

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH- IV**

**IB No. 839/ND/2019**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016.**

**IN THE MATTER OF:**

**Danfoss Industries Private Limited**

**...APPLICANT/ OPERATIONAL CREDITOR**

**VERSUS**

**WOG Technologies Private Limited**

**... RESPONDENT / CORPORATE DEBTOR**

**Order delivered on: 30.11.2021**

**CORAM:**

**DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:-**

For applicant: Ms. Swati Bansal, Adv.

For respondent: Mr. Amarjit Singh, Adv.

**Memo of Parties:**

**Danfoss Industries Private Limited**

**having registered office at,**

**602, 6th Floor, RMZ Millenia Business Park II,**

**48 Campus, 143 M.G.R Road,**

**Perungudi, Chennai,**

**Tamil Nadu- 600 096**

**...APPLICANT/ OPERATIONAL CREDITOR**

**VERSUS**

**WOG Technologies Private Limited**

**Having registered office at**

**E-5, Aggarwal Metro Heights,  
Unit 752, NetajiSubash Palace,  
Pitampura, New Delhi -110 034**

**... RESPONDENT / CORPORATE DEBTOR**

**ORDER**

**Per: MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (T)**

1. The present Application is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Danfoss Industries Private Limited, (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s WOG Technologies Private Limited (hereinafter, Respondent/Corporate Debtor).
2. As per averments made in the application, Respondent placed purchase orders on the applicant for supply of high presume pumps and certain related accessories. Thereafter the applicant supplied the goods to the Respondent as per the Purchase orders to the corporate debtor. Accordingly, the applicant issued Tax Invoices (Nos. TN1300020734 and TN1300022717) respectively to the corporate debtor for payment of a total amount of Rs. 1,29,02,699.38/-.
3. Further it is stated that in discharge of its dues, the respondent/corporate debtor issued a cheque bearing no. 003757 for Rs. 23,33,789/- drawn on Kotak Mahindra Bank, which was subsequently dishonored on 26.07.2018. The applicant issued notice dated 25.07.2018 regarding bouncing of cheque and payment of pending invoices.

4. The respondent has failed to pay remaining amount Rs. 1,04,02,699.38/. The applicant sent demand notice dated 24.09.2018 in terms of Section 8 of the Code demanding payment for pending invoices through Registered Post Acknowledgement due, which was duly served and the acknowledgment card has been placed on record. The respondent did not replied raising any dispute. Subsequently, 31.12.2018, the Corporate Debtor made part payment of Rs. 25,00,000/- to applicant for discharge of its liability.
5. The applicant has filed affidavit in terms of Section 9 (3) (b) of the Code affirming that the applicant has not received any reply within 10 days after issuing Demand Notice to the respondent.
6. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present application raising the following objections against the admission of the present application:
  - a) It is submitted that even though the commissioning of material supplied to Indonesia was still pending, the respondent, in good faith and on specific assurance of completing the pending jobs, further placed orders for supply of High Pressure Pumps and Energy Recovery Device for its projects viz. Chinnakarai and S. Periyapalayem vide Purchase Orders bearing no. WOG/2017-218/CEPT-CHK/PO/005 dated 18.09.2017 for Rs. 89,56,705 and WOG/2017-218/SSP-CEPT/PO/002 dated 10.11.2017 for Rs. 28,41,430/- with similar terms and conditions.
  - b) Thereafter the respondent had issued a cheque bearing no. 003757 dated 30.04.2018 for Rs. 23,33,789/- drawn on Kotak Mahindra Bank

towards part payment but its payment was not cleared as in the meantime, Respondent found that the applicant has failed to supply the complete material and also did not supply the Test Certificates of individual units which were mandatory before installation of material to ensure flawless execution. The respondent accordingly informed the applicant and demanded the supply of remaining material. However, after various discussions the respondent transferred the payment of Rs, 25 lakh, Despite all this, the applicant failed to supply the deficit material and documents.

