

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 2223(ND)/2019

In the matter of:

Burda Druck India Private Limited
B-1, LGF, Geetanjali Enclave,
New Delhi-110017

.....Operational Creditor

V/s

Dynamic Textbooks Printers Private Limited
134, First Floor, Bhagwati Market,
Gali Lohewali Charkhewala,
Chawri Bazar,
New Delhi-110006

.....Corporate Debtor

SECTION: U/S 9 of IBC, 2016

Order delivered on: 27.05.2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Petitioner: Mr. Sushant, Mr. Mohd. Raiz

For the Respondent: Mr. Anukul Raj, Ms. Nikita Raj, Dr. P.K. Agarwal, Ms.

Priscilla Ghazesv



ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

1. The present application is being preferred by Burda Druck India Private Limited (hereinafter referred to as “Operational Creditor”) to initiate corporate insolvency resolution process of Dynamic Textbooks Printers Private Limited (hereinafter referred to as Corporate Debtor”), due to the non-payment of outstanding dues by Corporate Debtor to the Operational Creditor, which is a principal amount of INR 6,67,0,420.10/-, and fell due on 7th November, 2017. Though the Operational Creditor issued Demand Notice dated 18th December, 2018 to the Corporate Debtor, which was delivered to the registered address of the Corporate Debtor, and was also sent by email to the Director of the Corporate Debtor, no reply whatsoever has been received from Corporate Debtor, including any notice of dispute with respect to the outstanding dues. The Corporate Debtor has also not made any payment after the receipt of the Demand Notice dated 18th December, 2018 and the last part-payment made by the Corporate Debtor was on 18th January, 2017.

2. Pursuant to the Court notice issued to the Corporate Debtor, reply was filed and it was submitted by Corporate Debtor that:-
 - a) That the petition is not maintainable and has been filed with ulterior motives. The Operational Creditor is by means of this petition, trying to bypass the civil remedies available to them



and wants to recover the alleged amount from the Corporate Debtor without establishing the dues.

- b) That the petition is not maintainable since the Operational Creditor has failed to comply with the obligatory requirements of Section 9 (3)(c), wherein the Operational Creditor was obligated to file a certificate, from its financial institution, confirming that there is no payment of debt by the Corporate Debtor. It may kindly be noticed that the Operational Creditor has filed its account statement, starting from 01.10.2015 till filing of the petition. The said account statement has been spread out in three volumes with the petition. Incidentally they have however not filed the account statement of about six months in between. As per examination of page 466, it discloses that the last entry is of 31.05.2016. Thereafter at the very next page 467, the entries start from 02.01.2017. Therefore, there is a gap of about six months in the account statements filed by the Operational Creditor. The Operational Creditor has purposely avoided to file the bank statement for the aforesaid six months, since a lot of payments had been made by the Pathya Pustak Adhikari (Text Book Officer), Govt. of Uttar Pradesh, directly to the Operational Creditor, which in apprehension of Corporate Debtor was done during the said period. Hence there is no dues against the Corporate Debtor and in favour of Operational Creditor. Thus the petition is not in compliance of obligatory requirements of Section 9 (3)(c) and deserves to be dismissed.



- c) Further, the transaction between the parties was also dependent upon a third party which was Pathya Pustak Adhikari (Text Book Officer), Govt. of Uttar Pradesh.
- d) Further, it is settled law that before filing of an application u/s 9, a default has to be proved on the side of Corporate Debtor, which has not been done by the Operational Creditor and therefore, the application is not maintainable. To prove a default by the Corporate Debtor, the Operational Creditor needs to show, existence of a debt and non-payment of that debt. The Operational Creditor has failed to adduce enough evidence to convince about the existence of a debt.
- e) That the Operational Creditor has filed some alleged invoices, but none of these alleged invoices are valid and legal since the same are not supported by proof of delivery. As submitted hereinafter the parties were doing the work of Pathya Pustak Adhikari (Text Book Officer), Govt. of Uttar Pradesh, the payment to the Operational Creditor or Corporate Debtor was to be made from different districts in the State of Uttar Pradesh, where the goods were finally delivered. However, such payment was subject to submission of proof of delivery. The Operational Creditor never till date provided proof of delivery of all items (books and workbooks), to either the Corporate Debtor or to the Pathya Pustak Adhikari (Text Book Officer), Govt. of Uttar Pradesh. Non production of these proofs resulted in no payment by the Districts. Thus, even today when the Operational



Creditor files these invoices the same are of no relevance, since they are not supported by any proof of delivery.

