

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)
Company Petition No. IB-11/ND/2022**

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

M/S RUDRA BUILDWELL CONSTRUCTIONS PVT LTD.

...Applicant/Operational Creditor

VERSUS

M/S PSA IMPEX PVT LTD

...Respondent/Corporate Debtor

Pronounced on: 18.04.2022

CORAM:

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

**SHRI VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)**

For the Operational Creditor: Mr Vinay Shankar Dubey, Mr Gaurav Joshi,
Advocate

For the Respondent: ---

ORDER

Per- Shri Bachu Venkat Balaram Das, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the

IB-11/ND/2022



Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Rudra Buildwell Constructions Pvt Ltd (for brevity 'Operational Creditor') with a prayer to initiate the Corporate Insolvency process against M/S PSA Impex Private Limited (for brevity 'Corporate Debtor').

2. The Operational Creditor/Applicant submits that the applicant started supplying material to the corporate debtor and in pursuance of that, the applicant raised invoices from 11.06.2019 to 31.05.2021, totalling a sum of Rs 3,41,22,413/-. The applicant submits that the corporate debtor had confirmed and given an undertaking as full and final payment made on their own letterhead for confirming the debts wherein the stamp of the corporate debtor company has duly been placed.
3. The Operational Creditor/Applicant sent a reminder letter dated 02.06.2021 to the corporate debtor for clearing the payment of outstanding dues, wherein the corporate debtor has acknowledged its inability to pay the outstanding dues to the applicant due to the financial stress. The extracts from the corporate debtor's letter dated 03.06.2021 are ready verbatim for reference:

"We further regret to inform you that we are presently unable to pay the outstanding dues pursuant to grave financial stress that we are going through. We further assure you that we will repay you the entire outstanding dues along with the agreed interest as soon as we have sufficient funds available in the account of ESA Impex Private Limited, till then we request you to kindly bear with us and continue the strong relationship that we cherish. Hoping for a cooperation in this regard."

4. The Operational Creditor issued section 8 demand notice dated 06.12.2021 under the provisions of the I & B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the operational debt of Rs 5,39,60,674/- including interest @18% p.a. The said notice was sent by Speed Post at the registered address of the corporate debtor as reflected in the master data, which is duly delivered to the corporate debtor. The tracking report is filed, which mentions 'Item Delivered' at the registered address as per master data. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.
5. The Operational Creditor filed the present application on 24.12.2021 under section 9 of IBC, 2016 and served the copy of this application through email at the registered email address as reflected on the MCA website, which was duly delivered to the corporate debtor. The copy of the Application was also duly served through speed post at its registered address as reflected on the MCA website, which was duly delivered reflecting the remark 'Item Delivery Confirmed'.
6. The Corporate Debtor has neither filed any reply nor appeared before the Bench. The Corporate Debtor was proceeded ex-parte on 22.03.2022.



7. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. 5,39,60,674/- including interest 18% p.a. The date of default is 31.03.2020 as per Part IV. This Adjudicating Authority vide order dated 12.01.2022 sought clarification as to whether the present case is not hit by Section 10A of the IBC, 2016 and granted 2 weeks' time to the petitioner to file additional affidavit. The Petitioner filed an additional affidavit in compliance with the order dated 12.01.2022 and the relevant portion of the said affidavit is as follows:

"5. That respondent failed to make the payment of outstanding dues to the applicant. The respondent however responded vide letter dated 03.06.2021, wherein he acknowledged the outstanding debt and further stated its inability to repay the same in view of financial stress that respondent has been undergoing. A copy of letter dated 03.06.2021 received from the respondent is attached herewith as Annexure B.

6. That date of default is 03.06.2021 i.e. the date on which the respondent explicitly expressed its inability to pay its outstanding dues on account of financial stress.

7. That pursuant to an inadvertent clerical error, the date of default mentioned as 31.03.2020 at Part IV of the application against "AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED at page no.17 be read as 03.06.2021."

8. We have perused the additional affidavit filed in compliance of order dated 12.01.2022 and we are convinced that the date of default in the present petition will be considered as 03.06.2021 instead of 31.03.2020. Hence, the present petition is not hit by Section 10A of IBC, 2016 and is maintainable.
9. The debt is due and payable both in fact and in law.
10. It is seen from the records that notice of default under Section 8 has been delivered and an affidavit dated 24.12.2021 under Section 9(3)(b) of IBC has also been filed affirming that no notice of dispute has been given by the corporate debtor relating to dispute of the unpaid operational debt. The applicant has also filed an affidavit under section 9(3)(c) dated 24.12.2021 affirming that the applicant has not received any amount after serving of demand notice till date and a certificate from the banker of the operational creditor is enclosed.
11. Having heard the submissions and perused the records, we are of the view that a clear case of the default has been made out by the Applicant and the present application under Section 9 IBC needs to be admitted.
12. The registered office of the corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. In the given facts and circumstances, the present application is complete and the operational creditor is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the



default in payment of the operational debt beyond doubt. The present application is **admitted**, in terms of section 9 (5) of IBC, 2016.

14. The Operational Creditor has proposed the name of the IRP in PART III, of Mr. Prabhat Ranjan Singh as IRP, with registration number IBBI/IPA-002/IP-N00428/2017-18/11239, email: prabhatsadvocate@gmail.com who is and hereby appointed by this Tribunal, as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and should make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
15. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Prabhat Ranjan Singh, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted

for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per sub-clauses (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
17. A copy of the order shall be communicated to the operational creditor, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Operational creditor is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
18. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

— Sd —

(BACHU VENKAT BALARAM DAS)
MEMBER (Judicial)

— Sd —

(VIRENDRA KUMAR GUPTA)
MEMBER (Technical)