

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.748/9/HDB/2019
Under section 9 of the IB Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of:- M/s. R.V.R PROJECTS PRIVATE LIMITED

M/s. Mayur Rolling Shutters & Engineering Works,
Regd. Office: H No.2-10-50, Kummari Basti,
Mahankali Temple Main Road,
Uppal, Hyderabad – 500 039.

...Petitioner/
Operational Creditor

Versus

M/s. R.V.R Projects Private Limited,
Regd. Office: Plot No:1217/A, Veda Ark,
Road No.36, Upstairs Smoky Pitara,
Jubilee Hills, Hyderabad, T.S – 500 013.

...Respondent/
Corporate Debtor

Order delivered on: 21.09.2020

**Coram: Shri.K.Anantha Padmanabha Swamy, Member Judicial
Dr.Binod Kumar Sinha, Member Technical**

Parties/Counsel Present:

For the Operational Creditor : Mr.M.V.Ramana Rao, Counsel.

For the Corporate Debtor : Ms.Keerthi Kiran Kota, Counsel.

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. Under consideration is a Company Petition filed by M/s. Mayur Rolling Shutters & Engineering Works (in short, 'Petitioner/Operational Creditor') against M/s. R.V.R Projects Private Limited (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (in short, I & B Code 2016) Read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, 'IB Rules 2016').

2. The Petitioner is having its Regd. Office at H No.2-10-50, Kummari Basti Mahankali Temple Main Road, Uppal, Hyderabad. The Respondent/Corporate Debtor is a Company registered under the Companies Act, 1956 having its Registered Office Plot No:1217/A, Veda Ark, Road No.36, Upstairs Smoky Pitara, Jubilee Hills,, Hyderabad, Telangana.
3. Brief facts of the instant case, as stated by the Applicant are as under:-
 - a. That the Petitioner/OC is engaged in the Manufacturing and supply of mild steel pressed door frames and shutters and allied products and that the Respondent/Corporate Debtor is into the business of building, transportation, irrigation, water supply, tunnels and industrial structural's of complete or parts thereof in EPC engineering construction projects.
 - b. That the OC has received the purchase orders from M/s RVR Projects Private Limited i.e., the CD herein for supplying of mild steel pressed door frames with thickness of 1.25 mm including hinges jamb, lock jamb, bead rolling 6 for the total worth of Rs.19,29,417/- (inclusive of Taxes) vide Work order RVR/NTPC(GPL)/WO/2014/3066 dated 20.09.2014.
 - c. That initially the work order was issued worth of Rs.19,29,417/- and subsequently the work was enhanced to Rs.37,00,361/- on the instruction of Corporate Debtor orally and the same is not in dispute. That the materials were supplied by the Operational Creditor and that a total of nineteen (19) invoices worth Rs.37,00,361/- were raised against the Corporate Debtor.
 - d. That the Corporate Debtor had to pay the bills as per the availability of the funds and not as per the invoices raised. That as per terms and conditions of the Purchase Order, the material was to be dispatched on TO-PAY basis.
 - e. That the Operational Creditor has completed the supply of material, raised invoices and accordingly received the payment to the tune of Rs. 25,67,523/- on several dates and last date of payment was 06.02.2015. That a balance amount of Rs.11,32,839/- is due and payable. That the operational creditor was continuously and consistently following up for the pending debt till the filing of the instant application.

