

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No.1663 /IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

**SHREE GAUTAM LABDHI TRADE
LINKS**

Registered office at: 6-C, Rustom
Building, 2nd Floor, 29, Veer Nariman
Road, Fort, Mumbai-400023

.....Operational Creditor

Vs

**SHREEDHAM CONSTRUCTIONS
PRIVATE LIMITED**

(CIN: U99999MH1989PTC051699)

Registered office at: 105/106, 1st
Floor, Vijay Industrial Estate, New
Link Road, Chincholi Bunder, Malad
(West), Mumbai- 400064

.....Corporate Debtor

Order delivered on: 19.01.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Ashish Mehta

For the Respondent: Mr. Aseem Naphade

Per: Shri H.V. Subba Rao, Member (Judicial)

The above Company Petition is filed by M/s. Shree Gautam Labdhi Trade Links hereinafter called as “Operational Creditor” seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Shreedham Constructions Private Limited hereinafter called as “Corporate Debtor” by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for Resolution of an Operational Debt of Rs. 13,73,688/- with interest at the rate of 24% per annum.

BRIEF FACTS OF THE OPERATIONAL CREDITOR

1. The Operational Creditor submit that the claim in the Petition has arisen due to default made by the Respondent in payment of the balance price of the goods sold and delivered and overdue interest on the outstanding payment.
2. The Operational Creditor email dated 8th December 2018 sent by the Respondent raised dispute for the 1st time about the quality, weight, etc. for the supply of the Goods since December 2012. The Respondent by its Advocate’s letter dated 10th December 2018 replied to the Statutory Demand notice raising various false and frivolous disputes and more so claiming that the Respondent Company has made an excess payment.
3. The Operational Creditor ultimately filed the present Petition on 26th April 2019 before the Hon’ble NCLT, Mumbai and the same was served upon the Respondent Company on 6th June 2019. An affidavit dated 19th June 2019 for Service of the Petition was filed before the Hon’ble NCLT, Mumbai. The Respondent filed its Affidavit in Reply dated 10th July 2019. The Petitioner filed its Affidavit in Rejoinder dated 18th July, 2019 alongwith a compilation of the documents and in response to the Rejoinder, the Respondent filed an Affidavit in Sur-Responder dated 22nd August 2019. The

Petitioner submits that the Respondent through its Affidavit in Reply tried to mislead the correct admitted facts and therefore it became imperative for the Petitioner to place the relevant facts and records to thwart the false and vague statements made by the Respondents. The Petitioner states that to meet the end of justice the Affidavit of Rejoinder has to be referred to and accepted by the Hon'ble Tribunal. The Petitioner submits that the Respondent, vide its affidavit in Reply and Affidavit in Sur-Rejoinder, the Respondent has been unable to show any existence of dispute, and thus the present Application ought to be admitted.

4. The Operational Creditor sold, supplied and delivered to the Respondent TMT bars of various sizes and quantities on the purchase orders dated 24th August, 2017 and 10th May, 2018 by the Respondent. The Petitioner against the goods ordered and delivered issued Invoices vide Invoice Nos. 213/17-18 dated 28th August, 2017 of RS. 3,95,451/- and 068/18-19 dated 13th May, 2018 of Rs. 4,98,876/-. Pursuant to the orders places by the Corporate Debtor through purchase orders, the Petitioner had issued Invoices for the goods sold, supplied and delivered, the Petitioner had also raised Debit Notice towards interests on delayed payments to the Respondent. The Respondent is liable to pay interest as per the one of the terms and conditions of the said sale transactions as mentioned on the said Invoices. The Respondent has time to time paid interest @24% p.a. after deducting the TDS to the petitioner on all the earlier outstanding Invoices. Accordingly, the Petitioner had issued three Debit Notes vide no. 18, 21 and 25 to the Respondent towards the interest liability on account of late payment. Therefore, the total outstanding amount of Rs. 13,73,688/- is due and payable by the Respondent for the price of goods sold, supplied and delivered to the Respondent by the petitioner from 27.09.2017 to 12.06.2018 till the date of this Petition, in which Principal amount of Rs.

