

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - II
IB-330/ND/2019

IN THE MATTER OF:

NOTAM PROJECTS
H. No. KA-14, 2nd Floor,
Near Wave Cinema,
Kaushambi, Ghaziabad – 201010,
Uttar Pradesh.

...Applicant

VERSUS

PAN REALTORS PVT. LTD.
S-406 (LG), Greater Kailash – II,
New Delhi – 110048.

...Respondent

Order Delivered on:25.07.2019

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

PRESENT – Brajesh Chandra Tripathi, Advocate for the Applicant
Santosh Kumar, Sanjeev Arora, Ishan Jayant Tewari, Advocates for
Respondent



ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This is an application filed by Notam Projects ("Applicant") invoking the provision of Section 9 of Insolvency and Bankruptcy Code, 2016 ("the Code") against Pan Relators Pvt. Ltd. ("Respondent") for initiating Corporate Insolvency Resolution Process ("CIRP") of the Respondent.
2. The Applicant has averred as follows:
 - a. The Applicant entered into a contract with the Respondent for structural and civil work and internal plumbing for construction of group housing project Pan Oasis, Towers K & L, Sector 70, NOIDA, UP, through work order numbers PAN/PUR/WO/PAN-Oasis/10-11/012 dated 14.06.2010, PAN/PUR/WP/PAN-Oasis/10-11-053 dated 27.12.2010 and PAN/PUR/WP/PAN-Oasis/11-12/110 dated 24.04.2012.
 - b. Pursuant to the work completed as per work order the Applicant raised several running bills from time to time and certain payments were made. However, as per the running bills raised, exact payments were never made. This led to an outstanding amount with each running bill along with certain other unpaid running bills.
 - c. Due to the defaults of the Respondent, several meetings were held and several letters were exchanged between the Applicant and the Respondent to address the issue of default.



- d. Vide e-mail dated 03.02.2016 the Respondent admitted to an outstanding balance of Rs.89,16,902/- but still no payment was forthcoming.
- e. The Applicant then sent a statutory demand notice under Section 8 of the Code for the amount of Rs.3,83,59,638/-. In response to the demand notice, a letter dated 03.07.2018 was sent by the Respondent, wrongly disputing the claims of the Applicant on completely frivolous and baseless grounds.
3. The Respondent in its reply has opposed the application on the following grounds:
- a. As per the terms of the W. O. PAN/PUR/WO/PAN-Oasis/10-11/012 dated 14.06.2010, the Applicant submitted its first RA bill in respect of the aforesaid work contract on 12.10.2010, for work order no. PAN/PUR/WO/PAN-Oasis/10-11/053 dated 27.12.2010, the Applicant submitted its first RA bill in respect of the aforesaid work contract on 05.08.2011; for work order no. PAN/PUR/WO/PAN-Oasis/11-12/110 dated 24.04.2012, the Applicant submitted its first RA bill in respect of the aforesaid work contract on 07.09.2012; for work order no. PAN/PUR/WO/PAN-Oasis/12-13/151 dated 12.12.2012, the Applicant submitted its first RA bill in respect of the aforesaid work contract on 31.03.2013 AND for work order no. PAN/PUR/WO/PAN-Oasis/15-16/34 dated 28.05.2015, the



Applicant submitted its first RA bill in respect of the aforesaid work contract on 20.06.2015 and the other bills were submitted subsequently which was properly recorded in the ledger maintained by the Respondent. The certified bills reaching the accounts department after verification from the site engineer along with the debit note/emails were properly entered in the ledger account of the Applicant maintained by the Respondent and it reflects the true statement of work done and payment made against the same.

- b. A total of Rs. 6,02,37,161/- was paid to the Applicant against the aforesaid work orders and as per the books/ledger of the Applicant maintained with the Respondent, a total of Rs. 10,98,749/- has been paid in excess and the same is recoverable from the Applicant and the same is also reflected in the audited accounts of the Respondent.
- c. The Respondent before the finalization of the books for each financial year has provided the ledger account to the Applicant for reconciliation and the same was accepted by the Applicant without any objection/demur. The Applicant never raised any dispute regarding the debit notes or any other particulars with the Respondent. The Respondent on many occasions was forced to employ additional resources/departmental labour to complete the work awarded to the Applicant and has expressed its serious objections/unhappiness over the time-lag and quality of contract

work. The debits made against the bills was done in transparent manner.

