

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-2263/(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:

M/s Narang Fastners

Through its Sole Proprietor Shri Ashok Narang

Having its office at:-

63, Sudershanpura Industrial Area

Jaipur-302006

...Operational Creditor/Petitioner

Versus

Metro Irrigation Pvt. Ltd.

Having its Registered office at:-

G-144/G-2 Dilshad Colony

Delhi-1100095

...Corporate Debtor/Respondent Company

Coram:

DR. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

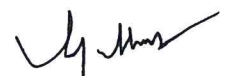
Counsel for Operational Creditor: Mr. Shashank Kasliwal, Advocate

Order Delivered on:17.08.2020

ORDER

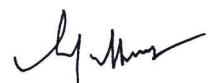
As Per Dr. V.K Subburaj, Member (Technical)

1. This is a petition filed by M/s. Narang Fastners the petitioner/operational creditor seeking to initiate CIRP against the



Respondent company /Corporate Debtor M/s Metro Irrigation Private Ltd., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor in settling the amount of Rs. 12,89,131/- including the interest component towards the goods supplied. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:-

- a. The Operational creditor is a sole proprietorship firm of Shri Ashok Naranag and is engaged in the business of manufacturing HDPE pipe fittings, sheet metal components and supplied the said goods to various entities.
- b. That the applicant supplied various goods from 2012 to 2016 to the Corporate Debtor and thereafter the operational creditor raised a total of 47 bills upon which the payment has been defaulted by the Corporate Debtor.
- c. That the last payment received from the Corporate Debtor was for an amount of Rs. 50,000/-. It is pertinent to mention that from the total of 47 bills, no bill of the same amount was raised which is apparent from the bank account maintained in respect of Corporate Debtor which is in the nature of running account. No payment was made in respect of any specific bill.
- d. That the operational creditor raised its last bill dated 03.09.2016 for the amount of Rs. 47,252/- which was duly delivered to the corporate debtor. Copy of email dated



13.11.2019 which was duly received from its delivery company i.e DTDC Jaipur has been placed on record.

- e. That the operational creditor sent a Demand Notice dated 18.05.2019 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. Copy of the Demand Notice dated 18.05.2019 demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India, where the operational creditor delivered the goods for several years to the Corporate Debtor.
- f. That pursuant to the said Demand Notice dated 18.05.2019, Demand notice was again sent by the operational creditor via email on 23.05.2019 to the email address of the corporate debtor as given in the master data on Ministry of Corporate Affairs.

2. The Corporate Debtor in its reply to the application submits that:

- a. That the corporate debtor duly acknowledges the demand notice dated 18.05.2019 was not delivered vide Post/Courier and was sent through email to the address metrohiwani@gmail.com on 23.05.2019. Further the email address of the respondent is surander.singh1@gmail.com

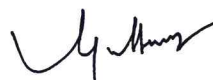


and also the applicant has not pleaded nor proved any service through email to the registered email address of the respondent.

- b. Further, it is submitted that the claim of the applicant is barred by the limitation and is neither due nor payable. The applicant filed an alleged invoice dated 03.09.2016 which was never raised to the respondent nor were the goods delivered to them.
- c. Furthermore, it is submitted that there is pre-existing dispute between the parties wherein the applicant has filed two letters dated 30.06.2016 and 30.09.2016 raises dispute with regard to the materials supplied by the operational creditor.

3. In this regard, the petitioner has denied the allegations made in the reply of the corporate debtor and further submitted that:

- a. In respect to the Demand Notice: That the demand notice was served thrice by the Operational Creditor on the registered address as per the website of Ministry of Corporate Affairs, Government of India, by the RD, AD Post, however it remained undelivered. Also the operational creditor delivers the goods for several years to the Corporate Debtor on the same registered address. Further served by email, which was read 6 times, but chose not to reply to the same.



b. Further in respect to the Claim barred by limitation, it is submitted that the last payment received from the Corporate Debtor was for an amount of Rs. 50,000/- and the same can be referred from the bank account statement. It is pertinent to mention that out of total of 47 bills, no bills for the said amount was raised which is apparent from the bank account maintained in respect of Corporate Debtor which is in the nature of running account. No payment was made in respect of any specific bill.

Therefore, the limitation has to be calculated from the date of issue of the last bill and not from the date of last payment since the default could not have occurred till the last bill was raised.

c. In respect to the Delivery and Quality of Goods (letter dated 30.06.2016 and 30.09.2016): That the corporate debtor duly accepted the delivery of all goods and never raised a dispute for the goods delivered which can be inferred by the email dated 13.11.2019 received by Operational creditor from DTDC.

Thereafter the corporate Debtor filed its reply raising issue of frivolous nature issues in order to create moonshine dispute.

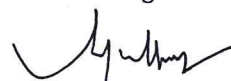
In this regard, it is further stated that bare perusal of these letters make it crystal clear that:



- a.) Addresses, phone numbers, pin codes of sender and receiver are not there;
- b.) No track report has been attached;
- c.) No proof that it was actually received; signatures of recipient are missing;
- d.) No complaint raised for 4 years and suddenly the Corporate Debtor raised the farce complaints;
- e.) Upon research could not find any detail of the said courier service online and the existence of the said courier service is highly doubtful.

4. We have gone through the documents filed by the petitioner and heard the arguments made by the counsel of the petitioner. A perusal of the correspondence indicates that there are no documents on record to show the communication of dispute to the operational creditor about the quality of goods supplied. No complaint filed in respect of the same on record. Further the Corporate Debtor has not referred to any specific material nor any specific quality issue.

5. There has been much cloud in the submission of the respondent. Further there is nothing on record indicating the communication of dispute to the operational creditor about the quality of goods supplied. Further no damage/counter claim has been lodged. When there is absolutely no document or particulars to support the claim of existence of dispute, the mere claim of dispute rose in the reply



and in the pleadings in defence can be termed as vague and motivated to evade the liability. That the authenticity of facts can only be ascertained by supporting evidence and Mere submission would not be taken into consideration. The Hon'ble Supreme Court of India in the matter of *Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd* has observed that:

“Para 40.... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster”.

6. Going by the above details the operational creditor has clearly established the existence of debt and default on the part of the corporate debtor. Hence this Tribunal initiates CIRP on the corporate debtor with immediate effect.

7. 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 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 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 corporate debtor.

(2) The supply of essential goods or services to the corporate debtor 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.



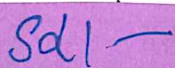
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

8. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Kumud Shekhar Registration No. IBBI/IPA-003/IP-N00206/2018-2019/12358 email--- kumud.shekhar@gmail.com duly empanelled with the IBBI as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days.

9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.


Sd/-

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


Sd/-

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