IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-1582/ND/2020

[*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:
Construmart Online Private Limited
...APPLICANT/OPERATIONAL CREDITOR

VERSUS

Maxworth Infrastructures Private Limited
...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 01.02.2021

FOR THE APPLICANT **:**Mr. Gaurav Singh, Adv.
FOR THE RESPONDENT :

CORAM:
DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

<u>MEMO OF PARTIES</u>

Construmart Online Private Limited
Through its Authorized Signatory,
Shri Mitesh Kumar
Having registered office at:
Unit No. 610, 6^{th} Floor
Universal Trade Tower,
Sohna Road, Gurugram - 122018

...Applicant/Operational Creditor

Versus

Maxworth Infrastructures Pvt. Ltd.
Having office at:
Tower – 1, 303, Bravely Park,
Plot No.02, Sector – 22.
Dwarka, New Delhi – 110075.

Also at:
Near Nehru Sweets,
City Residencies
Sector 10- A, Gurugram
Haryana-122018.
Also at:
Maxworth- Infrastructures Pvt. Ltd.
Unit No. 108-109, 1^{st} Floor, DLF star Towers,
Sector-30, Gurugram , Haryana-122001
Through its Director:
Mr. Amarjeet Dhillon
Flat No. 104, Primier Urban, Plot No. 6A,
Sector 39, Gurugram, Haryana – 131301.
Through its Director
Mr. Sushil Kundania
Tower No. B-9, Expiron Builders, Sector 108,
Gurugram, Haryana – 122016.

...Respondent/ Corporate Debtor

ORDER

Per-Dr. Deepti Mukesh, Member (Judicial)

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') through and by Mr. Mitesh Kumar, being the Director of Construmart Online Private Limited (for brevity 'Applicant') authorized vide board resolution dated 24.05.2019 with a prayer to initiate the Corporate Insolvency process against Maxworth Infrastructures Private Limited (for brevity ('Corporate Debtor').

2. The Applicant is a company limited by shares incorporated on 09/06/2016 bearing on CIN No. U74999HR2016PTC64482 under the provisions of Companies Act 2013. The applicant has its registered office at Unit-630, 6th Floor, Universal Trade Tower, Sohna Road Gurgaon, HR-122018 IN. The authorized share capital is Rs. 25,00,000/- and paid up capital is Rs.11,11,110/-. The applicant is involved in the business of supply of goods with respect to the construction materials.

3. The Corporate Debtor is company limited by shares incorporated on 09/08/2010 bearing CIN No. U70100DL2010PTC206823 under the provision of Companies Act 1956. The corporate debtor has its registered office at Flat No. 203, S/F Block – G2C, pocket-2, Sector-18-B, Dwarka, New Delhi – South West, Delhi DL 110078 IN. The authorized share capital is Rs. 3,00,00,000/- issued, subscribed and paid up capital is Rs. 3,00,00,000/-.

4. The applicant submits that as per the requirements of the corporate debtor the applicant supplied goods such as cements, plumbing items along with sanitary products from the applicant from a period of 26.12.2016 to 30.07.2018. During this period various transactions were made to tune of

about Rs. 74,74, 467.31 in total. Out of the total amount a payment of Rs. 44,89,310.00 towards 57 invoices was made by the corporate debtor. However an amount of Rs. 29,85,157.31/- is still due and payable.

5. The applicant submits that the liability has been admitted by the corporate debtor vide email dated 05.04.2019. Thereafter several telephonic reminders were made to clear the outstanding liability. However, corporate debtor failed to make payment.

6. The applicant sent demand notice under Section 8 of the code on 27.05.2019 calling upon the corporate debtor to pay the total amount of Rs.35,82,188.40/-.The applicant submits that the notice had been duly served on the personal addresses of the Directors. The details of the DIN no. of the directors and personal address of the directors have been reflected on the MCA website. Further the notice was also served at the address mentioned on the invoices where the goods were supplied. The Copies of postal receipts and its tracking reports has been annexed.

7. The corporate debtor never replied to the said notice. Therefore, the Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of the application which was duly served through speed post as per the service affidavit filed. The copies of receipts of speed post and tracking reports have been annexed.

8. As per Form V, the total debt outstanding is Rs.35, 82,188.40/- (Rupees Thirty Five Lakhs Eighty Two Thousand One Hundred and Eighty Eight - Forty Paisa only) including interest of Rs.5,97,031.40/- calculated at the rate 24% for the period of 10 months from the date of default dated 30.07.2018.

9. Before filing a reply, the corporate debtor filed an affidavit and stated that an amount of Rs.8,99,000/- has been transferred from the corporate debtor's sister concern namely M/s Ashali Infrastructure Pvt. Ltd and payment further a payment of Rs. was Rs. 9,25,000/- was also made by the corporate debtor. The corporate debtor further undertook to pay the balance amount of Rs.15,75,000/- on or before 31.03.2020 to the applicant. In reply the corporate debtor has stated that the payment has been made as per above description. Accordingly, an outstanding of Rs. 20,86,157.31/- is due and payable. Further the corporate debtor stated that as per the invoices raised by the applicant, there was no interest clause, hence interest charged is not payable.

10. The applicant filed rejoinder to the reply of the corporate debtor and denied the contentions of the corporate debtor and stated the following:

a) The applicant submits that the transaction made from the sister concern of the corporate debtor is concocted and the same can be clearly understood from the timeline of the payment. The applicant submits that the ledger account was communicated on 15th March 2019 by the applicant to the corporate debtor and the transaction took place between April and May 2018.

b) Further submits that the highlighted transaction was made to adjust the amount outstanding in the books of the applicant where the closing balance stood at Rs 47, 44, 318.22/-. After the payment made from the sister concern the ledger accounts were communicated by the applicant by email dated 15.03.2019 and 04.04.2019.

c) The applicant submits that the corporate vide email dated 05.04.2019 sent a reply to the applicant and admitted the liability. A copy of email is annexed.

11. The date of default is 30.07.2018 and the present application is filed on 28.06.5019. Hence the application is not time barred and filed within the period of limitation.

12. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

13. The Applicant has filed its bank statement stating that the amount claimed or any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I & B Code. The Applicant has filed an affidavit in compliance of section 9(3)(b).

14. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.

15. Considering the documents on records and submissions made, it is clear that the default in payment of operation debt has occurred. However, a dispute with the regards the amount of debt has been raised. On the contrary, the corporate debtor in its reply has also admitted that the liability of more than 15 Lakhs, due and payable and the said admission is also recorded in the order dated 06.01.20201, as *"…Ld. Counsel for applicant states that in reply they have admitted the liability."*

This leaves no doubt that the default has occurred for the payment of the operational debt for which the invoices were raised by the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute. As per the judgment of Hon'ble Supreme Court in the case of "*Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*" it has been held that the dispute has to be genuine and not moonshine and the husk needs to be separated from the grain. The applicant is entitled to claim the dues which is still outstanding and has remained unpaid till date. Therefore, the applicant is admitted.

16. Since the applicant has not proposed the name of the IRP hence the court appoints, Mr. Rahul Jain having email id: ca.rahuljain.2005@gmail.comand mobile no. 9871552902 and registration no. IBBI/IPA-001/IP-P02078/2020-2021/13219 as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, within a period of one week from this order.

17. The application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

18. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rahul Jain to meet out the expenses and perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the applicant. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.

19. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
SUMITA PURKAYASTHA
MEMBER (T)

Sd/-
DR. DEEPTI MUKESH
MEMBER (J)