

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

IA (IB)/177/2020 in IBA/316/2019

*(Filed under Sec. 17, 18, 20, 25(2)(b) read with Sec. 60(5) of Insolvency
and Bankruptcy Code, 2016)*

In the matter of **M/s. Unique Roof Private Limited**

Muthuiah Thevar Rajapandian

Resolution Professional of

M/s. Unique Roof Private Limited

Registration No: IBBI/IPA-003/IP-N00090/2017 – 18/10854

3/158 Bharathiyar Street,

Indian Bank Colony,

Narayanapuram,

Madurai – 625 014

.. .. Applicant

-Vs-

Orbinex India Private Limited

S.F. No. 608/3A2B, 608/3A1B

Chettipalayam Road,

Eachnari Post,

Coimbatore – 641 021

.. .. Respondent

Present:

For Applicant : Muthuiah Thevar Rajapandian, RP

For Respondent : Pranav V. Shankar, Advocate

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 29th September 2020



ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. IA(IB)/177/2020 has been filed by the Applicant under Section 17, 18, 20, 25(2)(b) r/w Section 60 (5) of Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

That the Hon'ble Tribunal may be pleased to direct the respondent to pay the balance outstanding to the Corporate Debtor in pursuant to the supplies made by the Corporate Debtor to the Respondent Company and pass any such other order, orders, direction and directions and thus render justice.

2. It is averred in the Application that, this Tribunal vide order dated 04.10.2019 passed in IBA/316/2019 initiated Corporate Insolvency Resolution Process (CIRP) and appointed the Applicant herein as the Insolvency Resolution Professional (IRP). Subsequent thereto, the IRP made public announcement under Section 15 of IBC, 2016 on 11.11.2019. In the meantime, the Suspended Director of the Corporate Debtor has filed an Appeal before the Hon'ble NCLAT, which is pending disposal.

3. The Learned Resolution Professional submitted that the Corporate Debtor's business activities are making steel building design as per the purchase order, and manufacturing of steel



structure, sale of steel materials, etc., and the Corporate Debtor is having their own cranes which are used for the erection of structure & Roofing sheet in the work place and they also used to hire cranes from outside, whenever required.

4. The Learned Resolution Professional submitted that, while perusing the records of the Corporate Debtor, it was found that there were receivable to be received by the Corporate Debtor from the Respondent and in this connection the Corporate Debtor has issued a quotation for the supply of structural materials dated NIL to the Respondent for the supply of structural materials at their unit. It was further submitted that the Respondent has issued a Purchase Order to the Corporate Debtor and thereby, the Corporate Debtor has delivered the building materials at the work place of the Respondent on various dates, which aggregates to ₹1,07,70,644/-

5. The Learned Resolution Professional submitted that the Respondent have issued work completion report on 30.01.2017 and out of the total amount of ₹1,07,70,644/-, the Respondent have paid only ₹1,01,20,136/- and as per the books of the Corporate Debtor a balance sum of ₹6,50,508/- is due from the Respondent



to the Corporate Debtor till date and by levying interest @ 18% p.a., the total amount claimed by the Resolution Professional is ₹12,03,225/- which is due to the Corporate Debtor by the Respondent.

6. The Learned Counsel for the Respondent *prima facie* contended that the Application is unsustainable in law and on facts. It was submitted that product supplied by the Applicant has failed and as such there is no debt due from the Respondent to the Applicant. It was submitted by the Learned Counsel for the Respondent that the Purchase Order dated 27.10.2014 placed by the Respondent *inter alia* stipulated a condition as regards warranty which states that the Corporate Debtor will provide 15 years warranty for manufacturing defects and facility workmanship and any defect should be repaired or replaced free of costs within this warranty period. It was further submitted that the purchase order also provides for the bank guarantee for 10% of the total order value and specifically that 10% of the purchase price will be linked to the performance guarantee, which is valid for a period of 14 months. The installation of the roof by the Corporate Debtor was completed on 08.09.2015 and the Corporate Debtor has issued a



warranty certificate dated 27.03.2015 confirming that the erection was completed on 27.03.2015.

7. The Learned Counsel for the Respondent submitted that the Respondent faced repeated problem of leakage in the building roof and the Applicant was not able to satisfactorily provide a solution to the said problem. In the month of March 2016, which is within the retention period and warranty period, there were major leakages in more than 29 places which were damaging the Machineries kept by the Respondent. This fact was communicated by the Respondent to the Corporate Debtor vide email dated 14.03.2016 and a representative from the Corporate Debtor visited the premises and took photographs and agreed to revert back for rectification after internal discussion with the Corporate Debtor's team, however there was no response and as such the Respondent sent another mail to the Corporate Debtor on 25.03.2016 and a follow up mail again on 29.03.2016, to which there was no response from the Corporate Debtor.

8. The Learned Counsel for the Respondent contended that the balance amount as claimed by the Applicant, is admittedly less than 10% of the contract value, which is linked to the performance



guarantee and as such only on the product quality being proven, the Applicant is entitled to the payment of such sum.

9. The Learned Counsel for the Respondent submitted that on 11.10.2018, the Respondent has sent a notice to the Corporate Debtor, placing on record the persistent leakage and the lack of action from the Corporate Debtor. Further, even on 01.11.2018, the Respondent intimated the Corporate Debtor by email that there is a leakage during heavy rains and called upon the Corporate Debtor to carry out the Pressure Splash Test however, it is averred that after repeated reminders the Corporate Debtor has failed to carry out the Pressure Splash Test and as such it has breached its contractual obligation. It was thus submitted by the Learned Counsel for the Respondent that the Applicant is not entitled at all to the retention money, as the Corporate Debtor has failed to comply with such terms and conditions. Thus, it was argued by the Learned Counsel for the Respondent that the Applicant has concealed the entire sequence of facts and is making a claim for a sum of ₹6,50,508/- an overdue interest, which is totally false, puerile and as such sought for the dismissal of the present application.



10. Heard the submission made by the parties in detail and perused the records. Before this Tribunal venture into the merits of the case as contended by the parties, this Tribunal is duty bound to examine the claim filed by the Applicant from the aspect of Limitation, eventhough an averment to that effect has not been made in the counter. It is seen from the documents filed by the Applicant that the last date of Invoice is stated to be 04.09.2015 and the CIRP in relation to the Corporate Debtor was initiated by this Tribunal on 04.10.2019. However from the Statement of Account maintained by the Corporate Debtor in relation the Respondent, it shows that a payment of ₹5,31,750/- was paid by the Respondent to the Corporate Debtor on 13.07.2017 and as such by taking into consideration Section 60(6) of IBC, 2016 the CIRP in relation to the Corporate Debtor triggered on 04.10.2019, the Application as filed by the Applicant is well within the period of limitation.

11. As to the merits of the case, *prima facie* it is seen that there is a gross violation of the terms and conditions by the Corporate Debtor in relation to the supply and service of materials to the Respondent and as such the Applicant, being the Resolution



Professional of the Corporate Debtor, having taken charge from 10.10.2019, was also not in a position to explain as to what transpired between the parties and also ignorant of the series of mail exchanged between the parties. However, from the email communication exchanged between the parties, it can be seen that the Corporate Debtor has acted in violation to the terms and conditions of the purchase order and as such we are of the considered view that the Corporate Debtor is not entitled to any payment further to be made by the Respondent in this regard, in view of the defects pointed out by the Respondent, all being anterior to the date of initiation of the CIRP by this Tribunal.

12. Thus, in view of the reasoning stated *supra*, the Application as filed by the Applicant stands **dismissed**, however without costs.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond