



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-394/(ND)/2022

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Sunder Engineering Works

Having registered office at:: 27, Mohkampur Industrial Complex, Delhi Road,
Meerut, Uttar Pradesh-250002

...Applicant/Operational Creditor

Versus

M/s. Satnam Global Infraprojects Limited

Having registered office at: Plot No 272,
FIE Industrial Area, Patparganj,
New Delhi- 110092

...Respondent/Corporate Debtor



Coram:

SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Applicant: Ms. Prachi Johri

Counsel for Respondent: Ms. Richa Singh

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 26.04.2023

1. This is an application filed by the Applicant M/s. Sunder Engineering Works seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Satnam Global Infraprojects Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 1,28,23,427.07/- (Rupees One Crore Twenty Eight Lakhs Twenty Three Thousand Four Hundred Twenty Seven). This is payable alongwith interest as mentioned in the invoices and the Operational Creditor reserves its right to claim interest. The details of transactions leading to the filing of this



application as averred by the Applicant/Operational Creditor are as follows:

- i. That the present application under Section 9 of the IBC is being filed in view of the debt amounting to Rs. 1,28,23,427.07/-. Further, interest @18% p.a. is also payable on the abovementioned principal sum from the date of invoice as per the terms and conditions mentioned on the invoice.
- ii. That the said amount is due in terms of various invoices, whereunder goods including HR sheets, shapes and sections etc. were supplied by the Operational Creditor to the Corporate Debtor.
- iii. Despite various follow ups, the Corporate Debtor defaulted in paying off the said invoices. Therefore, the Operational Creditor was constrained to issue a notice under Section 8 of the IBC, 2016 at the registered address of the Corporate Debtor. The demand notice was



successfully delivered at the above said address.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

- i. That the Respondent placed order for various goods including HR sheets, shapes & sections etc. on various dates which were supplied by the Operational Creditor. However, the Operational Creditor did not deliver all the goods as per the order placed. There were certain deficiencies on the part of the Applicant who were supplying inferior goods to the Respondent.
- ii. That the Applicant has fraudulently filed the present application against the Respondent claiming fallacious amount of Rs. 1,28,23,427/- (Rupees One Crore Twenty-Eight Lacs Twenty Three Thousand Four Hundred and Twenty-Seven) on the basis of fabricated invoices, for the goods that were not even booked by the Respondent.



iii. That as per the books of accounts of the Respondent, the outstanding amount payable to the Applicant is Rs. 96,12,291/- (Rupees Ninety-Six Lakhs Twelve Thousand Two Hundred and Ninety One) which is below the threshold limit of Rs. 1 Crore as per Section 4 of the Code.

3. The Counsel for the Operational Creditor has filed its written submissions stating that:

i. That the Corporate Debtor has admitted principal due of Rs. 96,12,291/- outstanding. The CD has further admitted all invoices except two invoices (M338 and M340). All the invoices carry clause of charging 18% interest if payment is not made. The Hon'ble NCLAT in the case of *Mr. Prashant Agarwal v. Vikas Parasrampuria, Co App. (AT)(Insol.) No. 690/2022*, held that since interest on delayed payment was clearly stipulated in invoice and therefore, this will entitle for "right to payment" (Sec. 3(6) IBC) and therefore will form part of "debt" (Section 3(11) IBC). Therefore, on Corporate Debtor's own admission, liability above Rs. 1 crore threshold stands admitted.



Further, Ledger wise calculation of interest shows interest upto 15.02.2022 as Rs. 1,59,04,672/-.

- ii. That the Operational Creditor had contacted the GST department and has been able to procure written confirmation that the Operational Creditor has in fact filed details of invoices no. M338 and M340 in its GSTR 1 pertaining to that period and the Corporate Debtor has claimed input tax credit on both these invoices.

4. We have heard the Ld. Counsels for the Operational Creditor and Corporate Debtor and perused the averments made in the application as well as the documents enclosed with the application.
5. The Corporate Debtor has acknowledged that as per the ledger maintained by the Corporate Debtor, the outstanding amount payable to the Applicant is Rs. 96,12,291/- (Rupees Ninety-Six Lakhs Twelve Thousand Two Hundred and Ninety One) in its reply to the present Section 9 Application and submitted that the debt amount is below the threshold limit of Rs. 1



Crore as per Section 4 of the Code. However, a perusal of the Application and the invoices attached clearly depicts that the invoices had a provision of charging interest at the rate of 18% on delayed payments. Further, as observed in the landmark judgement by NCLAT in Krishna Enterprises Vs Gammon India Ltd Company Appeal (AT) (Insolvency) No. 144 of 2018:

“4. It is submitted that the ‘debt’ includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement interest is payable to the Operational or Financial Creditor then debt will include interest, otherwise, the principle amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor.”

In the present case, the invoices had provision for payment of interest on delayed payments and therefore, the interest component will also form part of the Operational Debt in the present case. In light of the same, it can be fairly concluded that the present Application is well above the threshold limit u/s 4, IBC, 2016.

6. In the light of the above and in view of the fact that the Corporate Debtor has not raised any contention w.r.t



any pre-existing dispute between the parties and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and along with that, in the absence of any pre-existence of dispute, this tribunal admits this application and initiates CIRP on the Corporate Debtor with immediate effect.

- 7.** The name of Insolvency Resolution Professional has not been proposed in the Application filed by the Operational Creditor. This Adjudicating Authority, hereby appoints Mr. Rajneesh Kumar Aggarwal (Email – ca@arkadvisors.in), Reg. No: IBBI/IPA-001/IPP00886/2017-2018/11483 to act as Insolvency Resolution Professional from the panel of Insolvency Professionals (IPs) valid from the period 01.01.2023 to 30.06.2023 issued by IBBI in terms of Section 16(4) of



the IBC, 2016. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

- 8.** The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
- 9.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
- 10.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1)



(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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 property including any action under the Securitization 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.*

11. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the



Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

12. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



13. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the ‘Corporate Debtor’. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of his obligation, imposed



by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

14. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

SD/-

(P.S.N. PRASAD)
MEMBER (JUDICIAL)