



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-23(ND)2021

IN THE MATTER OF:

VA REALCON PRIVATE LIMITED

Registered office at :

106 Palco House, T-10,
Main Patel Road,
Patel Nagar, Delhi - 110008

...Applicant/Operational Creditor

VERSUS

AVAIL HOLDING LIMITED

Registered office at :

209, Bhanot Plaza – II
3, D.B. Gupta Road,
New Delhi - 110055

...Respondent/Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 17.08.2022

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Mateen Ahmad, Adv.

For the Respondent : None



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s. VA Realcon Private Limited (for brevity, the '**Applicant/Operational Creditor**') has filed the present Petition 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 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Avail Holding Limited (for brevity, the '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Avail Holding Limited is a Company incorporated on 17.05.1985 with CIN L67190DL1985 PLC020953 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 209, Bhanot Plaza – II, 3, D.B. Gupta Road, New Delhi-110055, which falls within the jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 1,90,00,000/- and Paid-up Share Capital is Rs. 1,15,00,000/- as per the Master Data of the Corporate Debtor.

4. It is averred by the Applicant that it is doing the business as owners, builders, colonizers, lessors, maintainers and residential, commercial and industrial buildings colonies, hotels, mills, factory sheds, buildings and is dealing in all kinds of immovable properties



whether belonging to Company or not. Whereas the Corporate Debtor is engaged in the business of investing, buying, selling, transfer, pledge and dealing in and disposing of ay shares, stocks, bonds, debentures, units, securities of any government and local authority.

5. It is averred by the Applicant that it has sold 1,16,620 shares of M/s. Macor Packaging Limited to the Corporate Debtor for a consideration of Rs. 1,14,28,500/- against the invoices annexed with the Application.

6. That the Applicant has given particulars of the debt claimed in the Part IV of its Application, which is reproduced overleaf:



		<p>Creditor sold 1,16,620 shares of Macor Packaging Limited at the rate of Rs. 98/- per share, amounting to Rs. Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only), to the Corporate Debtor. The contract note for the sale of aforesaid shares, dated 14th October, 2019, executed between the Operational Creditor and the Corporate Debtor is annexed herewith as Annexure – C. The Operational Creditor raised sale invoice No. 63/2019-20 dated 14th October, 2019 upon the Corporate Debtor for payment of Rs. 1,14,28,500/-The sale invoice raised by the Operational Creditor dated 14.10.2019 upon the Corporate Debtor is annexed herewith as Annexure – D.</p> <p>e. The amount of Rs. 1,14,28,500/- stood due and payable on the date of transaction i.e. 14th October, 2019. The Operational Creditor contacted the Corporate Debtor for repayment of the outstanding dues several time while the Corporate Debtor always assure of the payment in a week and so, but always failed to honour its promises.</p>
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		<p>f. The Operational Creditor then served reminder letter dated 18th September, 2020 along with the account confirmation and summary of transactions between Operational Creditor. The Corporate Debtor assure Operational Creditor to clear the dues within the week, but the dues were never cleared. Copy of recovery letter and its annexures are attached herewith as Annexure-E.</p> <p>g. The Corporate Debtor was liable to honour the sale invoice on the same day as it was raised, but till date no amount has been received inspite of several reminders.</p> <p>h. The Operational Creditor finally issued demand notice upon the Operational Creditor in form 4 as prescribed under section 8 of the Insolvency and Bankruptcy Code, 2016 and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016, on 06th November, 2020 to make the payment of outstanding dues immediately. The copy of demand notice along with service and delivery proof is annexed herewith as</p>
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	<p>AND THE DATE FROM WHICH SUCH DEBT FELL DUE</p>	<p>Annexure – F.</p> <p>i. That it is also pertinent to mention that Operational Creditor made all the efforts to maintain the business relation but ultimately, when Operational Creditor was left with none other option, the present application is hereby filed before the Hon'ble Tribunal.</p> <p>That it is humbly submitted before the Hon'ble Adjudicating Authority, National Company Law Tribunal, Delhi Bench that the Corporate Debtor was liable to make the payment against the sale invoice immediately, i.e. on 14th October, 2019. Thus the debt fell due w.e.f. 14th October, 2019.</p>
2	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED</p> <p>(ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>The total amount claimed to be in default as on date is Rs. 1,14,28,500/- (One Crore Fourteen Lacs Twenty Eight Thousand Five Hundred Only).</p> <p>The date of default is 14.10.2019 i.e. the day when the Corporate Debtor was liable to pay the amount, but failed.</p>



7. The total amount of the unpaid Operational Debt claimed by the Applicant in Part IV of the Application amounts to Rs. 1,14,28,500/- excluding interest. The date of default relied upon by the Applicant is 14.10.2019.

8. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of the operational debt, it had issued a Demand Notice dated 06.11.2020 under Section 8 of IBC 2016 at the registered office of the Corporate Debtor vide speed post. It has been added that the Demand Notice was served to the Corporate on 09.11.2020. The Tracking Report has been placed on record at page no. 40 of the application.

9. The Applicant has averred that no reply of the demand notice has been received by him. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC 2016 stating that no notice of dispute has been received by it.

10. Basing on the aforesaid facts, the Applicant has prayed for initiation of CIRP against the Corporate Debtor.

11. That on issuance of notice to the Corporate Debtor, neither anyone appeared on behalf of the corporate debtor nor they filed reply. Accordingly, vide order dated 13.10.2021 of this Tribunal, the Corporate Debtor was proceeded ex-parte.



12. We have heard the Ld. Counsel for the Applicant and perused the Application and documents placed on record. On perusal of the records, it is observed that the Operational Creditor has averred in its application that it is engaged in the business as owners, builders, colonizers, lessors, maintainers and residential, commercial and industrial buildings colonies, hotels, mills, factory sheds, buildings and dealing in all kinds of immovable properties whether belonging to Company or not. However, it is observed that the Operational Debt in the instant case is arising out of selling of 1,16,620 shares of Macor Packaging Limited to the Corporate Debtor, which is not the regular business activity of the Applicant as per the description of its activities given in the Application. However, we would still like to examine the case based on the documents available on record.

13. The Operational Creditor has annexed one contract note dated 14.10.2019, which is reproduced below :

MEMO OF CONFIRMATION CONTRACT NOTE

Bill No. : 631211-20 Date : 14/10/2019

From : VA REALCON PVT. LTD. (Dealing in Shares & Securities) 104A, Single Storey, Ramesh Nagar, New Delhi - 110 015. Mob. : 8851750934 PAN No. : AACV0980F				To : Arvind Holdings Ltd 201, Street, Raza B. 2, Okhla Road, New Delhi - PAN No. : AAACCT 2844E			
BUY FROM YOU				SELL TO YOU			
DATE	NAME OF SECURITIES	No. of SHARES	RATE	DATE	NAME OF SECURITIES	No. of SHARES	RATE
	105 PRLCO HOUSE, T-10, MAIN PATEL ROAD, RAJENDR NAGAR, NEW DELHI-110008			14/10/19	Macor Packaging Ltd	116620	721
TOTAL				TOTAL		116620	

NOTE : We have done the following transaction with you today. Please confirm same.
 E. & O. E. Arvind Holdings Ltd
Director/Authorized Signatory Auth. Signatory



Further, the Applicant has also annexed an invoice dated 14.10.2019 issued to the Corporate Debtor, as reproduced below :

BILL No. 53/2019-20 **SALE BILL** Date 14/10/19


From : VA REALCON PVT. LTD. (Dealing in Shares & Securities) 104A, Single Storey, Ramesh Nagar, New Delhi - 110015, Mob. : 8851750934 PAN No. : AADCV0080F		To: Avul Hoodig UD 249, Dharam Place II, 3-08 Anand Road, New Delhi - PAN No. : AAAC7284NE		
DATE	PARTICULARS	No. of SHARES	RATE	TOTAL
14/10/19	Macor Packaging Ltd 105 PALCO HOUSE, T-10, MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110008	116620	98/-	11428500/-
E. & O.E. MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110008		105 PALCO HOUSE, T-10 MAIN PATEL ROAD, PATEL NAGAR, NEW DELHI-110008		11428500/- Auth. Signatory

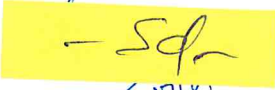
While going through the records, we observe that the Operational Creditor has not placed or produced any proof that it was the owner or in possession of the above referred 1,16,620 shares of M/s. Macor Packaging Limited, which are reported to have been sold to the Corporate Debtor. Further, no Share Transfer Deed (Securities Transfer Form) in Form SH-4 or record of DMAT Account of the either parties has been placed or produced by the Operational Creditor, which could demonstrate that the shares were actually transferred from the Applicant to the Respondent/ Corporate Debtor.



14. We further observe that both the Sales Bill as well as the Contract Note placed on record by the applicant neither contain the CIN number of the Applicant Company, which is a mandatory requirement as per Section 12(3)(c) of the Companies Act 2013, nor bear the acknowledgement of the Respondent/ Corporate Debtor, which coupled with absence of any valid Share Transfer Deed and DMAT Account raises doubts about the veracity of the alleged transaction. Hence, basing on the material available on record, the Applicant has not been able to establish or prove the existence of unpaid debt and default by the Corporate Debtor beyond doubt. Therefore, in our considered view, no ground is made out for initiation of CIRP against the Corporate Debtor.

15. In view of the above, the Application is Dismissed with the cost of Rs 1 (one) Lakh to be deposited in the Prime Minister's Relief Fund within 3 weeks of this order.


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)