- f. That, 'C' forms against all invoices have been downloaded from the Commercial Taxes Department by the corporate debtor against all these invoices /bills but not issued to the operational creditor. Operational creditor has asked the Corporate Debtor for 'C' forms which are collected from the Commercial Taxes Department.
- g. That on 28.12.2018, the Commercial Tax Officer, Tarnaka-1 Circle, Hyderabad had given notice to the Operational Creditor for claiming the concessional rate of Tax @ 2% on the turnover of 33,77,143/- and for non-submission of 'C' Form. That all the invoices pertaining to the Corporate Debtor have been reported to Commercial Tax Department and the Commercial Tax Officer has assessed the Operational Creditor and has raised demand for additional Tax of Rs.1,56,510/- in the absence of 'C' Forms during the Assessment. That the operational creditor has requested the Corporate Debtor for issuance of 'C' Forms several times orally and also in writing. As the operational creditor is a small enterprise it requested consistently for the payment and the corporate debtor has been remitting the amount as per their convenience whenever funds were available.
- h. That the Operational Creditor is continuously following up for the balance amount but there is no proper response from the Corporate Debtor. That the cause of action for this claim first arose on 06.02.2015 and the same has been followed up consistently. That the last correspondence is on 23.07.2019, hence, this claim is well within limitation as there is continuous breach of the payment which is acknowledged by the Corporate Debtor.
- i. That there is no notice of disputes from the Corporate Debtor after receiving the material and that the material is being used in the projects. That the demand notice was issued to Corporate Debtor on 23.08.2019 and the same was delivered to the Corporate Debtor on 30.08.2019. That the Corporate Debtor has called the Operational Creditor for settlement on 04.10.2019 and 24.10.2019 at corporate office of the Corporate Debtor. On 04.10.2019 the Operational Creditor met the director of the

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Company Mr. R. Satyanarayana, during discussions he agreed to settle the issue on 24.10.2019.

- j. That on 24.10.2019, Mr. Mohan Rao represented the corporate debtor and committed to pay the amount of Rs.6,80,976 in addition to 'C' forms payment of Rs.1,56,510/-. That after 15 minutes, surprisingly Mr. Mohan Rao said that he will only pay the amount of 'C' forms i.e., Rs.1,56,510/-, which was not accepted by the operational creditor. Calculation sheet done and approved by the Mr. Mohan Rao is attached. That after agreeing in principle and not accepting again, shows the mala-fide intention of Corporate Debtor to evade the payment.
- k. That after unfruitful negotiations, the Corporate Debtor issued the reply dated 25.10.2019 to the demand notice of the Operational Creditor with vague grounds and the operational creditor has denied the reply of Corporate Debtor in total. It is stated that, in his reply the corporate debtor said that, he has paid the amount of Rs.3,58,372/- in cash to labour, which is denied by the operational creditor and operational creditor submitted that, he has never given any consent to corporate debtor for the payment to labour. Further it is stated that, in his reply the corporate debtor said that, he paid 2.5 lakhs to operational creditor vide cheque No.475570 dated 06/01/2015 which is denied by the operational creditor as he has not received any cheque payment. The corporate debtor said in his reply that, he has paid Rs.2,90,210/- to M/s Shyam Steels by NEFT, the same is denied by the operational creditor since he is not concerned with payment to Shyam Steels as he was not informed before paying to Shyam Steels and operational creditor has never given consent to corporate debtor to pay the amount to M/s. Shyam Steels. It is submitted that, the same reply is given to corporate debtor by denying all averments made herein and demanding the corporate debtor to pay existing debt of Rs.11,32,839/- vide letter dated 31/10/2019. It is submitted that any dispute raised and averments made by corporate debtor is not having any legal significance since those averments have been raised after issuing the demand notice u/s 8 of the IBC, 2016. It is submitted that again the corporate debtor has

given reply to rejoinder of operational creditor repeating same which are mentioned in his first reply to demand notice which are untrue, fabricated and manufactured evidence.

- l. That the material was supplied to Corporate Debtor along with way bills and 'C' Forms against invoices downloaded by the Corporate Debtor, hence, the debt is legal and still existing and not paid even after the issuance of demand notice U/s 8 of the Code.
- m. That as on date operational creditor has not received payment of Rs.11,32,839/- against the invoices as mentioned below:

DATE	BILL NO.	WAY BILL NO.	PARTICULARS	AMOUNT(in ₹)
28.10.2014	1	361410287216 944	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	54,979.00
04.11.2014	2	361411046856 355	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	1,30,505.00
13.11.2014	3	361411046856 355	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	4,45,561.00
08.11.2014	4	SAMPLES WITHOUT WAYBILL BUT INVOICE RAISED REPORTED IN CST SALES PAID THE TAXES	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	20,490.00
26.11.2014	5	361411265697 843	RVR PROJECTS PVT LTD. TO	1,84,625.00

			MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	
26.11.2014	6	361411268946 199	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	1,48,031.00
05.12.2014	7	361412051476 710	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	58,357.00
09.12.2014	8	361412096251 687	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	5,51,852.00
15.12.2014	9	ADDED TO ABOVE WAY BILL SEND THIS MATERIAL	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	55,725.00
29.12.2014	10	MATERIAL DISPATCHED WITHOUT WAYBILL BUT INVOICE RAISED	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	62,907.00
29.12.2014	11	MATERIAL DISPATCHED WITHOUT WAYBILL BUT INVOICE RAISED	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	62,907.00

08.01.2015	12	361501028245 528	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	3,19,332.00
08.01.2015	13	361501085633 974	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	2,00,995.00
17.01.2015	15	361501175130 802	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	2,17,970.00
23.01.2015	16	361501236123 346	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	1,12,390.00
27.01.2015	18	361501271520 877	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	2,66,631.00
09.02.2015	19	361502095880 822	RVR PROJECTS PVT LTD. TO MAYUR ROLLING SHUUTERS & ENGINEERING WORKS	5,40,990.00
TOTAL				34,44,681.00
MAYUR ROLLING SHUTTERS & ENGINEERING WORKS FABRICATION REALING WORK LABOUR CHARGES AT RVR NTPC SITE @ 20*12784 KGS AS PER THE VERBAL ADVICE AT YOUR SITE BILL NO.062 DATED 06.08.2015				2,55,680.00

BILL GRAND TOTAL (A)	37,00,361.00
PAYMENT RECEIVED (B)	25,67,523.00
BALANCE DUE (A-B)	11,32,838.00

- n. Reiterating above, Ld. Counsel for the Operational Creditor stated that it has no option except to initiate the corporate insolvency process against the Corporate Debtor under Section 9 of IBC 2016.
4. The Corporate Debtor filed its counter *inter-alia* stating as under:-
- a. That initially Corporate Debtor vide order in RVR/NTPC(GPL)/WO/2014/3066, made a purchase order for supply of pressed steel doors with mortal guards, Lock strike plate and shock absorbers along with Profile C and Profile E (Inclusive of Tax) for Rs.19,29,417.00. Further vide amended order dated 30.09.2014, the said order was reduced totaling to an amount of Rs.17,18,782.00/-.
- b. That as per terms and conditions of the said order, a payment of Rs.1,00,000/- was paid as advance vide cheque No.263177 dated 24.09.2014 and the balance amount was to be paid on delivery of completed items on TO-PAY basis. Subsequently the additional orders were placed.
- c. That as per subsequent orders, the Applicant had to finish the work on agreed timelines along with fabrication work. However the Applicant herein did not complete the work as agreed, inspite of repeated reminders. That the authorized representative of the Corporate Debtor vide email dated 28.04.2015, specifically intimated the Operational Creditor that they are not responding to any calls and have not attended the works in proper way and in view of the same, the Corporate Debtor herein made alternate arrangements with a 3rd party to complete the balance works and also further requested them to supervise and complete the balance works.
- d. That in view of the said breach committed by the Operational Creditor herein by not attending to the works, the Corporate Debtor hired a 3rd party contractor to complete the said works and in view of the same the Corporate Debtor incurred higher costs.

