



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT - IV**

**ITEM No. 502**  
**IB/437/ND/2021**

**IN THE MATTER OF:**

JMJ Tools (Through Proprietor Kamal Pant)	...	Appellant
V/s		
NBCC (India) Ltd.	...	Respondent

**Order under Section 9 of IBC, 2016.**

**Order pronounced on 17.05.2023**

**Coram:**

**Mr. P.S.N. PRASAD,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide, separate sheets.

IB/437/ND/2021 **Stands dismissed.**

**Sd/-**

**DR. BINOD KUMAR SINHA,**  
**MEMBER (TECHNICAL)**

**Sd/-**

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



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV**

**Company Petition No.(IB)-437 (ND)/2021**

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

**IN THE MATTER OF:**

Mr. Kamal Pant  
Proprietor of: -  
M/s. JMJ Tools India

**.... Applicant/  
Operational Creditor**

**Vs.**

M/s. NBCC (India) Limited

**.... Corporate Debtor**

**CORAM:**

**SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on:17.05.2023**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)**

The instant application is filed by M/s. JMJ Tools India, a proprietorship firm having Mr. Kamal Kant as its sole proprietor (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. NBCC (India) Limited (hereinafter



referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.4,07,70,153.55/- (Rupees Four Crores Seven Lakhs Seventy Thousands One Hundred Fifty Three Rupees and Fifty Paise Only).

2. The Respondent Company M/s. NBCC (India) Limited having CIN: L74899DL1960GOI003335 incorporated under the provisions of the Companies Act, 1956 is having its registered office situated at NBCC Bhawan, Lodhi Road, New Delhi-110003. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Succinctly stated facts of the present case as averred by the applicant are that the applicant is the sole proprietorship firm and is engaged in the business of supplying best quality products and installation services for furniture, LED lights, fitting and similar articles suitable for furniture, doors, staircases, trunks etc. It was submitted that the Corporate Debtor had issued a letter of Award dated 08.02.2018 vide no. NBCC/ED/RBG/LOA/NID/BHOPAL/2018/1677 accepting the tender for the supply and installation of Furniture and Allied work at NID, Bhopal for DIPP, submitted by the Applicant after successful completion of bidding.
4. Further, it was submitted that the official agreement dated 22.02.2018 was executed between the applicant and the corporate debtor for the execution of the tender work in consideration of which the Corporate Debtor had agreed to make payment as per the invoices raised by the Applicant. It was submitted that the Corporate Debtor had accepted the



Performance Guarantee of 5% of the contract value after several verbal request by the Applicant on 29.05.2018 i.e., near about after 95 days from the due date i.e., 15 days from the date of issue of the letter of award of contract.

5. It was submitted that the applicant had completed all the work of supply and installation of furniture and allied work as per the Agreement and requirement of the Corporate Debtor in respect of which several invoices were raised in the name of the Corporate Debtor. It was submitted that the Applicant had repeatedly requested the Corporate Debtor to clear the outstanding dues through several correspondence sent on various dates. It was submitted that the Corporate Debtor had made a part payment of Rs. 53,52,528/- on 22.01.2019 towards the work done. The Applicant being aggrieved had sent Statutory Demand Notice dated 15.01.2020 under Section 8(1) of the Code upon the Corporate Debtor demanding the outstanding operational debt of Rs.3,08,05,303/-, which has been duly delivered to the Corporate Debtor. It was further submitted that the Corporate Debtor had replied to the said demand notice vide reply dated 28.02.2020.
6. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor submitted that in pursuance of the Award dated 08.02.2018, the work to be completed within a period of 03 months and as per agreement dated 22.02.2018 entered between the parties the start date of the work was 17.02.2018 and the completion of the work was said to be 16.05.2018. It was submitted that the consultant appointed by the Corporate Debtor had sent the complete furniture layout along with the presentation to the applicant on 15.02.2018, therefore, despite the completion of all the formalities on the part of the Corporate Debtor, the Applicant had never started with the supply and installation of the furniture as stipulated in the LOA as well as the agreement, owing to



which an explanation was also called for from the Applicant on 20.03.2018.

