

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH - I  
KOLKATA**

**C.P (IB) No. 237/KB/2021**

*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:*

**Sri Sadhan Kumar Nag**, sole proprietor of Nag Construction having its office at House No.111, Bhawanipur, Colony, Tupudana, P.S. Dhurwa, Ranchi - 834003

*...Operational Creditor*

*Versus*

**Saa Vishnu Bakers Private Limited** [CIN U15411WB2009PTC132317], a company incorporate under the Companies Act, 1956, having its registered office at FB - 13, 1598 Rajdanga Main Road, Kasba, Kolkata – 700107.

*...Corporate Debtor*

**Date of Hearing: 24.08.2022**

**Date of pronouncing the order: 07.09.2022**

**Coram:**

**Shri Rohit Kapoor** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

**Appearances (through Video Conferencing/physical hearing)**

Mr. Reetobrata Mitra, Advocate : **For Operational Creditor**

Ms. Mousomee Shane, Advocate :

Mr. Debangshu Dinda, Advocate :

Mr. Subhajit Das, Advocate :

Mr. Barnik Ghosh, Advocate : **For Corporate Debtor**

Mr. Subodh Kumar Agarawal, RP : **in person**

**O R D E R**

***Per Balraj Joshi, Member (Technical)***

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Sri Sadhan Kumar Nag, sole proprietor of Nag Construction (***‘Operational Creditor’***) for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against Saa Vishnu Bakers Private Limited (***‘Corporate Debtor’***).
3. The present Petition was filed on ***03 August, 2021*** before this Adjudicating Authority. The total amount claimed in default is Rs.1,35,14,745/- (Rupees One Crore Thirty Five Lakh Fourteen Thousand Seven Hundred Forty Five only) as on 31 May, 2021.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs. 3,00,00,000/- (Rupees Three Crore only) with subscribed share capital of Rs. 2,94,80,340/- (Rupees Two Crore Ninety Four Lakh Eighty Thousand Three Hundred Forty only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
  - 5.1 The Operational Creditor is a sole proprietorship concern engaged in the business of Civil Construction. Whereas, the Corporate Debtor is a Company engaged in the business of manufacturing biscuits.
  - 5.2 The Corporate Debtor has issued three purchase orders in favour of the Operational Creditor for carrying out civil structural work. The details of the purchase orders as follows;
    - (i) Purchase order no. 562 dated January 16, 2018 for construction of main building of cashew processing plant (***‘Project No.1’***);
    - (ii) Purchase order no. 563 dated January 16, 2018 for construction of main building of haldiram plant (***‘Project No.2’***);
    - (iii) Purchase order no. 447 dated November 10, 2018 for construction of extension main building (***‘Project No.3’***);

- 5.3 The Operational Creditor had duly completed the work in terms of the Purchase Order No.562 & 563, and handed over to the same to the Corporate Debtor. With respect to Purchase Order No.447, the Operational Creditor had also executed a substantial portion of the work.
- 5.4 It is pertinent to note that by November, 2018, the Operational Creditor had invested Rs.40,19,999/- (Rupees Forty Lakh Nineteen Thousand Nine Hundred Ninety Nine only) in Project No.1 & 2 and Rs.29,36,600/- (Rupees Twenty Nine Lakh Thirty Six Thousand Six Hundred Ninety Nine only) in Project No.3.
- 5.5 On January, 10, 2020, the Operational Creditor issued three Bills to the Corporate Debtor, details of which are as follows;
- (i) Bill ref. no. 186/Nag/2019-20 in respect of Purchase Order No. 562 for an amount of Rs. 12,43,349/- (Rupees Twelve Lakh Forty Three Thousand Hundred Forty Nine Only).
  - (ii) Bill Ref no. 187/Nag/19-20 in respect of Purchase Order No. 563 for an amount of Rs. 68,67,091/- (Rupees Sixty eight lakh sixty seven thousand ninety one only)
  - (iii) Bill ref no. 188/Nag/19-20 in respect of Purchase Order No. 447 for an amount of Rs. 29,36,699/- (Rupees Twenty Nine Lakh Thirty Six thousand Six Hundred Ninety Nine only)
  - (iv) Tax Invoice dated January 10, 2020 for an amount of Rs. 13,25,657/- (Rupees Thirteen Lakhs Twenty five Thousand Six Hundred and Fifty Seven only) towards GST payable for all three purchase orders.
- 5.6 As on 10 January, 2020 a total sum of Rs.1,23,72,796/- (Rupees One Crore Twenty Three Lakh Seventy Thousand Seven Hundred Ninety Six only. However, the Corporate Debtor made a part payment of Rs.10,83,300/- (Rupees Ten Lakh Eighty Three Thousand Three Hundred only).
- 5.7 On failure of the Corporate Debtor to clear the dues, the Operational Creditor faced a severe financial crunch, because of which the Operational Creditor was forced to pause the construction work under Project No.3 till the clearance of the outstanding dues.

