

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB)-2130(ND)2019

IN THE MATTER OF:

**Dynacon Projects Pvt. Ltd.
Gali No. 9, New Ashok Nagar
Delhi-110096**

...Operational Creditor

VERSUS

**Today Homes and Infrastructure Pvt. Ltd.
Pragati Tower, Rajendra Place
New Delhi-110008**

... Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 31.10.2019

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

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

PRESENT:

For the Petitioner : Ms. Leena Tuteja, Adv.

For the Respondent : Ms. Ankita Bajpai & Ms. Geetika Sharma, Adv.

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(IB)-2130(ND)2019

M/s Dynacon Projects Pvt. Ltd. Vs Today Homes & Infrastructure 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 M/s Dynacon Projects Pvt. Ltd. (for brevity 'Operational Creditor') through its authorized representative Mr. Ashok Sarin, who is duly authorized vide Board Resolution dated 15.05.2019, with a prayer to initiate the Corporate Insolvency process against M/s Today Homes & Infrastructure Pvt. Ltd. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s. Dynacon Projects Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U74899DL2000PTC107430, having its registered office at C-8, LGF, Jangpura Extension, New Delhi – 110014.

3. The Corporate Debtor namely, M/s Today Homes & Infrastructure Pvt. Ltd. is a Company incorporated on 25.08.2000 under the provisions of Companies Act, 1956 with CIN No. U45201DL1996PTC081609, having its registered office at UGF 8-9, Pragati Tower Rajendra Place, New Delhi-110008.



4. The Authorised Share Capital of the Respondent Company is Rs. 60,00,00,000 and Paid up Share Capital of the Company is Rs. 56,29,47,000 as per Master Data of the Company.

5. It is submitted by the Operational Creditor that :

“The Corporate Debtor, who is in the business of construction, has been constructing a residential complex, namely, Royal Elegancia at Sector -73, Gurugram and for the purpose of carrying out Civil, Finishing, Electricity, Plumbing and Sanitary Works in Tower 6,7 and 8 in their aforesaid Project Royal Elegancia, a Contract/ Agreement dated 14.01.2013 was entered between the Corporate Debtor and the Operational Creditor. The total contract value for the works to be carried out by the Operational Creditor was Rs. 42,33,79,897/-”

6. It is submitted by the Operational Creditor that as per the terms of the Contract, the payment was to be made against the actual work done at the site and the contractor i.e. the Operational Creditor was to submit monthly R.A. bills to the Engineer-in-charge and/or any Authorized Representative of the owner i.e. the Corporate Debtor at site.



7. It is further averred by the Operational Creditor that :

“As per Clause 9 of the General Conditions of the Contract under the Contract Agreement for Construction, the Corporate Debtor was under obligation to release the 50% of the certified amount of the RA Bill in 21 days of certification of the submitted bills and the balance in 45 days of certification of the submitted bills. For the purpose of ease, the said Clause 9 dealing with the payment terms is reproduced.....”

8. It is submitted by the Operational Creditor that it had performed its obligations with agreed terms and had continued raising RA Bills from time to time. It is further submitted by the Operational Creditor that in total, 18 RA Bills have been raised for the entire work executed by the Operational Creditor under the Contract. The details of the RA Bills are reproduced below :

Bill No.	Current Bill Amount (Rs.)	Date
1	1,82,70,620	08.04.2013
2	70,09,822	24.06.2013
3	68,51,766	14.08.2013
4	57,33,706	27.09.2013



5	76,12,208	01.11.2013
6	75,13,834	19.12.2013
7	7,13,343	10.01.2014
8	61,82,553	20.02.2014
9	83,20,120	15.03.2014
10	80,71,711	21.05.2014
11	82,59,262	14.07.2014
12	79,97,784	20.08.2014
13	84,25,677	31.10.2016
14	75,12,436	31.10.2016
15	69,15,955	31.10.2016
16	82,05,074	30.11.2016
17	13,78,328	31.12.2016
17	26,51,330	28.02.2017
18	25,89,481	28.02.2017