- d. On account of unsatisfactory work the Respondent was constrained to send to the Applicant e-mails on various occasions to complete the work as per schedule and by maintaining quality. The Applicant was released ad-hoc payments as per requirement of the Applicant on the basis of accepted program and deployment and also asked to rectify the defect. The Respondent expressed strong objection and displeasure for the excess measurement given by the Applicant and has stated that the Applicant has stopped the work on the site to coerce the Respondent to release the unjustified payment for the bad and incorrect work and has further asked the Applicant to attend the work and if he was still having dispute suggested him to proceed for arbitration and the Applicant even suggested to give time at the request of the Applicant. The Respondent also offered the Applicant that if he was not willing to undertake the balance work, the Respondent shall finish the same and shall charge the cost to the Applicant.
- e. The Applicant has purportedly stated to have done total contract work of Rs.8,81,12,095 which includes of additional work of Rs.45,90,823/- done. The cost of additional work done was part of the work order and as such no additional cost was chargeable from the Respondent. The total alleged outstanding as per the Applicant



on 01.01.2014 was Rs.1,4476,225/- and on which the Applicant has added interest @ 18% from 01.01.2014 till 16.05.2018 amounting to Rs.1,07,58,413/-. Demurrage, overhead, watch and ward, maintenance store have been arbitrarily added to the amount of Rs.1,31,25,000/- without any basis and without any provision in the work order.

- f. The Respondent since 01.04.2013 has made a total payment of Rs.1,14,71,757/- to the Applicant by way of various cheques, however, the Applicant has not given any effect to those payments while calculating the alleged interest on pending amount since 01.04.2013.
- g. The Applicant started threatening the employee/officers of the Respondent for taking action against them for cancellation of the work order due to delay in execution and poor-quality work, the Respondent cancelled the work order and asked the Applicant vide letter/email dated 28.07.2017 to submit his final bill. Infuriated by the action taken for cancellation of the work order, the Applicant went to the site office of the Respondent at GH-01, Sector -70 and misbehaved with the directors of the Respondent company. the Respondent has filed a complaint with the SHO, PS – Phase III, Sector – 70 in this regard.
- h. The ledger filed by the Applicant is fabricated and does not contain true particulars about the bills and payments made to the Applicant



and it has no relation with the actual transaction between the Applicant and the Respondent. There are different cheques amounting to Rs. 90,47,180/-, Rs. 26,52,586/-, Rs.10,43,315/-, Rs.9,39,145/-, Rs.1,13,116/-, Rs.65,700/-, Rs.50,000/- and Rs.1,00,000/- as mentioned by the Applicant in his ledger accounts were never issued by the Respondent in favour of the Applicant.

- i. The Respondent has replied to the statutory notice dated 20.06.2018 of the Applicant on 03.07.2018 disputing the claim of the Applicant submitting that the ledger/books of the Applicant was fabricated/doctored and it did not contain the correct particulars of the submitted bills and payments made on different dates. Glaring defects/irregularities were pointed out in the ledger account of the Applicants. All bills for the work order awarded on different dated i.e. on 14.06.2010, 27.12.2010, 24.04.2012, 12.12.2012 and 28.05.2015 was booked on 15.09.2010 i.e. even prior to date of first work order awarded and since thereafter only the entries of payment received on different dates have been mentioned in the ledger. The ledger has surprisingly no entry for the bills submitted by the Applicant on different dated. Maintaining ledger in such manner is peculiar and unknown to any accountancy practice. The Applicant in his email dated 03.02.2016 has claimed that the amount of Rs.89,16,902/- was pending to the Respondent. The falsity of the claim under the insolvency application is evident from the fact that

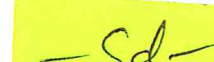


on one hand the Applicant is claiming that a sum of Rs.1,07,58,413/- was due since 01.01.2014 whereas in the email dated 03.02.2016, he is claiming that an amount of Rs.89,19,902 was outstanding.

4. We have perused the documents and heard the arguments of both sides. the Respondent has placed on record numerous e-mails pertaining to years 2012, 2013 and 2014 where the Respondent has been constantly pointing out the lack of man power, poor quality of work and delays to the Applicant. The Respondent, in these e-mails has also informed the Applicant about the man power that it has deployed on its own. These emails clearly show that there are disputes between the two parties and a further investigation into these circumstances would be required to reach a clear conclusion regarding the liability of either party. It is beyond the jurisdiction of this Tribunal to carry on such investigation and thus, the only appropriate action would be to dismiss the present application, as there is no need to entertain the further contentions of the parties. The application stands dismissed with no costs.



Dr. V.K. SUBBURAJ
Member (TECHNICAL)



INA MALHOTRA
Member (JUDICIAL)

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