

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP No. 1422/IBC/MB/2019**

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 Infra Care India**

Office at: 205, Vithaldas Chambers, 2<sup>nd</sup>  
Floor, 16, Mumbai Samachar Marg, Fort,  
Mumbai – 400001.

**.....Operational Creditor**

**V/s**

**M/s Gold Plaza Developers Pvt. Ltd.**

Having Registered Office at : Gala No. 3,  
Opp. Nirmal Park, Behind Petrol Pump,  
Byculla (East), Mumbai – 400027.

**.....Corporate Debtor**

**Order delivered on:- 14.10.2022**

***Coram:***

<b>Hon'ble Member (Judicial)</b>	<b>:</b>	<b>Justice P.N. Deshmukh (Retd.)</b>
<b>Hon'ble Member (Technical)</b>	<b>:</b>	<b>Mr. Shyam Babu Gautam</b>

***Appearances:***

For the Operational Creditor	<b>:</b>	Ms. Pooja Batra, Advocate
For the Corporate Debtor	<b>:</b>	None Present

**ORDER**

*Per :- Justice P.N. Deashmukh, Member Judicial*

1. This Company Petition is filed by *M/s Infra Care India* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Gold Plaza Developers, Pvt. Ltd.* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “the Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 27,90,969/- (Rupees Twenty Seven Lakhs Ninety Thousand Nine Hundred and Sixty Nine Only), Principal Amount being 22,40,000/- (Rupees Twenty Two Lakhs Forty Thousand Only) along with interest to the tune of 5,50,969/- (Rupees Five Lakhs Fifty Thousand Nine Hundred and Sixty Nine Only) @ 18% p.a. calculated from the date on which the cheques were dishonoured till 21<sup>st</sup> December, 2018, i.e. the date of demand notice.
3. The Operational Creditor and Corporate Debtor entered in to an Agreement dated 16.04.2014 for Civil Works carried out at the site situated at plot bearing No. C.S. No. 197/74 of Parel, Sewree Division, Plot No. 209, Supari Baug Estate, Rudra Heights (Dalvi building) Parel (East).

4. However, vide a mutual understanding Agreement entered between the parties dated 20.09.2016, the Agreement dated 16.04.2014 was mutually revoked/terminated. Under the terms of the said MoU, it was agreed between the parties that a sum of Rs. 3,60,28,834/- would be paid to the Operational Creditor. The Operational Creditor had received an amount of Rs. 3,18,28,834/- from the Corporate Debtor. Further the Corporate Debtor after deducting an amount of Rs. 84,000/- towards TDS payable and issued 5 post dated cheques to the tune of Rs. 41,16,000/- in full and final settlement of the claims of the Operational Creditor under the Agreement dated 16.04.2014.
5. The Operational Creditor has placed on record the water proofing and cube certificates provided to the Corporate Debtor. The Operational Creditor has from time to time raised bills for the work done. The Operational Creditor also raised the bills for the cheques issued by the Corporate Debtor.
6. Further the cheques bearing no. 233666 dated 25.11.2016 and cheques bearing no. 233667 dated 25.12.2016 for total amount of Rs. 19,60,000/- were dishonoured. The Corporate Debtor stopped payments against the two cheques and also did not deposit the 3<sup>rd</sup> cheque for an amount of Rs. 6,86,000 dated 25.03.2017.
7. The Operational Creditor time and again reminded the Corporate Debtor to clear the outstanding dues, but the Corporate Debtor failed to clear the outstanding dues of the Operational Creditor and was constrained to address a statutory demand notice dated 21.12.2018 to the Corporate Debtor. Despite the receipt of the same on 01.01.2019, the Corporate Debtor failed to reply or issue a notice of dispute. Hence, the Corporate Debtor was set ex-parte on 01.11.2021.

### FINDINGS

8. We have heard the submissions of the Counsel appearing for the Operational Creditor. It is seen from the records that the Operational Creditor has time and again called the Corporate Debtor to clear the outstanding dues. In spite of the same the Corporate Debtor have not appeared before this Tribunal nor have raised any dispute for the said claim. The Operational Creditor has also provided the cube report and the water proofing certificate to the Corporate Debtor. Moreover, the cheques issued by the Corporate Debtor in the name of the Operational Creditor are also dishonoured. The Corporate Debtor has also made a part payment of Rs. 4,90,000/- which is evident from the statements of Accounts for the period of 01.01.2017 to 31.01.2017. Further it is also seen that the Corporate Debtor has paid the part payment of the amount due. Hence, it is observed by this bench that the part payment made by the Corporate Debtor proves that it owes the claimed amount to the Operational Creditor and hence it is deemed to be an admission on the part of the Corporate Debtor.
9. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. Hence this Bench is left with no option except to admit the above Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.
10. Hence, it is evident that the Corporate Debtor Company were not in a position to pay the debt and also any contentions of the Corporate Debtor were not raised/replied to the Demand Notice sent by the Operational Creditor to the Corporate Debtor dated 21.12.2018.

11. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices.
12. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

**ORDER**

- a. **The above Company Petition No. (IB) -1422 (MB)/2019 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Gold Plaza Developers Pvt. Ltd.
- b. This Bench hereby appoints **Mr. Rajan Garg**, Insolvency Professional, Registration No: **IBBI/IPA-001/IP-P02397/2021-2022/13624**, having email as: - **fcarajangarg@gmail.com**. 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. Three Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**Sd/-**

**JUSTICE P. N DESHMUKH  
(MEMBER JUDICIAL)**