

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT NO. IV, NEW DELHI
C.P. No. IB-1071/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. GUPTA JI ELECTRIC COMPANY
...APPLICANT/OPERATIONAL CREDITOR**

VERSUS

**M/S. STRAIGHT EDGE CONTRACTS PRIVATE LIMITED
...RESPONDENT/CORPORATE DEBTOR**

JUDGMENT PRONOUNCED ON: 26.02.2020

CORAM:

**MS. INA MALHOTRA
HON'BLE MEMBER (Judicial)
SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)**

MEMO OF PARTIES

M/S. GUPTA JI ELECTRIC COMPANY

Through its partner Dheeraj Gupta
Registered office at 82, Ambedkar Marg,
Ghaziabad, Uttar Pradesh – 201001.

...Applicant/Operational Creditor

VERSUS

M/S. STRAIGHT EDGE CONTRACTS PVT. LTD.

Registered Office at Ground Floor, 4,
Dayanand Vihar, Main Vikas Marg,
Delhi-110092

Also at:

A-23, Swasthya Vihar,
Delhi-110092

...Respondent/ Corporate Debtor

For the Applicant : Mr. Ritesh Agarwal, Adv.
Mr. Tejas Bhatia, Adv.

For the Respondent : Mr. Sanjeev Kumar, Mr Aviral Adv.

ORDER**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 Gupta Ji Electric Company (for brevity 'Applicant') through Mr. Dheeraj Gupta duly authorized vide letter dated 21.03.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. Straight Edge Contracts Pvt. Ltd. (for brevity 'Corporate Debtor').
2. The applicant is partnerships firm incorporated vide partnership deed executed on 12.04.1996, amended on 01.04.97, 01.04.2005 and 18.02.2017 in the name and Style of name M/s Gupta Ji Electric Company and having its registered office at: 82, Ambedkar Marg, Ghaziabad, Uttar Pradesh - 201001. Applicant is engaged in the business of supplying electrical fittings, components, electric wires, electrical switch, switchboards etc.
3. The Corporate Debtor is a private limited company incorporated on 31.12.2009 under the provisions of companies Act, 1956, having its registered office at Ground Floor, 4, Dayanand Vihar, Main Vikas Marg, Delhi-110092, bearing CIN U45400DL2009PTC197467 as per master data. The authorized share capital of the company is Rs. 1,00,00,000/- and Paid up capital is Rs.1,17,600/-.

4. The Corporate debtor has been developing housing projects namely Greenpolis situated at Sector 89, Gurugram, Haryana and “Zing” situated at Sector 168, Noida, Uttar Pradesh and required electrical components and material for the abovementioned projects.
5. The Applicant has stated that the corporate debtor placed purchase orders from time to time as per its requirements for supply of materials and assured to release the amount as per terms of purchase order. In terms of mutual understanding arrived upon between them, the applicant supplied the materials as per the requirement of corporate debtor vide various purchase orders raised between Dec 2017 to June 2018. Accordingly, the applicant raised invoices on various dates.
6. The applicant supplied materials worth Rs.3,15,42,453/- (Rupees Three Crore Fifteen Lakh Forty Two Thousand Four Hundred and Fifty Three Only) to the corporate debtor out of which the corporate debtor paid a sum of Rs.1,68,92,519/- (Rupees One Crore Sixty Eight Lakh Ninety Two Thousand Five Hundred and Nineteen Only). Therefore, an amount of Rs.1,46,49,934/- (Rupees One Crore Forty Six Lakh Forty Nine Thousand Nine Hundred Thirty Four only) along with interest at the rate of 24% p.a. is pending against the corporate debtor.
7. The applicant submitted that they regularly supplied the materials and against each supply raised the respective bill, the corporate debtor never made the up to date payments in terms of purchase order and made payments of only partial amounts. The corporate debtor made last payment on 02.05.2018 against the project namely “Greenpolis” and on 24.08.2018 against the project namely “Zing”, Noida.

8. It is further submitted by the applicant that after the due amount got accumulated for a long period, the applicants stopped the supply of materials and requested the corporate debtor to clear all pending bills. The corporate debtor duly acknowledged the outstanding principal amount payable to the applicant. But despite acknowledging the due amount, the corporate debtor failed to make payment.
9. The applicant repeatedly requested the corporate debtor to clear their admitted outstanding amount of Rs. 1,46,49,934/- along with 24% per annum accruing upon each due amount for the supply of materials in terms of different purchase orders.
10. Thereafter, the corporate debtor, admitting his liability to pay the aforesaid amount, issued 12 post dated cheques amounting to Rs. 1,46,49,934/- in total. Out of the said 12 cheques, the applicant deposited cheque no.642306 dated 30.09.2018 for a sum of Rs. 15,00,000/- and cheque No. 642308 dated 30.09.2018 for a sum of Rs. 10,00,000/-, both the cheques drawn on YES Bank, Hargobind Enclave, New Delhi. The said cheques were dishonored by the bank with remarks “Funds Insufficient” on 12.10.2018. Further, the applicant deposited cheque No. 642309 dated 30.10.2018 for a sum of Rs. 15,00,000/- and cheque No. 731088 dated 30.10.2018 for a sum of Rs. 10,00,000/-, both drawn on YES Bank, Hargobind Enclave, New Delhi. The said cheques were dishonored by the bank with the remarks “Funds Insufficient” on 01.11.2018. Again, the applicant deposited the cheque No.788041 dated 30.11.2018 for a sum of Rs. 15,00,000/- drawn on YES Bank, Hargobind Enclave, New Delhi and the cheque no.731089 dated 30.11.2018 for a sum of Rs.10,00,000/- drawn on Axis Bank, Swasthyay Vihar, New Delhi. The said cheques were also dishonored by the bank with remarks “Funds Insufficient” on 03.11.2018. Pursuant to the said cheques,

the applicant initiated proceedings under Section 138 of Negotiable Instruments Act, 1881 against the corporate debtor.

