

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/834/2019**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016)*

In the matter of **M/s. Landmark Housing Projects Chennai Pvt. Ltd.**

**NKV Home Depot**

86A, Poonamalle High Road,  
Velappanchavadi,  
Chennai – 600 077

*... Operational Creditor*

-Vs-

**M/s. Landmark Housing Projects Chennai Private Limited**

No.27, Saravana Street,  
T. Nagar,  
Chennai – 600 017

*... Corporate Debtor*

**WITH**

**MA/135/2020 in IBA/834/2019**

*(filed under Rule 11 of NCLT Rules, 2016)*

**Nirmal K. Dhiran**

(Proprietor of M/s. NKV Home Depot)  
86A, Poonamalle High Road,  
Velappanchavadi,  
Chennai – 600 077

*... Applicant / Operational Creditor*

-Vs-

**M/s. Landmark Housing Projects Chennai Private Limited**

No.27, Saravana Street,  
T. Nagar,  
Chennai – 600 017

*... Respondent / Corporate Debtor*

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Order Pronounced on ~~05-05-2020~~

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**  
**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Applicant/  
Operational Creditor* : Alpa Jain, PCS

*For Respondent/  
Corporate Debtor* : M/s. Nathan & Associates

**COMMON ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. The IBA/834/2019 has been filed by the **M/s. NKV Home Depot** (hereinafter referred to as "*Operational Creditor*") against **M/s. Landmark Housing Projects Chennai Private Limited** (hereinafter referred to as "*Corporate Debtor*") under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. The MA/135/2020 in IBA/834/2019 has been filed by the Operational Creditor under Rule 11 of the NCLT Rules, 2016. The prayer made is to amend the cause title in the application filed under IBA/834/2019 replace the name of the Petitioner with the

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name of the proprietor of the petitioner. Since the same is only for the amendment of the cause title, the MA/135/2020 filed in IBA/834/2019 stands **allowed**.

3. A perusal of Part I of the Application shows that the Petitioner is a Sole proprietor. In relation to the Corporate Debtor, the particulars of the Corporate Debtor is given in Part – II from which it is seen that the date of incorporation of the Corporate Debtor is given as 06.05.2013 and the Nominal Share Capital of the Company is Rs.15,00,00,000/- and Paid-up Capital is Rs.14,87,00,000/-. The Registered office of the Corporate Debtor as per the Application is stated to be situated at No.27, Saravana Street, T. Nagar, Chennai – 600 017.

4. In relation to Part III of the Application it discloses that the Operational Creditor has not proposed any “Interim Resolution Professional” (IRP) and left it to the discretion of this Tribunal to appoint the IRP. Part IV details the transaction between the Operational Creditor and the Corporate Debtor leading to the debt and default and the amount which is being claimed is Rs.16,04,952.85/-/- including interest.

5. Part V in the prescribed Application discloses the documents based on which the claim is sought to be



substantiated by the Operational Creditor as against the Corporate Debtor and the Operational Creditor has attached list of invoices and credit note in relation to the same.

6. The Corporate Debtor approached the Operational Creditor for supply of NKV Gypsum and based on the same, the Operational Creditor supplied materials to the Corporate Debtor and has raised a total invoices amounting to Rs.50,16,306/- and out of which the Corporate Debtor has paid a sum of Rs.35,58,130/-. The Learned Authorized Representative for the Operational Creditor submitted that the principal amount outstanding after the receipt of the said amount is Rs.14,58,176/- and interest outstanding is Rs.1,46,776.85/- which the Corporate Debtor has failed to pay.

7. The Operational Creditor issued Demand Notice under Section 8 of IBC to the Corporate Debtor on 29.03.2019 and the same was served to the Corporate Debtor on 30.03.2019, however the Corporate Debtor has preferred not to reply to the same.

8. The Learned Counsel for the Corporate Debtor submitted that the Operational Creditor supplied NKV Gypsum to the Corporate Debtor from 2017 onwards and whenever the same is

delivered to the Corporate Debtor, the Operational Creditor raised several invoices and more particularly stated that on 15.07.2017 and 22.08.2017, the Corporate Debtor had ordered for 1200 and 4400 bags respectively of NKV Gypsum Fine Plaster and the validity of the Purchase order is 30 days, but the Operational Creditor has not supplied the concerned bags on time and had prolonged more than a year for supply of the products and when these products were used to the building and sites and within days, the entire gypsum coat had melted down and got distorted which caused a loss of around Rs.25,00,000/- and further when this was informed to the Operational Creditor, there is no proper reply from them and again on 23.11.2018 the Operational Creditor had supplied Gypsum bags manufactured in the year 2017 when the shelf life of the product is only 1 year.

9. The Learned Counsel for the Corporate Debtor submitted that immediately thereafter, the Corporate Debtor in his internal communication on 21.11.2018 with the Employees had intimated the same to one Mr. Shanmugam through WhatsApp communication and the said person assured to replace the product. However, the Operational Creditor had not taken any efforts to replace the same and as a result the Corporate Debtor had reworked on all the projects wherein they have used the products of the Operational Creditor thereby resulting in huge



loss. It was further submitted that upon a meeting arranged with the Operational Creditor on 16.12.2018, it has been recorded in the minutes of the meeting that the Operational Creditor has not completed the work viz. (1) ABC Snag & pending Works, (2) Pending Flats – A 403, B 403, C 404 and also had not started DEF block with sufficient supply of gypsum bags.