7. Further, it was submitted that despite sending several reminders and request to the Applicant, the Applicant had miserably failed to supply even a single item of the BOQ items till August, 2018 whereas the stipulated date of completion of the contract was 16.05.2018 and the Corporate Debtor vide e-mail dated 09.08.2018 had informed the Applicant that Corporate Debtor is intending to terminate the contract and is in the process of encashing the Bank Guarantees. The Corporate Debtor had issued a show cause notice dated 05.10.2018 to the Applicant asking to show cause the reasons for not terminating the contract and the Applicant vide reply dated 20.10.2018 had submitted a revised time line for completion of contract.
8. It was submitted that after several meetings between the parties, the Applicant again had miserably failed to supply the furniture as per the revised timelines and also as per the specifications given. It was submitted that the Applicant vide letter dated 21.11.2018 was specifically informed that the mattresses provided at the site were not in consonance with BOQ items and therefore, the same needs to be replaced with the brands mentioned in BOQ List. Furthermore, the Corporate Debtor vide letter dated 08.02.2019 and 12.02.2019 had informed the Applicant to complete the supply within the stipulated time.
9. Moreover, it was submitted that there is no debt pending towards the Applicant as the Corporate Debtor was constrained to award work which was left by the Applicant on the risks and cost to the other contractor by floating separate tenders altogether and therefore, awarded pending work to the subsequent contractor at an extra costs of Rs.34,42,021/-, which is recoverable from the Corporate Debtor.



10. On behalf of the Applicant, the Rejoinder has been filed to the reply filed by the Corporate Debtor, wherein the submissions of the Corporate Debtor are rebutted and it was submitted that there exists no dispute as such as envisaged under Section 5(6), 8 and 9 of the Code, 2016 and the Corporate Debtor had never raised a dispute on the invoices raised by the Applicant from time to time. It was submitted that the Applicant had vide e-mail dated 26.03.2018 had explained the Corporate Debtor that several things like colour shade and fabric needs to be approved by the Corporate Debtor to get the work started, because of which the Applicant sat idle after March, 2018 to August, 2018. Moreover, the Applicant was surprised to receive a mail dated 09.08.2018 from the Corporate Debtor informing about the invocation of the Bank Guarantee.
11. Further, it was submitted that there were no deviations from the specifications and details of the furniture's supplied by the Corporate Debtor and as mentioned in the BOQ. It was submitted that no description of any pre-approved make of the mattresses to be supplied had been mentioned in the BOQ items. Thus, there was no approved list of makes for the NDIA mattresses to be supplied and the supplied foam mattress of M/s Libra make was done only after verbal acceptance from Corporate Debtor.
12. Moreover, the Applicant was supplying the furniture of WIPRO make which was one of the approved make but the Corporate Debtor was continuously insisting the applicant to supply the furniture of Godrej make only for the reasons best known to the Corporate Debtor only. It was pertinent to note M/s. Reliable Furnishers which got the retendering awarded, supplied the WIPRO make furniture only at NM Bhopal site.



13. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been examined.

14. Adverting to the factual matrix of the present case, it is an admitted fact that the Corporate Debtor awarded the work contract pertaining to supply and installation of Furniture and Allied works at NID Bhopal, MP to the applicant vide Letter of Award dated 08.02.2018 with a completion period of 03 months for a value of Rs.3,85,73,237/-. However, there was delay in supplies and installation and the work was rendered and several invoices were raised from 16.11.2018 to 04.02.2019 by the Applicant and part payments were also made by the Corporate Debtor. From the submissions of the Applicant and the bank statements, it is alleged that an operational debt of Rs.4,07,70,153.55/- (Rupees Four Crores Seven Lakhs Seventy Thousands One Hundred Fifty Three Rupees and Fifty Paise Only), was still due and payable by the Corporate Debtor.

15. The Hon'ble Supreme Court judgement in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34,** have categorically laid down what the Adjudicating Authority has to examine in an Application under Section 9, which is as follows:-

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding*



*filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

16. From the submission of the parties, the short point for consideration for this Adjudicating Authority is whether there is any discernible pre-existing dispute surrounding the debt claimed to be due and payable by the Corporate Debtor.

