

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-I, MUMBAI BENCH**

C.P. No. 109/IBC/MB/2020

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016
In the matter of

ENCRAFT INDIA PRIVATE LIMITED

Having registered office at:
70, Okhla Phase 3 Road,
Okhla Phase III, Okhla Industrial Area,
New Delhi, Delhi 110020.

... Operational Creditor/Petitioner

Vs

DEO LEELA FAÇADE SYSTEMS LLP

(LLP Identification no. AAI-6390)
Registered office at: SR No. 27/8, Near
Hariom Dimix, Pune 411 048.

..... Corporate Debtor

Order delivered on: 28.02.2024

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance :-

For the Operational Creditor : Mr. Shubham Dhamanskar, Advocate

For the Corporate Debtor : Ms. Shaheen Kapadia, Advocate

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This is an application filed by Operational Creditor/applicant under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IB Code"

for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

Brief facts:-

2. The Operational Creditor is engaged in the business of manufacturing and providing UPVC windows, doors and profiles. The Corporate Debtor approached and expressed its requirements for purchase of different products manufactured by the Operational Creditor and the same were supplied. Accordingly, various invoices were also issued from 27th September, 2017 to 12th April, 2019.
3. Corporate Debtor vide its e-mail dated 10.04.2019 gave its confirmation to the purchase invoice no. SQ-1920-000030 for manufacturing of the said goods. Operational Creditor on its part dispatched the said goods via its invoice no. 1920010025 amounting to INR 17,28,368/- (Rupees Seventeen Lakhs Twenty-Eight Thousand Three Hundred and Sixty-Eight) to the Corporate Debtor along with goods consignment note no. GCDDN192000065, dated 12.04.2019 against the purchase invoice no. SQ-1920-000030.
4. The Operational Creditor has received part payment to the tune of INR. 1,00,000/- (Rupees One Lac) on 11.07.2019. However, towards the discharge of the said invoice two cheques were issued by the Corporate Debtor which when presented to the bank were returned on the ground “Funds Insufficient”.
5. As per the ledger account of the Operational Creditor as on 10.12.2019, a balance of INR 16,34,339/- is due and

payable by the Corporate Debtor. Despite various e-mails and whatsapp messages the Corporate Debtor failed and neglected to pay the balance amount.

6. Accordingly, the Operational Creditor addressed a demand notice dated 20.08.2019 as per Form-3 of the IB Code which was dully served and replied by the Corporate Debtor acknowledging the debt and assuring that the balance payment shall be made shortly. However, no payment was made. Therefore, the present petition.
7. The Corporate Debtor has resisted the present Company Petition by filing its affidavit-in-reply.
8. According to the Corporate Debtor vide invoice no. 190010025, the goods amounting to Rs. 17,28,368/- (Rupees Seventeen Lakh Twenty-Eight Thousand Three Hundred Sixty-Eight Only) were purchased from the Operational Creditor and thus there is no dispute for procurement of material from the Operational Creditor. However, it has paid total amount against the said disputed invoice, the details of which is given as under: -

Particulars	Amount (Rs.)
INVOICE VALUE	<u>17,28,368.00</u>
Less -Amount Paid	
1. Payment made through Axis Bank A/c 917020027352871 through NEFT vide Chq. No. 53657 dated 11.07.2019.	<u>1,00,000.00</u>
2. Payment given on behalf of Corporate Debtor by M/s. Classic Promoters and Builders Pvt. Ltd. through bearing Chq. No. 000466 dated 07.02.2020.	<u>9,79,159.00</u>

3. Payment given on behalf of Corporate Debtor by M/s. Classic Promoters and Builders Pvt. Ltd. through Bearing Chq. No. 000467 dated 09.06.2020.	<u>6,25,240.00</u>
4. Debit Note bearing Note No. 26 dated 18.02.2020.	<u>19,306.00</u>
Difference payable by Corporate Debtor	4,663.00

In support of above said payment, the Corporate Debtor has enclosed various documents-

- a) Ledger Account of Operational Creditor in the books of Operational Creditor (Exhibit-A).
- b) Bank Statement of Corporate Debtor (Exhibit-B)
- c) Ledger Account of M/s. Classic Promoters and Builders Pvt. Ltd. in the books of Corporate Debtor (Exhibit-C)
- d) Debit Note (Exhibit-D).

Thus, it is evident that Corporate Debtor has paid entire amount against the disputed claim.

