



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-201
IB-580/ND/2020

IN THE MATTER OF:

Khandelwal Group Pvt. Ltd.

Vs.

Panache Construction Pvt. Ltd.

.....Respondent

....Applicant

SECTION

U/s 9 IBC

Order delivered on 21.07.2023

CORAM:

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

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

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-580/ND/2020) is **Dismissed**.

Sd/-

(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-

(SHRI P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
C.P (IB)/580(ND)2020**

An application 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:

**KHANDELWAL GROUP PVT
LIMITED**

Main MG Road, Near Sikanderpur,
Metro Station, Sikanderpur
Gurugram, Haryana.

...Operational Creditor

Versus

**PANACHE CONSTRUCTION
PRIVATE LIMITED,**

H. No. D-800, Ground Floor,
New Friends Colony,
New Delhi - 110025

...Corporate Debtor

CORAM:

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

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



APPEARANCES:

For the Applicant : Adv. Purav Middha

For the Respondent : Adv. Nitesh Jain

Order Delivered on: 21.07.2023

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. The instant application is filed by Khandelwal Group Pvt. Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') 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 ("CIRP") against Panache Construction Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for failing to make the payment amounting Rs.6,64,576/- (Rupees Six lacs sixty four thousand five hundred and seventy six only) and Rs.1,00,000/- as legal expenses.
2. The Respondent Company Panache Construction Private Limited (hereinafter referred as Corporate Debtor) was incorporated under the provisions of the Companies Act,



1956 having its registered office situated at H. No. D-800, Ground Floor, New Friends Colony New Delhi- 110025. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal is having territorial 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 subsection (1) of Section 60 of the Code.

- 3.** Briefly stated the facts of the present case as averred by the applicant are that the Operational Creditors is a Pvt. Limited Company and sells steel bars etc. During the course of business the Corporate Debtor had placed a purchase of steel and steel bars from the operational creditor. The Applicant in compliance of the purchase order Operational Creditor had supplied the material dated between 04.06.2017 to 16.06.2017 to the Corporate Debtor. Further, it is submitted that the Operational Creditors relying the corporate debtor's promises supplied the material but the corporate debtor had failed to make the payment of Rs.6,64,576/- (Rupees Six lacs sixty four thousand five hundred and seventy six only) and Rs.1,00,000/- as legal expense.
- 4.** The Applicant submitted that the date of default occurred after seven days of invoice date i.e 23.06.2017 and in view of default on part of the Corporate Debtor to make the payment to the Applicant against the material so supplied



the Applicant had raised Demand Notice on dated 13.01.2020 under Section 8 of the Code upon the Corporate Debtor.

- 5.** Further the Applicant submitted that the Operational Creditor neither received reply of Notice sent under Section 8 of the Code of nor payment of the mentioned unpaid amount to the Operational Debtor within a period of 10 days of the receipt of the Demand Notice by the Corporate Debtor.
- 6.** That the Applicant through its Written Submission submitted that they have moved an application for amendment in invoices to corrects the invoices details and again invoices were attached with amended application wherein Value-Added Tax no (“VAT”), Central Sale Tax (“CST”) and Permanent Account Number (“PAN”) of the Operational Creditor were stated.
- 7.** On the other hand, the respondent through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety.
- 8.** Further, the Respondent submitted that, it is a wrong submission by the Applicant that the Corporate Debtor has not filed the reply of section 8 of IBC, in fact the Corporate Debtor has replied to the Notice under section 8 of IBC vide reply dated 25.01.2020, which was dully received by the



applicant and also annexed along with the present Application at page no. 37.

- 9.** The Respondent through his Ld. counsel submitted that the Applicant is misleading this Adjudicating Authority by submitting that the Corporate Debtor has defaulted the applicant against the supplied material of Rs.6,64,576/-. In fact Corporate Debtor only ordered and received goods worth of Rs.53,374/- and had paid in full for the goods delivered to and received by the Corporate Debtor. Further the abovesaid invoices filed by the Applicant are self-created by the Applicant and no invoice has been served on the Corporate Debtor by the Applicant, except the invoice dated 04.06.2017.
- 10.** The Operational Creditor through its rejoinder has submitted that the Corporate Debtor has written a letter in response to Section 8 IBC notice to describe the dispute but did not specify the same. Further it is submitted that the Corporate Debtor had appeared through its Ld. Counsel in January 2021 before this Adjudicating Authority and had not raised any issue of not received any other invoice, except the invoice dated 04.06.2017. Further, the Applicant submitted that the Corporate Debtor only denied his liability toward the Operation Creditor and the law is well settled that denial of liability is not the dispute.



11. Further, the Applicant through its written submission submitted the Corporate Debtor on receipt of present petition the Corporate Debtor have threatened to lodge the police complaint but no such complaint has been lodged.

Analysis and Findings

12. We have heard Ld. Counsel for the applicant and perused the averments made in the application filed by the applicant. The relevant documents annexed with the submissions have been examined.

13. On-going through the submissions made by the Learned Counsels for both the parties and on perusing the documents placed on record, it is observed that the Corporate Debtor has disputed the abovesaid invoice filed by the Operational Creditor has false and fabricated and no Work Order was ever given by the Corporate Debtor. It is perceived that there is no acknowledgment of the material supplied by the Operational Creditor to the Corporate Debtor. It is pertinent to note that, this Adjudicating Authority does not have the power to adjudicate, whether the alleged invoices is false or not.

14. The Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd., AIR 2017 SC 4532 has already amplified the role of Adjudicating Authority on the question of consideration of dispute. For benevolent



reference, the relevant paragraph of the said judgment is reproduced below:

“40. All the adjudicating authority is to see at this stage is whether there is 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...The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

- 15.** Keeping in mind the aforementioned judgment, and the above stated fact, this Adjudicating Authority dismisses the Application herein filed under section 9 of the IBC read with rule 6 of the Rule, 2016 as the invoices on which the claim has been filed are disputed. Accordingly, CP (IB) No. 580/ND/2020 is dismissed and disposed of.

Let copy of the order be served to the parties.

Sd/-

(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-

(SHRI P.S.N. PRASAD)
MEMBER (JUDICIAL).