

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


C.P. (I.B) No.167/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.12.2019**

Name of the Company: Nuvoco Vistas Corporation  
V/s  
Ishavashyam Infra LLP

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

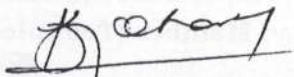
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Vibhor Chhabhot	ADV.	Petitioner	
2.				

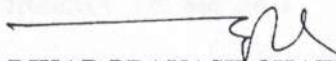
**ORDER**

The Petitioner is represented through Learned Counsel.

The Present Petition is admitted.

The detail order is recorded vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (T)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (J)

Dated this the 17th day of November, 2019.



**BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

C.P. (I.B.) No. 167/9/NCLT/AHM/2018

**In the matter of:**

NUVOCO VISTAS CORPORATION  
LIMITED

**(Formerly known as Lafarge  
India Limited)**

Having its address at: Equinox  
Business Park, Tower-3, East  
Wing, 4<sup>th</sup> Floor, Off. Bandra Kurla  
Complex, LBS Marg, Kurla(West),  
Mumbai – 400 070 (India)

...Petitioner(OC)

Versus

ISHAVASHYAM INFRA LLP

Having its Registered Office at:

Giriraj, Darga Road, Opposite  
Mental Hospital, Vadodara,  
Gujarat – 390018.

.....Respondent(CD)

Order delivered on 17<sup>th</sup> December, 2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

**Appearance:**

Mr.Vibhor Chaplot, Advocate for the Applicant  
None for the Respondent company



**[Per: Mr. Prasanta Kumar Mohanty, Member(T)]**

1. The present Petition is filed on 26.03.2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IB Code' for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('IB Rules' for short) for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, Ishavashyam Infra LLP for the recovery of the unpaid Operational Debt due.
2. The Petitioner, Nuvoco Vistas Corporation Limited is a company incorporated under the Companies Act, 1956 and was formerly known as Lafarge India Limited, prior to which was known as Lafarge India Private Limited. The Applicant is having its registered office at Equinox Business Park, Tower-3, East Wing, 4<sup>th</sup> Floor, Off. Bandra Kurla Complex, LBS Marg, Kurla(West), Mumbai – 400 070 and engaged in the business of manufacture and/or sale of Cement, Ready Mix Concrete ("RMX") and quarrying, processing, selling of hard rock/sand and gravel aggregate products. The present Petition is filed through the Shri Hardik Hasmukhlal Thakore, Authorised Signatory of the Applicant to initiate Corporate Insolvency Resolution process with respect to the Corporate Debtor.



It is submitted that the Respondent Company, Ishavashyam Infra LLP is a Limited Liability Partnership

Firm having its registered address at Giriraj, Darga Road, Opposite Mental Hospital, Vadodara, Gujarat – 390018 and was incorporated on 11.11.2014 with LLPIN No.AAC-9012.

4. It is submitted that the Respondent approached the Applicant for purchase of **Ready Mix Concrete** (hereinafter referred to as “RMC”) to be delivered at the Applicant’s site at Madhav Nagar, Atladara, Vadodara. After due negotiations, the Respondent placed the purchase orders dtd:01.09.2015, 01.09.2015 and 01.10.2015 for supply of various grades of RMC. It is submitted that the purchase orders specifically provide a condition of payment i.e. 15 days from the date of supply.

5. It is submitted that pursuant to the purchase orders, the Applicant supplied RMC in various batches from September, 2015 till October, 2015 as per the agreement with the Respondent. It is submitted that the Applicant has raised delivery challans in respect of the delivery of the materials, which have been duly signed and acknowledged by the Respondent and which reveals that the materials were being received by the Respondent at its site. It is submitted that the Respondent accepted and acknowledged the receipt of RMC without any protest, as the RMC supplied was in consonance with the quality and specifications demanded by the Respondent. Hence, the



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Applicant raised retail invoices on the supplies made from time to time, which were duly accepted by the Respondent.

6. It is submitted that as per the terms and conditions of purchase order, the Respondent was liable to make payment against each invoice within 15 days. Hence, on expiry of credit period of each invoice, the Respondent became liable to pay and was under an obligation to pay the amount claimed in each invoice. It is submitted that the Respondent had a running account with the Applicant, whereby it was allowed to pay lump sum amount instead of payment on tax invoices raised by the Applicant from time to time. However, it is submitted that the Respondent has failed to pay any amount with respect to supply of material.

7. It is submitted that the Respondent admitted the debt due amount to Rs.14,40,000/- and accordingly issued Cheque no.000116 dated 06.11.2015 amounting to Rs.14,40,000/- drawn on HDFC Bank, Vadodara for part payment of the outstanding amount. The said cheque was presented before Citi Bank, Mumbai Branch for realization, but the same was returned by the bank vide memo dated 03.02.2016 with reason 'payment stopped by the drawer'. Hence, the said act of the Respondent suffices to reveal the malafide conduct of the Respondent



and its disregard to clear the outstanding dues of the Applicant.

