



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 85/MB-VI/2020

*[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

M/s. Clavecon (India) Private Limited

[CIN- U70102UP2013PTC055839]

Registered Office: Khasra No. 193, Village-Patadi

Near NPTC Dadri, Gautambudha Nagar

Uttar Pradesh-203208.

...Operational Creditor

V/s

Saldar Infrastructure & Contracts Private Limited

[CIN- U45202MH2009PTC193254]

Registered Office: Flat No.204, Dharmajivan Co.Op.-

Hsg. Society, Plot No.86, Sector 6, Koperkhairane,

Navi Mumbai, Thane - 400709, Maharashtra.

...Corporate Debtor

Pronounced: 11.01.2024

CORAM:

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

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid)

Operational Creditor : Adv. Rakesh Piprodia i/b RMP Legal

Corporate Debtor : Adv. Anjana Sharma, i/b Anjana Law Offices



ORDER

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

1. **Background**

1.1 This C.P. (IB) No. 85/MB/C-VI/2020 (Application) was filed on 08.11.2019 by M/s. Clavecon (India) Private Limited, the Operational Creditor (OC), under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Saldar Infrastructure & Contracts Private Limited, the Corporate Debtor (CD). The debt in the present Application arises from the supply of goods by the OC to the CD in respect of which several tax invoices were raised by the OC, pursuant to purchase order dated 28.11.2016. In view of the said tax invoices raised upon the CD between 04.02.2017 to 16.02.2017, a total outstanding amount of Rs. 7,76,987.00/- (Seven Lakh Seventy-Six Thousand Nine Hundred Eighty-Seven Rupees) is claimed, which includes principal amount of Rs. 4,95,282/- (Four Lakh Ninety-Five Thousand Two Hundred Eighty-Two Rupees), with interest at the rate of 24% per annum, amounting to Rs. 2,81,705/- (Two Lakh Eighty-One Thousand Seven Hundred Five Rupees) calculated as on 26.06.2019 from the due date of the respective invoices raised. The date of default as mentioned by the OC in Part IV of the Application is 26.06.2019. In the circumstances,



the OC prays that the Corporate Insolvency Resolution Process (CIRP) be initiated in respect of the CD.

2. **Contentions of OC**

- 2.1 The OC is a company engaged in the business of manufacturing, supplying and trading of Fly Ash Bricks (Blocks), Blocks Joining Adhesive (Mortar) and other building and construction materials. The CD is a company engaged and dealing in the business of buying, selling, renting and operating of self-owned or leased real estate which includes building developing and sub-dividing real estate in lots. Both parties entered into commercial business for supply of goods pursuant to the purchase order dated 28.11.2016 vide No. DGC/16-17/LKO/016, which had a stipulation of payment for every invoice to be made by the CD within a period of 15 days and of issuance of post-dated cheques by the CD as submitted by the OC.
- 2.2 The OC as per the need and requirement of the materials by the CD, continued to deliver the ordered goods at the given site as informed by the CD and raised 6 invoices, particularly during the period 04.02.2017 to 16.02.2017.
- 2.3 The OC states that the invoices issued by it upon the CD were duly received by the CD, and, subsequently, several payment reminders were made by the OC to the CD by way of letters and emails; however, the CD failed to clear the outstanding amount till the date of filing of the present Application.



2.4 The OC sent Demand Notice dated 30.07.2019 in Form 3 as prescribed under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The OC states that no reply has been received by the OC from the CD with respect to the said notice.

3. Contentions of CD

3.1 Upon perusal of the record, we found that the CD has filed its reply on the NCLT portal on 26.04.2023; however, has not filed physical copy of the same before us. The OC denied having received any reply from the CD. The proof of service filed by the CD online also does not indicate if the reply has actually been served upon the OC as it lacks tracking report or any kind of evidence that shows receipt of copy of the reply by OC. However, we have perused the reply. In the reply, the CD has raised pre-existing dispute as a defence stating that it had sent emails and other communications regarding quality of goods to the OC many times before the demand notice was served upon them by the OC.

