



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

(IB)-822(ND)2022

IN THE MATTER OF:

M/s. Iuminar Engineering Services Private Limited

222, Janta Flats,
Pehladpur, New Delhi - 110044

... Operational Creditor

VERSUS

M/s. Innovacione India Projects LLP

Through its Designated Partners
Registered Office at:
H. No. – 583 G/F,
Chirag Delhi, New Delhi – 110047

Also, at:

B-38, Ground Floor,
Okhla Industrial Area,
Phase – I, New Delhi - 110020

... Corporate Debtor

Section: 9 of the IBC, 2016

Order Delivered on: 28.02.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

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

PRESENT:

For the Petitioner : Dr. Farrukh Khan, Mr. Amritjot Singh Lamba

For the Respondent : Adv. Piyush Singh, Adv. Akshay Srivastava,
Adv. Riddhi Jain



ORDER

PER: SHRI. ASHOK KUMAR BHARDWAJ, MEMBER (J)

Stating succinctly, the facts of the case as mentioned in the Company Petition (IB)-822/ND/2022 are that the Corporate Debtor/ Respondent is an LLP duly registered under the provisions of the Limited Liability Partnership Act, 2008 and operates its business from the registered office mentioned in the memo of parties. It is involved in the field of Corporate Interior Designs and fit-out Projects. The two entities namely, Innovacione India and Brisk Services were represented before the Operational Creditor through Mr. Mohit Gupta, who also happens to be one of the partners of the Corporate Debtor. Subsequently, Mr. Mohit Gupta impressed upon the Operational Creditor that in order to diversify the work, he along with some other person had incorporated a limited liability partnership firm in the name and style of “Innovacione India Projects LLP” (Corporate Debtor) herein. He also gave an impression to the Operational Creditor that the Corporate Debtor had received multiple prestigious projects, thus would need the services of the Operational Creditor. In the wake, the Operational Creditor agreed to provide its services to the Corporate Debtor and during the period of 2019 to July, 2022, it rendered services to Corporate Debtor on multiple sites, mentioned in the petition. Nevertheless, when the invoices raised by the Operational Creditor pertaining to some of the projects were settled, qua others, particularly in relation to the projects namely, Cvent-6B –



Gurgaon, Cvent – 3B – Gurgaon, KPMG – Gurgaon, Moody’s – Gurgaon, EXL Services – Noida, MIS Support – Gurgaon, Expedia – Gurgaon, the Corporate Debtor failed to make payment against the invoices raised. The conclusive plea espoused by the Operational Creditor is that an amount of Rs. 6,02,19,068.48/- is payable by the Corporate Debtor to it and the Corporate Debtor has committed a default in paying the same. According to the Operational Creditor, when the principal amount payable by the Corporate Debtor for the services rendered by it is Rs. 4,03,08,250/-, the remaining amount of Rs. 1,99,10,818.48/-, is the amount of interest payable on the principal amount. As has been submitted by the Operational Creditor, it served a demand notice dated 08.09.2022, under Section 8 of IBC, 2016, upon the CD, calling upon it to pay the outstanding amount within 10 days from the date of the receipt of the demand notice. It is the case of the Operational Creditor that the demand notice (ibid) was served upon the Corporate Debtor on 08.09.2022 through email and on 10.09.2022 through the speed post. The Corporate Debtor gave a reply to the demand notice, on 17.09.2022, taking the plea that the notice was absolutely false, frivolous and feeble. The Operational Creditor rejoined the reply vide rejoinder dated 14.10.2022, which could be served upon the Corporate Debtor on 15.10.2022. The salient contentions raised on behalf of the Operational Creditor are that in terms of the email dated 03.08.2022, and the entries in the books of the Corporate Debtor, the Corporate Debtor has admitted its liability to pay the defaulted amount to the Operational Creditor.



2. Per contra, in the reply to the Petition filed by the Corporate Debtor, it has espoused thus: -

a) The Operational Creditor miserably failed to complete the entire project in timely manner and did not shy away from rendering deficient, inadequate and flawed services on the project site/office site.

b) On multiple occasions, the Operational Creditor defied the compliance of Employees' Provident Funds and Miscellaneous Provisions Act, 1962, inter alia.

c) The amount of default i.e., Rs. 6,02,19,068.48/-, claimed by the Operational Creditor is disputed and the figures espoused by the Operational Creditor are hypothetical. The Operational Creditor failed to take note of the debit note dated 20.10.2020, for an amount tuning to Rs. 13,39,770/- only, inclusive of taxes.

d) The Corporate Debtor had apprised the Operational Creditor about the underlying disputes over email on different occasions. There is no Debtor - Creditor relationship between Operational Creditor and Corporate Debtor.

