

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI

IB-597/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**Arun Kumar Gupta**

Registered office at:  
H-1/167, Block-H  
Pocket-1, Sector-11,  
Rohini, Delhi – 110085.

...Applicant

**Versus**

**Him Valves and Regulators Pvt. Ltd.**

D-9, Udyog Nagar,  
Rohtak Road,  
New Delhi – 110041.

...Respondent



IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.

1

*[Handwritten signature]*

*[Handwritten signature]*  
11/10/2019

**Coram:**

**DR. P.S.N. PRASAD**  
**Hon'ble Member (Judicial)**

---

**DR. V.K. SUBBURAJ**  
**Hon'ble Member (Technical)**

Counsel for Applicant: Surinder Kumar  
Counsel for Respondent: Garima Sharma, Mohit Chaudhary,  
Advocates



IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.

*[Handwritten signature]*

## ORDER

Per Dr. V. K. Subburaj (Member Technical)

Date: .10.2019

1. This is an application filed by the Applicant Arun Kumar Gupta seeking to initiate corporate insolvency resolution process ("CIRP") of the Respondent Him Valves and Regulators Pvt. Ltd., under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in clearing the debt of Rs. 16,50,000/- owed to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant is a chartered accountant by profession and is practicing in the name and style of M/s Arun Devendra & Co. registered with the Institute of Chartered Accountants of India vide FRN 020578N.
- ii. The Applicant provided professional services to the Respondent from April 2014 to August 2018. The Applicant duly received the payments against his bills raised for the month of September 2017. The last payment received by the Applicant was on 11.04.2018 which was against the bill raised for the month of September 2017.



IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.

3

- iii. For the month of October 2017 and onwards the Respondent stopped making the payments to the Applicant. Hence, eleven monthly bills from October 2017 to August 2018, amounting to Rs.1,50,000/- each, totaling to Rs.16,50,000/-, of the Applicant raised on the Respondent against professional services rendered to it are long overdue for payment.
- iv. The Applicant vide his letter dated 20.09.2018 sent through email requested for clearance of his outstanding dues for which no reply was received from the Respondent. The Applicant vide letter dated 02.11.2018 again sent a demand notice for his pending remuneration from October 2017 to August 2018 by registered post vide acknowledgment no. RD634669453IN.
- v. The Applicant by email dated 08.01.2019 and by speed post sent the demand notice in Form 4 of Application to Adjudicating Authority Rules 2016 along with copy of invoices pending for payment to the Respondent, against which neither payment has been received nor any dispute has been raised by the Respondent.
- vi. To comply with the requirement of Section 9(3)(c) of the Code, the Applicant requested his banker to issue the required certificate confirming non-receipt of unpaid operational debt by



*[Handwritten signature]*

the Applicant but the banker denied to entertain the application of the Applicant.

vii. The unpaid debt of the Applicant is interalia proved by the copy of ledger accounts of the Applicant in the books of accounts of the Respondent.

viii. The Respondent has deducted income tax of the Applicant amounting to Rs.1,65,000/- during the financial years 2017-18 and 2018-19 while crediting the Applicant's account in their books of account but till date has not deposited this TDS in government account. The facts are confirmed from the copy of account of the Applicant in the books of the Respondent and copies of Form 26AS as published in the website of Income Tax Department.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

i. The Applicant was on the pay roll of Him Group rendering accountancy services since the past 10-12 years and was a trusted employee of the Him group of companies. The Applicant possessed all the details and records of the directors and company including income tax, RoC details, email

IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.



5

accounts, bank details, personal data of directors etc. the Applicant was also assigned the responsibility of conducting regular field checks in the factory and various units of the company with respect to company stocks, work in progress, purchases, sales, recoveries, compliances etc.

