

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-2684/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:

MR. KUNAL AGARWAL

(Proprietor of Narayani Ratan Scaffolding)

...Applicant/Operational Creditor

VERSUS

M/S SDS INFRATECH PRIVATE LIMITED

...Respondent/ Corporate Debtor

Pronounced on:12.05.2021

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (Technical)

MEMO OF PARTIES

MR. KUNAL AGARWAL

Proprietor of Narayani Ratan Scaffolding

Plot No 154/362/1, Pooth Khurd

Firni Road, Delhi-110039

...Applicant/Operational Creditor

VERSUS

M/S SDS INFRATECH PRIVATE LIMITED

Registered office at Bhagwati Business Centre

S-561, School Block-II ,Shakarpur

Delhi-110092

...Respondent/ Corporate Debtor

For the Applicant: Mr.Bharat Gupta, Mr. Varun Tyagi, Mr. Vishesh Chauhan, Advocates

For the Respondent:---

ORDER

Per-Dr. Deepti Mukesh, Member (J)

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 Mr. Kunal Agarwal, the Proprietor of Narayi Ratan Scaffolding (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/S SDS Infratech Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a proprietor of M/S Narayni Ratan Scaffolding, having registration no. 07ADSPA0590L1ZB, inter-alia, involved in the business of providing scaffolding material on rent to be used at construction sites. The applicant is having its registered office at Plot No 154/362/1, Pooth Khurd, Firni Road, Delhi-110039.
3. The Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 19.02.2008, having CIN U74120DL2008PTC174176. The applicant is having its registered office at Bhagwati Business Centre S-561, School Block-II, Shakarpur, Delhi-110092.
4. The Applicant has stated the Corporate Debtor had placed work order dated 29.12.2012 to the applicant for supply of scaffolding material wherein the material was to be delivered at the construction site of Corporate Debtor. It was agreed amongst the parties that the payment was to be made by the Corporate Debtor within 20 days (which was later on mutually decided to be 30 days) after issue of the invoice, and for any late payment, interest @ 18% per annum was payable by

the Corporate Debtor. It was further agreed that the cost of the goods/material was to be paid by the Corporate Debtor to the applicant in case of any damage or loss etc. caused to the material. In case of loss of MS shuttering plates, it was agreed that Rs.1,000/- per plate was to be paid by the Corporate Debtor, and in case of loss of MS Channel, Rs. 2,250/-per piece was payable by the Corporate Debtor. The applicant supplied the scaffolding material vide 3 Form DVAT 33 No. 388 dated 30.12.2012, No. 389 dated 01.01.2013 and No. 392 dated 09.01.2013.

5. The applicant submits that the invoices were raised against the corporate debtor from 30.12.2012 to 31.03.2018. The applicant further submits that the corporate debtor has lost 660 MS shuttering plates and had therefore requested the applicant not to levy hire/rent charges for the said 660 plates and instead levy the amount of loss i.e. Rs 1000/- per plate in the invoice. The request by the corporate debtor through email is annexed. The applicant accordingly charged and raised an invoice No HR0941 dated 28.02.2015 thereby levying Rs.6,60,000/- for the loss of 660 MS shuttering plates. However, since the corporate debtor was not making payment, the applicant cancelled the said invoice and issued fresh invoice No HR1039 dated 31.05.2015 for hire/rent charges on 60 MS shuttering plates with effect from 15.02.2015 till 31.05.2015. Further, to equalize the amount levied for loss of MS shuttering plates, the applicant gave credit of Rs 6,93,000/- on 23.07.2015, which included the amount of tax too.
6. The applicant further submits that various emails dated 03.07.2013, 15.04.2014, 22.09.2014, 30.08.2016 were sent to the corporate debtor asking for payment. The applicant further sent an email dated 15.10.2016 to the corporate debtor informing

that the cheque for Rs 1,00,000/- issued in part discharge of its liability by the corporate debtor had been dishonored. Copy of email dated 15.10.2016 is annexed.

7. The applicant submits that a mail dated 24.11.2016 was received from the corporate debtor asking to forward the work order which contained the cost of each unit of MS shuttering plates and MS channels to be paid by the corporate debtor in cases of loss. In pursuant to that, the applicant sent the mail to the corporate debtor along with the work order, showing the amount to be paid for loss as agreed between the parties. Even after sending the details of the payment, the corporate debtor fails to make any payment.
8. The applicant issued a Demand Notice dated 30.05.2019 under Section 8 of the I& B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by issuing Form 3 which was sent by Registered Post to registered address of the Corporate Debtor as well as by email on 04.06.2019 as reflected on MCA website. The Demand Notice was duly delivered to the Corporate Debtor on 03.06.2019 as evident from the tracking report, and vide mail on 04.06.2019, reflecting 'Item delivery confirmed'.
9. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.
10. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through speed post at its registered address as reflected on the MCA website. On 23.12.2020, the Learned Counsel for the corporate debtor had appeared and it is recorded that the parties had amicably settled the matter. The reply is not filed as party sought and were given one more

opportunity to complete the settlement. Since the settlement was not complete, the corporate debtor was proceeded ex-parte on the same day.

11. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. 28,44,733/- (Rupee Twenty-Eight Lacs Forty-Four Thousand Seven Hundred Thirty Three Only) which includes interest till 30.04.2019.
12. The Applicant has filed an affidavit under section 9(3)(b) dated 05.09.2019 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The last invoice was raised on 31.03.2018, and the present application was filed on 20.09.2019, hence the debt is not time barred and the application is filed within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, and moreover stand admitted as the corporate debtor appeared before the court and sought time for settlement. Therefore, the default of the operational debt is established beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
16. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Deepak Kukreja, with registration number IBBI/IPA-002/IP-N00077/2017-18/10208 (email –csdeepakkukreja@yahoo.com, is appointed by this Hon'ble Tribunal as IRP subject to the condition that no disciplinary proceedings are

pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

17. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Deepak Kukreja to meet out the expense 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 one week from the date of receipt of this order by the Operational Creditor. The amount however 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.
18. 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 Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
19. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy

of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
(MS. SUMITA PURKAYASTHA)
MEMBER (T)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (J)