

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1266/ND/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

**M/s SCHNEIDER ELECTRIC
INDIA PRIVATE LIMITED**

...Applicant/Operational Creditor

VERSUS

**M/s SP SAFE CONTROL
SYSTEMS PRIVATE LIMITED**

...Respondent/ Corporate Debtor

Pronounced on: 21.11.2019

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
SHRI HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)**

For the Applicant :

For the Respondent :



MEMO OF PARTIES

M/s SCHNEIDER ELECTRIC INDIA PRIVATE LIMITED

Having its registered office at:
C-56, Mayapuri Industrial Area,
Phase-II, Delhi-110064

...Applicant/Operational Creditor

VERSUS

M/s CHANDRALEKHA CONSTRUCTIONS PRIVATE LIMITED

Having its registered office at:
D-158, Jaitpur Extension Part-II,
Near Rampali Public School Badarpur,
New Delhi-110044

Also at:

A-128/1, 1st Floor Mohammadpur,
Behind Bhikaji Cama Place,
New Delhi-110066

...Respondent/Corporate Debtor



JUDGEMENT

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

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 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Schneider Electric India Pvt. Ltd. (for brevity 'Applicant'), through its legal counsel Ms. Pragya Chakraborty, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. Safe Control Systems Pvt. Ltd. (for brevity 'Respondent').
2. The Applicant, is a company incorporated on 24.02.1995 under the provisions of Companies Act, 1956 with CIN No. U74899DL1995065815, having its registered office at C-56, Mayapuri Industrial Area, Phase-II, New Delhi-10064.
3. The Respondent, is a company incorporated on 28.07.2009 under the provisions of Companies Act, 1956 with CIN No.U74900DL2009PTC192639, having its registered office at

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M/S SCHNIDER ELECTRIC INDIA PVT. LTD. VS. M/S SP SAFE CONTROL SYSTEMS PVT. LTD.



D-158, Jaitpur Extension, Part-II, New Rampali Public School, Badarpur, New Delhi-110044.

4. The Authorised Share Capital of the respondent company is Rs.10,00,000/- and Paid Up Share Capital of the company is Rs.1,00,000/- as per Master Data of the company.
5. It is the case of the applicant, that after due commercial negotiations and deliberations the Respondent, M/s SP Safe Control Systems Private Limited, issued to the applicant, M/s Schneider Electric India Pvt. Ltd., a purchase order, bearing reference No. 2014-15/SP-121 dated 22.12.2014 for value of Rs.22,52,074/- (Rupees Twenty Two Lakhs Fifty Two Thousand and Seventy Four), for supply of the BMS equipment at the Respondent's site. The purchase order was accepted by the Operational Creditor on 23.12.2014. As agreed between the parties, applicant duly supplied the BMS equipment vide invoice bearing no. 1537011919/9006135785 dated 14.08.2015 for value of Rs.22,52,074/- (Twenty Two Lakhs Fifty Two Thousand and Seventy Four). The Respondent accepted delivery of the equipment on



31.08.2019, vide road permit T2 Form Ref No. 901131585350815.

6. The Applicant further states that, it raised various invoices against the Respondent for the supply. However, till date, the Applicant has received only a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs), against the Invoice No. 1537011919/9006135785 dated 14.08.2015 and an outstanding amount of Rs. 7,52,074/- (Rupees Seven Lakhs Fifty Two Thousand and Seventy Four) is unpaid by the Respondent till date. The Respondent's lack of adherence to timely performance of its contractual obligations has resulted in time and cost overruns, in terms of project time and extra man hours. Thus, operational creditor has also claimed a sum of Rs. 4,51,245/- (Rupees Four Lakhs Fifty One Thousand Two Hundred and Forty Five), over and above the sum of Rs. 7,52,074/- (Rupees Seven Lakhs Fifty Two Thousand and Seventy Four) from the Respondent.
7. The supply of material was duly certified and acknowledged by Respondent, that despite such successful delivery by



Applicant, the Respondent has deliberately delayed clearing of the overdue amount payable by them till date. Numerous meetings took place, various communications were exchanged between the parties on 27.07.2016, 09.06.2016, 27.05.2016, 30.03.2016, 16.03.2016, 07.03.2016, 29.02.2016, 24.02.2016, 18.01.2016, 12.01.2016. In these communications, Respondent repeatedly assured the applicant, in unequivocal terms, of their intentions to make payment, without any further delay. However, despite such unequivocal written acknowledgement of debt and assurances, the Respondent failed to make payments due to the Applicant.