- c) It has been argued that the contracts related to Indonesia and other two are in a continuance series having reciprocal obligations, the performance of later orders can only be sought after performance of obligations of earlier connected order. The same has been duly admitted by the applicant sister concern in its mail dated 13.04.2019 in response to our request for deputing engineers for commissioning for Indonesia project vide mail dated 8<sup>th</sup> April, 2019. Therefore, the applicant had no right to claim performance of later orders without performing of later order without performing its reciprocal obligations as per section 52 of the contract act, 1872.
- d) In view of the above facts and circumstances, following have been the disputes between the applicant and respondent:
- i. Non-performance of obligation under the earlier order disentitles the applicant from seeking performance for later orders as all the orders are in continuous series. The performance of obligations by the applicant are sine quo non for performance of

obligations by the respondent in contracts having reciprocal obligations.

- ii. Since the applicant has failed to supply the entire material in terms of purchase orders, it is not entitled to be paid.
- iii. Non supply of documents particularly test certificates of individual items and spare parts list is breach of contract which disentitles the applicant to demand the price of material supplied the breach is cured.
- iv. Submission of performance guarantee in the form of PBG is a condition precedent and failure to submit the same disentitles the applicant from demanding payment of material supplied.

7. The applicationer has filed rejoinder to the reply of respondent and submitted as follows:

- a) That cause of action relates to two invoices related to Chinnakarai Project dated 09.03.2018 and to Peripalayam Project 28.03.2018 and both invoices are due and payable by respondent.
- b) It is submitted that the respondent is raising dispute which is related to Danfoss Industries Pte. Ltd. and Wog Technologies Pte. Limited, both are Singapore entities and have no bearing upon transaction between applicant and respondent.
- c) It is further stated that the respondent had issued cheque bearing no. 233320 dated 10.04.2018 for Rs. 1,05,68,911/- and cheque bearing no. 003757 dated 30.04.2018 for Rs. 23,

73,789/- to discharge its liability towards both the invoices raised by the applicant. It is claimed that issuance of cheques are clear admission/acknowledgment of its liability.

d) It is also claimed that the random payment of Rs. 25,00,000 after issuance of statutory notice dated 25.07.2018 is clear admission of the liability on the part of respondent.

8. It is pertinent to mention here that the corporate debtor has filed some additional document on record such as some email communications between the parties and revocation of Bank guarantee by S. Periyapalyem Common Effluent Treatment Plant because of failure on the part of respondent in completion of its contractual work. However, it is seen that the respondent has not produced any communication between applicant and respondent informing such revocation and raising dispute regarding said project.

9. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and written submissions filed by the parties.

10. It is an admitted position that the respondent has never raised any dispute over claim of applicant regarding said two invoices. Infact, the respondent has made part payment of Rs. 25,00,000/-, in December 2018 in discharge of its liability towards applicant's claim.

11. The respondent even failed to raise dispute regarding delay in supply of materials after receiving statutory notice dated 25.07.2018 and even paid Rs. 25,00,000/- to applicant. The respondent has raised dispute related to a sister concern of applicant and the additional documents

placed on record are also not showing any pre-existing dispute between the parties. The respondent also failed to raise dispute after receiving demand notice u/s 8 of the Code. The respondent has not denied the service of demand notice upon it.

12. In respect of definition of “dispute” in the Code, Hon’ble Supreme Court has held in the case of *Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2018 1 SCC 353 inter-alia that:

*“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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 defence which is mere bluster. However, in doing so the Court does not need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except 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.” (emphasis given).*

13. In view of the aforesaid discussion, the claim of respondent is nothing but a moonshine defense. The applicant has shown sufficient documentary evidence to prove its claim payable by respondent. It is reiterated that the respondent never raised any dispute against claim of applicant even after issuance of demand notice, but made part payment against invoices.

14. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Brijesh Singh Bhaduriya, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01045/2020-21/13385 and email id bsb@bsbandassociates.in. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
15. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Brijesh Singh Bhaduriya to meet out the expense 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 one week from the date of receipt of this order by the Operational Creditor. The amount however 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.
16. 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 corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**SD/-**  
**(SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**SD/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**