- 5.8 However, it is pertinent to mention that the Corporate Debtor, without clearing the dues of the Operational Creditor or termination the purchase order for Project No.3 proceeded to complete the construction of the same.
- 5.9 On 21 June, 2021, the Operational Creditor sent a notice under section 8 of the Code demanding the payment of the outstanding dues. The said notice was delivered on 24 June, 2021.<sup>1</sup>
- 6. Submissions by the Ld. Advocate appearing on behalf of the Corporate Debtor.**
- 6.1 The Operational Creditor has purposely inflated the amount of the debt to amount Rupees One Crore to come within the jurisdiction of this Adjudicating Authority. There are pre-existing disputes between the parties.
- 6.2 Further, purchase orders issued by the Corporate Debtor were not accepted by the Operational Creditor, thereby making it clear that they had mala-fide intention of fabricating the contents of the Purchase Orders, thereby inflating the same. The Operational Creditor inflated the quantum of the purchase order massively while raising invoices, which gave rise to the column of extra work.
- 6.3 The Operational Creditor has annexed an invoice dated 04 August, 2018 and 04 April, 2019. Further, in order to avoid limitation, the Operational Creditor again raised three invoiced dated 10 January, 2020
- 6.4 With respect to Purchase Order No. 562, the work was left incomplete. The following work was not done as per the Purchase Order:
- (i) Roof casting.
  - (ii) Exterior wall.
  - (iii) Plastering (both interior and exterior).
  - (iv) Window installation.
  - (v) Flooring (approximate 50% left incomplete).
  - (vi) Painting.
- 6.5 Further, an extra amount of Rs.26,24,552/- was raised without any justification whatsoever. The Purchase Order in this event was not accepted or countersigned by the Operational Creditor thereby making it inadmissible for

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<sup>1</sup> Annexure – G of the Petition, Pages 69 – 87.

the Operational Creditor to claim any amount from the instant Purchase Order. No supporting bills were provided to the Corporate Debtor for the extra work. Moreover, the entire extra work as claimed by the Operational Creditor was already covered under the Purchase Order.

- 6.6 With respect to the Purchase Order No. 563, the Operational Creditor billed an extra amount of Rs. 94,78,574/- over and above the amount set out in the Purchase Order. It is a fact that the extra items so billed were all covered by the said Purchase Order itself. The extra items so billed were bogus and as such, was done in order to dishonestly harass the Corporate Debtor with extra bills.
- 6.7 With respect to the Purchase Order No., only 20% of the work was completed and 80% work was left incomplete. As per the admitted position by the Operational Creditor, only work till plinth level was completed with casting of 30 columns out of 132 columns. Despite not completing even 20% of the work, an extra amount of Rs. 20,69,999/- was raised by the Operational Creditor.
- 6.8 Moreover, the greed of the Operational Creditor in charging more than Rs. 2,00,00,000/- in terms of extra work is an example of the fraudulent nature and malicious motives of the Operational Creditor
- 6.9 As per the actual work done by the Operational Creditor, the total amount to be paid by the Corporate Debtor to the Operational Creditor inclusive of GST is Rs. 1,84,29,600 / - (which is a sum total of Rs. 52,50,000/- for PO 562 + Rs. 92,55,000/- for PO 563 + Rs. 19,50,000/- for PO 447 plus GST).
- 6.10 The Corporate Debtor raised protests time and again regarding the extra amounts charged and the incomplete work. Copies of supporting chats on whatsapp [*Annexure C of the Reply*]. Further, The Corporate Debtor issued several emails complaining about the project getting delayed despite granting 2-3 extensions thus leading to encroachment of territory and market share by other competitors. Further emails were sent as far back as on 23 November 2018 complaining about inordinate delays in start of manufacturing operations.