8. Vide email dated 18.01.2016, corporate debtor gave written acknowledgement to the operational creditor that the outstanding payment will be cleared by 07.02.2016, again by email dated 29.02.2016 the Respondent also assured that the balance amount will be cleared within ten days, thereafter, by an email dated 06.09.2016 the Respondent again sought Fifteen days more to clear the outstanding amount. However,



despite such acknowledgement of liability, the outstanding amount has not been cleared till date.

9. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 16.10.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the payment of Rs. 7,52,074/- (Rupees Seven Lakhs Fifty Two Thousand and Seventy Four), along with interest @ 24% P.A., from the due dates as per the invoices till 07.10.2018, amounting to Rs.5,57,318/- (Rupees Five Lakhs Fifty Seven Thousand Three Hundred and Eighteen), within 10 days from receipt of the notice, failing which the Applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
10. The Applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office as well as the corporate office of the Corporate Debtor.



11. Despite the demand notice sent under Section 8 of the Code, the Respondent failed to pay the amount demanded and has neither raised any notice of dispute. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
12. The applicant has stated that total debt due and payable is Rs.7,52,074/- (Rupees Seven Lakhs Fifty Two Thousand and Seventy Four), along with interest of Rs. 5,57,318/- (Rupees Five Lakhs Fifty Seven Thousand Three Hundred and Eighteen), as per the invoices.
13. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP.
14. After the service of said notice, the Respondents have caused appearance in the matter and have filed their reply, in its reply to the present section 9 application, the Respondent states that it had ordered for purchase of BMS equipment for the project of CCCL Dehradun from the petitioner but the said Dehradun project was not ready for installation at the time of purchase order, it was mutually agreed that if the project is



not ready for installation the purchase order would be cancelled and the goods would be returned but the petitioner forced the respondent to use the material in some other projects and on the instruction of the petitioner, the Respondent used the materials in their OSL Gurgaon project but the project was small in comparison of CCCL Dehradun project and after installation, several items have been left unused and Respondent has intimated the Applicant to collect the same unused material. It has also been stated that the petitioner did not serve the demand notice to the respondent as per the requirement of section 8 of the I & B code, 2016.

15. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices. There is no documentary evidence on record to show that any complaint was ever made or any proceedings were initiated by the Respondent regarding the alleged mala fide acts of the Applicant nor any correspondence is placed on record with respect to issuing



fake/ bogus bills. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant. There has been much cloud in the submission of the Respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.

16. In **“Innoventive Industries Ltd.”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

17. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that



the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

In the present case, no such dispute is pre-existing, albeit a hypothetical or illusory dispute has been raised by the 'Corporate Debtor' and the same is a mere moonshine defense.

18. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under



section 9(5) of the Code. Hence, the present application is admitted.

19. The registered office of Respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. The Applicant has proposed the name of Interim Resolution Professional as Mr. Suman Saini. In view of the same, this Bench appoints the same Mr. Suman Saini, having registration no. IBBI/IPA-002/IP-N00747/2018-2019/12324, email address is suman62saini@gmail.com and contact number is +91-9582294011, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
21. We direct the Operational Creditor to deposit a sum of Rs.2 lakhs with the Interim Resolution Professional Mr. Suman Saini to meet out the expenses 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 three days from the date of receipt of this order by the Operational Creditor. The amount however will 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.

22. 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 Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
23. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by




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updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.


(HEMANT KUMAR SARANGI)
MEMBER (Technical)




(DR. DEEPTI MUKESH)
MEMBER (Judicial)


27/12/19


Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003