- ii. In the year 2017, management came to a finding that there were discrepancies in the data/reports provided by the Respondent. At this point, the Applicant being an old employee was warned and requested to perform his duties properly. Since the company had suffered losses on account of the manipulated reports of the Applicant, it was then decided that his payments would be released subject to his performance.
- iii. Based on this agreement, the Respondent released payments till September 2017 but thereafter as the Applicant became exceedingly irregular in his work, the payments were stopped. The Applicant was requested to finish the remaining work but failed to do so and his services were terminated.
- iv. Further, the Applicant has already initiated proceedings before the Labour Court and has filed statement of claim on his behalf as workmen under Section 33C(2) of the Industrial Disputes Act, 1947. The Respondent is disputing the claim of the Applicant in the said proceedings.

IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.



6

- v. Further, the quality of services rendered by the Applicant was of such deficient nature that no dues were liable to be paid and this was clearly communicated to the Applicant. The particulars of the incomplete work are as follows:
- a. No GST returns or forms filed for the Respondent.
  - b. Last income tax filing was for FY 2016-17 and after that no income tax return has been filed.
  - c. No TDS has been filed except for the Applicant's own TDS.
  - d. Last RoC filing was done for the FY 2015-16 and thereafter, no filing was done.
- vi. The conduct of the Applicant warrants him to compensate the company for the losses caused on account of the manipulated reports submitted by the Applicant showing false profits and accounts, thus, tremendously affecting the finance of the Respondent company.
- vii. Moreover, the invoices annexed in the application are fabricated and forged and no such bills were ever raised by the Applicant and the bills annexed are self-created documents. The Applicant has attempted to show that the bills were received by one Mr. Jitendra Kumar. However, Jitendra Kumar was the assistant of

IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.



7

the Applicant when he worked for the Respondent company and thus, has acted in connivance with the Applicant.

3. The employment of the Applicant by the Respondent and payment of monthly remuneration the Applicant till September, 2019 has been admitted by the Respondent. The Respondent has also stated that October 2017 onwards it stopped making payments of monthly remuneration to the Applicant. The Respondent further states that it terminated the services of the Applicant due to deficiency in services provided by the Applicant and withheld the monthly remuneration of the Applicant on the same ground. The Respondent also alleges that there is a pre-existing dispute on the basis of proceedings initiated by the Applicant in the labour court.
4. The Respondent has failed to show any documents stating the reason for withholding the payment of remuneration of the Applicant or for termination of the Applicant's services. Further, apart from stating that the Respondent is disputing the Applicant's claim in the labour court, it has not shown any reply/response/statement filed by it in such proceedings to refute the Applicant's claims. The Respondent has also failed to show a single document in which the issue of deficiency of

IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.



8

services of the Applicant may have been raised by the Respondent in any way.

---

5. Thus, the default in payment of monthly remuneration has been established and the Respondent has been unable to show that the non-payment was because of a pre-existing dispute, as alleged by it. In the above circumstances this Tribunal initiates CIRP of the Respondent company.

6. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the

IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt Ltd.



9

Securitization and Reconstruction of Financial Assets  
and Enforcement of Security Interest Act, 2002;

~~(d) the recovery of any property by an owner or lessor~~  
where such property is occupied by or in the possession  
of the Respondent.

- (2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”
8. The interim resolution professional (“IRP”) proposed by the Applicant is Madhu Juneja, (email id: [madhujun94@gmail.com](mailto:madhujun94@gmail.com)) and is being confirmed by this Tribunal. He shall take such other and further steps as are required under the statute, more specifically in



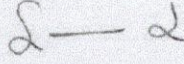
IB-597/ND/2019

Arun Kumar Gupta vs. Him Valves and Regulators Pvt. Ltd.

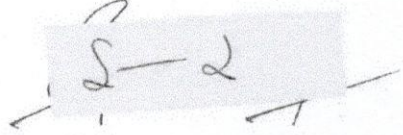
10

terms of Section 15, 17 and 18 of the Code and file his report within  
30 days before this Bench.

9. Renotify this case for report of the IRP on 04.11.2019.



(Dr. V.K. SUBBURAJ)  
MEMBER (TECHNICAL)



(DR. P.S.N. PRASAD)  
MEMBER (JUDICIAL)



Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003

FREE OF COST COPY