8,94,327/- is towards the Invoice raised and Rs. 4,79,361/- towards the Debit Notes raised for the interest @24% on Principal Amount.

5. The Operational Creditor further submits that the Respondent failed and neglected to make payment in spite of repeated requests and reminders by the Petitioner. The said Respondent pleaded that the Respondent on account of its financial difficulties was unable to pay the amount to the Petitioner and also to other vendors. The Petitioner issued a Statutory Notice and also to other vendors. The Petitioner issued a Statutory Notice via Form-3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding the balance outstanding amount along with interest by Registered Post A.D dated 28th November 2018. The Respondent duly received the said demand notice and acknowledged the receipt of the same via Email dated 8th December 2018. Thereafter the Respondent through its advocates sent a Reply to the Notice dated 10th December 2018 and raised various false and vague issues/allegations against the Petitioner. The Petitioner further sent a Rejoinder dated 24th December 2018 and placed the correct facts on record and thwarted all the false allegations. Since the Respondent failed to make any payment towards the said invoices and debit notes.
6. The Operational Creditor further submits that the Respondent company was very irregular in making payments of the Invoices issued to them from time to time. The Petitioner has written various Emails from 12th June 2014 to 3rd April 2019. The Petitioner submits that the Respondent has not replied to any of these Emails and never raised any objections in respect of quality, quantity or excess payment at any point of time before the filing of Petitioner and Statutory Demand Notice.

BRIEF FACTS OF THE CORPORATE DEBTOR

7. The Corporate Debtor submits that the Petitioner is engaged in the supply of steel rods and slabs and has been supplying the same to

the Respondent since April, 2012. Consequently, the Petitioner would from time to time raise its invoices on the respondent which the Respondent would duly clear. The fact that the Respondent was always prompt in making payment to the Petitioner is evident from the fact that there have been no complaints by the Petitioner with respect to delayed payments by the Respondent.

8. The Corporate Debtor further submits that the Petitioner has raised a total of 32 invoices for an aggregate amount of Rs. 2,47,79,729/ Pertinently, due to the fact that the Respondent would make on-account payments in respect of the Petitioners invoices, the respondent has till date made an aggregate payments of Rs. 2,61,30,154/- i.e. the Respondent has made excess payments of Rs. 13,50,430/- to the Petitioner is a schedule of payments made by the Respondent to the Petitioner along with a copy of the Respondent's Bank Account statements supporting the same. In view thereof, it is submitted that there is no debt whatsoever payable by the Respondent to the Petitioner as alleged in the Company Petition. On the contrary, it is the Petitioner who in fact has received excess payments from the Respondent. The Respondent reserves its right to recover the excess payments made from the Petitioner.
9. The Corporate Debtor further submits that in view of the above, the Respondent was shocked to have received the demand notice dated 28th November, 2018 from the Petitioner *inter alia* alleging that the Respondent had filed to make payments in respect of two invoices raised by the Petitioner, i.e. Invoice No. 213/17-18 dated 28th August, 2017 and Invoice No. 068/18-19 dated 13th may, 2018 and therefore, the Respondent allegedly owed the Petitioner an aggregate amount of Rs. 12,96,653/- which included a principal amount of Rs. 8,94,327/- along with interest of Rs. 4,02,326/- calculated at 24% p.a.

10. The Corporate Debtor replied to the Demand Notice vide its advocates letter dated 10th December, 2018 *inter alia* denying any liability whatsoever in respect of the alleged debt. Under the letter, the Respondent informed the Petitioner that not only had the alleged outstanding memos been cleared, but in fact the Respondent had made excess payments to the tune of Rs. 13,97,418/- to the Petitioner, as more particularly set out hereinabove. In the aforesaid letter, the Respondent set out the fact out hereinabove. In the aforesaid letter, the Respondent set out the fact that the petitioner had raised invoices for an aggregate amount of Rs. 2,47,79,729/- but the Respondent had made payments for an aggregate amount of Rs. 2,61,30,154/- and therefore, the Respondent had in fact made an excess payment of Rs. 13,50,430/-.

