



IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.2
(MP) CP(IB) 78 of 2020

Proceedings under Section 9 IBC

IN THE MATTER OF:

Steel Scaff (India) Pvt Ltd
V/s
Dilip Buildcon Ltd

.....Applicant

.....Respondent

Order delivered on 02/11/2023

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**P. MOHAN RAJ
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 78 OF 2020

(An application under section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Steel Scaff (India) Private Limited

M-14, Ground Floor, Greater Kailash-I
Delhi-110048

**Applicant/
Operational Creditor**

Versus

Dilip Buildcon Limited

Plot No.5, Inside Govind Narayan Singh
Chuna Bhatti, Kolar Road
Bhopal-462016

**Respondent/
Corporate Debtor**

Order Pronounced on: 02.11.2023

Coram: P. Mohan Raj, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. Adv. Mr. Karanjot Singh Mainee

For Respondent: Ld. Sr. Adv. Mr. Navin Pahwa, a.w. Ld. Adv. Mr.
Ritesh Kumar Sharma

ORDER

1. The present application is filed on 09.10.2020 by Steel Scaff (India) Private Limited (Applicant/Operational Creditor) through its director Mr. Divjot Singh Mainee, under section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an operational creditor for initiating Corporate Insolvency Resolution Process (CIRP) against Dilip Buildcon Limited (Respondent/Corporate Debtor). The amount of claimed debt in



default is Rs.2,62,32,195/- (Principal amount Rs.1,49,97,323/- and Interest amount Rs.1,12,34,872/-).

2. The applicant is a private company registered under the provisions of Companies Act, 1956 whereas the respondent is a listed company under the provisions of the Companies Act, 1956 Company and is engaged in the business of infrastructure facility and is functioning as one of the largest EPC groups in India.

3. The averments made by the applicant/operational creditor in its application and presented/argued by the learned counsel are summarized hereunder:

(i) The respondent approached the applicant in the year 2017 for supply of equipment for scaffolding, shuttering, propping and pit-propping for its various projects namely- Lucknow-Sultanpur Road, Mahagao-Yawatmal Road, Nalgampalll-AP Karnataka Road, Wardha-Yawatmal Road and Vijaywada Machhalipatannam Road. Further the respondent also issued purchase orders dated 09.01.2018, 24.02.2018, 13.03.2018 and 17.03.2018.

(ii) In response to the said purchase orders the applicant supplied the required equipment to the respondent through its transport agents i.e. B.S. Cargo Movers, Raj Carrying Corporation (India) and Pranav Logistic and obtained transport receipts for the same. Thereafter, the applicant raised tax invoices against which the respondent made the payment timely in the bank account of the applicant. However, the respondent failed to make payment with respect to the following invoices:

Sr.	Invoice No.	Date	Amount	Delivery State
1.	109	16.01.2018	2,30,425	Uttar Pradesh
2.	144	05.03.2018	16,91,318	Maharashtra



3.	146	08.03.2018	16,57,947	Maharashtra
4.	153	16.03.2018	16,48,035	Maharashtra
5.	156	23.03.2018	16,84,710	Andhra Pradesh
6.	157	27.03.2018	13,47,041	Maharashtra
7.	159	28.03.2018	16,59,930	Andhra Pradesh
8.	161	31.03.2018	16,36,141	Andhra Pradesh
9.	001	03.04.2018	17,10,150	Maharashtra
10.	002	04.04.2018	17,31,626	Maharashtra
Total			1,49,97,323	

(iii) In the meantime, the applicant communicated through various emails and also verbally, requesting the respondent to release the outstanding payment of the applicant. However, the respondent failed to pay the outstanding amount and therefore, the applicant, sent a demand notice dated 05.03.2020 to the respondent under section 8 of the Code through speed post against which the respondent had denied the outstanding amount through its reply dated 13.03.2020.

(iv) The applicant has proposed the name of the Insolvency Professional Mr.Arun Chadha having registration No. IBBI/IPA-001/IP-P00165/2017-18/10334 to act as Interim Resolution Professional (IRP). The written consent of the same to act as IRP is also placed on record.

