IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) 3732/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Nuvoco Vistas Corporation Limited

... Petitioner

v/s.

Veeyem Interiors (I) Private Limited

… Corporate Debtor

Order Delivered on: 20.03.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Bankim Gangar, Adv. Aarohee Gursale, Adv. Abhishek Chandwani

For the Corporate Debtor: Adv. Hafeezur Rahman

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed by **Nuvoco Vistas Corporation Limited** (formerly known as 'Lafarge India Limited') (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against **Veeyem Interiors (I) Private Limited** (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹26,30,023/- inclusive of interest at the rate of 24% per annum on the delay in payment by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Petition is filed on

10.10.2019 for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Petition is filed by Ms. Kiran Sharma, Assistant Legal Manager of Nuvoco Vistas Corporation Limited, authorized vide letter dated 09.10.2019 which is annexed to the Petition.

Contentions made by the Petitioner:

3. The Petitioner contended that the Corporate Debtor approached the Petitioner for the supply of ready-mix concrete of M-20 (goods) and pumping services for its construction site at Pune. For this purpose, the Petitioner submitted its quotation to the Corporate Debtor for the supply of the goods at the aforementioned site. Based on the said quotation, the Corporate Debtor issued a purchase order dated 16.08.2016 in favor of the Petitioner for supply of the goods. Accordingly, the Petitioner supplied the goods to the Corporate Debtor and raised invoices with delivery challans upon the Corporate Debtor pursuant to delivery of goods. As per the terms of the said invoices, the payment was to be made within 30 days from the date of each invoice by the Corporate Debtor and an interest at the rate 24% per annum was to be charged on the delay in payment.

4. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues, the Petitioner issued Demand Notice dated 07.09.2017 in Form 3 under Section 8 of the I&B Code, 2016 to the Corporate Debtor, but the Corporate Debtor failed to reply to the said demand notice as well as failed to pay the debt amount. Thereafter, the Petitioner, once again, issued Demand Notice dated 13.09.2019 demanding a sum of ₹26,30,023/- along with interest calculated at the rate of 24% per annum from 13.09.2019 till realization of debt.

5. The Petitioner has annexed the purchase order, invoices under the name of 'Lafarge India Ltd.' (Petitioner's former name) and statement of account of the Petitioner to show that the said debt amount is due to the Petitioner by the Corporate Debtor.

Contentions made by the Corporate Debtor:

6. The Corporate Debtor in its Reply to the Petition raised the following contentions:

   a. It was contended that the Petition is not maintainable as the Corporate Debtor never entered into any transaction with the Petitioner, i.e., 'Novoco Vistas Corporation Limited'. Also, the Petitioner failed to submit any document showing change of its earlier name, i.e., 'Lafarge India Limited', to the current name, i.e., 'Novoco Vistas Corporation Limited'.

   b. It was contended that the present Petition is defective, in as much as, it is based on separate and independent claims arising out of multiple and distinct agreements/ purchase orders and the various invoices raised under each respective agreement/ purchase order having different dates of default of payment thereunder cannot be clubbed together for the purposes of Petition under Section 9 of the Code for the reason that the cause of action qua each agreement/ purchase order and invoices issued is separate and distinct. To support this contention, the Corporate Debtor relied on para numbers 8, 9 and 10 of judgement of NCLAT in *International Road dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Limited (Company Appeal (AT) (Insolvency) No. 72 of 2017).*

   c. It was further contended that the Corporate Debtor had disputed the claim of the Principal amount itself and therefore, the question of payment of principal plus interest amounting to ₹26,30,023/- does not arise as the Corporate Debtor do not admit the debt raised by the Petitioner. The Petitioner failed to annex its demand letters dated 22.03.2017, 29.03.2017 and earlier issued statutory notice dated 26.06.2017 to the Petition, wherein an amount of ₹15,47,875/- was demanded by the Petitioner from the Corporate Debtor and hence, it is apparent that the alleged interest was never agreed by the Corporate Debtor and demanded by the Petitioner in these demand notices. But, in the present Form-5 of

the Petition, the Petitioner increased the amount from ₹15,47,875/- to ₹26,30,023/- without any justification.

d. It was also contended that it was mutually agreed that the Petitioner would supply the said material along with the pumping services at the construction site of the Corporate Debtor at the price agreed upon/ stated in the proforma invoice and charges for the same was also agreed. The Petitioner raised invoices worth ₹16,22,914.99/- for the same upon the Corporate Debtor. But, the Petitioner failed to provide the said pumping services as agreed and hence, the Corporate Debtor was constrained to take the services of the other party and therefore, an amount of ₹2,30,025/- was paid to M/S Nirmal RMC India Pvt. Ltd. towards the said pumping charges. After adjusting the above payment of ₹2,30,025/- out of ₹16,22,914.99/-, the balance remains ₹13,92,889.99/-. The Corporate Debtor has paid ₹3,99,711/- towards the supply of the said concrete materials by the Petitioner. The Corporate Debtor has also debited an amount of ₹1,85,294/- towards the delay in supply of the total purchased order and the pumping services done by the other agency, which was the primary responsibility of the Petitioner. Therefore, after adjusting all the above amounts, the total amount is not one as raised in the current Petition, and the calculation as arrived in the Petition is inflated one and therefore, the same has to be rejected. The Petitioner agreed to settle the full and final settlement and since they failed to do so, there was no question of the payment of the amount as above.

7. The Petitioner through its Rejoinder dated 23.12.2019 denied all the allegations, contentions, averments, statements, submissions and insinuations of the said Reply that are contrary to and/or inconsistent with what is stated in the said Petition as well as hereinafter.

Findings:

8. This Bench, after going through the averments made in the Petition and the arguments made during hearing, observes as follows:
   a. The Petitioner has already disclosed the erstwhile name of the Petitioner on the first page of the Petition in Part I of Form-5. Accordingly, the ground taken by the Corporate Debtor that the Petitioner did not disclose its change of name is baseless and untenable.
   b. The Corporate Debtor relied on the judgement of *International Road dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Limited, Company Appeal (AT) (Insolvency) No. 72 of 2017* passed by the NCLAT but the facts of the present Petition are completely different from the facts of the said judgement. In the said judgement, there were different purchase orders for different projects and the invoices were raised for the said different projects and all the outstanding amount was claimed in one Petition. However, in the present Petition, the Corporate Debtor has issued purchase orders for supply of materials on its project situated at Pune and the invoices as well as delivery challans were issued for the same project.
   c. The interest claimed by the Petitioner is as per invoices annexed to the Petition which has one of the terms to pay interest in case of delay in payment which read as "any delay in payment from due date shall attract the interest @24% per annum".
   d. It was submitted by the Petitioner that all the invoices raised were for supply of the goods at the site of the Corporate Debtor and no invoices had been raised for pumping service by the Petitioner upon the Corporate Debtor. So, there remains no question of demand of pumping charges by the Petitioner. Thus, an aggregate amount of ₹3,99,710/- which was paid by the Corporate Debtor when appropriated against the total outstanding amount, a principal amount of ₹15,47,875/- along with interest of

₹10,82,148/- totaling to ₹26,30,023/- remains due and payable by the Corporate Debtor to the Petitioner.

9. This Bench having been satisfied with the Petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this Petition declaring Moratorium with the directions as mentioned below:

(a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;

(b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period;

(c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(d) that the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be;

(e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code;

(f) that this Bench hereby appoints Mr. Hemantprakash Shyamsunder Jain, having Registration No. IBBI/IPA-001/IP-P00883/2017-18/11480 as Interim Resolution Professional to carry the functions as mentioned under the Code.

10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)