

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO.5, MUMBAI BENCH

C.P. (IB) No. 240/NCLT/MB/2019

Under Section 9 of the I&B  
Code, 2016

In the matter of:

Shree Associates

...Operational Creditor/  
Petitioner

V/s

KS Softnet Solutions Private  
Limited

...Corporate Debtor/  
Respondent

Order Dated: 17.06.2020

Coram:

Hon'ble Member (Judicial), Smt. Suchitra Kanuparthi

Hon'ble Member (Technical), Shri V. Nallasenapathy

For the Petitioner: Adv. Jagdish S. Hegde

For the Corporate Debtor : None Present

**ORDER**

*Per: V. Nallasenapathy, Member (Technical)*

1. M/s Shree Associates, the Petitioner/ operational creditor herein filed this Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") read

with rule 6 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority Rules, 2016 ( "Rules") for initiation of corporate insolvency resolution process ("CIRP") against the Corporate Debtor M/s KS Softnet Solutions Private Limited, alleging that the corporate debtor committed default in making payment of Rs.2,12,704/- with interest @18% pa from the date of default till realisation .

2. Heard the Counsel for the Petitioner.
3. Counsel for the Petitioner submits that Petitioner supplied tiles/kerbs manufactured by them at the instance of the Corporate Debtor and invoices were raised during the period between 01/12/2013 to 01/12/2014 to the extent of Rs. 13,52,328/- and TDS of Rs. 14,025/- was deducted and deposited with the Income Tax department. The Corporate debtor made the payment of Rs.11,39,625/- till 16/04/2016 and Rs.2,12,104/- is due from the Corporate Debtor. It is further submitted that the Corporate Debtor has made a payment of Rs.37,000/- on 16/04/2016 by NEFT transfer and petition is filed on 16/01/2019 and hence the petition is within limitation.
4. There is no representation from the side of the Corporate Debtor despite service of notice.

5. On going through the petition it is found that the notice issued by the petitioner on 25/09/2016 is a statutory notice under the Companies Act, 2013. The said notice is annexed to the petition as Annexure (4) and the same reads as below:-

*"Dated: 25/09/2016*

*Statutory Notice*

*To,*

*K S Softnet Solutions Pvt Ltd*

*Regd Office at 058,*

*Oshiwara Link Plaza Commercial Complex CHS Ltd*

*1<sup>st</sup> Floor, New Link Road Extn,*

*Jogeshwari (W), Mumbai – 400102*

*Dear Sir(s),*

*This is to bring to your kind attention that We, Shree Associates, a proprietor Firm being run from Seth Cottage, 16/126, Street No. 5, Faiz Road, Karol Bagh, New Delhi – 110005, hereby serve upon you this statutory notice under the Companies Act, 2013.*

*2. That pursuant to orders at Sept 11,2012 placed by you,we had installed our Mobile Plant at your site and had cast paver tiles/kerbs as per your specifications mentioned in your work order and also issued bills for the same to you for delivery of goods to you at site..*

3. That you have duly received and appropriated the said paver tiles which were specifically as per your specifications and as covered under our bills. That you had also admitted the bills for the purpose of paying the same to us and you have also booked bills and deducted tax at source on our sanctioned bills and deposited TDS to Govt. under income tax act confirming amount credit to corporate creditor however failed make the payment of our said sanctioned bills. Beside TDS your own, attached a/c confirms outstanding of Rs 212704/-which is not paid inspite reminder till now due to inability to pay.

4. That as per the agreed terms as mentioned in the said bills you have also agreed to pay interest at the rate of 18% on the delayed payments made after the due date. Thus after giving credit to part payments made by you , a sum of Rs. 2,12,704/- (Rupees Two Lakhs twelve thousand seven hundred and four only) is due and payable by your for the aforesaid work and further interest at the rate of 18% thereon for which you are liable to pay the said outstanding bills amounts to us and return our Plants & Machinery and value of goods made by you at your site with our machine failing which we are entitled to recover the same from you at your cost and risk.

5. That we would also like to remind you that we, through our authorized representative time and again have appraised you through your Chairman, Managing Director and other authorized Officials, for the payment of the said amount, on advise of your Chairman reconciled the account and requested to pay dues as per your outstanding confirmed by your

*account statements and ours however in vain. Kindly take note that vide our letters dated 05.12.2016 and 17.04.2017 we had also demanded the aforesaid outstanding amount from you. But you have intentionally failed and neglected to pay the said admitted outstanding amount to us.*

*6. That you have admitted our aforementioned claim but have no means to pay the outstanding bill amount to us.*

*7. That with an ulterior motive of deceiving, you had induced us to part with our plant machinery goods as shown para-4 above to the tune of the said bill & amount to you and with an intention not to pay, you have caused monetary loss and damage to our reputation, besides unbearable mental shocks to old senior citizen known heart patient Proprietor of the firm.*

*You are therefore hereby finally called upon to pay the admitted liability of Rs. 2,12,704/- (Rupees Two Lakhs twelve thousand seven hundred and four only) to us, along with value of goods made by you with our plant being the principal bill amount, due and payable by you with interest at 18% thereon within 21 days from the receipt hereof, failing which we shall institute legal proceedings against your company under the Statutory Provisions of the Company Act, 2013 entirely at your risk and cost.*

*Yours truly,*

*For Shree Associates*

*CC: Registrar of Companies*

*Everest 5<sup>th</sup> Floor, 100 Marine Drive,  
Mumbai, Maharashtra – 400002”*

6. An ordinary scanning of the above notice reveals that the petitioner has demanded sum of Rs. 2,12,704/- as due from the Corporate Debtor. It is to be noted that the above notice is a notice under the Companies Act, 2013 and nowhere in the notice it is mentioned that this notice is issued Under Section 8 of the IBC, 2016 which provides as below:-

*“(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—*

*(a) Existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the*

*receipt of such notice or invoice in relation to such dispute;*

*(b) The repayment of unpaid operational debt—*

*(i) By sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) By sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.”*

7. This Bench is of the view that for initiating CIRP against the Corporate Debtor, Section 8 of the Code mandates that the demand notice has to be issued in such a form and manner as may be prescribed.

8. Further Rule 6 provides that,

*"Application by operational creditor.—(1) An operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

*(2) The Petitioner under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.”*

9. However, the demand notice issued by the Petitioner is not in the form as mandated in the rule and hence this notice is a defective notice. Hence this petition is dismissed.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Suchitra Kanuparthi  
Member (Judicial)