4. In this context, the defense placed by the respondent/corporate debtor in its reply and as presented/argued by its learned counsel are summarized as under:

(i) The applicant approached the respondent and represented themselves as one of the best service providers in its sector and based upon such representations and warranties made by the applicant, the respondent placed orders through various



purchase orders for purchase of specified materials required for its projects, categorically specifying the qualitative standard, purpose for which the materials were bought by the respondent and the specific place where the materials were to be delivered.

(ii) The applicant agreed upon the terms of the respondent as mentioned in the purchase orders which also contained a term that the materials supplied by the applicant should be in conformity to all relevant codes and specifications and that if the material is rejected by the respondent at any stage due to inferior quality then the same should be replaced by the applicant on an immediate basis at its own expenses.

(iii) The applicant used to provide sub-standard quality of material from the beginning of the business transactions and that too after considerable delay of time. The respondent time and again communicated to the applicant and gave specific warnings, however, the applicant assured the respondent that the same would not be repeated.

(iv) Thereafter, during the course of business transactions in the month of February 2018, the respondent conducted internal vigilance and verification at various project sites wherein it was found that the applicant was continuously supplying sub-standard quality materials with various inherent discrepancies. These discrepancies were found for the materials issued under Invoice No 53 dated 01.11.2017 and Invoice No. 137 dated 22.02.2018. After inspection by the quality control team, structural designer, and safety-in-charge who were present and



posted at the project, the whole material supplied by the applicant was rejected and kept aside as unused stock.

(v) According to the terms of the Purchase Order, the applicant was required to supply the materials along with the inspection/ test certificate. However, to the utmost despair of the respondent, the applicant did not comply with the said condition and did not provide any of the inspection/ test certificates.

(vi) Further, to the utter shock of the respondent, it transpired that the applicant in connivance with one of the employees of the respondent namely, Shri Eknath Lade, was supplying inferior quality materials to the respondent and thereby secured illegal benefits and caused wrongful losses to the respondent. That the same has greatly affected the goodwill of the respondent as the construction put up by the respondent in the aforesaid projects has been done by utilizing the sub-standard quality of material provided by the Applicant. That after having learned the said fact, the respondent immediately filed a complaint against the said employee under section 406 and 420 of Indian Penal Code with the police authorities (FIR no. 0103 dated 29.03.2018) at Chunabhatti Police Station, Bhopal -District, Madhya Pradesh and the Investigating Officer has filed the complaint vide matter State vs. Eknath Lade, case no. RCT 6150/2018 before the Hon'ble VIIth JMFC, Bhopal. The charge sheet has also been filed in the matter and is presently pending.

(vii) It is for the reasons of the materials being of such sub-standard quality that the required certificates were not provided intentionally by the applicant and the materials were made to be



used by the respondent by cleverly playing fraud upon the respondent in connivance with its employee. Therefore, the respondent sent a legal notice dated 07.05.2018 to the applicant for inferior quality of material, delay in delivery as well as the fact of collusion of the personnel of the applicant with the said employee of the respondent. Consequently, the respondent has through the said legal notice rescinded all the Purchase Orders with the applicant and had informed the applicant about withholding of the balance payments due under the said Purchase Orders.

(viii) Moreover, it is pertinent to mention here that the applicant did not object to the said decision of the respondent and had duly accepted the payments made until rescindment of the Purchase Orders and in full and final settlement of the amounts due under the said Purchase Orders.

(ix) That, no Purchase Order was further placed with the applicant because of the aforesaid reasons and therefore, no business arrangement is pending or entered into with the applicant by the respondent thereafter.

(x) That even after defrauding the respondent and causing huge monetary losses to them the applicant did not stop. The applicant in order to further harass the respondent and to create unwarranted pressure to make them succumb to their illegal demands had sent a Demand Notice dated 05.03.2020 demanding payment of amounts under the Purchase Orders which were already rescinded by the respondent. The respondent through its reply dated 14.03.2020 to the Demand Notice



disputed the said amount and stated that the Purchase Orders had been rescinded due to the breach of the terms of the same and due to the fraud played by the applicant in connivance with the employee of the respondent. The respondent further stated in the reply that the payments are being withheld by the respondent for the damages caused.

