

**IN THE NATIONAL COMPANY LAW TRIBUNAL****NEW DELHI (COURT NO. IV)****Company Petition No. IB-660/ND/2018**

*(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:****M/s MARMO STONE PRIVATE LIMITED****...Applicant/Operational Creditor****VERSUS****M/s GLOW SOFTECH PRIVATE LIMITED****...Respondent/ Corporate Debtor****Pronounced on: 20.09.2019****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SHRI HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Ajit Sharma, Adv., Mr. Mayank Aggarwal, Adv.  
Ms. Manasvi Sharma, Adv.

For the Respondent : Ms. Nayati Bansal, Adv. & Mr. Varun Kathwad, Adv.



## MEMO OF PARTIES

### **M/s MARMO STONE PRIVATE LIMITED**

Having its registered office at:

A-35, Second Floor,  
Main Road, Jagat Puri,  
Delhi-110051

**...Applicant/Operational Creditor**

**VERSUS**

### **M/s GLOW SOFTECH PRIVATE LIMITED**

Having its registered office at:

10, 1<sup>ST</sup> Floor, Southern Avenue,  
Maharani Bagh,  
New Delhi- 110065

**...Respondent/Corporate Debtor**



## **JUDGEMENT**

**PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Marmo Stone Pvt. Ltd. (for brevity 'Applicant') through its director Mr. Rajesh Jindal, authorizing him to file present application vide Board resolution dated 29.05.2018, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s Glow Softech Pvt. Ltd. (for brevity 'Respondent').
2. The Applicant, namely M/s Marmo Stone Pvt. Ltd. is a company incorporated under the provisions of Companies Act, 1956 with CIN No. U51900DL2013PTC252564, having its registered office at A-35, Second Floor, Main Road, agat Puri, Delhi-110051.



3. The Respondent, namely M/s Glow Softech Pvt. Ltd. is a company incorporated on 15.02.2018 under the provisions of Companies Act, 1956 with CIN No. U74120DL2008PTC174121, having its registered office at 10, 1<sup>st</sup> Floor, Southern Avenue, Maharani Bagh, New Delhi-110065. The Authorised Share Capital of the respondent company is Rs.50,00,000/- and Paid Up Share Capital of the company is Rs.50,00,000/- as per Master Data of the company.

4. It is the case of the applicant that respondent company approached the applicant for purchase of various kinds of Marble Slabs, Tiles, Crazy and Granite products. It was specifically agreed that upon receiving the goods by respondent and raising of invoices by applicant, the entire payment for such invoices shall be made in a timely manner. The Respondent placed various purchase orders for a supply of variety of products such as Marble Slabs, Tiles, Crazy and Granite. The Applicant supplied the goods as per the orders



placed by Respondent and raised invoices against the said supply.

5. The applicant states that, the debt is arising out of several purchases of granite slabs and IR Marble Slabs made by the respondent from the applicant during the period between 23.05.2017 to 23.06.2017, for use in the construction of the commercial building of the respondent at A-27/A-62, Noida (U.P.). The applicant raised 13 invoices amounting to a total amount of Rs.1,58,92,229/- (Rupees One Crore Fifty Eight Lakh Ninety Two Thousand Two Hundred Twenty Nine Only), were duly raised against the respondent by the applicant.
6. The applicant further states that in lieu of the above mentioned supply of goods/ materials the respondent had made certain part payments, the details are listed below:

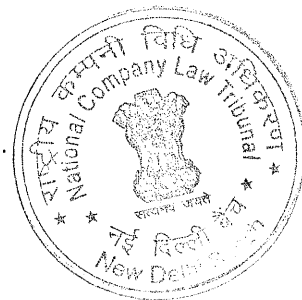
<b>S.No.</b>	<b>DATE OF PAYMENT</b>	<b>PAYMENT AMOUNT</b>	<b>MODE OF PAYMENT</b>
1.	16.06.2017	Rs.20,00,000/-	RTGS
2.	22.06.2017	Rs.20,00,000/-	RTGS



3.	11.07.2017	Rs.20,00,000/-	RTGS
4.	17.07.2017	Rs.60,00,000/-	-

A balance of Rs.38,92,229/- (Rupees Thirty Eight Lakhs Ninety Two Thousand Two Hundred and Twenty Nine Only), still remained unpaid by the respondent.

7. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply.
8. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 20.04.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.38,92,229/- (Rupees Thirty Eight Lakhs Ninety Two Thousand Two Hundred and Twenty Nine Only), along with interest @ 24% per annum, as per the invoices, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.



9. Despite the demand notice sent under Section 8 of the Code, the Respondent failed to pay the amount demanded and has neither raised any notice of dispute, but In its reply to the said notice the respondent asked for 20 days time to reply to the said notice. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
10. The applicant has stated that total debt due and payable is Rs.46,62,890/- (Rupees Forty Six Lakhs Sixty Two Thousand Eight Hundred Ninety Only), which includes Principal amount of Rs.38,92,229/-(Rupees Thirty Eight Lakhs Ninety Two Thousand Two Hundred and Twenty Nine Only) and interest of Rs.7,70,661/- (Rupees Seven Lakhs Seventy Thousand Six Hundred Sixty One Only) @ 24% p.a. from 24.06.2017.
11. Respondent has filed its reply and raised objections that alleging the forgery and manipulation committed by the applicant. The handwritten invoices filed by it along with the application, binding to several infirmities with regard to tally of statement of accounts between the Applicant and the Respondent. The respondent further claims that it was



discovered that the contractor appointed by the Respondent in connivance with the applicant defrauded the respondent. The respondent also placed before the bench the details of the case filed by it against the contractor, which is currently pending adjudication in the court of Ld. CMM, Karkardooma, bearing C.C No. 4229/2017.

12. It has been observed by this bench that the above stated suit has been filed by the respondent against its contractor DPS Rathor and not against the applicant in the present application. Hence, it is made clear, the said suit in the court of Ld. CMM, Karkardooma, cannot be said to be a pre-existing dispute.
13. In rejoinder of the applicant dated 23.08.2018, the submissions made in the application are reiterated and controverting the assertions in the reply.
14. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. There is no documentary evidence on record to show that any complaint was ever made



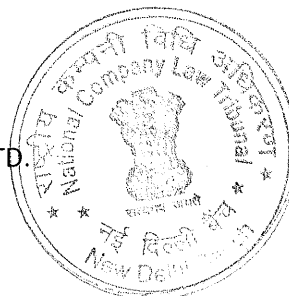
or any proceedings were initiated by the respondent regarding the alleged mala fide acts of the applicant nor any correspondence is placed on record with respect to issuing fake/ bogus bills. Once the debt shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.

15. In **“Innoventive Industries Ltd.(Supra)”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.
16. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:



“40..... Therefore, all that the adjudicating authority is to see at this stage 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 unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. 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.”

In the present case, there is no such dispute as pre-existing, albeit a hypothetical or illusory dispute has been raised by the ‘Corporate Debtor’ and the same appears to be a moonshine defense.



17. The applicant has attached the copy of Bank statements issued by HDFC Bank Ltd. and also the certificate issued by the CA confirming the operational debt in the books of accounts of the applicant in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
18. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
19. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Dharm Veer Gupta having registration no. IBBI/IPA-001/IP-P01492/2018-2019/12342 and email address is [dvgupta@hotmail.com](mailto:dvgupta@hotmail.com) and contact number is



9871777133, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

21. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Dharm Veer Gupta to meet out the expenses 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 three days from the date of receipt of this order by the Operational Creditor. The amount however will 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.
22. 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 Respondent prohibiting the respondent as per proviso (a) to (d)



of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

23. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (Technical)

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (Judicial)

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23/9/18

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23/9/18

सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
C.G.O. COMPLEX, NEW DELHI-110003