

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)**

Company Petition No. IB 2722/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:

GAYATRI TANDON

PROP. OF M/S RENUKA SALES CORPORATION

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S JKR TECHNO ENGINEERING PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 24.09.2021

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MS. SUMITAPURKAYASTHA

HON'BLE MEMBER (TECHNICAL)

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MEMO OF PARTIES

IN THE MATTER OF:

Smt. Gayatri Tandon

Proprietor of M/s Renuka Sales Corporation

209, masjid moth, 316 third floor

South Extension Plaza II

N.S.D.E., New Delhi – 110049

Email: renukasalescorporation@gmail.com

Mob. No. 9810175849

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s JKR Techno Engineering Pvt. Ltd.

Having registered office at:

B-87/4, First Floor, Dilshad Colony

New Delhi -110095

Email :raja@jkr.net.in, sales@jkr.net

Ph No. 9811121529

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT :

FOR THE RESPONDENT : Mr. Anuj. K. Sinha, Adv.



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

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 Shri. Rajeev Kumar Tondon, authorized vide Special Power of Attorney Dated 01.02.2018, executed by Ms. Gayatri Tondon, the Sole Proprietor of Ms. Renuka Sales Corporation (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency process against M/s JKR Techno Engineering Pvt. Ltd. (for brevity 'Corporate Debtor').
2. It is stated that M/s. Renuka Sales Corporation, a proprietary concern was incorporated in June 1998 having its business office at 209, Masjid Moth, 316, third Floor, south extension Plaza-II, N.S.D.E-II, New Delhi – 110049. The applicant is engaged in the business of trading of valves and other industrial items.
3. The Corporate Debtor is a Private company limited by shares incorporated on 18.07.2012, under the provisions of Companies Act, 1956 bearing CIN No. U74140DL2012PTC239017 and having its registered office at B-87/4, (F-1), Dilshad Colony, New Delhi-110095. The corporate debtor is engaged in the business of procurement and construction of engineering works.
4. The applicant states that the corporate debtor placed purchase orders for supply of bronze gate valve zoloto, between the period of July 2014 to January 2016 and accordingly applicant supplied material to the corporate debtor. Thereafter the applicant raised invoices from Aug 2014 to Jan 2016 and as per books of accounts the outstanding amount was Rs.8,99,551/- till 12.05.2016.

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5. The applicant submits that in discharge of liability, the corporate debtor issued a cheque dated 18.02.2016, bearing no.133944, for Rs.1,40,997/- drawn on central bank of India, Malviya Nagar branch, New Delhi in favour of applicant. The said cheque on being presented to the bank, got dishonored and returned with the remark "insufficient funds", vide return memo dated 12.05.2016. The copy of post dated cheque along with return memo is annexed.
6. Thereafter applicant informed the corporate debtor about the cheque dishonor and requested the corporate debtor to make payment, but inspite of repeated requests and demands by the applicant, corporate debtor failed to make payments. Hence the applicant filed a criminal complaint under Section 138 of the NI Act against the corporate debtor before the court of Ld. MM (south) Saket Courts, New Delhi. The corporate debtor appeared before the court, thereafter the matter was referred to Mediation Centre, Saket Court. The corporate debtor accepted its liability and agreed to pay a sum of Rs. 8,99,565/- to the applicant in 10 monthly installments. It was recorded vide order dated 16.09.2016 of the Mediation Centre, Saket Court, New Delhi as:

"After few discussions, both parties have agreed to settle their disputes in full and final on the following terms and conditions:-


1. *It is agreed between the parties that the second party, will pay an amount of Rs.8,99,565/- (Rupees Eight Lakhs Ninety Nine Thousand Five Hundred Sixty Five Only) to the first party, towards full and final amount qua both the parties of the present settlement.*
2. *It is agreed between the parties that the above-mentioned settled amount of Rs.8,99,565/- shall be paid in the following manner.*
3. *Amount of Rs.50,000/-(Rupees Fifty Thousand only) shall be paid on 22.11.2016 by way of cash/DD or RTGS.*
4. *Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.01.2017 against proper receipt or RTGS.*

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5. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.02.2017 against proper receipt or RTGS.
6. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.03.2017 against proper receipt or RTGS.
7. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.04.2017 against proper receipt or RTGS.
8. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.05.2017 against proper receipt or RTGS.
9. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.06.2017 against proper receipt or RTGS.
10. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.07.2017 against proper receipt or RTGS.
11. Amount of Rs.1,00,000/-(Rupees One Lakh only) shall be paid on or before 20.08.2017 against proper receipt or RTGS.
12. Amount of Rs.49,565/- (Rupees Forty Nine Thousand five hundred sixty five only) shall be paid on or before 20.09.2017 against proper receipt.
13. It is also agreed between the parties that on receiving/realization of the entire settled amount, nothing shall remain in respect to the transactions of the parties including in respect of the present complaint case and the first party shall withdraw the present complaint after completion of all the installments as stated above by making statement before the referral court.

This settlement has been voluntary arrived at between the parties with their own free will and without any force, pressure or coercion and both the parties are bound by the terms and conditions mentioned herein above."

 The copy of order date 16.09.2016 passed by the mediation centre is annexed.

