

**THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No. 95/CTB/2020

**CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)**

In the Matter of:

An application 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.

-And-

In the Matter of:

M/s. Cosmic Carriers Pvt. Ltd., an Unlisted Non-Government Company, limited by shares, registered under the provision of the Companies Act, 1956 having its Registered Office situated at: 44 MIDC Industrial Area, Hingna Road, Nagpur – 440 028, Maharashtra

..... Operational Creditor/Applicant

-Versus-

In the Matter of:

M/s. Sidharth Construction and Trading Pvt. Ltd., an Unlisted Non-Government Company, limited by shares, registered under the provision of the Companies Act, 1956 having its Registered Office situated at: Rajabagicha, Cuttack – 753 006, Odisha.

..... Corporate Debtor/Respondent

-And-

Sd

Page 1 of 5

Sd



In the Matter of:

**The Secretary, Ministry of Corporate Affairs, 'A' Wing, Shastri Bhawan,
Rajendra Prasad Road, New Delhi – 110 001.**

... .. **Respondent**

Counsels on record for the Petitioner (S):

Counsels on record for the Respondent (S):

Date of pronouncement of Order: day of April, 2021.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor i.e., **M/s. Sidharth Construction and Trading Pvt. Ltd.** This application is filed by **M/s. Cosmic Carriers Pvt. Ltd.** through its Authorised Representative, Mr. Vinod Mohunta against the M/s. Sidharth Construction and Trading Pvt. Ltd. claiming to the tune of Rs. 1,21,06,904/- (Rs. One Crore Twenty-One Lakhs Six Thousand Nine Hundred and Four) is due and payable by the Corporate Debtor to the applicant herein. Seeking reliefs in this petition are as under: -

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"i. To allow and admit the present application in order to enable the applicant to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor;

ii. To appoint Interim Resolution Professional as the Hon'ble Bench may deem fit and proper;

iii. Such other orders as the Hon'ble Bench may deem fit in the instant case "

2. The Operational Creditor submits that as per the request of the Corporate Debtor has provided rental and hire service of machine to the Corporate Debtor against several work orders issued during the year 2013-14 by the Corporate Debtor. Accordingly, the Operational Creditor had raised the invoices for the services supplied. The Corporate Debtor had given 11 (Eleven) cheques of Rs. 61,13,480 in aggregate which were presented to the Bank for collection but out of them 4 (Four) cheques were returned with the reason cited "Funds Insufficient" and rest of the 7 (Seven) cheques were returned with the reason cited "Account Block Situation". Due to the default in payment, an arrest warrant under Section 138 of the

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Negotiable Instruments Act, 1881 was issued in the name of the Directors of the Corporate Debtor.

3. The payment due and payable by the Corporate Debtor to the Operational Creditor are of the following Invoices as under: -

Bill No.	Date	Amount (Rs.)
B - 2	30.04.2014	1,76,588/-
B/14	31.05.2014	67,821/-
B/25	31.05.2014	12,12,201/-
B/27	30.06.2014	69,500/-
B-135	31.03.2015	23,54,000/-
RKL/261 (c)	07.07.2014	28,00,000/-

4. The Corporate Debtor has filed Statement of Objection dated 08.01.2021 and Written Note dated 10.02.2021 in connection with this application and as per the Order dated 02.02.2021 of this Adjudicating Authority wherein the Corporate Debtor had denied all the averments/contentions/allegations made by the Operational Creditor and the petition is not maintainable either in law or on facts and is liable to be

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dismissed with costs because the application filed by the Operational Creditor is grossly barred by limitation.

5. Heard both parties and also perused all pleadings and documents filed therein. In view of the Judgement of Hon'ble Supreme Court in Civil Appeal No.: 23988 of 2017 in B K Educational Services (P) Ltd. Vs. Parag Gupta and Associates, this application is clearly barred by Limitation.
6. In view of the above discussions, this CP (IB) No. 95/CTB/2020 stands **DISMISSED**. No cost.
7. Registry is hereby directed to communicate this Order to the applicant/petitioner & respondent. Let the certified copy of the Order be issued upon compliance with the requisite formalities.

Shri: [Redacted] Prasad
Sd [Redacted] (T)

Sd
Mrs. Sucharitha R.
Member(J)

Signed on this, the ...9... day of ~~April~~ June, 2020.

Santosh_P.S.

