



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-III

Item No.09
IB-714(PB)/2020

IN THE MATTER OF:

M/s. SS steels

..... **APPLICANT**

Vs.

M/s. Shahi Infrastructure Pvt. Ltd.

..... **RESPONDENT**

SECTION

U/s 9 IBC code 2016

Order pronounced on 30.05.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-714(PB)/2020
is **dismissed**.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT III
IB-714(ND)/2020**

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. S S Steels

... Applicant/Operational Creditor

Versus

M/s. Shahi Infrastructure Private Limited ... Respondent/Corporate Debtor

Order Delivered on: 30.05.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant

: Ms. Shankari Mishra, Advocate.

For the Respondent

: Mr. Akhil Shankwar, Advocate.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 9 of the IBC, 2016 seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor viz, *M/s. Shahi Infrastructure Private Limited*, declare Moratorium and appoint Interim Resolution Professional ("IRP").
2. The Applicant is a Sole Proprietor engaged in the business of supplying of steel, iron and other alloys to the Construction Company. The Corporate Debtor is a Private Company incorporated on 09.12.2004 having share capital is Rs. 1,00,000/- and its paid-up capital is Rs. 1,00,000/-. It is involved in the business of building of complete constructions or parts thereof under the category of civil engineering.
3. It is submitted that the Applicant had supplied raw materials including steel, iron and other alloys to the Corporate Debtor from 27.08.2017 to



29.08.2017. It is also submitted that such transaction of supply of goods to the Corporate Debtor was on an account basis, where the bills were raised and the payment by the Corporate Debtor was done by issuing PDC(s) bearing cheques No. 815885, 815884 & 815886 and the same got dishonoured.

4. It is submitted that the Applicant had supplied raw materials i.e., Steel, Iron and other alloys to the Corporate Debtor from 27.08.2017 to 29.08.2017. The Corporate Debtor has not paid amount of three invoices. The details of invoices are reproduced bellow:-
 - a. First on 27.08.2017 for an amount of Rs.10,63,692/-
 - b. Second on 27.08.2017 for an amount of Rs.10,56,378/-.
 - c. Third on 29.08.2017 for an amount of Rs.12,13,461/-.
5. It is further submitted that the total amount of debt is Rs.49,83,531/- including interest of Rs.13,50,000/- along with a litigation cost of Rs.3,00,000/-. *The interest has been calculated by Operational Creditor after allowing a credit period of 60 days from the date of invoice as per the industry norms.*
6. The Applicant sent a demand notice under Section 8 of IBC, 2016 to the Corporate Debtor on 30.01.2020 but no reply was given by the Corporate Debtor to the said demand notice.
7. The right to file reply of the Corporate Debtor was closed vide order dated 01.03.2023 passed by this Adjudicating Authority.
8. However, the Learned Counsel for the Corporate Debtor appeared and advanced his arguments when the matter was taken up for hearing and also filed written submissions on 16.04.2023.
9. The Corporate Debtor in the written submissions has raised several contentions which are broadly as under: -

A. The Demand Notice under Section 8 served upon the Corporate Debtor was incomplete and defective one:

The Corporate Debtor has submitted that the demand notice under Section 8 of the IBC, 2016 has been served upon the Corporate Debtor without any supporting documents. He further submitted that the Speed Post was sent to a different entity i.e. Shahi Infra.



Therefore, the present petition which has been filed after issuance of a defective demand notice is not maintainable. In this regard, he relied upon a judgment passed in the case of ***“Neeraj Jain, Director of Flipkart India Pvt Ltd v. Cloudwalker Streaming Technologies Pvt Ltd & Anr.,*** CA (AT) (Ins) No. 1354 of 2019”.

B. The Operational Creditor being an un-registered Sole Proprietorship firm is not qualified to initiate CIRP proceedings:

The Corporate Debtor has submitted that the Operational Creditor is a sole proprietorship firm and does not fall within the category of the person defined under Section 3(23) of IBC. The demand notice dated 28.01.2020 was also issued in the name of the sole proprietorship concerned. Therefore, the present petition is in the contravention of provisions of IBC and deserves to be dismissed.

C. Existence of Dispute and concealment of fact:

The Corporate Debtor has submitted that the Operational Creditor has forged and manufactured the invoices dated 27.10.2017 & 29.10.2017 which were never served upon the Corporate Debtor. Further, the Operational Creditor had manufactured the stamp in the name of the Corporate Debtor and marked over the invoices without service and knowledge of the Corporate Debtor. It is further submitted that the Operational Creditor has concealed the fact that the Operational Creditor has restrained cheques issued by the Corporate Debtor. Further, the Operational Creditor has deposited the cheques in the Bank for clearance without the knowledge or consent of the Corporate Debtor.

10. We have heard the submissions made by Ms. Shankari Mishra, Learned Counsel appearing for the Applicant as well as Mr. Akhil Shankhwar, Learned Counsel appearing for the Corporate Debtor and perused the records.
11. The Operational Creditor has deliberately failed to serve and annex any document in support of the claim evidencing the occurrence of default on the part of the Corporate Debtor and reflecting any liability.



12. In view of the above, it is established that the Corporate Debtor had raised certain issues relating to the restrained cheques issued by the Corporate Debtor, much before the issue of the statutory demand notice by the Operational Creditor.

13. In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has been able to raise a plausible contention regarding the Demand Notice and the existence of pre-existence of “dispute” between the parties. Consequently, we conclude that the instant application filed under Section-9 is not maintainable.

Hence, we are inclined to **dismiss** this application.

14. In the light of the above facts and circumstances, it is hereby ordered as follows:-

- i.** The Application bearing **IB-714/ND/2020** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- iii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs

-SD-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**