

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 627/Chd/Hry/2019

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Anurag Varma

R/o Flat No. 1106, Nanda Apartment,
Kaushambi, Ghaziabad,
Uttar Pradesh-201010

...Petitioner-Operational Creditor

Vs.

Fairwealth Housing Private Limited

with its registered office at
651-652, Udyog Vihar Phase-V,
Gurgaon, Haryana-122001

Corporate Office at:
UG 3 & 4, Somdutt Chamber II,
Bhikaji Kama Place,
New Delhi-110066

...Respondent-Corporate Debtor

Judgement delivered on: 01.06.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Mr. Om Pal Sharma, Advocate
Secretary

Respondent-Corporate Debtor : Already proceeded *ex parte* vide
order dated 20.05.2022

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Mr. Anurag Varma (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Fairwealth Housing Pvt. Ltd. (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, Fairwealth Housing Pvt. Ltd., is a Company incorporated on 17.11.2009 under the provisions of Companies Act, 1956 with CIN No.U70200HR2009PTC039709 with its registered office at 651-652, Udyog Vihar, Phase V, Gurgaon, Haryana – 122001, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-2.

3. The facts of the case, briefly, as stated in the petition are that the petitioner was appointed by the respondent as CEO vide appointment letter dated 27.04.2019 (Annexure A-3) for an annual CTC of Rs. 30 Lacs. However, the petitioner was paid salary only for one month i.e. May 2019 (Annexure A-4). Thereafter, no money was paid till date, despite the fact that the petitioner worked with the respondent till Jan 2020. Salary slip issued by the Corporate Debtor for the month of May 2019 (Annexure A-4).

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.9,50,000/- excluding interest amount of

Rs.17,112.311/- @ 18% on principal debt and the default occurred on 01.07.2019.

5. A demand notice in Form 3 dated is stated to be issued to the operational creditor by registered post on 09.09.2019. Copy of postal receipt along with tracking report and affidavit by operational creditor to the effect that it has not received any reply against demand notice (Annexure A-6 & Pg 24-26 respectively of the petition).

6. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Khushvinder Singhal, Insolvency Resolution Professional from the list provided by IBBI.

7. Accordingly, order dated 05.12.2019, notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. As per order dated 10.03.2022 of this Tribunal, the petitioner-operational creditor had informed the date of hearing to the opposite counsel and the compliance affidavit has been placed on record as per the direction. Despite service, through substituted mode of service i.e. by way of publication in two newspapers having wide circulation there was no representation from the respondent-corporate debtor and even no reply is filed. In these circumstances, this Adjudication Authority was constrained to proceed with the matter and the respondent has been set *ex parte*.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 09.09.2019 was properly served. The petitioner through has placed a tracking report, whereunder it was stated that the speed post was delivered to the corporate debtor Annexure (A-6).

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of corporate debtor despite repeated service and has been set ex parte vide order dated 20.04.2022. Moreover, petitioner has appended affidavit u/s 9(3)(b) stating that corporate debtor has not issued any notice or raised any dispute regarding the debt for which the present petition has been filed by the operational creditor.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 18.11.2019 vide Diary No.6401. Whereas the date of default is 01.07.2019, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹9,50,000/- (Principal Amount) and interest amount of Rs.17,112.31/-. The operational creditor has been appointed as CEO of the Corporate Debtor. Copy of appointment letter (Annexure A-3) and salary slip issued by the Corporate Debtor for the month of May 2019 (Annexure A-4). Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in

threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Fairwealth Housing Pvt. Ltd. and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below:-

- 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 Securitization and Reconstruction of Operational 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.

15. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till 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.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Khushvinder Singhal and there is nothing adverse against

him. In view of the above, we appoint Mr. Khushvinder Singhal, Registration No. IBBI/IPA-002/IP-N00888/2019-2020/12833, E-mail: kvsinghal@gmail.com Mobile No. 9914030030 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Khushvinder Singhal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) The Interim Resolution Professional, Mr. Khushvinder Singhal is directed to file **his** written consent in Form-2 within one week of this order.
- iii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the

Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iv.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing **his** profession and as an Insolvency Professional with high standards of ethics and moral;
- v.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- vi.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all

cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of **his** appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

18. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy

of this order to the Interim Resolution Professional at his email address forthwith.

Sd/- 01.06.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 1.6.22
(Harnam Singh Thakur)
Member (Judicial)

June 01, 2022
YP/ASH