The aforesaid letter also recorded the fact that the Respondent had in fact lodged a complaint with the Petitioner with respect to the quality of the goods supplied by the Petitioner inasmuch as the materials supplied were not as per ISO standards. Despite the Petitioner having given various assurances to the Respondent to look into the matter and rectify the deficiencies, no action had been taken by the Petitioner.

11. The Corporate Debtor further submits that the pursuant thereto, in or around March, 2019 the Respondent filed a Civil Suit before the City Civil Court, Dindoshi, Mumbai ("Suit") against the Petitioner *inter alia* claiming monies to a tune of Rs. 27,20,804/- on account of deficiency in the quality and specifications of the goods supplied and for recovery of monies paid by the Respondent to the Petitioner on account of excessive and inflated invoices raised by the Petitioner. Despite the fact that the said Suit raises a civil dispute in respect of the subject matter of the present Company Petition, the Petitioner has chosen to file the present petition.

12. Thereafter, on or about 23rd April 2019 after a span of nearly 5 months from the date of the Demand Notice, the petitioner filed the present Company Petition as a counter-blast to the Respondent's claim against the petitioner despite being aware that no money whatsoever was payable by the Respondent to the Petitioner.
13. The Corporate Debtor further submits that in view of the above, it is evident that the present Company Petition suffers from various infirmities, each of which without prejudice to the other, warrants that the Company Petition be dismissed at the threshold with the imposition of exemplary and penal costs on the Petitioner.

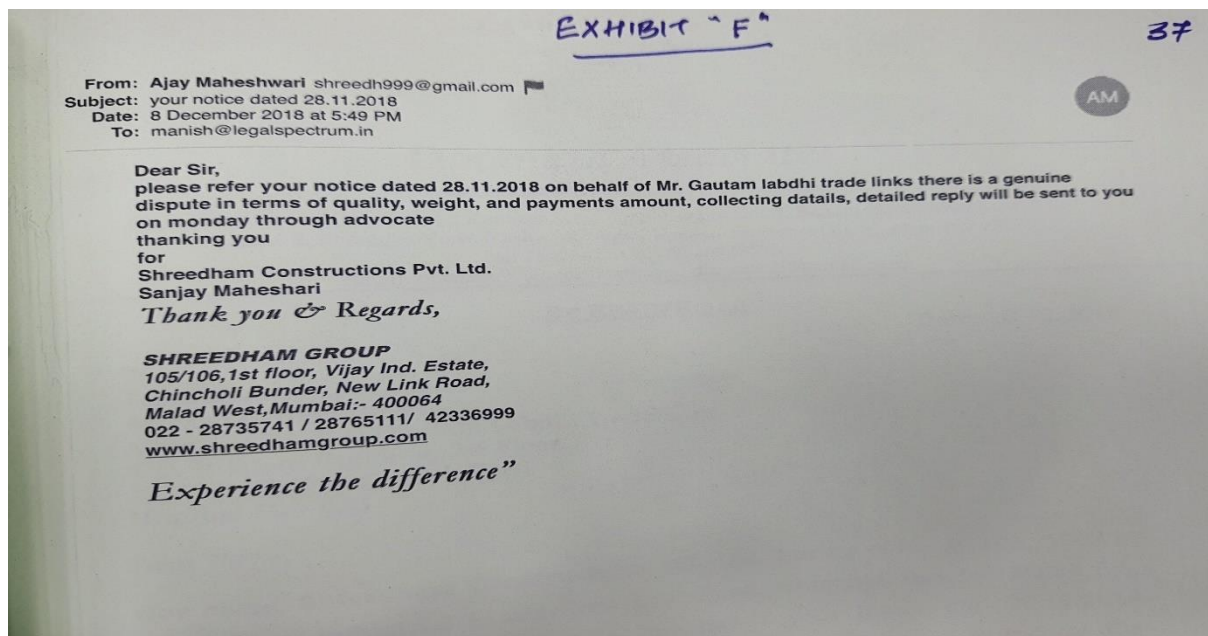
FINDINGS

1. In the light of the contentions raised by the Corporate Debtor in their reply, the core issue that needs to be decided in the above Company Petition is;
- I. Whether there is a pre-existing dispute between the parties?