9. By way of additional affidavit, the Corporate Debtor contends that the Corporate Debtor is supplier of one company namely M/s. Classic Promoters & Builders Pvt. Ltd. and said Company owed an amount of Rs. 16,34,339/- (Rupees Sixteen Lakhs Thirty-Four Thousand Three Hundred and Thirty-Nine Only) to the Corporate Debtor for supply of materials. The Corporate Debtor vide its e-mail dated 03.02.2020 (Annexure-A) instructed said Company to make that payment of Rs. 16,34,339/- (Rupees Sixteen Lakhs Thirty-Four Thousand Three Hundred and Thirty-

Nine Only) directly to the account of Operational Creditor on its behalf. Accordingly, said M/s. Classic Promoters & Builders Pvt. Ltd. made payments in two parts to the Operational Creditor on 07.02.2020 to the tune of Rs. 9,79,159/- and on 09.06.2020 to the tune of Rs. 6,25,240/- totalling Rs. 16,04,399/-. This amount was duly received by the Operational Creditor and accordingly Operational Creditor reduced pending outstanding balance amount in their ledger accounts. The said ledger account was sent by the Operational Creditor on 07.05.2021 via e-mail (Exhibit-B) to the Corporate Debtor. For all these reasons, the Company Petition is liable to be dismissed, urges Corporate Debtor.

10. Heard Mr. Shubham Dhamanskar, learned Counsel for the Operational Creditor and Ms. Shaheen Kapadia, learned Counsel for the Corporate Debtor.
11. Perused the record.
12. It is evident from the affidavit-in-reply of the Corporate Debtor that it had purchased the material from the Operational Creditor under invoice no. 1920010025 for an amount of Rs. 17,27,368/-. Thus, there is no dispute as far as the transaction between the parties is concerned. The Operational Creditor has come with a specific case that there is unpaid amount of Rs. 16,34,339/- (Rupees Sixteen Lakhs Thirty-Four Thousand Three Hundred and Thirty-Nine Only) as on 10.12.2019 under invoice no. 1920010025 and despite various e-mails, whatsapp messages and demand notice the Corporate Debtor has failed to repay the said amount. Similarly, the outstanding dues were duly

acknowledged by the Corporate Debtor in response to the demand notice which is apparent from the reply given by the Corporate Debtor to the demand notice of the Operational Creditor. It may be noted from the reply (Exhibit-L) that the said reply was sent on 22.08.2019.

13. At the first blush, one can come conveniently to the conclusion that since the demand notice is not disputed and rather has been admitted by the Corporate Debtor there is no difficulty in holding that the Corporate Debtor is liable to pay the outstanding amount to the Operational Creditor. However, the matter does not rest there.
14. If affidavit in reply is read carefully then it would be seen that one M/s. Classic Promoters and Builders Pvt. Ltd., on instructions (Exhibit- "A" of the additional affidavit) given by the Corporate Debtor, paid an amount of Rs. 9,79,159/- on 07.02.2020 and then further an amount of Rs. 6,25,240/- on 09.06.2020. This is quite clear from the ledger account of the Operational Creditor in the books of account of the Operational Debtor. This is further supported by the bank statement of the Corporate Debtor (Exhibit-B) and ledger account of M/s. Classic Promoters & Builder Pvt. Ltd. in the books of the Corporate debtor (Exhibit-C). There is also debit note (Exhibit-D) showing an amount of Rs. 19,306/- i.e. difference payable by the Corporate Debtor to the tune of 4,663/-. Interestingly, these material facts and as also fact of the receipt of the amount paid by M/s. Classic Promoters & Builders Pvt. Ltd. on behalf of the Corporate Debtor has not been denied or

rebutted in an unequivocal term by the Operational Creditor.

15. The above noted documentary evidences are clear pointer to the fact that the debt amount as claimed by the Operational Creditor was dully paid by the Corporate Debtor through M/s. Classic Promoters and Builders Pvt. Ltd. We therefore, find no merit in the petition and therefore the same is liable to be dismissed.
16. In view of above, we pass the following order.

ORDER

- 1) Company Petition No. 109/2020 filed under section 9 of I & B Code, 2016, filed by **Encraft India Pvt. Ltd.**, Operational Creditor/Applicant against **Deo Leela Façade Systems LLP** Corporate Debtor for initiating Corporate Insolvency Resolution Process is **dismissed**.
- 2) We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.
- 3) Any other pending IAs'/MAs' if any, in the present Company Petition stand **disposed of**.
- 4) File be closed and consigned to record.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna