

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-318(ND)2020

IN THE MATTER OF:

**Mr. Danish Irfan
F-28/B, 3rd Floor, Lane No.-4,
Abul Fazal Enclave, Okhla
New Delhi-110025**

...Operational Creditor

VERSUS

**M/s. Samiah International Builders Limited
G-74, First Floor,
Right Side, Shaheen Bagh
Abul Fazal Enclave, Part-II,
Jamia Nagar, New Delhi-110025**

...Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on : 23.07.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor : Mr. Chandan Goswami, Advocate

For the Corporate Debtor : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Danish Irfan (for brevity '**Operational Creditor**'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Samiah International Builders Limited (for brevity '**Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Samiah International Builders Limited is a Company incorporated on 19.09.2003 with CIN No. U45201DL2003PLC122337 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at G-74, First Floor, Right Side, Shaheen Bagh, Abul Fazal Enclave, Part-II, Jamia Nagar, New Delhi-110025 and the Corporate Office is at Samiah House, A-35, Sector-63, Noida, Uttar Pradesh.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 25,00,00,000 and Paid-up Share Capital is Rs. 20,21,45,570 as per the Master Data of the Corporate Debtor annexed with the Application.

4. That the Operational Creditor is an ex-employee of the Corporate Debtor, who had worked in the Corporate Debtor Company from 10.03.2010 till 31.01.2019 in the capacity of "Manager - Post Sales".

5. It is submitted by the Operational Creditor that the total Unpaid Operational Debt is of Rs. 9,09,005/-, which includes 18 (eighteen) months' salary, performances Bonus for the years 2016-18, LTC, Medical expenses, Leave Encashment and Gratuity amount. It is added that the Respondent subsequently paid an amount of Rs. 40,550/- thus leaving a balance of Rs. 8,68,455/- to be paid by the Respondent.

6. That the Operational Creditor has placed on record the Salary Account Statement issued by IDBI Bank for the period from 2011 to 2019. Additionally, the salary slips issued by the Corporate Debtor have also been placed on record.

7. That further, the Operational Creditor has also placed on record his Relieving Certificate dated 31.01.2019 (Annexure-E) along with the Full & Final Settlement Statement (Annexure-F) issued by the Corporate Debtor.

8. That it is submitted by the Operational Creditor that since the Corporate Debtor did not make the due payment of his operational debt, it had issued a Demand Notice dated 20.08.2019 (Annexure-K) under Section 8 of IBC, 2016 at the Registered office of the Corporate Debtor. The Operational Creditor has also annexed the notice of dispute dated 15.10.2019 sent by the Corporate Debtor through Advocate Mr. Kumar Mihir. The Applicant has filed the Affidavit under Section 9(3)(b) of 2016.

9. That the Corporate Debtor has denied the claim of the Operational Creditor vide is Notice of Dispute dated 15.10.2019 sent through Advocate Mr. Kumar Mihir, which is reproduced below :

 **KUMAR MIHIR**
ADVOCATE ON RECORD,
SUPREME COURT OF INDIA

ANNEXURE-L

15 October 2019

To,

Mr. Danish Irfan
F-28/B, 3rd Floor, Lane No.4
Abul Fazal Enclave, Okhla
Delhi 110025

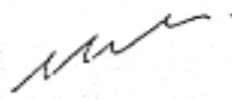
Subject: Reply to the Notice sent by you vide Form 3 dated 20.08.2019 under Rule 5 of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016

Dear Sir

Under instructions and on behalf of M/s Samiah International Builders Ltd and its directors (hereinafter referred as "Our Clients") having their office at Samiah House, A-35, Sector 63, Noida 201301 , I write to you as under:

1. At the outset all the contentions / allegation/ claims made by you in your notice under reply against our clients are refuted as the same are completely false , fabricated and illegal and any action initiated on the basis of these false , fabricated and illegal claims / allegations will be completely specious and void.
2. It is stated that our clients have duly paid all the dues owed to you towards your salary and other allowances and no other amount , much less the amount of Rs. 9,46,615 as claimed by you in the notice under reply is due or outstanding. It is further stated that the ledger enclosed with your notice under reply is incorrect and is being wrongly relied upon by you to somehow justify a non-existent claim against our clients.
3. It is further stated that you have retained certain data and documents pertaining to the business of our clients which are otherwise also owned by them and our clients have been repeatedly requesting you return the same and visit their office. However, you have

I-10, 1st FLOOR, JUNG PURA B, NEW DELHI 110014
PHONE: 011 41558565 MOBILE : +91-9871130450
Email: mihir.lawyer@gmail.com



KUMAR MIHIR
ADVOCATE ON RECORD,
SUPREME COURT OF INDIA

deliberately refused to either return the documents or to visit the office of our clients till date for reasons best known to you.

4. In view of the above, it is stated that the present notice under reply is completely devoid of merits and therefore our clients cannot be attributed with any liability of whatsoever nature. The claims as raised by you against our clients are completely untenable and devoid of merit. Therefore, allegations leveled by you and the claims raised in the notice under reply, are hereby categorically refuted. However, for the sake of old relationship our clients had with you, you may visit their office and return the data and documents pertaining to the business of our clients and also reconcile the accounts .

In the premises we have instructions from our clients to call upon you which we hereby do to withdraw the present notice under reply and in case you still persist to take any steps pursuant to the present notice, the same shall be duly defended by our client at your risk and costs.