Let us examine the above issue carefully. The careful perusal of the reply filed by the Corporate Debtor makes it very clear that the Corporate Debtor is opposing the admission of the above Company Petition on two grounds;

- a. There is a pre-existing dispute with regard to the defective quality and service of the material supplied by the Operational Creditor.
- b. The Corporate Debtor has made an excess payment of Rs. 13,50,430/- to the Operational Creditor.
2. This Bench notes that the Operational Creditor has issued Demand Notice under section 8 of the Code calling upon the Corporate Debtor to pay an amount of Rs. 12,96,653/- being the

principal and interest due under the above referred two invoices. The Corporate Debtor having received said Demand Notice sent a cryptic email dated 8.12.2018 as follows;



3. Subsequently, the Corporate Debtor got issued reply lawyer's notice dated 10.12.2018 through their advocate raising the same issues of excess payment and the defective quality of material and service rendered by the Operational Creditor. The Corporate Debtor in para 3.4, 3.5 and 4 of the reply lawyer's notice mentioned as if the Operational Creditor has assured the Corporate Debtor to sit together and sort out the issue of defective quality pointed out by the Corporate Debtor amicably and the Corporate Debtor has no objection to resolve the issue amicably.
4. It is pertinent to mention here that the Corporate Debtor did not place any material before this Bench to prove that they have raised the issue of defective quality of material and services of the Operational Creditor prior to issuing the Demand Notice nor placed any evidence to show that the material was returned to Operational Creditor on account of defective quality. It is also appropriate to mention here that the Corporate Debtor appears to

have filed Commercial Suit before the Additional Sessions Judge, Dindoshi claiming damages from the Operational Creditor for the alleged defective quality of the material supplied by the Operational Creditor and the said suit was dismissed very recently on 30.09.2021. Admittedly, the above Commercial Suit was filed by Corporate Debtor subsequent to filing the above Company Petition by the Operational Creditor to give an impression as if there is a pre-existing dispute. As per the settled proposition of law laid down by the Hon'ble Supreme Court in various judgements, whenever the Corporate Debtor raises the plea of pre-existing dispute in section 9 Application, the Adjudicating Authority has to see whether the plea of pre-existing dispute raised by the Corporate Debtor is a mere defence and require any further investigation. Applying the above analogy to the present case, it is important to mention here the Corporate Debtor for the first time raised the quality dispute only through their reply lawyer's notice and the Commercial Suit filed by the Corporate Debtor for damages was also dismissed. In the light of above developments and facts, this Bench has no hesitation in holding that the plea of pre-existing dispute is nothing but a false defence raised by the Corporate Debtor to avoid the "Operational Debt" and the plea of pre-existing dispute does not require any further investigation what so ever. For the forgoing reasons there is no merit in the defence taken by the Corporate Debtor and the above Company Petition deserves to be admitted since the "debt and default" in this case stands proved and the debt is also within limitation. To add this the Petitioner also suggested the name of the proposed IRP to be appointed and thus the Company Petition satisfy all necessary legal requirements for admission.

5. Accordingly, the above Company Petition is admitted by passing the following;

ORDER

- a. The above Company Petition No. (IB) 1663(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Shreedham Constructions Pvt. Ltd.
- b. This Bench hereby appoints **Mr. Mahesh Sureka**, Insolvency Resolution Professional, Registration No: IBBI/IPA-001/IP-P00413/2017-18/10736 as suggested by Operational Creditor in the Company Petition.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

SD/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**