- f) That the sole intent of filing of these proceedings is that the Operational Creditor wants to defeat the arbitration clause between the parties and also not to get the dispute settled by a court of law and therefore, the Operational Creditor has devised this method of extorting money from the Corporate Debtor, as if the Corporate Debtor has also admitted the disputed amount. Further, the Corporate Debtor has never admitted any liability as alleged by the Operational Creditor and he himself has failed to raise a dispute regarding non-payment of money, whereas the Corporate Debtor by a letter had already intimated the Operational Creditor, that there is no more dealings and no further dues against each other in relation to the agreement of parties. The Operational Creditor never responded to the said letter, neither objected to the contention of Corporate Debtor in the same and so the Operational Creditor himself had violated the terms of agreement between the parties due to which a penalty was imposed by the Govt. The Department and therefore the Corporate Debtor was compelled to terminate the contract between the parties and intimate the Operational Creditor that a full and final payment is being made on 18.01.2017, to which again the Operational Creditor did not respond.
- g) That the Operational Creditor in the petition has submitted that they originally raised ten invoices, all between 03.09.2015 and



30.09.2015. Thus they have admitted that the invoices were of September 2015 only. Thereafter it has been alleged that the reminders of these invoices were sent on 16.03.2017, 09.10.2017 and finally on 30.10.2017 i.e. after a delay of about two years. Thus the application is time barred, since the cause of action for filing of the application accrued in 2015 itself, whereas the present application has been filed on 06.09.2019 (as mentioned in the copy provided to the Corporate Debtor). The application therefore has been filed after four years of raising of invoices and therefore the same is barred by law of limitation.

- h) The Corporate Debtor in view of the terms of agreement entered into a separate agreement with the Operational Creditor on 15.05.2015, which has been filed with the petition at page 52 as Exhibit-3. The terms of this agreement also clearly specified that any payment made to the Operational Creditor, will be subject to payment by the Govt. Department. In other words, payment was to be released by the Corporate Debtor only after receipt of the same from the said Govt. Department, since payment was subject to delivery of goods as per the specifications in the work order issued by the Corporate Debtor, which in turn would receive it from the Govt. Department. Further, in Clause 2.4 of this agreement, the Operational Creditor was obligated to open an account in the name of the Corporate Debtor, ensuring that all the payments are made directly to the Operational Creditor



in the name of Corporate Debtor and in that case no dispute would have arisen between the parties, since all payments would have been received by them directly, but, in complete contravention of this clause the Operational Creditor never opened an account and the Corporate Debtor started receiving the payments to their account. Non-compliance of this clause led to a situation that the Operational Creditor was never interested in getting the payment from the Govt. Department and thus did not even comply with clause 4.2 as well, which in turn stipulates that a representative of Operational Creditor, was supposed to accompany the representative of Corporate Debtor for recovery of dues from the Govt. Department. At no point of time in the contract the Operational Creditor ever cooperated with Corporate Debtor for recovery of dues from the Govt. Department.

- i) Further the Corporate Debtor issued a Work Order on 25.05.2015 and the Operational Creditor was supposed to supply the books as per the work order which was for Rs. 20,93,49,821.00 and not as alleged for Rs. 22,51,45,859.71/-. The fact is evident from the totalling the amount mentioned in the work order dated 25.05.2016, filed at Page 56 of the petition. Admittedly the Operational Creditor was never able to supply the goods in time nor as per the specifications mentioned by the Govt. department.



- j) Since admittedly the Operational Creditor was never able to supply the goods in time nor as per the specifications mentioned by the Govt. department, a letter dated 12.06.2015, was sent to the Corporate Debtor by the Department whereby the Department warned the Corporate Debtor that since the Operational Creditor, namely, BurdaDruck India Pvt. Ltd. had not started the printing of books till that time, the delayed payment etc. would have been the responsibilities of the Corporate Debtor. The letter clearly stipulates that on inspection it had been found by the Department that at least till 12.06.2015, no steps for printing of books were undertaken by the Operational Creditor. A copy of this letter was immediately forwarded by Corporate Debtor to Operational Creditor. A copy of letter dated 12.06.2015 along with its translated copy has been filed as Annexure R-3.
- k) On 04.07.2015 the Department again informed the Corporate Debtor that the Operational Creditor has not been complying with the timeline provided in the contract and the supply of books is very late. The Department gave a strict warning to the effect, that if the timeline provided in the contract is not met, the Department may place the entire project to the tender evaluation committee, which may take coercive steps against the Corporate Debtor. A copy of letter dated 04.07.2015, along with its translated copy has been filed as Annexure R-4.



l) The parties thereafter held various negotiations. Unfortunately, due to the adamant attitude of Operational Creditor, they never reached a settlement. The Corporate Debtor on the other hand was in a very difficult position, since the Department had stopped releasing payments to them, due to lack of proof of supply of books. Moreover, the Corporate Debtor was also aggrieved of the actions of Operational Creditor due to which they had lost their reputation and prestige in the market. Ultimately, on 20.04.2016, the Operational Creditor consider the penalties imposed by the Govt. issued a Credit Note dated 20.04.2016. Interestingly by filing this Credit Note, at page 7360 of the petition, the Operational Creditor has admitted that they did not supply the books as per specifications in the contract.

m) Thereafter, the alleged notice u/s 8 of the Code was sent only on 18.12.2018 without mentioning that it is u/s 8 and moreover the same had been sent after almost two years. The Corporate Debtor saw this letter very late and thus could not respond to the same. Even after sending this notice u/s 8 (as alleged and not admitted) the Operational Creditor waited for another year to file this petition, which has been filed on 06.09.2019 only.

3. The Operational Creditor has filed rejoinder and asserted the following contentions:

a) The Corporate Debtor has clearly admitted in its Reply that it received the Demand Notice dated 18th December, 2018



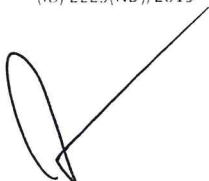
(hereinafter referred to as "Demand Notice") issued by the Operational Creditor to the Corporate Debtor. The Corporate Debtor has also admitted that no reply to this notice was sent by the Corporate Debtor to the Operational Creditor. No reason has been given by the Corporate Debtor for not responding to the Demand Notice, and it has been merely stated in the Reply that *"The Corporate Debtor saw this letter very late and thus could not respond to the same."*

b) Thus, there is no dispute raised by the Corporate Debtor in response to the Demand Notice.

c) The Corporate Debtor has also admitted that no amount has been paid by it after receipt of Demand Notice.

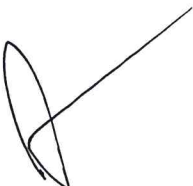
4. We have heard the Learned Counsel appearing for the Applicant/ Operational Creditor and perused the averment made in the application, reply, rejoinder to the reply and additional affidavit along with documents filed on behalf of the applicant as well as written submission filed on behalf of both the parties.

5. Learned Counsel appearing for the Applicant, in course of his argument submitted that in pursuance of the demand notice issued under Section 8(1) of the IBC, no dispute has been raised on behalf of the Corporate Debtor and Corporate Debtor, at a belated stage, by filing the reply raised the disputes which cannot be entertained in view of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P)*

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Limited- 2017 1 SCC OnLine SC 353. He further submitted that all the allegations of non-payment and none supply of the books is false.

6. He further submitted that the disputes regarding the quality of delayed supply are without any documents and proof and in the absence of pleading to the contrary, the same cannot be taken into consideration. He further submitted that the Operational Creditor has invoked the arbitration clause after the filing of this application, so, it cannot be said that there is a dispute prior to the filing of this application.
7. He further submitted that the Operational Creditor constrained to issue the notice invoking arbitration because limitation for disputes resolution may have expired on account of legal position. He further submitted that the contention of the Corporate Debtor is barred by limitation is not liable to be accepted because the last payment of Rs. 3,10,000/- was made by the Corporate Debtor on 18th January 2017 whereas the present application was filed on 11th September, 2019.
8. Therefore, the present application is within time. And in this regard, he placed reliance upon the decision reported in **2010 (118) DRJ 246 in the case of M/s. International Print-O-Pac Ltd. Vs. M/s. MAA Communication Bozell (P) Ltd.**
9. He further submitted that in view of Section 19 of the Limitation Act, the period of limitations starts from the last date of payment. He further submitted that the books were duly supplied by the



Operational Creditor and nowhere in its reply the Corporate Debtor stated that books were not supplied by the Operational Creditor. The Corporate Debtor has only alleged that there was delay in supply of books by the Operational Creditor but no evidence has been brought on record to show that there was, in fact, delay in supply of the books. He further submitted that there was no deficiency in the quality of books supplied by Operational Creditor. The Corporate Debtor has not filed any inspection report or any other relevant document showing deficiency in quality of books supplied by the Operational Creditor. He further submitted that the amount for alleged deficiency in quality has already been deducted and has not been claimed in the Section 9 application. He further submitted that National Company Law Tribunal in the matter of *Neeraj Papers Agencies vs. Rainbow Papers Limited C.P. IB No. 88/9/NCLT/AHM/2017*, vide order dated 12th September 2017 held that since the Operational Creditor claimed the amount due to him after deducting the amount towards alleged defective goods, therefore, the dispute raised by the Corporate Debtor, for the first time at the stage of objection is not a bona-fide dispute.