7. The applicant states that the corporate debtor made a payment of Rs. 50,000 on 23.11.2016, as the first installment of settlement before the

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mediation centre, corporate debtor failed to make any payments thereafter for any of installments. Thereafter the Ld. M.M, passed an order to proceed with matter on merits. The Ld. M.M passed an order granting an opportunity to the corporate debtor to make payment of Rs. 1,83,000/- to the applicant as full and final payment qua dishonored cheque of Rs. 1,40,000/- along with interest @ 9% + litigation charges of Rs.16,000/-.The applicant further submits that out of the total Rs.1,83,000/- the corporate debtor was required to pay a sum of Rs. 1,40,000/- to the applicant adjusting Rs.50,000/- which had been already paid during mediation as the first installment qua the settlement agreement.

8. On 27.06.2018 the applicant sent a demand notice under Section 8 of the IBC code 2016, for receiving the outstanding dues. Thereafter, the corporate debtor approached the applicant to resolve the matter and the parties arrived at a settlement. In this regard, the corporate debtor prepared an agreement and sent to the applicant, through email for its approval. The applicant, responding to the said email, agreed to proceed with the said agreement dated 28.06.2018. However, the same was never signed by the parties. In compliance of the said agreement the corporate debtor transferred a sum of Rs. 50,000/- on 23.11.2016 through RTGS in the account of the applicant, but did not make balance payment.
9. The applicant filed an application under section 9, to initiate CIRP against the corporate debtor on 16.11.2018. The corporate debtor filed reply wherein the corporate debtor had stated that the application is a misuse of legal process as settlement had already been arrived between the parties. The arguments were heard and the Delhi Bench-III vide order dated 14.06.2019 recorded as :


“19.The present application is premature as the operational creditor should have waited till June 2019 which was the time limit for the corporate debtor to pay entire amount of

Rs.8,00,000/- as per the terms and conditions of the agreement between the parties and which is binding between the parties. The corporate debtor approached the applicant to provide materials worth Rs. 6,53,803/-, which was duly supplied and invoices were raised accordingly. However, the said amount still remains due and payable.

23. This petition is rejected as the respondent has committed no default on or before the filing of the present petition."

10. Thereafter the corporate debtor did not pay any amount and debt of balance amount remained unpaid the applicant sent a demand notice dated 21.08.2019, posted on 02.09.2019 under Section 8 of IBC code, 2016 for payment of outstanding dues of Rs.8,50,000/-. The notice was sent to the corporate debtor on the registered address as per the master data which returned on 03.09.2019 with the remark "no such person". The notice was also served via email on the mail id used for regular communication between the parties. The copies of proof of delivery and tracking report of the email have been annexed.

11. The corporate debtor did not reply to the said demand notice. Consequently, the applicant filed the present application under section 9 of IBC, 2016 and served the copy of this application via speed post, which was returned with the remark "no such person in the address", the applicant also served the corporate debtor via email on the registered email id as per master data, the applicant also served the corporate debtor by hand. The copy of acknowledgment of delivery via email and by hand is annexed along with the service affidavit. As per Form V, the total debt outstanding is Rs.8,50,000/-.

 12. The Corporate debtor filed reply to the said application and raised the following objections:

a) The corporate debtor raised preliminary objection with regards the maintainability of the said application as the present application is

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barred by Res-Judicata, it is stated that the issue between the same parties, same transaction and same cause of action has already been adjudicated, by Delhi Bench.

b) That the applicant is hit by provisions of Section 65 of I& B code, 2016, as the applicant has concealed material facts. Further also stated that the applicant has violated the terms of agreement dated 27.06.2018, by filing an application under Section 9 previously. Hence the applicant cannot invoke the terms of the agreement.

13. The applicant did not file any rejoinder contravening the contentions of the corporate debtor.
14. The date of default is 01.07.2019 as per Part IV form V and the present application is filed on 23.10.2019. Hence the application is not time barred and filed within the period of limitation.
15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The Applicant has filed an affidavit in compliance of section 9(3)(b) affirming that no notice of dispute has been given by the corporate debtor relating to dispute of the unpaid operational debt.
17. The present application is filed in 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.
18. Considering the documents on records and submissions made, we are of the view that the default has occurred and has also been admitted before

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various forums without raising any dispute, a settlement agreement had also been executed between the parties admitting the said default. The defense of the corporate debtor that the claim is barred by Res Judicata is not maintainable as the order passed by the Bench -III while dismissing the application specifically records: -

"We make it clear that any observation made in this order shall not be construed as an expression of opinion on the merit of controversy and the right of the applicant before any forum shall not be prejudiced on account of dismissal of instant application."

Moreover, the corporate debtor argues that in view of the breach of settlement agreement dated 16.09.2016 submitted before the mediation centre, wherein it was agreed to not to file any proceedings or avail legal remedy against corporate debtor this application is not maintainable. Admittedly settlement agreement was not complied by the corporate debtor, by not adhering to the payment terms, the admitted debt as per settlement agreement by the corporate debtor remained unpaid. Hence in view of the cause of action arising with fresh date of default the applicant is entitled to claim the amount unpaid as per this application. Therefore, in the given facts and circumstances, the applicant has established that the default has occurred and is payable by the corporate debtor which was admitted by the corporate debtor. In the light of above facts and records, the present application is admitted.

19. The applicant has not proposed the name of IRP, accordingly this bench appoints, Mr. Kamal Ahuja as the Interim Resolution Professional having registration number IBBI/IPA-002/IP-N01025/2020-21/13389, having email nclt.srassociate@lawmax.in, who is be and hereby appointed as IRP 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 make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within 7 days.

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20. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Kamal Ahuja 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.
21. 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.
22. 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/-

**SUMITAPURKAYSATHA
MEMBER (T)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (J)**