Even as on October 2018 and June 2019. This, there is an existence of pre-existing disputes [*Annexure E of the Reply*].

**7. Rejoinder to the reply of the Corporate Debtor**

7.1 The Corporate Debtor never raised any objection with regard to any work of the Operational Creditor.

7.2 Moreover, the Corporate Debtor fabricated the documents, for instance, the purchase order no.563 consisted of three pages, whereas, the purchase order annexed by the Corporate Debtor has five pages. The signature of the Operational Creditor on pages five has been forged, as well. The Operational Creditor has also lodged a complaint against the Corporate Debtor for forging the signatures.

**8. Issues**

8.1 Is this instant Application barred by limitation?

8.2 Is there any pre-existing dispute between the parties?

***Analysis & Findings***

9. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor and perused the record.

10. Upon perusal of the record placed before us, it is apparent that the issues in this instant matter can be classified into two parameters. First, with respect to limitation, second, with respect to the pre-existing dispute.

11. On the ground of *limitation*, it is pertinent to mention that, the Corporate Debtor has submitted that, the Operational Creditor has annexed an invoiced dated 04 August, 2018 and 04 April, 2019 in the Petition. Further, in order to avoid limitation, the Operational Creditor again raised three invoices dated 10 January, 2020.

12. Notwithstanding, the fact that the Operational Creditor raised the invoice twice, this instant application has been filed on 03 August, 2021 before this Adjudicating Authority. Even if we take into account the dates of the invoices raised on 04 August, 2018 and 04 April, 2019, then also this application would fall within limitation.

13. With respect to the ground of *pre-existing disputes*, upon perusal of the alleged emails [Annexure – E at pages 47 – 50 of the reply], it is seen that the same do not appear to be genuine as they are not printed from the webpage, but appear to have been typed out.
14. Further, the Hon’ble Supreme Court in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited*<sup>2</sup> has observed that all that the Adjudicating Authority has to see at ‘the stage of Admission’ 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 or a moonshine defence unsupported by tangible materials/evidence. Further, upon perusal of the record at pages 42 – 43 of the reply [Annexure – C], it is seen that the Corporate Debtor failed to fulfill its obligations by not clearing the dues of the Operational Creditor on time, which in a cascading manner, resulted in the delay in the completion of the purchase order.
15. In view of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.
16. It is, accordingly, hereby ordered as follows:-
- a) The application bearing *CP (IB) No. 237/KB/2021* filed by Sadhan Kumar Nag, sole proprietor of Nag Construction, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Saa Vishnu Bakers Private Limited, is *admitted*.
  - b) There shall be a moratorium under section 14 of the IBC.

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<sup>2</sup> 2017 (1) SCC onLine SC 353

- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Madhusudhan Kumar Poddar**, registration number **IBBI/IPA-001/IP-P02173/2020-2021/13344**, email: **Madhusudan.ca.85@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- h) The Operational Creditor shall deposit a sum of **Rs.3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 17. CP (IB) No. 237/KB/2021** to come up on **21.10.2022** for filing the periodical report.
- 18.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
Member (Technical)

**Rohit Kapoor**  
Member (Judicial)

The order is pronounced on 07<sup>th</sup> day of September, 2022

SA [LRA]