- e. That for the works completed by the applicant herein, they were paid and that there are no dues whatsoever pending.
- f. That the Corporate Debtor has addressed an email to the Operational Creditor herein dated 28.04.2015, to attend the works and yet the Operational Creditor have neither completed the works nor have responded to the said email communication. Assuming the said date i.e. 28.04.2015 as the last date of communication or the day on which the alleged due amount became payable, the Petitioner Operational Creditor herein has not reported the same till 05.01.2019, by then the same is barred by Law of Limitation.
- g. That after the last email communication on 28.04.2015, the Operational Creditor for the 1st time again communicated with the Corporate Debtor on 05.01.2019 vide email requesting the respondent to provide the C-forms for the transactions during the year 2014-15. Along with the said email, transaction and payment statements were attached and for the first time they stated that they executed works to the tune of Rs. 39,90,571.00/- (inclusive of Fabrication work), were paid a sum of Rs.32,67,523.00/- and that the Corporate Debtor herein owes a sum of Rs.7,23,048.00 to them. In fact in the said email also, the Operational Creditor herein did not seek any repayment for the sole reason that they committed a breach of contract and they failed to execute the contract as agreed upon.
- h. That the Corporate Debtor has replied to the said email by specifically stating that no dues are pending from our end. That the first email addressed to Corporate Debtor after a period of 3 years states that it owes a sum of Rs.7,23,048.00/-. However, the present Application is filed seeking a sum of Rs.11,32,839.00/-. This itself shows that the instant application is filed only with an intention to harass the company herein and to make undue financial gain.
- i. That the amounts due are of the year 2015 and the same are disputed.
- j. That vide various email communications, Corporate Debtor has categorically stated that some of the bills produced for verification

were fake bills and that the Applicant herein has not done the said work.

- k. That the Applicant along with his counsel visited the office of the Respondent herein and that during verification of records, it has been concluded that the Corporate Debtor has paid all the monies due to the applicant and that no dues are pending.
- l. That vide email dated 26.10.2019, the Applicant has categorically stated that the only amount due is Rs.1,56,839/- and the same is the difference due to non-issuance of 'C' Forms.
- m. That as per the Applicant herein the total invoices/bills raised by them stands at Rs.37,00,361/- and they have received only a payment of Rs.25,67,523/-. As per the records, the Corporate Debtor herein has paid a total sum of Rs.38,07,790/- towards the material supplied and a sum of Rs.3,58,372/- towards fabrication works at the site. Thus the Corporate Debtor has paid more than the claim of the Operational Creditor herein.
- n. That the Operational Creditor has failed in proving that no pre-existing dispute is in existence prior to the date of issuance of the demand notice. The Corporate Debtor has clearly elaborated upon how there was a pre-existing dispute and that no amount was payable by the corporate debtor herein.
- o. The Corporate Debtor has placed reliance on the following judgements:-
- i. The Hon'ble Supreme Court of India in Mobilox Innovations Pvt. Ltd., v. Kirusa Software Pvt. Ltd. (2017 SCC Online SC 1154)
- ii. The Hon'ble NCLAT in the case of Sandeep Reddy v. Jaycon infrastructure Ltd., [2018] 144 CLA 86 (NCLAT)

Reiterating above, Ld. Counsel for the Corporate Debtor prayed to dismiss the instant Application.

5. The Learned Counsel for the Operational Creditor filed its Rejoinder reiterating the averments made in the Application, denying the allegations made in the counter and further prayed to allow the instant Application.
6. The Operational Creditor has also filed a memo dated 27.02.2020 enclosing a copy of case law, relying upon the Judgement of Hon'ble

Supreme Court in Mrs. Margaret Lalita Samuel Vs. The Indo Commercial Bank Limited wherein it is held as under:-

"In the case of such continuing guarantee, so long as the account is a live account in the sense that it is not settled and there is no refusal on the part of the guarantor to carry out the obligation, the period of limitation does not commence running. Limitation would only run from the date of breach under Art.115 of the Schedule to the Limitation Act, 1908."

"On the plain words of the letters of guarantee it is clear that the defendant undertook to pay any amount which may be due by the Company at the foot of the general balance of its account or any other account whatever. We are not concerned in this case with the period of limitation for the amount repayable by the Company to the bank. We are concerned with the period of limitation for enforcing the liability of the defendant under the surety bond. We hold that the suit to enforce the liability is governed by Art. 115 and the cause of action arises when the contract of continuing guarantee is broken, and in the present case we are of the view that so long as the account remained a live account, and there was no refusal on the part of defendant to carry out her obligation, the period of limitation did not commence to run."

