

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 1119/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Navlakha Translines

...Operational Creditor/Applicant

V/s

Neo Capricorn Plaza Private Limited

[CIN: U55102MH2004PTC187649]

...Corporate Debtor/Respondent

Order Dated: 16.05.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : None Present.

For the Respondent(s) : Mr. Akash Agarwal, Advocate.

ORDER

Per: Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 1119/MB/C-IV/2021 filed on 27.09.2021 by Mr. Satendra Navlakha, Partner of Navlakha Translines, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Neo

Capricorn Plaza Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

- 1.1 The Operational Creditor has claimed a debt of Principal amount of Rs. 1,04,81,253/- and the date of default is 01.01.2020 as submitted by the Operational Creditor in Part 4 of the Petition.
2. The Operational Creditor is a Partnership firm that owns and operates Solar Power Project with a total installed capacity of 1 MW at Osmanabad District and entered into an agreement dated 27.02.2017 with the Corporate Debtor to purchase the power generated through Solar Power Project which was valid from 01.04.2017 to 31.03.2021.
 - 2.1 The Operational Creditor submits that he has regularly supplied power to the Corporate Debtor and issued monthly Invoices from October 2019 till the date of filing the petition, which the Corporate Debtor failed to honour.
 - 2.2 The Operational Creditor submits that the Corporate Debtor issued a cheque bearing No. 000055 dated 30.03.2021 in favour of Operational Creditor amounting to Rs. 40,00,000/- (Rupees Forty Lakhs Only) against the outstanding amount due. However, the said cheque when deposited was dishonored twice with the remark "Funds Insufficient.
 - 2.3 The Operational Creditor then issued notice dated 21.05.2021 u/s 138 of Negotiable Instruments Act, 1881 having Criminal complaint No. 18512/2021 to the Corporate Debtor and sent repeated reminders to the Corporate Debtor through emails and electronic communication to repay the outstanding dues.

- 2.4 The Operational Creditor sent a legal notice to the Corporate Debtor on 22.02.2021 and thereafter, a Demand notice u/s 8 of the Code on 30.04.2021.
3. The Corporate Debtor in the present case has not filed any reply to the petition. However, on 30.03.2023, the matter was listed for hearing and the Corporate Debtor on that day submitted that the matter is settled between the parties and that he has paid Rs. 1 crore to the Operational Creditor and now only Rs. 4 lakh is pending to be paid by the Corporate Debtor. The Corporate Debtor made these payments from December 2021 to August 2022 as per the payment schedule agreed upon by the parties in the terms of settlement sent by the Corporate Debtor to the Operational Creditor vide an email dated 23.05.2022. The payment schedule and the relevant entries in the bank statement are attached to the Written Submissions submitted by the Corporate Debtor to this Bench on 30.03.2023. Therefore, only 4 lakh rupees are pending to be paid by the Corporate Debtor to the Operational Creditor as on 30.03.2023.
4. We have carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
- 4.1 It is observed that the Operational Creditor has filed an Affidavit under Section 9(3)(b) of the Code as required by law to the present Application to affirm that there has been no dispute or any notice of dispute from either parties w.r.t. the debt of Rs. 1,33,43,691/- upto 31.04.2021.
- 4.2 However, on perusal of the documents available on record, it is observed that some of the invoices raised by the Operational Creditor fall within the 10A period i.e between March, 2020 and March, 2021 and the same cannot be taken into

consideration to calculate the total amount of the purported debt in view of the Section 10A of the Code.

- 4.3 Further, the Ministry of Finance on 24.03.2020, vide its notification bearing number MCA Notification S.O. 1205(E) announced that the threshold for default u/s 4 of the Code for the period falling between 24.03.2020 to 23.03.2021 is raised to Rs. 1 crore from the Previously existing threshold of Rs. 1 lakh. In view thereof, the remaining amount of Rs. 4 lakh does not meet the threshold of Rs. 1 crore.
5. In view of the above, we find that the present case is fit for dismissal under Section 4 of the Insolvency and Bankruptcy Code, 2016 in view of and deserves to be **dismissed**.

ORDER

6. This Application being C.P. (IB) No. 1119/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Navlakha Translines, Operational Creditor/ Applicant against Neo Capricorn Plaza Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.
7. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Prabhat Kumar
Member (Technical)
/LRA Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)