NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-607(ND)/2017

In the matter of

Vs.

Sh. Atul Gupta .... **Petitioner**

V/s

Topline Build-Tech Pvt. Ltd. .... **Respondent**

SECTION: 9 of IBC, 2016

Order delivered on 16.02.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

For the Petitioner (s): Mr. Vinod Kr. Chaurasia, PCA
Mr. Ashok Kriplani, IRP

For the Respondent (s): Mr. Arvind Kumar Gupta and
Mr. Prashant Bhardwaj, Advocates

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The present petition has been filed under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process on ground of his unpaid bills.

2. Brief facts of the case are that the Operational Creditor is a supplier of goods in the construction industry and had a long-standing relationship with the Corporate Debtor. It is submitted that in 2008, the Corporate Debtor became irregular in payment of the bills. In acknowledgment of the outstanding liability, the Corporate Debtor issued two cheques in the year 2010-2011, which returned dishonoured. However, the Operational Creditor did not take recourse to any legal remedy on the assurance of the Corporate Debtor that payments would be made in due course. It is submitted that on 26.03.2014, the Corporate Debtor gave a sum of Rs. 20,000/- against return of one bounced cheque. The balance payment towards the other cheque of Rs. 1,85,770/- remained unpaid.

3. The petition has been filed in the required format. Part IV of the said form reflects that as against the invoices of Rs. 4,38,184/- a balance of Rs. 1,85,770/- only remains to be paid which together with interest @ 24% per annum is being claimed at Rs. 4,97,864/-.

4. Compliance under Section 9(3)(b) and 9(3)(c) of the Code has been made. The Operational Creditor has also proposed the name of the Interim Resolution Professional whose willingness as well as certificate of eligibility has been filed.

5. In the demand notice issued to the Corporate Debtor, a defence is sought to be raised that the entire outstanding had been settled on

26.03.2014 by paying Rs. 20,000/- in cash and issuing a debit note in the sum of Rs. 1,85,770/- against the other dishonoured cheque.

6. In the reply filed before this Forum, the respondent maintains the same defence that the entire claim was amicably settled by giving Rs. 20,000/- in cash and raising a debit notice for Rs. 1,85,770/-. Copy of the debit note dated 26.03.2014 for Rs. 1,85,770/-, being the amount of the rejected material supplied, has been filed along with the reply.

7. The Operational Creditor vehemently disputes the goods being rejected or the debit note being issued. This Adjudicating Authority on an appraisal of the defence raised by the Corporate Debtor is of the opinion that the same cannot be sustained as the alleged debit note has been unilaterally issued and does not bear the acceptance by the Operational Creditor. Further there is nothing to infer that the so called rejected material had been returned. No details have been filed in respect of the same being returned or any correspondence to substantiate that the goods were defective. It is therefore considered that the dispute sought to be raised is a mere moonshine for the purpose of resisting the present claim.

8. The petition is also resisted on grounds of limitation. However, as per the various decisions of the Hon'ble NCLAT, limitation does not apply to initiation of a Resolution Process. Though the said order of the Hon'ble NCLAT has been impugned before the Apex Court, the matter is still open

for consideration and the law on this point has yet to be settled. Till then the decision of the Hon'ble NCLAT is binding and good law.

9. In view of the aforesaid facts, this petition merits consideration on facts.

10. The Petition is therefor Admitted.

A moratorium in terms of Section 14 is accordingly imposed prohibiting the following:-

> *" (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

राष्ट्रीय कम्पनी विधि अधिकरण National Company Law Tribunal सत्यमेव जयते नई दिल्ली बेंच New Delhi Bench *(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.*

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

11. The Operational Creditor has named Mr. Ashok Kriplani as the Interim Resolution Profession. His appointment is being confirmed by the Bench. The IRP appointed shall take all such steps as are statutorily required, more specifically in terms of Sections 15, 17, 18 & 19 of the Code and file his report with this Bench within the time envisaged under the Code.

Details of the IRP are as under:-

Mr. Ashok Kriplani

Registration No.: IBBI/IPA-003/IP-N00009/2016-17/10071

Email ID: ashok.kriplani1956@gmail.com

12. Copy of this order be communication to all concerned.

-S-d-

(Deepa Krishan)
Member (T)

S d

(Ina Malhotra)
Member (J)

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राष्ट्रीय कम्पनी विधि अधिकरण
National Company Law Tribunal
नई दिल्ली बैंच
New Delhi Bench

16-2-2018

Registrar
National Company Law Tribunal
New Delhi