



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

COURT-V

Item No.-102
IB-379/ND/2022

IN THE MATTER OF:

Prem Kanta Sharma

....Applicant

Vs.

Siwon Builders Pvt. Ltd.

.....Respondent

SECTION

U/s 9 of IBC

Order delivered on 26.05.2022

CORAM:

**SHRI ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (JUDICIAL)**

**SHRI HEMANT KUMAR SARANGI,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant : Mr. Sushil Kumar, Adv.

For the Respondent : Mr. Smriti Sahay, Adv.

ORDER

We have heard the Ld. Counsel appearing for the Applicant. The Ld. Counsel appearing for the Applicant, in the course of hearing admits that the date of default occurs on 11.03.2021, so considering this submissions, at this juncture; we would like to refer to Part-IV of the application. The scanned copy of the same is reproduced below.

PART - IV

PARTICULARS OF OPERATIONAL DEBT

1.	TOTAL AMOUNT OF DEBT	<p>Rs. 1,03,96,700/- (Rupees One Crore Three Lacs Ninety Six Thousand Seven Hundred only) including claims and interest calculated at the rate 18% p.a till date of realization.</p> <p>The Operational Creditor further reserves its right to claim interest till date of realization of payment.</p> <p>Workings for computation of default amount i.e. Operational Debt is enclosed herewith as Annexure C</p>
	DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE	<ul style="list-style-type: none">• Operational Creditor is the proprietor of Baba Birdhilal through which the goods were supplied and invoices were raised.• In the year 2021, the Operational Creditor entered into an agreement with the Corporate Debtor for the supply of Moong Magar.• Pursuant to this agreement, the Corporate Debtor issued a Purchase order dated 01/02/2021 in the name of Baba Birdhilal, the proprietorship concern of the Operational Creditor.• It was in accordance to this purchase order that the Operational Creditor supplied the required material and raised the corresponding tax invoices based on the rates as agreed in the purchase order.• All of the following tax invoices raised by the Operational Creditor have been left unpaid by the Corporate Debtor:<ul style="list-style-type: none">➤ Invoice No. 421 dated 09/02/2021 for Rs. 17,26,200/-

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	<ul style="list-style-type: none">➤ Invoice No. 426 dated 17/02/2021 for Rs. 16,17,000/-➤ Invoice No. 471 dated 22/02/2021 for Rs. 14,06,300/-➤ Invoice No. 472 dated 25/02/2021 for Rs. 14,26,000/-➤ Invoice No. 36 dated 04/03/2021 for Rs. 13,89,200/-➤ Invoice No. 42 dated 10/03/2021 for Rs. 15,64,800/-➤ Invoice No. 45 dated 14/03/2021 for Rs. 12,67,200/- <p>Total : Rs. 1,03,96,700/-</p> <ul style="list-style-type: none">• There is no dispute about the execution of the work and the amount billed.• The Corporate Debtor has failed to discharge the dues arising out of aforesaid invoices. Operational Creditor has pursued Corporate Debtor several times for clearance of outstanding dues but there has been no compliance of the same.• Hence on 03/11/2021 the Operational Creditor issued demand notice (Form 3) dated 30/10/2021 to the Corporate Debtor to the registered email id of the Corporate Debtor. No response was received from the Corporate Debtor.• Consequently, IB-61/ND/2022 was filed and was dismissed by this Hon'ble Tribunal vide order dated 15.03.2022. While dismissal through withdrawal, Hon'ble Tribunal granted liberty to file a fresh application.• Operational Creditor once again issued demand notice dated 26/03/2022 in Form 3 of I&B Code to the email id of sanjay01636@gmail.com of the Corporate Debtor which was delivered instantly.• Corporate Debtor replied through email dated 05/04/2022 acknowledging the receipt of the demand notice and assuring to reply to the notice shortly. However, no reply to the demand notice has been received yet.• Hence the present application.
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	AND THE DATE FROM WHICH SUCH DEBT FELL DUE	<ul style="list-style-type: none">• Debt fell due from 11/03/2021• Last payment received on: NA• Last Invoice raised on 14/03/2021
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)	Rs. 1,03,96,700/- (Rupees One Crore Three Lacs Ninety Six Thousand Seven Hundred only) Workings for computation of operational Debt is enclosed herewith as <u>Annexure C</u> Corporate Debtor defaulted on their payment on 11/03/2021

On perusal of the averments made in Part-IV, Column II, we observe that the date of default is on 11.03.2021. Therefore, at this juncture, we would like to refer to Section 10A of IBC, 2016. The same is reproduced below:-

10A. Suspension of Initiation of Corporate Insolvency Resolution Process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate



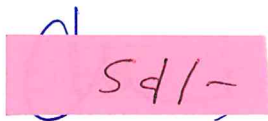
debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]

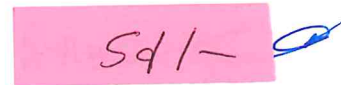
Mere perusal of the provision refer to supra shows that no application shall ever be filed for initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said periods. Therefore, in our considered view, since the default has occurred during such period, hence, the present application is not maintainable in terms of the proviso of Section 10A of the IBC.

Accordingly, the present application is dismissed.



**(HEMANT KUMAR SARANGI)
MEMBER (T)**

Md Saddam



**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**