Thanking you,
Yours truly,


(KUMAR MIHIR)

Advocate

10. Since there was no representation made by the Corporate Debtor despite service of notice, the Corporate Debtor was proceeded ex-parte vide Order dated 27.02.2020 of this Bench.

11. We have heard the Operational Creditor, gone through his averments in the Application and the notice of dispute raised by the Corporate Debtor. As regards to delivery of the Demand Notice, this Bench during the hearing had observed that the Applicant has only annexed the dispatch proof of sending the Demand Notice at Page-120 of the Petition but has not placed the tracking report to depict delivery

of the Demand Notice. In response, it was submitted by the Ld. Counsel appearing for the Operational Creditor that the tracking record is not available with the concerned Post office. He, however, placed reliance on the notice of dispute dated 15.10.2019 sent to him by the Corporate Debtor through Advocate Mr. Kumar Mihir. Obviously, the Corporate would not have been able to reply or raise notice of dispute, had he not received the demand notice. Hence, it is deemed that the Demand Notice was successfully delivered to the Corporate Debtor.

12. Further, on perusal of the Affidavit filed by the Operational Creditor under Section 9(3)(b) of IBC 2016, it is observed that it has been averred by the Applicant that no notice of dispute has been given by the Respondent/Corporate Debtor. However, during the course of hearing, the Ld. Counsel for the Operational Creditor confirmed that the notice of dispute was received and the same is enclosed at Annexure L with the Petition. Therefore, we are of the view that since the notice of dispute has been annexed by the Petitioner with the Application, no prejudice shall be caused to anyone.

13. Although, the Corporate Debtor in its Notice of Dispute has denied all the contentions of the Applicant and stated that all the dues of the Applicant towards his salary and allowances have been paid, however there is nothing annexed by him with Notice of Dispute dated 15.10.2019, which could demonstrate or suggest that there was a dispute existing prior to the issuance of the Demand Notice.

14. Moreover, the Operational Creditor has also placed on record the Relieving Certificate dated 31.01.2019 issued by the Corporate Debtor, which states that the Operational Creditor had handed over all the documents and is allowed to be relieved. Further, the Full & Final Settlement Statement dated 31.01.2019 issued by the Corporate Debtor clearly reflects that the net amount payable to the Operational Creditor/ Applicant herein is to the tune of Rs.9,09,005/-. The Relieving Certificate dated 31.01.2019 and the Full and Final settlement statement dated 31.01.2019 as annexed with the Application are reproduced below:



SAMIAH

CIN:U45201DL2003PTC122337

INTERNATIONAL BUILDERS LTD.



सामिआ इन्टरनेशनल ग्रुप

सामिआ इन्टरनेशनल ग्रुप

सामिआ इन्टरनेशनल ग्रुप

सामिआ इन्टरनेशनल ग्रुप

Ref. No.....

File No. SIBL/HR/2018-19/3169..

Dated: 31 January' 2019

TO WHOM IT MAY CONCERN

This is a Relieving Certificate to Mr. Danish Irfan S/O Shri Irfan Ahmed vide Employee ID No PSD002 i.e. 31 January' 2019. All the documents have been handing over by both the sides. We have no objection if He leave the Company and join any other Company as per his own choice.

The Management would like to thank you for your services with the Company and we wish you all the best in your future endeavors.

For Samiah International Builders Limited


Mohd. Ali
(Manager - HR)




The Management would like to thank you for your services with the Company and we wish you all the best in your future endeavors.”

Further, the Statement of Full and Final Settlement (page-46) clearly reflects the “Net amount to be paid” to the Operational Creditor as “Rs.9,09,005”/-.

16. Furthermore, the e-mail dated 07.07.2019 (reproduced below) from the Corporate Debtor (CD) to the Operational Creditor attached with the Petition indicates willingness of the CD to settle the matter.

2/4/2019 Gmail - Re: REMINDER 5-REGARDING THE NON PAYMENTS OF FULL AND FINAL DUES 5c
ANNEXURE - H
danish irfan <irfaan.danish@gmail.com>



Re: REMINDER 5-REGARDING THE NON PAYMENTS OF FULL AND FINAL DUES

Sageer Khan <sageer@samiahinternational.com>
To: danish irfan <irfaan.danish@gmail.com>, cmd@samiahinternational.com
Cc: mohd.ali@samiahinternational.com

Sun, Jul 7, 2019 at 2:57 PM

Dear Danish

You are better knows the current situation of Real Estate, If you want onetime payment, it is not possible at this time, If you want monthly cheque then

We will issue accordingly, Every person settle in property it is single window for quick recovery,

Pls Come office & meet me personally because i can not explain better in mail

Thanks

Sageer Khan

[Quoted text hidden]

Hence in view of the above discussion, in our considered opinion, the Operational Creditor has been able to prove the default in payment of the operational debt by the Corporate Debtor.

17. In the given facts and circumstances, the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the IBC, 2016.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 Corporate Debtor.”

18. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Ms. Shruti Gupta having IBBI Registration No. IBBI/IPA-001/IP-P00303/2017-18/10567 (guptashrutica@gmail.com) as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

“Ms. Shruti Gupta, IP having IIBI Registration No. IBBI/IPA-001/IP-P00303/2017-18/10567 is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed by all modes.”

19. The Operational Creditor is directed to deposit Rs.1,00,000/- (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

20. A copy of this Order shall be communicated immediately to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

-S/d
(L. N. Gupta)
Member (T)

-S/d
(Abni Ranjan Kumar Sinha)
Member (J)