

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-765/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Sh. Bhavya Prakash and Anr

...Operational Creditor/Applicant

Versus

M/s DD Motors ltd.

Having its Registered office at:-
B-84, Industrial Area Mayapuri
Phase-I, West Delhi
New Delhi-1100064

...Corporate Debtor/Respondent

Coram:

MR. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Sunil Dutt Dixit , Advocate

Counsel for Corporate Debtor: Mr. Sinha Shrey Nikhilesh, Advocate

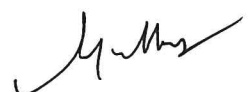
Order Delivered on:13.04.2021



ORDER

Per Dr. V.K Subburaj, Member (Technical)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.
2. The applicant Sh. Bhavya Prakash has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. It is the case of the applicant that the erstwhile company Starline security services Private Limited in which the applicants were the directors shareholders were allotted the parking site at DD Motors Wazirpur depot civil lines zones at monthly license fee of Rs.1,72,000/- plus TCS after deposit of the security deposit equivalent to three month license fee amounting to Rs.5,16,000/- and also advance monthly license fee and TCS for one month amounting to Rs.1,75,440/- with DA/RP/cell north MCD. Copy of the Allotment Letter placed on record. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:
 - a. That the applicants complained to North MCD and the Section Officer/RP Cell North DMC sent a letter to the respondent on



25.01.2017 thereby requesting its administrative to attend the meeting on 31.01.2017 to resolve the issue but none came from the respondent. Further North DMC sent another letter with copies to the director enforcement cell and the SHO, PS Keshav Puram to inspect the parking site and lodge FIR against the encroachers inside the parking area.

- b. It is submitted that the outstanding amount for the parking charges as per invoice raised by the operational creditor in the financial years 201-2018 and 2018-2019 is Rs.2,97,60,000/- along with the interest rate @ 18 per annum as on 31.08.2019 amounts to Rs.1,06,40,239/- tantamounting as on 09.01.2020 to Rs 4.04.00.239/-. Further the respondent company never approached their applicants erstwhile company for any monthly package etc and therefore bills were raised on day to day basis at the rates stipulated in clause 11 of the terms and conditions and fixed by NDMC.
- c. That it is further submitted that in the reply by the respondent company it was mentioned that the name of the erstwhile company had been struck off from the Registrar of Company vide notice dated 08.08.2018.
- d. That on 07.01.2020 an application by the erstwhile company u/s 12A of the code to withdraw the application with the permission to file a fresh petition application was allowed by this Tribunal.

- e. Further it is submitted as per section 250 of the companies act 2013 which provides that where a Company Act 2013 stand dissolved under section 248 it shall on and from the date mentioned in the notice under sub section 5 of that section cease to operate as a company and the certificate of incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment of discharge of the liabilities or obligations of the company. Therefore, the present application is maintainable as company exist for the purpose of realisation of debt.
- f. The operational creditor sent a Demand Notice dated 10.01.2020 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. Copy of the Demand Notice dated 10.01.2020 demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India, where the operational creditor supplied services to the Corporate Debtor which was replied to.

4. The Corporate Debtor in its reply to the application submits that:

a. That as per the self-admission made by the Applicants herein, a parking site of North Delhi Municipal Corporation situated at DD Motor near Wazirpur Bus Depot vide letter of intent dated 06.12.2016 was allotted to one M/s Starline Security Service Pvt. Ltd. (CIN NO. U74920DL2008PTC178958). Further it is submitted that the invoices were raised as per the self-admission of the Applicants by the aforesaid company whose name has been struck off from the Register of Companies vide Notice of Striking off and dissolution dated 08.08.2018 and that the said company stands dissolved and has ceased to operate as a company from the said date of the aforementioned notice.

Copy of the said dissolution notice dated 08.08.2018 and Company Master Data from the website of Ministry of Corporate Affairs ('MCA') are annexed alongwith.

b. That as per the self-admission of the Applicants, the Applicants are erstwhile directors/shareholders of the aforesaid company which has ceased to exist w.e.f 08.08.2018 and the said company has not been revived and no steps have been taken by the Applicants for restoration of the said company with the Registrar of the Companies.

c. It is submitted that the Applicants have also deliberately concealed the fact that the Respondent in response to Applicants' demand notice dated 10.01.2020, sent a Notice



of dispute under Section 8(2) of the code dated 24.01.2020 to the Applicants disputing the existence of an unpaid operational debt as alleged in the demand notice, via Speed Post and DTDC Courier. The Applicants have not only concealed before this Tribunal the fact that a notice of dispute was served upon the Applicants but also have filed an incomplete copy of the said notice of dispute which has been filed along with the Application under the pretext of a reply received from the Respondent.