10. He further submitted that since the application filed by the applicant is complete and the applicant has also enclosed Section 9 (3)(b) affidavit and Section 9(3)(c) and there is no reply to the demand notice, therefore, the present application is liable to be admitted.

11. On the other hand, Learned Counsel appearing for the Respondent, in course of his argument submitted that during the pendency of the



present proceeding, Operational Creditor has sent a notice under Section 21 of the Arbitration and Conciliation Act, 1996, invoking the arbitration clause and on the basis of that the Learned Counsel appearing for the Corporate Debtor submitted that since a dispute is raised after the filing of this application, therefore, the present application is not maintainable. He further submitted that the present application is also not maintainable because the Operational Creditor has failed to comply with the obligatory requirements of Section 9 (3)(c). He further submitted that in order to prove default by the Corporate Debtor, the Operational Creditor needs to show the existence of the debt and non-payment of the debt. In this case the Operational Creditor has failed to adduce enough evidence to convince the Hon'ble Tribunal about the existence of a debt. The Operational Creditor has filed some alleged invoices but none of these alleged invoices are valid and legal, since the same are not supported by proof of delivery.

12. He further submitted that the payment to the Operational Creditor from the Corporate Debtor was to be made from the different district in the state of Uttar Pradesh, where the goods were finally delivered but such payment was subject to submission of proof of delivery and the Operational Creditor till date never provided the proof of delivery, therefore, these invoices are not relevant in absence of the proof of delivery. He further submitted that the application is barred by limitation because the original 10 invoices are in between the



03.09.2015 and 30.09.2015, thereafter, it is claimed by the Operational Creditor that the reminders of these invoices were sent on 16th March, 2017, 9th October, 2017 and finally on 30th October, 2017 that is after a delay of about 2 years, therefore, the application is barred by limitation. He further submitted that vide 2nd March, 2016, the department sent a report to the Government of Uttar Pradesh whereby, it was informed that the quality of paper used by the Operational Creditor was bad and was not as per the standard prescribed in the contract, therefore, it was decided to pay the rest of the money in the contract after deducting a penalty. He further submitted that the Operational Creditor considering the penalty imposed by the Government, issued a credit note dated 20th April 2016 which he has enclosed as page 73 of the Petition. He further submitted that all the correspondence made by the Operational Creditor show that the amount may be paid only after recovery from the Government department, therefore, the amount cannot be defined as default under Section 8 of the IBC, 2016.

13. Now in the light of the submission raised on behalf of the parties, we shall consider the case in hand.

14. Since, Learned Counsel appearing for the Operational Creditor submitted that in para 14 (P) at page 13 of reply, the Corporate Debtor admits this fact that he has not sent the reply to the notice received under Section 8 (1) of the IBC, 2016. Therefore, at this juncture, we



would like to refer to the provision contained under Section 8 and 9 of the IBC, 2016.

“Section: 8. Insolvency resolution by operational creditor

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -

a) Existence of a dispute, 1[if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) The [payment] of unpaid operational debt-

(i) By sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or




(ii) By sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding 3[payment] operational debt in respect of which the default has occurred.”

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor. –

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.



(3) The operational creditor shall, along with the application furnish-

(a) A copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) An affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt [by the corporate debtor, if available;]

2[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) Any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) Admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) The application made under sub-section (2) is complete;

(b) There is no 3[payment] of the unpaid operational debt;

(c) The invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) No notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) There is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) Reject the application and communicate such decision to the operational creditor and the corporate debtor, if -

(a) The application made under sub-section (2) is incomplete;

(b) There has been 1[payment] of the unpaid operational debt;



(c) The creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) Notice of dispute has been received by the operational creditor or

There is a record of dispute in the information utility; or

(e) Any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”

15. Mere plain reading of the provisions contained under Section 8 & 9 of the Code shows that on the occurrence of a default, the operational-creditor is required to deliver a demand notice of unpaid operational debt or copy of the invoice demanding payment of the amount involved in the default to the Corporate Debtor in such form and manner as may be prescribed and the Corporate Debtor after the receipt of the demand notice or copy of the invoice mentioned in Section 8(1) of the Code, within ten days of the receipts of the notice



