepted by the Corporate Debtor.
3. The Operational Creditor issued Invoice No. 043/17-18 dated 12.09.2017 for the current bill cycle for a cumulative amount of Rs. 8,30,078/-.
4. The Corporate Debtor made the part payment of Rs. 18,00,099/-. The Corporate Debtor did not make the payment of the remaining liability despite repeated reminders sent by the Operational Creditor.

5. Thereafter, the Operational Creditor issued Demand Notice dated 16.09.2019 and Reminder Demand Notice. dated 9.10.2019 to the Corporate Debtor.
6. As the Corporate Debtor did not make the payment of the outstanding dues, the Operational Creditor through their advocate, issued a Statutory Demand Notice dated 31.10.2019 u/s 8 of the Insolvency and Bankruptcy Code, 2016 demanding 'payment of Rs. 8,30,078/- along with 18% simple interest of Rs. 4,48,242/-and further interest from 31.10.2019 till payment and realization.
7. It was further stated that the Corporate Debtor responded to the Statutory Notice by way of letters dated 5.11.2019 and 7.11.2019 but did not make the outstanding payment.
8. The date of default is 12.09.2017 i.e. the date on which the invoice for the current bill cycle was issued and the debt became due. Since the payment was not made by the Corporate Debtor, this necessitated the filing of the present petition under Section 9 of the Code.
9. The Respondent did not appear before this Bench despite notices have been duly served and was proceeded against **Ex-Parte**.

FINDINGS

10. We have heard the Ld. Counsel appearing for the Petitioner and perused the record.
11. The present Company Petition has been filed by the Operational Creditor for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, where the Operational Creditor, pursuant to the work order dated 23.02.2016, rendered services to the Corporate

Debtor and the Corporate Debtor has failed to pay the Principal Outstanding Dues of Rs. 8,30,078/-. Though the operational Creditor has claimed an interest @18% p.a., but the same has not been mentioned either in the work order or in the invoice issued dated 12.09.2017. Therefore, prima facie, the Operational Creditor is not entitled for any interest, as there is no contract between the parties to this effect.

12. The Corporate Debtor defaulted the payment of the rightful, non-disputed dues of the Operational Creditor and, therefore, the Operational Creditor issued the Demand Notice dated 31.10.2019 under Section 8 of the Code, in Form no. 3 and Form no. 4, demanding the outstanding amount. The statutory Demand Notice dated 31.10.3019 was sent to the Corporate Debtor through RPAD/ Speed Post.

13. It has been brought to the notice of this court that Corporate Debtor vide reply letter dated 05.11.2019 and 07.11.2019 acknowledged that the Operational Creditor was assigned the work pertaining to **“Internal and External Painting work”** and the Corporate Debtor has made the part payment of Rs. 18,00,099/-. Despite accepting the liability, the Corporate Debtor has refused to make the remaining payment on the ground of services rendered by the Petitioner being unsatisfactory. However, no reply has been filed by the Corporate Debtor to elaborate as to how the work/services rendered by the OC were not satisfactory. Therefore, without any plea raised on behalf of the Corporate Debtor, it cannot be said that there was a pre-existing dispute between the parties justifying no payment of the outstanding dues.

14. From the above discussion, it flows that Petitioner has been able to establish that there has been an operational debt in respect of which the default has been committed by the Corporate Debtor. Even otherwise, the averments made in the petition have not be controverted as the Corporate Debtor has been proceeded against ex-parte and no

reply on its behalf has also been filed. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- A. The above Company Petition No. (IB) 644 of 2020 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **DK Infrastructure Pvt. Ltd.**
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Jayanti Lal Jain**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01792/2019-2020/12845, having Email id jljain.ip@gmail.com and Contact Number-9870201926 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- C. The Operational Creditor shall deposit an amount of Rs. Two Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- D. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial

interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- E. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- F. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- G. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- H. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- I. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- J. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- K. Accordingly, the **C.P.(IB) 644 of 2020** is admitted.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)