8. Thereafter, the Applicant issued a legal notice dated 02.03.2016 to the Respondent under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 calling upon the Respondent to pay the Applicant the entire dues amounting to Rs.14,40,000/- within 15 days from the receipt of the notice. Further, on failure to pay the amount as per legal notice dated 02.03.2016, the Applicant filed a Criminal Complaint before the Magistrate Court at Mumbai and the same is pending for adjudication.
9. It is submitted that the entire liability was not fulfilled by the Respondent for the amount due and payable to the Applicant. An undisputed amount of Rs.14,40,825/- along with interest @24% p.a. as per invoice is still due and payable by the Respondent. Therefore, the non-payment of the debt due and payable amount is defaulted within the meaning of Section 3(12) of the Code. Accordingly, the Applicant sent a demand notice dated 08.08.2017 under Rule 5 of the IBC Rules for the payment of the amount claimed in default along with the interest thereon, failing which it was intimated that the Applicant shall initiate a CIRP against the Respondent. The said demand notice was dispatched at the registered address of



the Respondent; however, the same was undelivered and returned back with remark 'left'. It is submitted that the Applicant has duly caused the service of demand notice on the registered office of the Respondent and hence sufficient service. It is submitted that since the Applicant has neither satisfied the claim nor compounded or secured the same to the satisfaction of the Applicant within the statutory period of 10 days from the date of demand notice, the Respondent is deemed to be unable to pay its debts and therefore the CIRP procedure may be initiated against the Respondent.

10. It is submitted that no suit, arbitration proceedings or any other proceedings are pending before any judicial forum or authority relating to the unpaid operational debts except the legal proceedings under Section 138 of Negotiable Instruments Act are mentioned supra. Further, it is submitted that the Respondent till date has not disputed the liability to pay the outstanding amount to the Applicant and has also not shown 'existence of dispute', if any in terms of Sub-section (2) of Section 8 of the Code. Thus, it is clear that the Respondent has committed a 'default' in payment of the unpaid operational debt within the meaning of Section 3(12) of the Code.

11. It is submitted by the Operational Creditor that the total **amount claimed is Rs.22,91,791/-** (Rupees: Twenty Two Lakhs Ninety One Thousand Seven Hundred and Ninety



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Five Only) which includes interest @24% per annum uptill 20.03.2018 till date of realization. **Date of Default is on 31.10.2015.**

12. This Application has been filed on 26<sup>th</sup> March, 2018. This Application was listed before this Authority for the first time on 02.05.2018. This Authority directed the Applicant to issue notice to the Respondent informing the date of hearing along with the copy of the order and to file proof of service and posted the matter to 11.06.2018. Applicant filed proof of service of date of hearing on Respondent on 11.06.2018. Thereafter, the Respondent was also served by way of paper publication in daily newspapers "Indian Express" & "Sandesh" i.e. in English and Vernacular Language in Vadodara Edition dated 26.07.2018, in compliance of orders dtd:11.06.2018 of this Adjudicating Authority. The Applicant has also filed affidavit to this effect on 18.09.2018, enclosing therewith proof of publication. But none appeared for the Respondent inspite of service of notice. The matter was finally heard on 20.08.2019 and petitioner was also given liberty to file his written submissions with a week.

13. Accordingly, the Learned Counsel for the Petitioner filed its written submissions on 27.08.2018, wherein it is submitted that -

13.1 The Respondent is incapable of making the payment of the outstanding dues to its creditors in the



ordinary course of its business and hence in the public interest, the Respondent be liquidated.

13.2 It is submitted that this Adjudicating Authority has jurisdiction to entertain, try and dispose of the present application.

13.3 It is also submitted that the Application is not barred by limitation, since the debt was due on 31.10.2015 and the application was filed before this Tribunal on 26.03.2018.

13.3 It is submitted that the Respondent has not disputed the liability to pay the outstanding amount to the Applicant, as upon the receipt of Demand Notice on 08.02.2018, the Respondent failed to reply the same and hence, the Applicant has not shown "existence of dispute, if any" in terms of Sub-Section (2) of Section 8 of the Code.

13.4 It is submitted that it is clear, the Respondent has committed a 'default' in payment of the unpaid operational debt arising in the usual and ordinary course of business and is unable to pay the same. It is also submitted that the Applicant is not using the provision under the Code, as a recovery mechanism of a debt that is in dispute between the parties.

14. Heard the arguments of the learned counsel appearing for the Applicant.



**15. It is observed that: -**

15.1 The Applicant has filed the present Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 on 26.03.2018 for the default amount of Rs.22,91,791/-, which was due on account of supply of RMC by the Corporate Debtor to the Petitioner.

