

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.388/MB-IV/2022**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Mr. J.K Shah and Anr.**

...Operational Creditor

V/s

**Tridhaatu Builders LLP**

(AAA-6085)

... Corporate Debtor

**Order Dated: 29.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Prashant Chande, Ld. Counsel.

For the Respondent(s) : Ms. Ruchi Magoo a/w Mr. Anshuman Jagtap and Mr. Dhiren Durante i/b Lexicon Law Partners, Ld. Counsel.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) Mr. J.K Shah and Anr., (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Tridhaatu Builders LLP, (“the Corporate Debtor”).

2. The petition is filed on 07.02.2022 claiming an amount of Rs.2,79,96,079/-, which includes interest up to 31.01.2022 as specified in Part IV of the petition.
  
3. The applicant has filed this application claiming a debt due arising out of a transaction for purchase of a Residential Flat No. 801 admeasuring 68.69 [sq.mt.](#) equivalent to 739.38 sq. ft (RERA carpet area) of the building known as Tridhaatu Arista situated on Deodhar Road, Matunga, Mumbai- 400 019, "Said Flat" between the Operational Creditors and Corporate Debtor.
  - 2.1 The Corporate Debtor (i.e. the Sellers) and the Operational Creditors (i.e. the Purchasers) executed an agreement for sale date 31.03.2019, thereafter, executed a Registered Deed of Rectification dated 25.04.2019, for 2 reserved Car Parking. The total consideration for the said agreements was Rs. 3,05,00,000/- (Rupees Three Crore and Five Lakh Only)
  
  - 2.2 The Operational Creditor further submits that, Corporate Debtors did not complete the said project as per the said Agreements. The Operational Creditor filed a Complaint No. CC006000000194602 of 2020, before the MAHARERA Authority, for refund of the entire amount paid by Operational Creditor to Corporate Debtors as per the said Agreements for the purchase of the said residential flat along with the car parking in the said project and for accrued interest thereon.
  
  - 2.3 After filing of the said Complaint, the parties amicably settled the dispute by entering into and executing Consent Terms dated 06.08.2021. These Consent Terms were filed and placed on record with the MAHARERA Authority, in pursuance whereof, vide Order

dated 26.08.2021, the said Complaint was disposed of as settled between the parties.

- 2.4 In pursuance of the aforesaid Consent Terms dated 06.08.2021, the Corporate Debtor, issued a cheque bearing No.000071, 07.01.2022, for Rs 2,16,06,320/- (Rupees Two Crores Sixteen Lakh Six Thousand Three Hundred and Twenty Only) drawn on HDFC Bank, Chembur branch in favour of and delivered to the Operational Creditor Mr J.K. Shah. The cheque was issued by Corporate Debtor in discharge of the debt and liability for the payment of the Decretal amount and the same was not honoured upon presentation by the Operational Creditor. The cheque was returned by the Banker of the Applicant with the remark "FUNDS INSUFFICIENT" on 13.01.2022.
- 2.5 Despite repeated requests and reminders, the Corporate Debtor failed and neglected to release the outstanding payment, consequently, a statutory Demand notice dated 15.01.2022 in form 3 was issued u/s 8 of the IBC,2016 and the same was not replied by the Corporate Debtor.
- 3 The Corporate Debtor in its reply has denied each and every allegation made by the Operational Creditor and further denied that purported debt advanced by the Operational Creditor falls under the ambit of an "Operational Debt" u/s 5(21) r/w section 9 of the IBC,2016; and also submitted that the operational creditor needs to approach the Real Estate (Regulation & Development) Authority in the event of default of any of the said consent terms.
- 4 The Operational Creditor has filed rejoinder in which he has negated the contentions of the Corporate Debtor in its reply.

*Findings*

4. We have heard the counsels and perused the material on record.
5. On the perusal of the consent Terms between the parties it is observed that, the said terms were filed by the Parties before MAHARERA which was amicably settled and the said complaint was disposed of by MAHARERA vide order dated 26.08.2021. Further, it is observed that the said consent terms do not give rise to any “Operational Debt” in terms of Section 5(21) as the claimed debt arises out of failure of the Corporate debtor to deliver the flat to the Applicant, requiring it to pay back the amounts due on such failure in terms of consent terms filed before MAHARERA. We note that this debt does not arise from the provision of goods or services or employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.
6. We feel that the nature of decree depends on the nature of transaction, from which such decretal debt has arisen. Since, the claimed amount is not in nature of operational debt, the amount claimed in default in the present application cannot be held to be in nature of Operational Debt. We find that the Hon’ble Madras High Court in the case of *Cholamandalam Investment and Finance Company Ltd. V. Navrang Roadlines Private Limited (O.S.A (CAD) no. 115 of 2022, following the decision of Hon’ble Supreme Court in case of Kotak Mahindra Bank (Supra)* held at para 12 that –

*“ A mere perusal of the above observations of the Hon'ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as*

*“financial debt” within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect of the same claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings”.*

7. In view of foregoing discussion, we feel that the application filed by the Operational Creditor against the Corporate Debtor cannot succeed. Hence, the present Application filed u/s 9 of the Code deserves to be dismissed in the absence of any operational debt being in existence.

### **ORDER**

8. The petition bearing CP (IB) No.388/MB-IV/2022 filed by Mr. J.K Shah and Anr., seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Tridhaatu Builders LLP (“the Corporate Debtor”), is **Dismissed.**
9. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before

any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/-

**PRABHAT KUMAR**  
**Member (Technical)**  
**29.03.2023.**

Sd/-

**KISHORE VEMULAPALLI**  
**Member (Judicial)**