3. Relying upon the Judgment of the Hon'ble Supreme Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353, the Corporate Debtor has set forth the requirement to be satisfied/fulfilled to maintain an application under Section 9 of the IBC, 2016. The Corporate Debtor has further referred to the Judgment of the Hon'ble



Supreme Court in *Kay Bouvet Engg. Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd.* (2021) 10 SCC 483, as also in *Rajratan Babulal Agarwal v. Solartex India Private Limited & Ors.* Civil Appeal No. 2199 of 2021. By referring to all the Judgments, the Corporate Debtor has tried to espouse that in the event of there being dispute, the petition under Section 9 of IBC, 2016 may not be entertained.

4. We have heard the Counsels for the parties and perused the records. Admittedly, the Operational Creditor and the Corporate Debtor have a long-standing business relationship and the Corporate Debtor had contracted the Operational Creditor for its services on various projects sites/office spaces. As per the averments made in the petition, the Corporate Debtor defaulted in making the payment of outstanding amount of Rs. 6,02,19,068.48/-, on 26.08.2022. It is not denied that the Operational Creditor served a notice upon the Respondent under Section 8 of IBC, 2016, demanding the defaulted amount. The notice dated 08.09.2022 issued under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is in the prescribed form i.e., Form 3 and has been enclosed as Annexure F-2 to the Petition. An Affidavit under Section 9(3) (b) of IBC, 2016 was filed on behalf of the Petitioner on 25.11.2022. In para 4 of the affidavit there is a categorical averment regarding non-existence of dispute before receipt of demand notice by the Corporate Debtor. The Operational Creditor has placed on record the purchase orders and tax invoices as Annexure D to the petition (page no. 41 to 165). The Petitioner has also placed on record a true copy of GSTR – 1 along



with screenshot of the GST Portal. It has also placed on record, a copy of email dated 03.08.2022, which reads thus:



Rashid Khan <rashid.khn2@gmail.com>

Expedia-GGN || Electrical work MB and Final Bill || Innovatone India Projects LLP

Wed, Aug 3, 2022 at 1:58 P

Naveen Rathore <naveen.rathore@iluminar.in>
 To: accounts <accounts@innovatoneindia.com>
 Cc: Rashid Khan <rashid@iluminar.in>, Cammy Bhinder <cammy@iluminar.in>, Trilok Ranjan Jha <trilok.jha@iluminar.in>, mohit <mohit@innovatoneindia.com>

Dear Rahul,

Thanks for your prompt response on acceptance of the Expedia project final invoice.

As discussed in the last meeting held in your office on Saturday with Mohit Sir regarding the payment schedule of total outstanding of INR 4,03,08,250.00 in which you have agreed to clear all outstanding upto October 2022 but we have not received any payment schedule from your side as of now.

Requesting you to kindly share the payment schedule.

Thanks & Regards
CA Naveen Rathore
 (Manager – Finance & Accounts)

Iluminar Engineering Services Pvt. Ltd.
 H-16/6, Office # 5, DLF Phase 1, GGN - 122002
 T: +91-124-4014696 | M: +91-9821290698

E: info@iluminar.in | W: www.iluminar.in

On Wed, Aug 3, 2022 at 1:35 PM accounts <accounts@innovatoneindia.com> wrote:

Dear Naveen,

We have checked your Expedia invoices and that is accepted from our end.

Further , Your payment will be disbursed shortly as discussed subject to the compliances issues if any.

Regards

Rahul

From: Naveen Rathore [mailto:naveen.rathore@iluminar.in]
Sent: 02 August 2022 12:10
To: Inder
Cc: Rashid Khan; Cammy Bhinder; Trilok Ranjan Jha
Subject: Fwd: Expedia-GGN || Electrical work MB and Final Bill || Innovatone India Projects LLP

Hi Rahul,

As discussed, please find certified MB with final bills enclosed herewith as required.

Thanks & Regards
CA Naveen Rathore
 (Manager – Finance & Accounts)

Iluminar Engineering Services Pvt. Ltd.
 H-16/6, Office # 5, DLF Phase 1, GGN - 122002
 T: +91-124-4014696 | M: +91-9821290698

E: info@iluminar.in | W: www.iluminar.in

----- Forwarded message -----

From: Naveen Rathore <naveen.rathore@iluminar.in>
Date: Wed, Jul 27, 2022 at 8:25 PM
Subject: Re: Expedia-GGN || Electrical work MB and Final Bill || Innovatone India Projects LLP
To: mohit gupta <mohit@innovatoneindia.com>

<https://mail.google.com/mail/u/1/?ik=ae6f67c767&view=pt&search=all&permmsgid=msg-f%3A1740127949447497070&dsqt=1&simpl=msg-f%3A...>

TRUE COPY

For Iluminar Engineering Services Pvt. Ltd.