15.2 Copies of the two purchase orders dated 01.09.2015 and one purchase order dtd:01.10.2015, shows that Respondent placed an order for supply of goods with the Applicant. Perusal of the copies of the Invoices show that goods were supplied to the Respondent.

15.3 Applicant submitted that the cheque provided for Rs.14,40,000/- dated: 06.11.2015 for payment of goods supplied was returned by the bank on presentation vide memo dated 03.02.2016 for the reason 'payment stopped by the drawer'.

15.4 As per the terms and conditions of the Tax Invoice, an interest of 24% is to be charged, if the amount is not paid on the due date.

**15.5 Date of default is 31.10.2015;**

15.6 Applicant also issued legal notices dated 02.03.2016 to the Respondent under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, demanding the due amounts under the above said Invoices. Respondent did not choose to repay the



amount due to the Applicant in respect of the goods supplied by the Applicant to the Respondent.

15.7 Applicant issued demand notice dated 08.08.2017 in Form 3 attaching the copies of the Invoices to Respondent as required by Section 8 of the Code read with Rule 5 of the Adjudication Rules. The said notice was returned unserved. Subsequently, the Applicant served the notice upon the Respondent through email on 10.08.2017. Applicant filed Affidavit stating that no notice of defence was sent by the Respondent.

15.8 Applicant also filed copies of Invoices and copies of the Bank statements.

15.9 The amount due to the Applicant from the Respondent is in respect of supply of goods. The claim made by the Applicant is in respect of supply of goods. Therefore, the amount claimed by the Applicant from the Respondent is operational debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code.

15.10 The amount is due from the Respondent to the Applicant. Respondent is a Company registered under the Companies Act. Respondent is a



Corporate Debtor within the meaning of sub-section (8) of Section 3 of the Code.

15.11 The Application filed by the **Applicant is complete. In spite of service of notice**, Respondent did not **choose to appear before this Authority**. No notice of dispute has been given by the Respondent to the Applicant even after receipt of demand notice from the Applicant.

15.12 Applicant did not name the Interim Insolvency Resolution Professional in the Application. Applicant made a request to refer the matter to the Insolvency Board under Section 16 of the Code.

15.13 No pre-existing dispute before the filing of this application is observed.

15.14 From the above observations and on the basis of the materials available on record, it is held that it is a case to initiate insolvency resolution process by admitting the Application under Section 9(5)(1) of the Code.

**ORDER**

**16.** Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **15, 15.1, 15.2, 15.3, 15.4, 15.5, 15.6, 15.7, 15.8, 15.9, 15.10, 15.11, 15.12, 15.13 & 15.14**, this Adjudicating Authority **is satisfied that,**



- a) Existence of debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on **31.10.2015**;
- d) Petition had been filed within the limitation period;**
- e) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor, Notice has been duly served; though the Respondent has failed to appear before this Adjudicating Authority and the application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor Company.

Therefore, the **present IB petition is admitted with the following directions:**

17. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority shall declare moratorium for prohibiting all of the following, namely: -

- I.(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 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*



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*property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to*  
*(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

18. The Petitioner/Operational Creditor has not suggested the name of any Interim Resolution Professional in the present Petition. Though it is not mandatory on the part of the Applicant to propose an Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the Adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority from the panel of Insolvency and Bankruptcy



Board of India available for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor is not able to bear the CIRP expenses.

19. Hence, this Adjudicating Authority hereby appoints **Shri Shalabh Kumar Daga, having Insolvency Professional Registration No.IBBI/IPA-001/IP-P00071/2017-18/10157, Email ID- [jlnus.ahd@gmail.com](mailto:jlnus.ahd@gmail.com) Mobile no.9687605050 as an Interim Resolution Professional.**

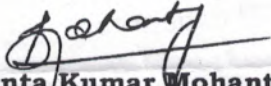
The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

20. An authentic copy of this order to be communicated by this Registry to the Operational Creditor/Corporate Debtor, as well as to the Interim Resolution Professional

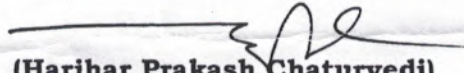


and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP(IB) No.167/9/NCLT/AHM/2018 is admitted with the **above observations and directions.**



**(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member(T)**

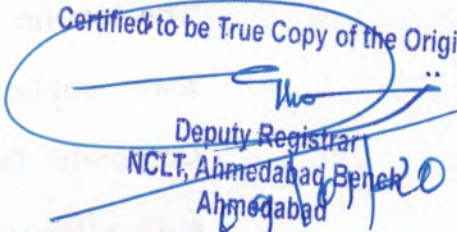


**(Harihar Prakash Chaturvedi)  
Adjudicating Authority &  
Member(J)**

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Certified to be True Copy of the Original



Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad