IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)

CP No. IB- 299/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:

A.R. International
Near Sports Stadium
Ramnagar Road, Kashipur
Uttrakhand-244713

...........Operational Creditor

Versus

M/s PRL Projects & Infrastructure Limited
CIN No: U65590DL1991PLC046236
"Puja House" 34/1 Vikas Apartments,
East Punjabi Bagh, New Delhi-110026

..........Corporate Debtor

ORDER PRONOUNCED ON:- 11.04.2022

CORAM:

SH. SHRI DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

11/4/22

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

1. Instant application under Section 9 of Code has been filed by A.R. International, a partnership firm, the applicant/operational creditor seeking initiation of CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s PRL Projects & Infrastructure Limited, for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 22,66,872/- on account of supply of bags of Cement to the corporate debtor.

2. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-
    a. The corporate debtor issued multiple Purchase Orders for supply of specified quantity pf Wonder Cement bags-OPC 43 Grade and applicant supplied the required cement bags to the corporate debtor. The applicant issued invoices from 17.05.2018 to 15.12.2018. It is claimed in the application that there is no dispute regarding quantity or quality of goods. The Invoices have been duly endorsed by the corporate Debtor and part payments were also made by corporate debtor for the cement received by it.

b. The applicant has placed copies of emails sent by the corporate debtor wherein the corporate debtor sent ledger account maintained by it acknowledging the liability of Rs. 22,66,872 payable to applicant.

c. As per part-IV of the application an amount of Rs. 22,66,872 is still due and outstanding to be paid by the corporate debtor for the invoices raised between 17.05.2018 to 15.12.2018.

d. The applicant issued Demand Notice u/s 8 of the Code on 11.12.2019 duly served at the registered office of the corporate debtor and to other known address of the Corporate Debtor. The applicant has filed an affidavit under Section 9 (3) (b) stating that no payment or notice of dispute has been received by applicant after service of demand Notice.

3. The respondent has filed its reply raising following objections:

a) It is submitted that the applicant is an unregistered partnership firm and in accordance with the provisions of the Section 69 of the Partnership Act, 1932 an unregistered partnership firm is barred from filing any suit or application, therefore the present Application is also barred by Section 69 of the Partnership Act, 1932.

b) It is further contended that word "suit" mentioned in section 69 of the Partnership Act, 193 2 should be understood in its generic sense and should not be given a restrictive meaning by applying the principles of *Noscuntur a Sociis and Ejusdem generis*. Therefore, words 'Application' is ordinarily understood and covered by the general word 'Suit. Reliance has been placed on judgment passed by Hon'ble Supreme Court in ***Patel Roadways Limited vs Birla Yamaha Limited passed on 28 March, 2000.***

4. We have heard the arguments and thoroughly perused the case records. The corporate debtor has raised objection the applicant being an unregistered partnership firm is not entitled to file present application in terms of Section 69 of the Indian Partnership Act, 1932. Section 69 has been reproduced below:

> *"69. Effect of non-registration.—*
>
> *(1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.*
>
> *(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.*

(3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or

(b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of 1920) to realise the property of an insolvent partner.

(4) This section shall not apply,—

(a) to firms or to partners in firms which have no place of business in 8 [the territories to which this Act extends], or whose places of business in 9 [the said territories], are situated in areas to which, by notification under 10 [section 56], this Chapter does not apply, or

(b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim. State Amendments."

5. From the bare perusal of the above said Section 69 of Indian Partnership Act, it is apparent that the effect of non-registration of the firm would adversely effect to the suit and not to the applications alike that of under Section 9 of the Code. The application under Section 9 of the Code does not come under the purview of the 'suits'. The proceedings before the NCLT under Section 9 are concerned, that are not in the nature of the suit or miscellaneous proceeding rather that is application moved by the party against the defaulting Corporate debtor for initiation of CIR proceedings. It is settled principle of law that NCLT is not entitled to go into the depth of the matter and law does not permit Tribunal to decide the matter on contentious issues, which are to be decided by Civil Courts. Similar view has been taken by Mumbai Bench in the matter of ***NN Enterprises Vs. Relcon Infra Projects Limited passed on 01.01.2022 in CP (IB) No. 3980/MB/C-IV/2018.***

6. In this regard, a reference can also be made to ***B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates 2018 IBCLaw.in 633 SC***, wherein it is held that CIR proceedings does not constitute a 'suit'. Similarly, the Hon'ble Supreme Court of India further in the matter of ***Sagar Sharma Vs. Phoenix Arc Pvt. Ltd., 2019 IBC Law.in 17 SC*** endorsed that the application under the IBC are petitions. Thus, the proceedings under IBC Code are not of the nature of 'suits' and are summary in nature, therefore, the bar under Section 69(2) of the Indian Partnership Act, 1932 is not applicable with respect to the applications filed under the Code.

7. So far as citation referred on behalf of the respondent is concerned i.e. ***Patel Roadways Limited Vs. Birla Yamaha Limited passed on***

28th March 2000, in that matter the proceedings were before National Consumer Disputes Redressal Commission. The matter before NCDRC is being decided on the basis of evidence on the record and parties are being given opportunity to lead the matter, therefore, the proceedings before NCDRC are being permitted to be contested like that of a Civil Suit, whereas, the proceedings before the NCLT are summary in nature and it is not permissible for Adjudicating Authority to look-into any question on merits. Hence, the above said citation is not helpful to the respondent and to act as Civil Courts. Accordingly, it is held that applicant being un-registered firm can maintain the application under Section 9 of the Code against the respondent-Corporate Debtor. Moreover, in the matter of ***B.K. Educational Services Pvt. Ltd. (Supra)***, it is already by the Hon'ble Apex Court that the proceedings under IBC are not 'suit'. Hence, the contentions raised on behalf of Learned Counsel for the respondent that un-registered partnership firm cannot maintain the insolvency proceedings as an Operational Creditor against the Corporate Debtor is without any force.

8. From the above said discussion, it is established that applicant had raised the invoices from 17th May 2018 to 15th December 2018 and there was vague dispute regarding the quality of one consignment only, which was also stand resolved, hence, a sum of Rs.

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22,066,872/- were still outstanding against the Corporate Debtor pertains to the above said invoices. In view of the facts and circumstances, the present petition stands admitted.

9. The applicant has proposed the name of Mr. Aditya Kumar, Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-N00338/2017-18/10609 and email id aditya@ashwaniassociates.in. Mr. Aditya Kumar has given its written consent in required Form-2 which is attached with the application. Therefore, this bench appoints Mr. Aditya Kumar, as the Insolvency Resolution Professional of the corporate debtor.

10. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Aditya Kumar to meet out the expense to 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 Operational Creditor. 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 Operational Creditor.

11. As a consequence of 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.

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

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[SUMITA PURKAYASTHA]
MEMBER (T)

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[DHARMINDER SINGH]
MEMBER (J)