

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 893 (ND)/2020

IN THE MATTER OF:

**M/S ARORA ENGINEER
THROUGH SOLE PROPRIETOR
MR. SURENDER ARORA
ADD. A/20, GEETA COLONY
NEW DELHI - 110031**

....APPLICANT/OPERATIONAL CREDITOR

VERSUS

**M/S ANANDRAO INFRASTRUCTURE
PRIVATE LIMITED
REGD. OFFICE: 13/5 SUNDAN GARDEN
NEW ROSHAN PURA MAIN CHAWLA ROAD,
NAJAFGARH DELHI- 110043**

....RESPONDENT/CORPORATE DEBTOR

SECTION: U/S 9 of IBC, 2016

Order delivered on: 25.05.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. L. N. GUPTA, MEMBER (TECHNICAL)

Present-

For the Operational Creditor : Adv. Vriti Anand
For the Corporate Debtor : Adv. Amrita Sarkar



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") by M/s Arora Engineers (hereinafter referred to as the "Operational Creditor") praying for initiation of Corporate Insolvency Resolution Process of M/s Anandrao Infrastructure Private Limited (hereinafter referred to as the "Corporate Debtor") on the grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows:

- i. That the Operational Creditor is engaged in the business of supplying building material and labour services in various real estate projects.
- ii. That the Operational Creditor had supplied goods as well as services to the Corporate Debtor for a total amount consideration of Rs. 8,62,42,642/-. (Principal amount). The invoice's details are as follows:

S. No.	Particulars of Foundation Invoices in 2014-15	Amount
1.	Invoice 2014-15/12 dated 30.09.2014 towards the expenditure incurred on the material supply and labour.	Rs.92,78,960/-
2.	Invoice 2014-15/16 dated 15.12.2014 towards the expenditure incurred and labour.	Rs.88,78,960/-
3.	Invoice 2014-15/21 dated 27.03.2015 towards the expenditure incurred on the material supply and labour.	Rs.69,55,800/-
4.	Invoice 2014-15/19 dated 03.02.2015 towards the expenditure incurred on the material supply and labour.	Rs.82,78,945/-
5.	Invoice 2015-16/03 dated 15.06.2015 towards the expenditure incurred on the material supply and labour.	Rs.97,95,640 /-
6.	Invoice 2015-16/06 dated 10.08.2015	Rs.92,35,680/-



	towards the expenditure incurred on the material supply and labour.	
7.	Invoice 2015-16/11 dated 03.10.2015 towards the expenditure incurred on the material supply and labour.	Rs.97,48,695/-
8.	Invoice 2015-16/14 dated 11.11.2015 towards the expenditure incurred on the material supply and labour.	Rs.88,78,452/-
9.	Invoice 2015-16/17 dated 10.01.2016 towards the expenditure incurred on the material supply and labour.	Rs.82,45,690/-
10.	Invoice 2015-16/20 dated 21.03.2016 towards the expenditure incurred on the material supply and labour.	Rs.69,45,820/-
	Total	Rs. 8,62,42,642/-

- iii. That the Operational Creditor sent an Outstanding Due Letter dated 13.07.2017 to the Corporate Debtor and to which a response was received vide acknowledgment letter dated 22.09.2017. As per the said acknowledgement letter, the Corporate Debtor had agreed to make the payment of the outstanding dues within three months from the date of the said Letter to the Operational Creditor. However, till date, no payment has been made.
- iv. That the Operational Creditor delivered a Demand Notice dated 29.02.2020 u/s 8 of the Code, to which no reply has been received.
- v. That the Corporate Debtor has never raised any issue on the quality of services and the goods provided by the Operational Creditor and therefore, the present claim is undisputed and admitted by the Corporate Debtor.
- vi. That the total outstanding dues are Rs. 13,72,68,659/- (Rs. 8,62,42,642/- principal amount + Rs. 5,10,26,017 interest @ 12% p.a. as on 04.08.2020).



3. The Corporate Debtor has filed its reply and submitted the following:-

- i. That the volume of work to be executed by the Operational Creditor was around at Rs. 8,62,42,642/-.
- ii. That, from the inception, the Corporate Debtor had raised several issues in terms of the quality of services and goods and the settlement of final bill was subject to the correction of defects in the goods by the Operational Creditor.
- iii. That the Corporate Debtor has agreed to pay the amount to the extent the work has been performed as per the contract.
- iv. That the dispute between the parties in respect of the quality of work and services and the inflated amounts raised under the impugned invoices.
- v. That the Operational Creditor has suppressed the fact that various complaints were raised on the quality of work and it was assured that goods supplied would be changed.
- vi. That the Corporate Debtor was going through severe financial distress and sought time to make the payments. It is further submitted that there was an understanding between the parties that the amount would be revised. The amounts raised under the invoices was exaggerated and inflated which was disputed by the Corporate Debtor.