17. We find that the Corporate Debtor in its reply dated 28.02.2020 to the Section 8 demand notice had disputed both the existence of operational debt and also deficiencies in respect of discharge of contractual obligations by the Operational Creditor. We also notice that even prior to receipt of demand notice dated 28.02.2020, the Corporate Debtor on various occasions had informed the Applicant about the non-completion of the work within the prescribed timelines and also about the quality/brand of goods supplied not as per the work order specifications. It will be useful at this stage to peruse the reply dated 28.02.2020 of the Corporate Debtor in response to the demand notice dated 15.01.2020. the relevant para of the same is extracted below: -

“8. That the true and irrefutable facts and events pertaining to the existence of disputes between NBCC and JMJ Tools India are as follows:

a.\*\*\*\*\*

b. \*\*\*\*\*

e. That despite of completion of all the formalities on part of NBCC, you addressee never started with the supply and installation of the furniture as stipulated in the LOA as well as the agreement. Owing to



such failure of yours, explanation was called from you addressee on 20.03.2018.

- f. That despite of several reminders and requests from NBCC, you addressee miserably failed to even supply even one item of the BOQ items till August, 2018 whereas the stipulated date of completion of the contract was 16.05.2018.
- g. Thereafter, NBCC was constrained to send a notice to you to explain why the delay is being caused to which no satisfactory reply was furnished by you addressee and eventually your Performance Bank Guarantee was encashed on 28.09.2018.
- h. After, encashment of the Performance Bank Guarantee, NBCC sent a notice dated 5.10.2018 thereby asking you addressee to show cause why, the contract is not to be terminated. And you addressee vide your reply, submitted a revised time line for completion of the contract and further assured that the same shall be completed within the new timeline thus provided.
- i. However, again you addressee miserably failed to start the supply and installation of the furniture at the site even till the month of January, 2019.
- j. Eventually, you addressee started supplying the furniture at the site, however, to the utter dismay of NBCC, it was found that the furniture supplied was not as per the specification which were agreed at the time of entering into the LOA and the agreement which clearly amounts to breach of contract on the part of you addressee.”

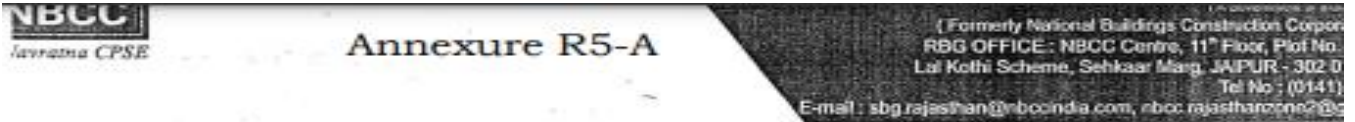
\*\*\*\*\*

18. Next we come to the issue of deficiencies in respect of discharge of contractual obligations by the Applicant as raised by the Corporate Debtor in its reply to the present application.

19. We find that the issue of deficiency in terms of defects and delays in respect of supplies received from the Applicant was raised by the Corporate Company Debtor prior to issue of statutory demand notice dated 15.01.2020 as borne out from a series of correspondences placed at pages 31-55 of the Corporate Debtor's reply dated 09.12.2021. Concisely put, the email dated 20.03.2018 from the Corporate Debtor raises issues about delay in completion of the work awarded to the Applicant vide LoA dated



08.02.2018; letter dated 19.11.2018 is about the supply of mattresses which are not as per the approved list provided in work contract of the LoA. These correspondences which are on record clearly substantiate that the Operational Creditor/Applicant was put to notice regarding non-supply of goods as per the specification, delay in supplies, supply of defective goods, replacement of the Applicant which are clear signs of pre-existing disputes. We also find that the Corporate Debtor had issued Show Cause Notice dated 05.10.2018 raising two fold issue viz. (i) Delay in supply of goods (ii) Change in specification of items of furniture. The extract of the Show Cause Notice dated 05.10.2018 is reproduced below for reference:-



No. ED/RBGO-JP/NID/2018/ 3251

October 5, 2018

**M/s JMJ Tools India**  
**D-20, Plot E-15,**  
**Shatabdi Vihar, Sector No. 61**  
**Noida (U.P)- 201301**  
**Contract No. 9650176433**  
**Email id : kamalpant59@hotmail.com**

### **SHOW CAUSE NOTICE**

**Name of Work: Supply and Installation of Furniture and Allied works for National Institute of Design (NID) at Bhopal, MP.**

**Sub: Contract Agreement dated 22.02.2018**

**Ref:**

1. Letter of award No. NBCC/ED/RBG/LOA/NID/Bhopal/2018/1677 dated 08.02.2018
2. Our mail dated 20.03.2018
3. Your mail dated 26.03.2018
4. Our mail dated 12.08.2018
5. Our mail dated 13.08.2018
6. Your mail dated 31.08.2018
7. Our mail dated 08.09.2018
8. Your mail dated 11.09.2018

Dear Sir,

This has reference to the work of Supply of Furniture & other items placed on you vide Agreement dated 22.02.2018 with completion period of 03 months. It is regretted to mention that you have not commenced the supply of furniture even after lapsed of 08 months.

You have all along tried to change the specifications of items of furniture's put to tender thereby proposing additional cost which was not agreed by us for the simple reason that nothing of this sort was suggested during pre-bid meeting.

Your kind attention is also invited the visit of representative of **M/s Wipro Mr. Sanjay Kumar**, who had also forwarded delivery scheduled but so far they have failed to supply a single piece of furniture at site.



In view of above, we left no other option but to terminate your contract & forfeit encashed Performance Bank Guarantee. However, as a special case we are giving you final notice to take the corrective action.

1. It is noticed that inspite of the fact that considerable time has elapsed since the issue of such instruction; you have not taken any corrective action.
2. It is accordingly felt that you are not in a position to discharge your obligations under the contract. I therefore hereby give you notice that if you do not take necessary corrective **action within 07 days of the date of** issue of this letter the undersigned will be left with no other option but to consider for determination of the Contract on account of your default in the discharge of your contractual obligations. In the event of such a Determination of the Contract, in terms of Clause 11.1 (iv) of the Contract, Performance Guarantee shall be forfeited by the NBCC and further action will be taken as stipulated in Clause 11 of the contract, without prejudice to the other rights or remedies available to the NBCC under the terms of the Contract or under Law.
3. Please acknowledge receipt of this letter.

Thanking you,

20. The Hon'ble Supreme Court in the decision **Transmission Corporation of Andhra Pradesh Limited V/s. Equipment Conductors and Cables Limited reported in (2019) 12 SCC 697**, categorically laid down that IBC was not intended to be a substitute to a recovery forum and that whenever there was existence of a real 'Dispute', IBC provisions could not



be invoked'. The object of the Code, at least insofar as Operational Creditors are concerned, was to initiate Insolvency Process against the Corporate Debtor only in clear cases where a real 'Dispute' between the parties as to the 'debt owed' did not exist.

21. In the instant case, we are of the considered view that there is sufficient evidence on record to exhibit a 'Pre-Existing Dispute' between the parties prior to the issuance of the Demand Notice under Section 8, IBC, 2016. Further, the defence is not spurious, mere bluster, plainly frivolous or vexatious. Therefore, we are of the consequent view that the ratio of the Judgement of the **Hon'ble Supreme Court in the case of M/s. Mobilox Innovations Pvt. Ltd. V/s. Kirusa Software Pvt. Ltd.** squarely applies to the facts of the attendant circumstances of the case, wherein it is held that if the Corporate Debtor raises a plausible contention about the existence of a prior dispute, it would suffice for the Adjudicating Authority to reject the Section 9 application, it is not necessary for the Adjudicating Authority to determine as to whether the Corporate Debtor will be successful in respect of the dispute raised or not.

22. On-going through the submissions made by the parties and keeping in mind the provisions of law laid down in the Code and the Judgments cited supra, it is amply clear that there exists a pre-existing dispute with respect to the quality of supplied goods and other disputes related to the discharge of contractual obligations which would require further investigation for proper determination. Since, the proceedings before us are of summary nature, no such determination is possible by the Adjudicating Authority. In view of the above factual and legal position, the instant application cannot be proceeded with as far as initiation of proceedings by Operational Creditor against the Corporate Debtor is concerned.



23. Accordingly, the instant petition (IB-437/(ND)/2021) stands **dismissed** with no order to costs.

Let copy of the order be served to the parties.

Consign the file to the record room.

**Sd/-**  
**(DR.BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(SH. P.S.N PRASAD)**  
**MEMBER (J)**