

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 3899/MB-VI/2019

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

SAFINTRA ROOFING (INDIA) LIMITED

[CIN: U74900MH2008PLC185250]

Plot -A/1, MIDC Industrial Area,

Taloja, Raigarh, Maharashtra - 410208.

...Operational Creditor

V/s

LARSEN AND TOUBRO LIMITED

[L99999MH1946PLC004768]

Registered Office: L & T House

Ballard Estate, Mumbai, Maharashtra - 400001.

...Corporate Debtor

Order Dated: 12. 09. 2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances (Physical):

Operational Creditor: CS PS Thakre

Corporate Debtor: Adv. Samiksha Rajput i/b Manilal Kher Ambalal & Co.

ORDER

Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)

1. Background

1.1 This C.P. (IB) No. 3899/MB/C-VI/2019 filed on 10.10.2019 by Safintra Roofing (India) Limited, Operational Creditor (OC), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) against Larsen &

Toubro Limited, Corporate Debtor (CD), for initiating Corporate Insolvency Resolution Process (CIRP) in respect of the CD. The OC is engaged in the business of supplying roofing sheets and accessories and it had supplied goods to the CD, against various purchase orders, relating to Bangalore International Airport Ltd. Project (BIAL Project). However, an amount of Rs. 21,77,823/- fell due to the OC from the CD with interest @ 24% PA of Rs. 18,29,370/- totalling Rs. 40,07,195/- from 16.12.2015 to 30.06.2019.

2 **Contentions of OC**

2.1 The OC alleges that in spite of delivering the goods as per purchase orders and invoices, the CD did not pay the dues against their claim for payment of debt, which arose from the terms of invoices raised by it and admitted by the CD. The OC sent demand notice on 04.07.2019 to which the CD replied *vide* letter dated 12.07.2019. However, the CD's denial, *inter alia*, of, no financial liability; allegation of delays in supply of goods; pre-existing dispute; rejection of certain materials and limitation are all unfounded, according to the OC. It, therefore, demands initiation of CIRP of the CD, u/s 9 of the IBC, for the default in payment of the amount due i.e., Rs. 40,07,195/-.

3 Contentions of CD

3.1 The CD contends that there was pre-existing dispute with the OC as they rejected materials supplied by the OC on account of inferior quality, and, issues were raised with the OC on more occasions than one before this application was filed. The alleged outstanding amounts were disputed by the CD *vide* e-mails dated 08.09.2016, 10.08.2016 and 02.02.2017. Since the OC had not fulfilled its obligations and committed serious lapses in the performance of contract between them, the CD had to execute works through third parties. The CD also contends that the OC *vide* letter dated 08.07.2013 confirmed that there were no further dues pending from the BIAL Project site, except Rs.14,73,255/-. The CD also contends that the OC's application is hopelessly barred by limitation since the debt fell due, according to the OC, on 16.12.2015, but this application was filed only on 9.10.2019.

4 Analysis and Findings

4.1 Pre-existing dispute. - Part IV of the application by the OC mentions the details of the transactions relating to roofing sheets and accessories for BIAL Project to the tune of Rs. 21,77,823/- against SI. No. 2, plus interest of Rs. 18,29,370/- @ 24% p.a. from 16.12.2015 to 30.06.2019, totalling Rs. 40,07,195/-. The CD, on the contrary, contends that the transactions on the supply of materials for BIAL Project relate back to the financial years 2011-2012 and 2012-2013.

The CD further contends that *vide* letter dated 08.07.2013 on the subject “*Outstanding at BIAL site against supply of steal liner sheets for roofing*”, the net payable amount was mentioned by the OC as Rs.14,73,255/- confirming that “*there is no further dues from BIAL site*”. It is seen from the records that the eight invoices numbering 418 to 643 referred to in the letter dated 08.07.2013, are dated from 17.08.2012 to 08.12.2012. However, according to the OC, the amount of Rs. 21,77,820/- shown as total amount of debt and default, against Sl. No. 1 and 2 respectively of Part IV of the application, is based on the very admission by the CD *vide* e-mail dated 16.12.2015. According to the OC, this gross outstanding of Rs. 21,77,820/- was arrived at, after complete reconciliation and updated accounts as on 16.12.2015, and, hence, the same is due, payable and in default by the CD. However, according to the CD, e-mail dated 16.12.2015 cannot be construed as admission of debt of Rs. 21,77,820/-. The CD clarifies that this amount only indicates pre-existence of dispute, as the calculation was drawn out, in continuation of the visit of the representative of the CD and in pursuance of conversation and reconciliation of accounts in respect of the Action Plan to be undertaken by the OC for settlement of accounts. The CD further contends that *vide* letter dated 08.07.2013, although total outstanding of Rs.14,73,255/- was confirmed by the CD, which also covers certain disputed invoices, (for e.g. invoice No. 418 dated 17.08.2012), there still existed certain further disputes. The CD had already informed the OC personally and through e-mail that certain sheets were damaged,

rejected and objected to their unloading at the CD's site. It is also seen from the e-mail from the CD to the OC dated 26.02.2013, that the CD had to arrange 180 litres of paint and labour to repair the peeled off portion from the sheet. Again, the CD had to buy certain quantity of sheets of higher thickness from outside due to immediate requirement. A differential payment of Rs. 3,12,547/- also called for debiting from the OC's bill. It is observed that, according to Part IV of the application by OC, the debt fell due on 16.12.2015. However, dispute was already raised by the CD *vide* e-mail dated 26.02.2013 addressed to the OC. Hence, it has come out that the dispute raised by the CD is not found to be a patently feeble legal argument unsupported by evidence. Applying the decision of the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. (Civil Appeal No. 9405/2017)*, a dispute truly existed in fact before the application for CIRP was preferred by the OC, and it was not spurious, hypothetical or illusory. Hence, this issue is found against the OC.

4.2 Limitation. - According to the OC, the debt fell due as on 16.12.2015. It is stated that, since the debt is shown in the audited financial statement of the CD for the financial year 2012-2013, and that the payments are made on running account basis, and not as per invoice-to-invoice basis, the debt fell due from 16.12.2015 to 30.06.2019. They have further stated that the debt is legally and admittedly due from the CD, and, hence the application is not hit by limitation. Further, according to Part IV of the

application, the default occurred on 16.12.2015. However, records reveal that the application was filed by the OC on 10.10.2019 only, which is beyond 15.12.2018, the period of limitation under Section 238A of the IBC r/w Article 137 of the Limitation Act, 1963. There is nothing to show that the period of limitation was extended by acknowledgment of debt by the CD in terms of Section 18 of the Limitation Act, 1963. Hence, the application is barred by the law of limitation, which again goes against the OC.

ORDER

As discussed above, pre-existing dispute between the CD and the OC has been established. The application is also hit by the law of limitation. This Adjudicating Authority is cognizant of the distress caused to the OC but we are unable to provide succour. As enunciated under the IBC, sanctity of CIRP is sacrosanct and cannot be experimented for recovery of dues. In the result, this application fails and is rejected under Section 9(5)(ii)(d) and Section 238A r/w Section 137 of the Limitation Act, 1963.

No orders as to costs. However, this order does not prevent the OC from pursuing any remedy available as per law.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R SAJI KUMAR
MEMBER (JUDICIAL)

//MT & SKS//