bring to the notice of the operational-creditor the existence of disputes or show the documents that the payment of unpaid operational-debt has been made. Section 9 makes it clear that after the expiry of period of ten days, from the date of delivery of the notice or invoice demanding payment, if the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2) of the Code, only in that case the Operational Creditor may file an application for initiation of the CIRP. If we shall read these two provisions together then we find, before initiating a proceeding under Section 9, the operational-creditor is required to fulfil the conditions mentioned under Section 8(1), if he has not sent the demand notice as required under Section 8(1) of the Code, then he cannot invoke the provision under Section 9, rather he can invoke the provision of Section 9 only, when Corporate Debtor fails to raise the existing of disputes or produce the document to show that unpaid operational debt has been paid within ten days of the receipt of the demand notice. Therefore, on the basis of aforesaid provision, we are of the view that Section 8 and 9 cast a duty upon the operational-creditor as well as Corporate Debtor to act as per Section 8 and if they fail to fulfil the conditions of Section 8 and 9 then in that case neither the application filed by the operational-creditor is maintainable nor the plea of existing of disputes or the payment of debt subsequently taken by the Corporate Debtor can be taken into consideration.

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16. At this juncture, we would also like to refer the decision reported in the case of ***Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 271***, and we find that Hon'ble Supreme Court in Para 14 of the judgment held that:

“It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.”

17. In the light of that decision, when we shall consider the case in hand then we are of the considered view that since it is specifically mentioned in Section 8(2) of the Code that within ten days from the date of the receipt of the demand notice, the corporate-debtor is required to bring to the notice of the operational-creditor, the existence of dispute or the documents regarding the payment of debt, therefore, we have no option, but to hold that since the corporate-debtor fails to give the reply of the demand notice and raised the disputes, hence after his appearance in response to the notice, he cannot raise it by filing the reply to the application filed on behalf of the operational-creditor and this has also been held by another NCLT,

Delhi Bench in the case of *M/s Jai Laxmi Traders v M/s. Mayasheel Retail India Ltd. IB-2184/(ND)/2019.*

18. Now, coming to the point of limitation, at this juncture, in course of hearing, Learned Counsel appeared for the Corporate Debtor submitted that the application is barred by limitation because all the invoices are in between 3rd September, 2015 to 30th November, 2015.
19. At this juncture, we would like to refer the argument advanced on behalf of the Learned Counsel appeared for the Applicant who in course of this argument submitted that the last payment was made by the Corporate Debtor on 18th January, 2017 which would be evident from the statement of account filed by the Operational Creditor by filing additional affidavit on 23rd September, 2019 at page 33 of the additional affidavit, the transaction made on 18th January, 2017 by the Corporate Debtor is referred and which shows that on that day Rs. 3,10,000/- was credited in the account of applicant.
20. At this juncture, we would also like to refer Section 19 of the Limitation Act and the same is quoted below: -

“19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the

payment was made: Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.

Explanation.—For the purposes of this section,—

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) “debt” does not include money payable under a decree or order of a court.”

21. Mere plain reading of the provision shows that when the payment of account of debt or of interest is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf, a fresh period of limitation shall be computed on the time when the payment was made. Here in the case in hand, all the invoices are in between 3rd September, 2015 to 30th November, 2015, whereas the last payment was made on 18th January, 2017 which is within 3 years from the date of issuance of the invoices as required under article 137 of the Limitation Act, therefore, the last payment was within 3 years from the date of the issuance of the invoice.

22. Hence, in view of the Section 19, we are of the considered view that limitation runs from the last date of payment and when we shall count the date of limitation from 18th January, 2017 then we find that the present application is filed on 11th September, 2019, therefore, it is within 3 years from the date of last payment made by the Corporate Debtor.
23. Hence, we find, no force in the contention raised on behalf of the Learned Counsel appeared for the Corporate Debtor that present application is barred by limitation, rather, we are of the considered view that from the date of last payment that is from 18 January, 2017, the present application is within time.
24. For the reasons discussed above, we are of the considered view that in view of Section 9(5)(i)(a) since the application is complete, there is no payment of unpaid operational debt, which is more than Rs. 1 Lakh, which is the minimum threshold U/S 4 of the Code for initiating a proceeding U/S 9 of the Code and no notice of dispute as required U/S 8(2) of the Code is raised by Corporate Debtor. Therefore, we think it is proper to admit the application.
25. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor

including execution of any judgement, 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 or 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;

(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.

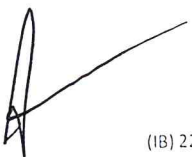
Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

26. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint, Mr. Shiv Nandan Sharma, an Insolvency Professional, Registration No. IBBI/IPA-001/IP-P00384/2017-2018/10641 email- sharmasn@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
27. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
28. Copies of the order be sent to both the parties as well as to the IRP.



29. The office is directed to send a free copy of this order to both the parties.

[Redacted] sdi-

K. K. VOHRA
Member (T)

[Redacted] sdi-

24-05-20
ABNI RANJAN KUMAR SINHA
Member (J)