

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1

TP/MP/ 156 of 2019 [CP(IB) 461 of 2019]

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
INDORE BENCH AT AHMEDABAD OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.09.2020

Name of the Company:

SN Tradelink Pvt Ltd
V/s
Millennium Structurals (India) Ltd

Section:

9 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

Dated this the 28th day of September, 2020


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT 1**

CP (IB) No.461/9/NCLT/INDORE/2019

An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of :

S.N. Tradelink Private Limited

204-207, Parshwa Complex,
3010, Momai Complex,
Outside Sahara Darwaja,
Katodra Road,
Surat,
Gujarat-395002

..Operational Creditor

Versus

**M/s. Millennium Structruals (India)
Limited**

CIN: U28932MP1999PLC013920
101, Indore Trade Centre,
23/2, South, Tokoganj,
Indore, Madhya Pradesh-452001

..Corporate Debtor

Order reserved on 24.09.2020
Order Pronounced on 28th Day of September, 2020

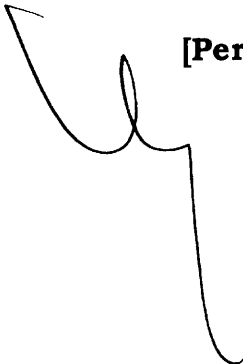
Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Mr. Pavan Godiawala for the Operational Creditor.
Learned Counsel Mr. Harmish Shah for the Corporate Debtor.

ORDER

[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]



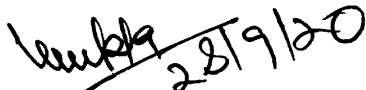
1. This Application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 by the Operational Creditor, M/s. S.N. Tradelink Private Limited to initiate Corporate Insolvency Resolution Process against Corporate Debtor M/s. Millennium Structruals (India) Limited. The amount of debt has been claimed at Rs.7,91,932/- (Rupees Seven lakhs Ninety-One Thousand Nine Hundred Thirty Two only).
2. The Learned Counsel Mr. Pavan Godiawala appeared for the Operational Creditor and submitted that Operational Creditor sold the goods to the Corporate Debtor during the period from 15.04.2016 to 21.04.2016 which was not in dispute. The payment has also not been made. It was also contended that notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 which was duly served on the Corporate Debtor on 10.04.2019 which was within a period of three years from the date of last invoice. He further contended that the Corporate Debtor had not given any reply to such notice to show that there existed some dispute prior to delivery of such notice or otherwise the debt was not payable, hence, application filed by Operational Creditor was admissible.
3. Learned Counsel Mr. Harmish Shah appeared on behalf of the Corporate Debtor, on the other hand contended that application had been filed on 01.07.2019 which was beyond three years from the date of default. Accordingly, it was also contended that in view of several

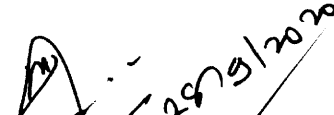
decisions of Hon'ble Supreme Court that if an application was filed beyond a period of three years from the date of default, then such application was liable to be dismissed as barred by Limitation.

4. We have considered the submissions made by both the parties and material on record. It is noted that supplies have been made during 15.04.2016 till 21.04.2016. Copy of track report regarding delivery of notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 has been furnished, and Form No. 3 & 4 alongwith copies of invoices have also been attached. From the perusal of the invoices, it is noted that invoices were to be paid immediately. It is not in dispute that last invoice has been raised on 21.04.2016. Although, notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 has been delivered within three years from the date of last invoice which is the date of default as well, however, as per the decision of the Hon'ble Supreme Court in the case of B.K. Educational Society, period of limitation has to be seen with reference to date of application filed under Section 7 or 9 of the Insolvency and Bankruptcy Code, 2016. In the present case, admittedly, application has been filed on 01.07.2019, hence, same being filed after expiry of three years from the date of default. Thus, this application is barred by limitation. Before parting, we may add that in the present case, the Corporate Debtor has not submitted its response to the Operational Creditor within 10 days from the receipt of notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, hence, for this reason, petition could have been admitted but

having regard to the fact that debt is barred by limitation even such non-compliance of the Corporate Debtor, in our considered view, cannot make this application eligible for admission. In view of this, we reject this application and dismiss the same.

5. Accordingly, CP (IB) No. 461 of 2019 is dismissed and disposed-off.


(Virendra Kumar Gupta) Member
(Technical)


(Madan Bhalachandra Gosavi)
Member (Judicial)

Signed on this, the 28th Day of September, 2020.

PC