4. The Operational Creditor has filed its rejoinder and submitted the following:-

- i. That the Corporate Debtor had never raised any dispute or complaints regarding the services or the quality of goods during the subsistence of transactions between them. Further, the Corporate Debtor has failed to annex any documents in support of its allegations.
- ii. That it is admitted by the Corporate Debtor that payments were due and the Corporate Debtor sought time to make payments due to financial distress.



iii. That the Corporate Debtor has raised sham allegations of inflated sums and never raised any request to revise the due amount.

5. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application, reply and rejoinder filed by the respective parties.

6. Ld.Counsel appearing for the Applicant has submitted that the Respondent/Corporate Debtor vide email dated 22.09.2017, has admitted the defaulted amount and also acknowledged to pay the amount within three months from the date of issuance of the letter dated 22.09.2017. He further submitted that by filing the reply though the Respondent has raised certain disputes but failed to produce any document to show that there was any pre-existing dispute, prior to the issuance of the demand notice.

7. On the other hand, Ld. Counsel appearing for the Respondent has submitted that the Applicant has concealed the facts that the issues of quality of services and goods were raised on several occasions and the final bill was settled subject to the correction of the defect in the goods supplied by the Operational Creditor.

8. In terms of submissions, we Consider the prayer of the applicant. We observe that the demand notice was delivered by the Operational Creditor to the corporate debtor but no notice of dispute was ever raised by the Corporate Debtor in terms of Section 8(2) of the IBC, 2016. We further observed that the Applicant/Operational Creditor has also filed an affidavit under Section 9(3)(b) of the IBC, 2016, in which; it is specifically stated that after the delivery of the demand notice, neither the payment was made nor any dispute was raised.



9. We further observe that though by filing reply the respondent has raised the issue of quality of goods but no documents is placed on the record to show that there was any dispute between the parties prior to the issuance of the demand notice.

10. At this juncture, we would also like to refer to letters dated 13/07/2017 and 22.09.2017, placed at page no. 31 and 32 of the application sent by the operational creditor and corporate debtor respectively. The scanned copy of the same are reproduced below:



ANNEXURE -B-

ARORA ENGINEER

1A/20, Geeta Colony
New Delhi- 110031
E mail: aroraengineer2yahoo.com

(31)


TO

ANANDRAO INFRASTRUCTURE PRIVATE LIMITED
13/5, SUDAN GARDEN, NEW ROSHAN PURA MAIN CHAWALA
ROAD, NAZAFGARH DELHI WEST DELHI DL 110043 IN

Dear Sir

Please refer to our invoices for the year 2014-15 and 2015-16. We thereby again request you to please release our outstanding dues conducting principal amount of Rs. 8,62,42,642/- .

It is our humble request to clear our outstanding dues as we are a very small firm and we are in no position to allow such delayed credit period.


PROPRIETOR

SURENDER ARORA



Received
17/07/2017
Sangita
(On behalf of Anand Rao Infra Pvt Ltd)



ANNEXURE - "C"

ANANDRAO INFRASTRUCTURE PRIVATE LIMITED

CIN: U70109DL2006PTC153589
Regd ofc: 13/5, Sudan Garden, New Roshan Pura Main
Chawala Road, Nazafgarh Delhi West Delh110043

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Date: 22nd September, 2017

To

Arora Engineer

1 A/20, Geeta Colony,

New Delhi- 110031

Sir/s

We received your letter dated 13/07/2017. We do hereby acknowledge that the Company will make the payment of your outstanding dues within 3 months from the date of this letter. Please provide us some time in good faith as the Company is going on through some financial crises.

On behalf of

Anand Rao Infrastructure Pvt Ltd



11. On perusal of the letters referred to supra, we observed that the Respondent has acknowledged the amount referred to in the letter dated 13.07.2017, placed at page no. 31 of the application.

12. On the basis of these two letters, we are of the considered view that there is an acknowledgement of debt by the respondent on 22.09.2017, and the present application is filed on 10.08.2020, within three years from the date of the acknowledgement.



13. Hence the application is within time. We further observe that there is no pre-existing dispute and the application is complete. The Applicant has not proposed the name of IRP and the principal amount is of Rs. 8,62,42,642/-, therefore, the Applicant has fulfilled the criteria of minimum threshold of Rs. 1 Crore. Therefore, in our considered view, it fulfills the requirement of Section 9(5)(i) of the IBC 2016.

14. In sequel to the above, **the petition is admitted.** Accordingly, the CIR Process is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all:

- “(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;
- (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.”


15. Since the name of IRP is not proposed by the Operational Creditor, therefore, this Bench appoints Mr. Ranjan Chakraborti, having Registration Number – IBBI/IPA-002/IP-N00541/2017-2018/11618



registered email id:- ranjanns@gmail.com, New Delhi from the list of panel of IPs recommended by IBBI to this Adjudicating Authority.

16. The Operational Creditor is directed to deposit Rs. 2,00,000/- (Two Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

17. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



L.N GUPTA
Member (T)


25-00 2020

ABNI RANJAN KUMAR SINHA
Member (J)