

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT-III

IB-1350(ND)/2019 filed 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. Auctus Town Planners Pvt. Ltd.

Khandelwal Group Private Limited

...Operational Creditor

Versus

Actus Town Planners Pvt. Limited

...Corporate Debtor

Order delivered on 14th January, 2020

CORAM:

CH. MOHD. SHARIEF TARIQ
Member (Judicial)

MS. SUMITA PURKAYASTHA
Member (Technical)

*For OC: Mr. Ashish Middha, Advocate
For CD: Mr. Rakesh Jaiswal*

ORDER

1. The Ld. Counsel for the Operational Creditor is present. Legal Advisor for the Corporate Debtor is present.
2. Under consideration is a petition under No. IB-1350(ND)/2019, that has been filed under **Section 9** of the Insolvency and Bankruptcy Code, 2016 ('IBC, 2016') with the prayers to initiate the Corporate Insolvency Resolution Process

(‘CIRP’) against the CD, declare moratorium and appoint Insolvency Resolution Professional (‘IRP’).

3. The Ld. Counsel for the Operational Creditor submitted that the amount under demand is Rs.8,20,045/-, which is based on the Invoice which has been raised on 9th October, 2017, a copy of which is placed on the record.

4. It is submitted that the Operational Creditor is engaged in the business of supply of Iron Bars for the purpose of construction and in the course of the business, had supplied the materials to the Corporate Debtor and raised the Invoices. The Corporate Debtor has made the payment through three Cheques, out of which, two Cheques got encashed and one Cheque of 7th November, 2017 was stopped from making payment by the Corporate Debtor on 13th November, 2017.

5. The Notice under Section 8 has been sent by the Operational Creditor on 26.4.2019 demanding the payment of Rs.8,20,045/-, to which, no reply has been given.

6. The Operational Creditor has also complied with the provisions of Section 9 (3) (b) & (c) by placing on record an affidavit wherein under Para-4, it is deposed that the Operational Creditor has not received any payment after the notice and the Corporate Debtor has not given any notice of dispute.

7. The Ledger Accounts and Bank statements are placed on record. The Ledger Accounts with effect from 1st April, 2017 to 31st March, 2018, reflects the balance of Rs.8,20,045/-as on 15.11.2017.

8. The Legal Advisor appearing on behalf of the Corporate Debtor has filed the **reply** on 16.12.2019. During the arguments he has referred to the copy of

the Invoice at page-34 of the typed set filed with the Application and the copy of the same Invoice which is placed at Page-20 of the reply and submitted that copies of the Invoice placed on record by the parties are not matching.

9. On close scrutiny of both the copies placed on record, it is noted that there is no mis-match as far as the entries are concerned. However, the Invoice which has been placed on record by the Operational Creditor provides the mode/terms of payment as seven days, whereas copy of the Invoice placed on record by the Corporate Debtor is not showing the same. However, in the Notice, which has been issued under Section 8 of IBC, the Credit period shown is 30 days. The difference as to the mode/Term of payment is not fatal to the case of the Operational Creditor. All the entries in the Invoices are same i.e., invoice number, date, names of the Sender and Buyer are the same. Therefore, the objection that has been raised by the Legal Advisor for the Corporate Debtor stands rejected.

10. The Legal Advisor for the Corporate Debtor submitted that Notice under Section 8 issued by the Operational Creditor was not received; however, when the matter was filed before the NCLT, they have received a copy in the typed set. It is noted that notice was sent on the e-mail address of the Corporate Debtor, which is recorded in the MCA Portal. Therefore, the defence that has been taken by the corporate debtor appears to be contrary to the record and stands rejected. Further, the Legal Advisor for the Corporate Debtor has disputed the sending of notice by the Operational Creditor to the Corporate Debtor through Speed Post. But it is a fact that the Envelope was returned with the endorsement “ ”. However, the objection has been rebutted by Ld. Counsel for the Operational Creditor by stating that the address which is mentioned on the Envelope and the Master Data is the same. Therefore, this defence raised by the Legal Advisor for the CD is also rejected.

11. The counsel for the operational creditor has referred to the copy of the Cheque dated 07.11.2017 for the amount of Rs.8,20,045/-, with respect to which, the Corporate Debtor has sent the communication on 13.7.2017 to the Bank stopping the payment. The Legal Advisor for the Corporate Debtor submitted that Cheque was given prior in time for supply of the material, which was not delivered. But he could not explain as to how the amount shown in the Invoice dated 9th October, 2017 is recorded in the Cheque dated 7th December, 2017. Therefore, the submissions made by the Legal Advisor for the Corporate Debtor is not substantiated with any documentary evidence, the same also stands rejected.

12. The Operational Creditor has fulfilled all requirements of law. Therefore, Application is **admitted** and the commencement of the CIRP is initiated, which shall ordinarily be completed within 180 days, reckoning from the day this order is passed.

13. The Moratorium is declared which shall have effect from the date of this Order till the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -

- (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 (54 of 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.

14. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

15. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as Interim Resolution Professional ('IRP'). Therefore, Mr. Tejas Patel is hereby appointed as IRP. There is no disciplinary proceeding pending against the IRP. The IRP is directed to take charge of the Corporate Debtor's management immediately. He is directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

16. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the Management of the Corporate Debtor are/is

directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the IBC, 2016.

17. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the CD's assets etc., and make compliance with this Order as per the provisions of IBC, 2016. The details of IRP are as under

Name: Mr. Tejas Patel

Registration number: IBBI/IPA-002/IP-N00600/2018-2019/11861

E-mail: mail@tejaspatel.in

Mobile No.: 9971006440

18. The Registry is directed to communicate this Order to the OC, CD and IRP with immediate effect.

19. The Order is dictated and pronounced in the open court, in the presence of the Counsel for OC and Legal Advisor for the CD.

-Sd -

**(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)**

-Sd -

**(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)**

Surjit/ V