- d. Further it is pertinent to mention that the Applicants have further concealed from the Tribunal that prior to sending said demand notice dated 10.01.2020 and prior to filing of the aforesaid previous application, as a prerequisite for the filing the said previous application, the aforesaid company had sent a demand notice dated 03.08.2019 to the Respondent demanding Rs.2,97,60,000/- (Rupees Two Crores Ninety Seven Lakh and Sixty Thousand only) as the total amount of debt owed by the Respondent to the said company which was duly replied by the Respondent vide notice of dispute in terms of Section 8(2) of the code dated 14.08.2019.
- e. It is submitted that vide letter dated 10.08.2018 and notice dated 28.05.2019, Applicant herein sought alleged damages from the Respondent and did not even mention any invoice



number, let alone enclosing the purported invoices along with the said letter and the notice.

- f. It is submitted that the purported invoices attached with the present application are false and fabricated. It is a matter of fact that Goods and Services Tax ('GST') was launched with effect from 01.07.2017 and the date of registration of the aforesaid company of Applicants with the GST portal is 01.07.2017. Therefore, it is reasonable to infer that GST no. 07AALCS9852L1ZI as mentioned in purported invoices raised by the the said company and filed by the Applicants herein could not have been generated and given to Applicant prior to 01.07.2017
- g. It is stated that in the reply dated 07.06.2019 it was informed to the applicants that the Respondent was not liable to pay a single rupee to the aforesaid company- principal amount or interest whatsoever- for any parking charges or purported damages wrongfully claimed as Respondent has never availed any parking services purportedly provided by the company.

Copy of the said demand notice dated 03.08.2019 and the notice of dispute dated 14.08.2019 have been filed.

5. It is the case of the respondent that there is self-admission of the Applicants that the Applicants are the erstwhile directors/shareholders of the aforesaid company which has ceased to exist w.e.f 08.08.2018 and the said company has not been revived



and no steps have been taken by the Applicants for restoration of the said company with the Registrar of the Companies. Further the applicant in its rejoinder had submitted that the as per Section 250 of the Companies Act, 2013 the incorporation of the company cannot be deemed to have been cancelled for the purpose of realizing the amount due to the company. It is claimed by the applicants that after the dissolution of the company, no resolution can be passed in the name of the company, but its directors/shareholders can very well initiate the proceedings for the realization of the amount due to the company.

6. Heard the parties and perused the case records.
7. The insolvency resolution process has serious civil consequences on the welfare of the company including its members and employees. Admittedly the Applicants are erstwhile directors/shareholders of the aforesaid company which has ceased to exist w.e.f 08.08.2018 and the said company has not been revived and no steps have been taken by the Applicants for restoration of the name of the company. Burden of proof clearly lies on the applicant regarding maintainability of the present application. The applicants however could not prove with documentary evidence as to how they are entitled to file present application as operational creditors of the corporate debtor when they have not supplied any goods or provide any service to corporate debtor in their personal capacity.
8. In addition to that the claim of applicants is not admitted by the respondent and infact allegation of false and fabrication of invoices

have been raised by the respondent in their reply. The respondent in its reply has pointed out that the invoices bearing invoice no. from GSDD21 to GSDD26 have been fraudulently generated by Applicants post the date of dissolution of the company after which the company had already ceased to operate and could not do business. Therefore, the said invoices were false and fabricated as well.

9. It is seen that the company is not in existence. Section 250 of the Company Act, 2013 provides for the realization of the amount but this is not a recovery proceeding therefore the provision of the section 250 is not applicable on the application filed under Section 9 of the Code. The applicants are not the creditors of the corporate debtor and therefore they are not entitled to file the present application. That apart the claim has been disputed by respondent even before filing of present application.

10. For the reasons stated above this petition fails and the same is rejected.

11. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicants before any other forum shall not be prejudiced on account of dismissal of instant application.

Let the copy of the order be served to the parties.



(DR. V.K.SUBBURAJ)
MEMBER (TECHNICAL)



(P.S.N PRASAD)
MEMBER (JUDICIAL)