7. Heard both the sides and perused the record.
8. It is the case of the Applicant that it has received an order for supplying of mild steel pressed door frames with thickness of 1.25 mm including hinges jamb, lock jamb, bead rolling from the Corporate Debtor to the tune of Rs.19,29,417/- and subsequently the same was orally enhanced to the tune of Rs.37,00,361/- and the Operational Creditor has supplied the same and has raised invoices to the tune of Rs. 37,00,361/-. That out of the said amount, the Corporate Debtor has paid an amount of Rs. 25,67,523/- and an amount of Rs. 11,32,838/- is due and payable by the Corporate Debtor. The said claim also includes amount payable against the issuance of 'C' Form.
9. Per contra, the Corporate Debtor has prayed to dismiss the instant Application on the grounds that the instant Application is barred by limitation, that no amount is due and payable by the Corporate Debtor and that there exists a pre-existing dispute between the parties.
10. With regard to the plea of Limitation, this Adjudicating Authority observes that the instant Application under Section 9 of IB Code, 2016 was filed on 18.11.2019, whereas the last date of invoice is

09.02.2015 and the date of default as mentioned in Part-IV of the Form - 5 in the instant Application is also 09.02.2015, which is much beyond the period of Limitation of three years. Clarifying the applicability of Article 137 of the Limitation Act to the proceedings under the IBC 2016, Hon'ble Supreme Court in the case of B.K. Educational Services Private Limited v. Parag Gupta and Associates held as under :

"27...It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. "The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."

Further Hon'ble Supreme Court in Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. have categorically held that the proceedings under section 7 of the IBC are "an application" and not "suits"; thus they would fall within the residuary article 137 of the Limitation Act and the right to apply will arise from the date of default. In Jignesh Shah v Union of India Hon'ble Supreme Court reiterated that the right to apply under the IBC will be from date of default.

11. It is not disputed that the instant application has been filed much after the completion of the limitation period of three years reckoned from the "date of default" as stated in the application itself. Further the Applicant herein has also failed to place on record any other document which either reflects existence of circumstances covered under Section 5 of the Limitation Act for condonation of delay or circumstances covered in Section 18 of the Limitation Act allowing extension of limitation period. Thus the applicant has not been able to prove that the instant Application is within time and not barred

by limitation. The judgement relied upon by the applicant does not apply to the instant case as the facts of the present case are otherwise.

12. Thus, this Adjudicating Authority is of the view that the Application is liable to be dismissed on the sole ground of limitation as all the invoices which are subject matter of the instant Application are beyond the time period of three years.

13. Further, it is seen that there exists a pre-existing dispute between the parties, which was raised much prior to the issuance of demand notice u/s 8 and the same is evident from the email dated 28.04.2015. The relevant portion of the said email is abstracted for ready reference as below:-

*'.....Forwarded message.....
From: RVR NTPC rnrntpc@gmail.com
Date: Tue, Apr 28, 2015 at 1:37PM
Subject: request to complete the works
To: Prabhu Narayana mayurworks70@gmail.com*

Dear Mr. Prabhu,

This is very bad to inform you that you are not responding to any of my calls and not attending works in proper way. Pl. recall your words and my requests to visit site and guide your force.

Now we have made arrangements with third party to complete the balance works with your cost.

Once again request you to supervise and complete the balance works.

Thanks & Regards,

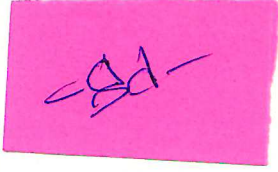
K V Mohana Rao

*RVR Projects Private Limited,
NTPC, Deepanjalinagar,
Visakhapatnam.
Mobile: +919399966899,
Mail: rnrntpc@gmail.com'*

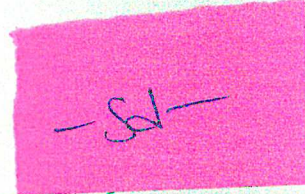
14. From the above email communication, it is evident that there exists a pre-existing dispute between the parties which was actually raised much prior to the issuance of demand notice.

15. In view of the above observations, the instant Application U/s 9 of IB Code, 2016 is liable to be rejected on the ground of limitation and also in view of the pre-existing dispute between the parties.

16. Accordingly, CP(IB) No. 748/09/HDB/2019 is hereby rejected. No order as to cost.



Dr. BINOD KUMAR SINHA
MEMBER TECHNICAL



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

SRAVAN & SANTI