

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-365/ND/2019**

(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. STONEX INDIA PVT. LTD

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S. ZAVITSA REALTORS LLP

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 05.03.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MEMO OF PARTIES**M/S. STONEX INDIA PVT. LTD.**Registered office:

D-1476, MANSAROVAR GARDEN

NEW DELHI-110015

...Applicant/Operational Creditor**Versus****M/S ZAVITSA REALTORS LLP**Registered office:

C-23, GREATER KAILASH ENCLAVE,

PART-I, NEW DELHI-110048

...Respondent/ Corporate Debtor**FOR THE APPLICANT** : Mr. Akshat Bajpai, Adv.**FOR THE RESPONDENT** :

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by M/s. Stonex India Pvt. Ltd. (for brevity 'Applicant') through Mr. Amresh Kumar Jha, being the Accounts-Executive of the applicant firm, duly authorized vide Board Resolution of the applicant dated 10.11.2018, with a prayer to initiate the Corporate Insolvency process against M/s Zavitsa Realtors Pvt. Ltd. for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated on 24.09.2007 under the provision of Companies Act, 1956 bearing CIN No. U14200DL2007PTC168592 having its registered office at D-176, Mansarovar Garden, New Delhi-110015. The authorized share capital of the company is Rs. 1,50,00,000/- and the paid up capital of the company is Rs.1,23,47,710/-. The applicant is engaged in the business of import, processing and supply of wide variety of marbles and stones across India and abroad.
3. The Corporate Debtor is a company limited Liability partnership registered with registrar of companies, Delhi, incorporated on 18.10.2017, under the provisions of Companies Act, 1956 bearing Identification no. LLP IN-AAK-9097 and having total Obligation of Contribution of Rs.10,000/- with its registered office at C-23, Greater Kailash Enclave Part I, New Delhi-110048 and email Id: zavitsallp@gmail.com.

4. The applicant submits that in Dec 2017, the applicant entered into a business transaction with the corporate debtor for supply of marble slabs. Towards the supply of goods, the applicant issued invoices amounting to total of Rs. 14,12,342/-.As a standard business practice, each invoice provided a credit period of 15 days failing which an interest of 18% per annum which was required to be paid by the recipient of goods.
5. The applicant submits that the goods under invoice were supplied after receiving a specific requisition from corporate debtor. The applicant further submits that the cheques amounting to Rs. 13,98,626/- were issued by the corporate debtor , all the cheques were presented for payment and the same got dishonored and were returned by the bank with the remark, "Funds insufficient"
6. The applicant further submits that the corporate debtor never raised any dispute with respect to the receipt of goods, their quality or the amount due towards them and has acknowledged the same by issuing cheques for payment of debt.
7. The applicant issued a demand notice dated 20.12.2018 under Section 8 of the code along with invoices and ledger accounts calling upon the corporate debtor to pay the total outstanding amount of Rs.14,12,342/- along with interest of Rs.2,16,610/- @ 18% p.a. calculated from 25.01.2018 to 01.12.2018. The notice was served upon the registered office of the corporate debtor on 26.12.2018.
8. Upon receipt of demand notice the corporate debtor sent a reply dated 05.01.2019, the corporate debtor denied the contention of the applicant and stated that the goods supplied by the applicant were of defective and

substandard in quality and raised several objections for the same. Further, the corporate debtor stated that items were never supplied on time resulting in delay in project of the corporate debtor.

9. The Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which was duly delivered to the Corporate Debtor as per service affidavit. The Corporate debtor failed to appear before the Tribunal in spite of service, hence was proceeded ex-parte vide order dated 23rd January 2020.
10. As per Form V, the total debt outstanding is Rs.14,12,342/- along with interest of Rs.2,16,610/- @ 18% p.a. calculated from 25.01.2018 to 01.12.2018 which is due and payable by the corporate debtor to the applicant.
11. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and establish a pre-existing dispute by asserting the substandard quality of goods. However, no documentary evidence or correspondence is placed on record by the corporate debtor to support the contentions, that there is a pre-existing dispute but the said dispute was raised for the first time only after notice under Section 8 of IBC was issued. In reply only statements are made by Corporate Debtor which has not been substantiated with any proof.
12. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. There is no merit in the so-called dispute raised by the corporate debtor as mere reply filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature. On the contrary the issuance of various cheques

by the corporate debtor belies its story of dispute and confirms the admission of liability. This leaves no doubt that the default has occurred for the payment of the operational debt for which the invoices were raised by the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down In “**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**”, the Hon’ble Supreme Court observed that *“It is clear , therefore that once the Operational creditor has filed an application, which is otherwise complete , the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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.”*

In view of the above observation it can be concluded that the dispute raised by the corporate debtor, is spurious, plainly frivolous and unable to categorize as genuine dispute as reproduced above. Hence, contention of the corporate debtor, of a pre existing dispute without any evidence and merit is a clear after thought to defeat the claim of the applicant.

13. The date of default is 25.01.2018 and the present application is filed on 29.01.2019. Hence the application is not time barred and filed within the period of limitation.
14. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

15. The Applicant has filed an affidavit in compliance of section 9(3) (b).
16. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.
17. As a consequence of application being admitted and IRP name not suggested by the applicant, this Bench appoints Mr. Rajesh Kumar Goel, having email id: rajesh.goel@mrgoel.com and registration no. IBBI/IPA-001/IP-P01810/2019-20/12761 as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, within a period of one week from this order.
18. 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.

19. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rajesh Kumar Goel, to meet out the expenses and 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 applicant.
20. A copy of the order shall be communicated to the Applicant and the Corporate Debtor as well as to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)