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9. As per the Ledger Account Annexed by the Operational Creditor, the last part payment received by it was of Rs. 13,78,238 on 03.02.2017.
10. It is stated by the Operational Creditor that the liability of the Corporate Debtor is of Rs.1,38,20,062 excluding interest @ 18%.
11. It is stated by the Operational Creditor that since the Corporate Debtor Company had failed to liquidate its dues, it had sent a Demand Notice under Section 8 of IBC 2016 on 20.05.2019 vide Courier to the Registered Office of the Corporate Debtor on 03.06.2019. It is further submitted by the Operational Creditor that the Corporate Debtor had replied to the Demand Notice vide its letter dated 14.06.2019. The same has been averred in the Affidavit filed under Section 9(3)(b) of IBC, 2016 by the Operational Creditor. Further, the Operational Creditor has annexed the certificate issued by Kotak Mahindra Bank in compliance of Section 9 (3)(c) of IBC 2016.
12. The Corporate Debtor has filed its reply on 16.10.2019 and has raised certain objections. It is submitted by the Corporate Debtor that :

“6. It is stated that serious dispute(s) exists between the Applicant and Respondent prior to the Demand Notice sent by the Applicant and there is ample contemporaneous documents, as being mentioned hereinafter to prove the existence of dispute in terms of Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 (“the Code”).



“7. It is stated that Applicant vide its Email dated 3.1.2017 to the Respondent requested the Respondent for a joint meeting to resolve the issue of service tax rate discrepancy which states that the amount as claimed by the Respondent is disputed.”

“8. It is stated that the email dated 2.1.2018 and 10.04.2019 sent by Applicant to Respondent, clearly reflects that there were disputes related to the payments which required resolution. It is evident from the said emails there has been existence of dispute between Applicant and Respondent with respect to the claims and counter claims of both the parties.”

“20. It is stated that on inspection of the site by the Engineer-in-Charge, it came to the notice of Respondent that the material and products used by the Applicants were of sub-standard quality and did not meet the standards as agreed upon and as specified in the Contract. The issue of use of sub-standard quality of material/product in the construction was raised and the Applicant had assured the Respondent that it shall maintain the specified standards as defined in the contract.”

“28. It is stated that there has been a delay of more than 10 weeks on account of Applicant and in view of the same and in terms of Clause 18 of the Contract, Applicant is liable to pay 10% of the Contract value i.e. Rs. 4,23,37,988/- (Rupees Four Crores Twenty Three Lacs Thirty Seven Thousand Nine Hundred and Eighty Eight only) as compensation towards the delay in completion of work.”



13. At the time of final hearing, the Ld. Counsel appearing for the Corporate Debtor could neither show any communication which could depict existence of a pre-existing dispute between the parties or produce any document in support of their averments.

14. After hearing submissions of both the parties, this Bench is of the view that the averments regarding the dispute raised by the Corporate Debtor with respect to the usage of sub-standard quality material, is not supported by any documentary evidence. Therefore, the dispute raised by the Corporate Debtor does not merit any further consideration.

15. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt. 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 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.”

16. The Operational creditor has not proposed the name of any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Shri. Deepak Bansal as an IRP having Registration No. IBBI/IPA-002/IP-N00096/2017-18/10239 (Email- csdeepakbansal@gmail.com , Mb. No. 9899167774) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

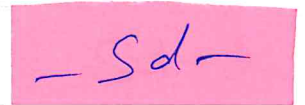


17. The Operational Creditor is directed to deposit Rs. 2,00,000 (Two Lakh) only to meet the immediate expenses of the IRP, for which he shall be liable to account for.

18. Based on the above terms, 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 the Order shall be communicated to the Operational Creditor, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the IRP above named who is figuring in the list of resolution professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry of this Tribunal.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)