10. It has been submitted by the Learned Counsel for the Corporate Debtor that the Operational Creditor has not come to this Tribunal with clean hands and has suppressed the disputed set of facts about the unpaid operational debt between the Corporate Debtor and Operational Creditor in relation to the supply of NVK Gypsum and when such a dispute arises, the Arbitration Clause in the Purchase order can be invoked and this matter should be referred to Arbitral Tribunal as per the Arbitration and Conciliation Act, 1996.

11. The Learned Authorized Representative for the Operational Creditor has filed a rejoinder and has stated that in relation to the supply of expired materials, the Operational Creditor has given Credit note on 24.11.2018 for the sum of Rs.1,01,850/- and new supply of materials was also done to the Corporate Debtor and the Corporate Debtor is trying to use this as a cover to colour the whole transaction and as such it is a patently feeble



argument. Further, it has been submitted that even after supplies were made as per the Purchase Order the Corporate Debtor had not made the payments as per the said Purchase Order.

12. The Learned Authorized Representative for the Operational Creditor further submitted that there was no report from the Corporate Debtor about the Gypsum melting down from any of the site and the Corporate Debtor was happy with the quality and was continuously ordering the materials and it is practically impossible for the gypsum to melt down. Further, it was contended by the Learned Authorized Representative for the Operational Creditor that the Corporate Debtor had never denied or disputed at any time, neither by any communication nor in the counter, the receipt of the materials for the debt in default as claimed by the Operational Creditor and hence it is an acknowledgment of the invoices in addition to the acknowledgment of receipt as given by the Corporate Debtor for the invoices.

13. Heard both sides and perused the records including the documents placed on record. From the submissions made by the Learned Counsel and Authorized Representative for both the



parties, the only point which fell for consideration and adjudication before this Authority is:-

- (i) *Whether the Corporate Debtor has raised any dispute as against the payment of the sum as claimed by the Operational Creditor in the present petition before issuance of the Demand Notice?*

14. A perusal of the typed set of documents filed by the Corporate Debtor would reveal the fact that there are series of e-mails which have been exchanged between the parties even before issuance of the Demand Notice. On 17.12.2018, the Operational Creditor has sent a mail to the Corporate Debtor to clear the outstanding dues of Rs.14,58,176/- for which the Corporate Debtor has sent a reply e-mail, which is as follows;

*Dear Sir,*

*We have all the proof that you supplied expired materials we need to do rework on the same. We have all the evidences that you cheated us. Hence we are not able to pay any more.*

*Regards,  
Uday*

15. Further a perusal of another email dated 17.12.2018, written by the Operational Creditor to the Corporate Debtor posits that the Operational Creditor has terminated the supplies to the Corporate Debtor;



*"Dear Sir,*

*The supplies were terminated as your cheques were bounced. Kindly clear the outstanding of Rs.14,58,176/- for us to resume supplies. The details of site wise outstanding were already shared with you. We request you to update your accounts about the outstanding as it you who have to pay and not the other way around. We have got all the proof of supplies, Incase if any bills are missing, please let us know immediately.*

*....."*

16. Again the Corporate Debtor has sent a reply to the said mail on 17.12.2018 itself, which is as follows;

*"Dear Sir,*

*All the bounced cheques we have done RTGS to your account, since you supplied expired date materials we are not in a position to pay further."*

17. Further, it may be seen from the mail dated 29.11.2018, the Corporate Debtor has sent to all of their staff, which is as follows;

*"Dear All,*

*Please find alternate vendor to complete the work. Not allow NKV inside the site since they made huge loss to our Company. Send mail stating that all the work order are cancelled and we will withheld his balance payments.*

*With warm regards,  
Uday*

18. A fasciculus of the above e-mails as exchanged between the parties clearly posits the fact that there exists a 'dispute' between the parties even before the issuance of the Demand

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notice. Further, it may also be noted that the proceedings before this Tribunal is summary in nature and this Tribunal, unlike the Civil Court cannot indulge in the luxury of taking evidence, oral or otherwise as to its existence.

19. Further, the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited; 2017 1 SCC Online SC 353** held that the 'existence of dispute' and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the Demand Notice or Invoice as the case may be and observed as follows;

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.."

At paragraph 51 it is held:

"51. .....Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is



not a patently feeble legal argument or an assertion of fact unsupported by evidence."

20. Thus, as to the facts of the case, it is seen that there exists dispute between the parties before the issuance of the Demand Notice itself and the contentions raised by Corporate Debtor is a plausible contention which requires further investigation and in the said circumstances, we are constrained to dismiss the Application. As a result thereof, IBA/834/2020 stands **dismissed**. No order as to costs.

-SD-

(ANIL KUMAR B)  
MEMBER (TECHNICAL)

MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)  
MEMBER (JUDICIAL)

MEMBER (JUDICIAL)

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Order pronounced by concord in terms of NCLT circular dated 14/04/2020 through video conferencing platform. Member (J) present in person at Chennai and Member (T) through video conference from Kochi and the respective parties intimated to be present through video conferencing and after duly listing and uploading the cause list dated 05/05/2020 for Chennai Bench - I.

  
N. SRIRAMASUBRAMANIAN  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
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