 Authorised Signatory



5. As can be seen from the email (ibid), apparently, the Corporate Debtor did not deny the payment demanded by the Operational Creditor. The text of the reply given by the Corporate Debtor to the demand notice served upon it by the Petitioner is the same as that of reply filed in the present Petition. A careful reading of the same would reveal that the Corporate Debtor has tried to raise a nebulous and apocryphal plea regarding pre-existing dispute. When a genuine and well-founded dispute can be the plausible basis to reject an application filed under section 9 of IBC, 2016, no moonshine plea raised in this regard by the Corporate Debtor can be accepted. When the Corporate Debtor tried to raise the plea of deficiency in quality and service, it could not explain and specify such deficiency in any manner. The vague plea of deficiency to espouse pre-existing dispute cannot be countenanced. We are conscious that a financially sound business venture cannot be pushed to CIRP. However, the Corporate Debtor has not canvassed that its financial position is positive and it is solely on account of deficiency in quality of service that the claim raised by the Operational Creditor could not be met/ honored. As can be seen from the various emails, enclosed with the reply filed by the Corporate Debtor as Annexure R- 5 (Colly), the tenor of the emails is only that the Corporate Debtor called upon the Operational Creditor to attend certain minor complaints. It nowhere appears from the contents of either of the emails that the Corporate Debtor ever espoused that the services rendered by the Operational Creditor were deficient to such an extent, which disentitle the Operational Creditor to the amount claimed in the invoices. It is not the case of the Corporate Debtor that the Operational Creditor caused to it any such business loss, which leads to dispute qua the amount of default referred to in



the Petition. On the contrary, in the email reproduced hereinabove, the Corporate Debtor admitted the amount demanded by the Operational Creditor, subject to compliances. The Corporate Debtor has nowhere espoused that the compliances referred to in the email were such that non-adherence to same would disentitle the Operational Creditor to the amount of default or render the amount as disputed one.

6. In view of the discussions and findings as above, we are left with no option but to admit the Corporate Debtor to CIRP. The Petition stands admitted. Resultantly, a declaration is made under Section 13 for the purposes referred to in Section 14 of the IBC, 2016. As the Operational Creditor has not proposed name of any Insolvency Professional to be appointed as IRP, in terms of the provisions of Section 13(1)(c) read with Section 16(3)(a) of the IBC, 2016, the Insolvency Professional namely, Mr. Anoop Prakash Awasthi, having IBBI Registration No. IBBI/IPA-002/IP-N01008/2020-2021/13271, email id: apipaor@gmail.com is appointed as IRP in the matter. The Court Officer/Registrar of this Tribunal/Adjudicating Authority is directed to inform the IRP about confirmation of his appointment forthwith. The term of the Interim Resolution Professional shall continue till the date of appointment of the Resolution Professional under Section 22 of the IBC, 2016 or the development if any under Section 12A of the Code or otherwise, whichever is earlier. The IRP is directed to act in terms of the provisions 13(1)(b) and Section 13(2) read with Section 15 of the IBC, 2016 immediately. In other words, the IRP shall cause a public announcement of initiation of Corporate Insolvency Process qua the Corporate Debtor and call



for submission of claim under Section 15 immediately. The public announcement shall contain the information stipulated in Section 15(1) of the IBC, 2016. We are sanguine that the IRP shall act in due deference to the provisions of IBC, 2016, particularly Section 12,15,17,18,20 & 21 thereof as also Regulation 6, 6A, 12A, 13, 14, 16A and 17 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. It goes without saying that in the wake of the moratorium, there shall be prohibition of all the following: -

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing off 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.

7. Nevertheless, it is made clear that a license, permit, registration, quota, concession, clearance or similar grant or right (if any) given by the Central



Government, State Government, Local Authority, Sectoral Regulator or any Authority constituted under any other law for the time being in force shall not be suspended or terminated qua the Corporate Debtor on the ground of Insolvency, subject to the conditions that there is no default in payment of current dues arising for the use of continuation of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Besides, the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, except where the Corporate Debtor does not pay the dues arising from such supply during the moratorium period or any other explainable situation.

8. The Operational Creditor shall deposit an amount of Rs. 2,00,000/- with the IRP to enable him to meet the expenses to be incurred at the initial stage of the CIRP. The expenses shall be reimbursed by the Committee of Creditors, to the extent the same are ratified by it. The amount of expenses ratified by the Committee of Creditors shall be treated as CIRP cost. It goes without saying that in terms of Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the CoC shall fix the expenses to be incurred by the IRP/ RP and the expenses shall constitute IRP cost. Ordered accordingly.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)