(xi) Further not only through the said reply but the respondent has through earlier communications also taken the same stand and has always disputed the acts of the applicant and the amount claimed by them.

(xii) No contract exists as on the date of filing of the present application and therefore the respondent is not liable to pay any amount under the same. Even otherwise, the said application is not maintainable as the claim presented by the applicant before this Adjudicating Authority is disputed for having pre-existing dispute between the parties which existed and was duly communicated before the issuance of Demand Notice under section 8 of the Code.

(xiii) Even otherwise, the Purchase Orders have very specifically stated that in case of any dispute, the parties shall invoke arbitration which shall take place in Bhopal, M.P. Therefore, the present Application has been filed in violation of the terms of the Purchase Orders and without exhausting the available remedies by the Applicant and hence the present Application is liable to be rejected in-limine.



5. We have heard the learned counsels appearing from both sides and have perused the relevant documents available on record. It is noted that the respondent is engaged in the business of infrastructure facility and had issued purchase orders dated 09.01.2018, 24.02.2018, 13.03.2018 and 17.03.2018 to the applicant for supplying certain equipment required for its various projects. The terms of the purchase order were such that the applicant was required to supply the materials along with the inspection certificate and that if at any stage the respondent rejects the material then the applicant has to replace them immediately at its own cost.

6. It is noted that pursuant to the said purchase orders the applicant supplied materials and raised invoices against which the respondent made the payment in due course in the bank account of the applicant. However, the respondent did not make payment with respect to 10 invoices amounting to Rs.1,49,97,323/- and therefore after various follow-ups the applicant sent the Demand Notice dated 05.03.2020 under section 8 of the Code and subsequently filed the present application on non-receipt of the outstanding dues.

7. It is also noted that the respondent has through its reply to the Demand Notice disputed the quality of the material and the amount claimed by the applicant. It is further noted that the respondent has several times raised quality issues prior to the Demand Notice as issued by the applicant. Moreover, as stated by the respondent, in the month of February 2018, while conducting internal vigilance and verification at various project sites, the respondent came across the fact that the applicant had continuously supplied sub-standard quality materials even after several warnings; therefore, the



respondent rejected the said materials and kept them aside as unused stock.

8. It is further noted that the respondent become known of the fact that the applicant in collusion with one of the employees of the respondent namely Shri Eknath Lade was supplying inferior quality materials, thereby causing loss to the respondent and affected the goodwill of the respondent. The respondent filed a complaint against the said employee under section 406 and 420 of Indian Penal Code with the police authorities (FIR no. 0103 dated 29.03.2018) at Chunabhatti Police Station, Bhopal -District, Madhya Pradesh and the Investigating Officer has filed the complaint vide matter State vs. Eknath Lade, case no. RCT 6150/2018 before the Hon'ble VIIth JMFC, Bhopal. The charge sheet has also been filed in the matter.

9. It is also noted that the respondent issued a legal notice dated 07.05.2018 to the applicant for inferior quality of material, delay in delivery as well as the fact of collusion of the personnel of the applicant with the said employee of the respondent and rescinded all the Purchase Orders with the applicant and had informed the applicant about withholding of the balance payments due under the said Purchase Orders.

10. In view of the above, we are of the considered view that the legal notice dated 07.05.2018 issued by the respondent disputing the quality of the material and the collusion of the applicant with the employee of the respondent is prior to the Demand Notice dated 05.03.2020 issued by the applicant. Thus there exists a pre-existing dispute. Further, the respondent has not placed any purchase order subsequent to the legal notice dated 07.05.2018 wherein the



respondent informed the applicant about terminating the purchase orders and withholding the remaining amount due with respect to the said purchase order. Thus there being a pre-existing dispute such an application under section 9 of the Code deserves to be rejected.

11. Accordingly, the application, i.e., CP(IB) 78 of 2020 is rejected and disposed of with no cost. The Registry is directed to serve a copy of this order to the applicant and the corporate debtor.

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Kaushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Swati Khandelwal