4. Analysis & Findings

4.1 Although the CD filed its reply online and was represented by an advocate, the Counsel did not appear to advance any argument on its behalf. Therefore, we have perused the reply and all other documents available on record. On perusal of the documents on record and the arguments advanced by the OC, we find that Part IV



of the Application mentions the date of default as 26.06.2019. It is seen that the terms on all 6 invoices stipulate that payment against the invoices was to be made in advance by the CD. The last payment made by the CD against the said invoices was seen as 04.03.2017 as per the copy of Ledger Account and Bank Statement submitted by the OC along with the Application. However, the OC has not explained as to how it has claimed 26.06.2019 as the date of default.

- 4.2 The CD failed to represent itself on several occasions when the matter was listed for hearing before us and even on 13.09.2023 when the matter was fixed for hearing and reserved for orders, the CD failed to appear. However, the CD had already filed reply dated 26.04.2023 online, wherein it is stated that he raised disputes as regards quality of the goods being sub-standard in nature resulting in cracks in the walls because of inferior quality of the materials supplied by the OC. Further, the CD contends that it had informed the OC about the above quality issues over telephone and in writing but there was no response from the OC. We do not find any material, however, relating to any such dispute raised by the CD any time before filing the Reply by the CD. In the absence of any material on record to corroborate any pre-existing dispute raised by the CD, we are unable to accept this contention of the CD. Although there is no pre-existing dispute as the CD could prove, the OC has not provided an Affidavit with respect to no notice of dispute given



by CD to it relating to the amount claimed by it in the Application as mandated u/s. 9(3)(b) of IBC. Hence, we cannot hold that the present Application is complete in terms of Section 9 of the IBC. Hence the Application filed by OC turns out to be defective and incomplete.

4.3 On perusal of the documents, we find that all the documents that form the basis of the OC's claim against the CD are executed with a Company named M/s. DG Infrastructure & Contracts Private Limited. However, the CD is shown as M/s Saldar Infrastructure & Contracts Private Limited. The OC has given no proof of both being the same company, i.e., the CD, except for a statement in the Board Resolution dated 27.08.2019 authorising Mr. Tushar Bhardwaj (Sr. Executive HR) to file the present Application, wherein it is mentioned that the company was formerly known by the name M/s. DG Infrastructure & Contracts Private Limited. There is no mention anywhere in the Application regarding change of name of company or any document evidencing the name change available with us. The OC has failed to explain how M/s. DG Infrastructure & Contracts Private Limited and M/s. Saldar Infrastructure & Contracts Private Limited are connected to each other.

4.4 The Application was filed on 18.12.2019. Although the Ledger Account maintained by the OC and the Bank Statement indicate that the last payment the OC received from M/s. DG Infrastructure & Contracts Private Limited on 04.03.2017, there is nothing to show



that any money was due and payable from M/s. Saldar Infrastructure & Contracts Private Limited. The date of default mentioned as 26.06.2019 in Part IV of the Application. There is nothing to suggest that on this date, any default of payment occurred. We, therefore, find no reason to believe that any debt is due from CD to the OC in the present Application as the former names of the CD are not available on the public portal of MCA. The OC's Application lacks sufficient evidence to prove that the CD herein was formerly known as M/s. D G Infrastructure & Contracts Private Limited in respect of whom the tax invoices were raised. We hold that an application under Section 9 requires the Applicant to provide strict proof regarding debt and default. The OC has not proved to our satisfaction that any default has occurred qua the CD. Hence, the present Application deserves to be rejected by reason of it being unconvincing.

ORDER

In view of the above discussions, this Application bearing C.P. (IB) No. 85/MB/C-VI/2020 filed by M/s Clavecon (India) Private Limited, the OC, under section 9 of the IBC for initiating CIRP in respect of Saldar Infrastructure & Contracts Private Limited, the CD, is **Rejected.**

We make it clear that any observation made in this Order shall not be construed as expressing opinion on merits. Any right or claim of the OC available as per law before any judicial/quasi-judicial forum



shall not be prejudiced on the grounds of rejection of the present Application. No orders as to costs.

Ordered accordingly.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

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

//LRA/Akshata Shah//