11. The Applicant submits that the corporate debtor had never raised any objection or complains of any kind whatsoever against the goods/material supplied by the applicant.
12. The Applicant issued a demand notice dated 11.01.2019 in Form 3 under the provisions of section 8 of Insolvency & Bankruptcy Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 at its registered as well as the corporate office of the corporate debtor by speed post on 23.01.2019 and the said notice was duly received by the corporate debtor but no response was received.
13. Hence, the applicant filed present application under Section 9 of IBC and served the copy of this application to the Corporate Debtor. As per Form V, the total debt outstanding is Rs. 1,46,49,934/- along with interest at the rate of 24% against the invoices raised by the applicant between 16.12.2017 to 21.06.2018.
14. On 10.10.2019 the Corporate Debtor filed reply to the said application, wherein the corporate debtor submitted the following :
 - a) The corporate debtor had entered into agreements dated 28.11.2017 and 13.12.2017 with M/s. Three C Shelters Pvt. Ltd. And M/s. Three C projects Pvt. Ltd. (collectively "**Principal Employer**") respectively for completion of balance construction.

- b) As per the agreements, the corporate debtor were required to invest an amount of Rs. 5,00,00,000/- and for the same the corporate debtor would charge 12% over and above on the bill raised by the vendors.
- c) Pursuant to the said agreements the corporate debtor approached the applicant for providing electric components. After issuance of purchase orders the applicant started supplying the required products to the Respondent Company. Thereafter the applicant requested the corporate debtor to make payment but since the corporate debtor was not being paid by the principal employer, the corporate debtor could not pay the applicant and the other vendors.
- d) The corporate debtor submits that the debt of the corporate debtor had been assigned to the Principal Employer of the corporate debtor and further the corporate debtor also submits that the assent for the same was also orally given by the applicant. Subsequently vide email dated 24.08.2018, the corporate debtor had obtained the assent of the applicant fro assigning the due amount to the principal employer. Later, a sum of Rs. 5,00,000/- was transferred by the principal employer to the applicant.
- e) The corporate debtor further submitted that the goods were not being supplied by the applicant for reason of non-payment by the principal employer, the corporate debtor cancelled all pending purchase orders amounting to Rs. 14,55,525/- and further submitted that the goods were not delivered by the applicant before cancellation of Purchase Orders.
- f) The debt was assigned to the Principal employer after obtaining permission from the applicant and after such assignment the applicant

also received a sum of Rs 5,00,000/-Therefore, no operational debt was owed to the corporate debtor.

15. The applicant filed rejoinder to the reply of the corporate debtor, denying all averments of the corporate debtor and submitted

- a) The applicant was not a party to the agreements dated 28.11.2017 and 13.12.2017, therefore not bound by the same.
- b) The applicant denied that the corporate debtor was acting in the capacity of a mediator, also that ThreeC Projects Pvt. Ltd were a client of the corporate debtor and not their principal employer.
- c) On bare perusal of the email dated 24.08.2018, it could be inferred that corporate debtor was only trying to arrange for money and they had received all material which was lying in the store.
- d) The delivery of goods was never delayed and as per the Purchase Orders no condition was stated according to which the payment to the vendor shall be made only if the corporate debtor received payment from the principal Employer.
- e) The amount received from the Principal Employer was after communications with the corporate debtor the same was to be adjusted in the ledger accounts of the applicant, to have been received on behalf of the corporate debtor.

16. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and establish a pre-existing dispute by asserting that the liability had been transferred to the

third party who the corporate debtor averred as Principal Employer, but the corporate debtor has failed to establish that the applicant had accepted or was in any manner involved in the said understanding between the parties.

17. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to this application. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant. Thus mere reply filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature and the said is merely a moonshine dispute as laid down in "***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited***".
18. The date of default is 24.08.2018 and the present application is filed on 15.04.2019. Hence the application is not time barred and filed within the period of limitation.
19. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. The Applicant has filed an affidavit under section 9(3) (b) affirming that the corporate debtor has not raised any pre-existing dispute as regards the amount of operational debt claimed by the applicant.
21. The present application is filed on the Proforma prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The default has occurred of the debt which is

due and payable. Therefore, the applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.

22. The Applicant has named Mr. Ranjeet Kumar Verma, registered vide registration number IBBI/IPA-02/IP-N00301/2017-18/10859 having address: SC-53, 1F, Ansal Plaza, Sector1, Vaishali, Ghaziabad, UP-201010 as the Interim Resolution Professional who is hereby appointed 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. The specific consent has been filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been made.
23. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Ranjeet Kumar Verma to meet out the expenses and 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 applicant. 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 applicant.
24. 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.

25. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall also be communicated to the IRP above named and intimation of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

HEMANT KUMAR SARANGI
MEMBER (T)

SD/-

MS. INA MALHOTRA
MEMBER (J)

Pronounced today under Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (J) Ms. Ina Malhotra is not holding the court today.

SD/-

Court officer
(Asim Kumar Pal)