

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

CP/1423/2019 filed under section 9 of the
Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency Bankruptcy
(Application to Adjudicating Authority)
Rules, 2016.

**In the matter of M/s. Landmark Housing Projects Chennai
Private Limited**

M/s. Jindal Steels

No. 4 & 5, T. V Koil Street,
2nd Floor, Taylors Road, Kilpauk,
Chennai-600010

---Operational Creditor

V/s

M/s. Landmark Housing Projects Chennai Private Limited

No.27, Saravana Street,
T. Nagar, Chennai-600017

---Corporate Debtor

Coram:

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Operational Creditor: *Shri.K. Gaurav Kumar, PCS*
Ms. Alpa Jain, PCS

For the Corporate Debtor : *M/s. Nathan and Associates*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order pronounced on: 29.04.2021

Under Consideration is a Company Petition filed by M/s.
Jindal Steels (in short, 'Petitioner/Operational Creditor') against

M/s. Landmark Housing Projects Chennai Private Limited (in short, 'Respondent/Corporate Debtor') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, 'IB Code 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, 'IB Rules 2016').

2. The learned counsel appeared on behalf of the Operational Creditor submitted that the Operational Creditor was established in the year 2013 and engaged in the business of supply of steels. On 07.05.2014, Corporate Debtor approached the Operational Creditor for supply of TMT steel items. Out of the total supplies made, invoices were raised. In the application, debt to the tune of Rs. 37,04,830/- including principal amount outstanding Rs.13,49,758/- and Rs.23,55,072/- interest outstanding at the rate of 36% per annum is claimed. On 01.11.2019 the demand notice was sent to the Corporate Debtor and the proof of service is enclosed in Page 68 to 71 of the application.

3. Learned counsel for the applicant submitted that, upon default of the said payments by the Corporate Debtor, the

Operational Creditor contacted the Corporate Debtor through various communication modes and requested them for payment of the outstanding amount. The Corporate Debtor had acknowledged the ledger balances and confirmed the outstanding amount for the Financial Years 2016-2017, 2017-2018 and 2018-2019. Even after repeated reminders, the Corporate Debtor has neither come forward to make payment of the outstanding invoices nor issued any reply to the reminder communications and demand notice.

4. As the Corporate Debtor is unable to pay its debts despite admission of liability, the Operational Creditor is left with no other option but to seek for filing of the Insolvency and Bankruptcy petition against the Corporate Debtor.

5. The learned counsel for the Corporate Debtor filed a counter on 17.02.2020 vide SR No. 1131 on behalf of the Corporate Debtor and submitted that, on 07.05.2014, the Corporate Debtor approached the Operational Creditor for supply of TMT Steels for which the Operational Creditor raised three invoices viz. Invoice No.868 dated



09.10.2014; Invoice No.1000, dated 11.11.2014 and Invoice No.1157 dated 09.12.2014.

6. The Corporate Debtor further submitted that the alleged ledger has not been signed and sealed by the authorized signatory of the Corporate Debtor. Further, the Director of the Corporate Debtor is in charge of functioning and management of the day to day affairs of the Corporate Debtor and the Purchase Manager is not legally authorized to do so as shown in Page 63 of the application filed by the Operational Creditor. The Operational Creditor, in collusion with the then Purchase Manager, who without any authority had signed and affixed seal in the alleged ledger without knowledge of the Corporate Debtor and the thus the Corporate Debtor has not acknowledged the debt. It is well established law that the seal and signature of authorized person in ledger maintained by the Operational Creditor is not considered as an acknowledgement as per Section 18 of the Limitation Act, 1963.

7. Further, the last invoice dated 09.12.2014 was the cause of action enabling the Operational Creditor to file this application but

it is not within limitation as the limitation period starts from 09.12.2014 and the present application was filed on 29.11.2019 after the expiry of a period of three years. Section 238A of the Code clearly provides that the Limitation Act, 1963 applies to proceedings before this Tribunal. The learned counsel for the Corporate Debtor relied on the decision of the Hon'ble Supreme Court in **B.K. Educational Service Pvt. Ltd. Vs Parag Gupta and Associates** on the Insolvency Law Committee Report of March, 2018 which suggested that *"the intent of the Code could not have been to give a new lease of life to debts which are time-barred. It is settled law that when a debt is barred by time, the right to remedy is time-barred"*.

8. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had been obtaining the confirmation of balances from the Corporate Debtor which is nothing but acknowledgement of debt.

9. No action was taken at any point of time to rescind this balance confirmation (contract) by the Corporate Debtor and thus this is an implied ratification of the contract. Hence, under Section

19 read with 18 of the Indian Contract Act, 1872 does not make the contract invalid.

10. Since the Corporate Debtor was completely aware of the existence of such outstanding balances in its books, the confirmation of balances by their Purchase Manager cannot be considered as voidable and hence cannot be invalid. In continuation to the above, the contract was not rescinded and hence sub-section 2 of Section 27 of the Specific Relief Act, 1963 does not permit rescission of the contract and the grounds that it is impliedly ratified.

11. Further, the Corporate Debtor's objection that the Purchase Manager cannot enter or sign the confirmation of balances of its creditors on behalf of the Corporate Debtor and thereby making the entire transaction as invalid ab initio is not sustainable.

12. In this Context, the Learned Counsel for the Applicant relied on Judgement of the Hon'ble Supreme Court in the matter of **United Bank of India vs Sh. Naresh Kumar and others on 18th September, 1996**, it was held that

As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the

Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of it's officers a Corporation can ratify the said action of it's officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, especially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.



13. Heard the submissions made by the Learned Counsel / Authorized Representative for both the parties. The Learned Counsel for the Corporate Debtor sought to rebut the claim as filed by the Operational Creditor on the ground of limitation and further it has also been contended that the alleged confirmation of balance obtained from the Corporate Debtor was done by the Operational Creditor in collusion with the then Purchase Manager, who without any authority had signed and affixed seal in the alleged ledger without knowledge of the Corporate Debtor. It is pertinent to note that it seems to be only an allegation being made by the Corporate Debtor in order to rebut the claim of the Operational Creditor, which is not supported by any documentary evidence.

14. Further, it is also seen that from the Purchase Order issued by the Corporate Debtor dated 02.06.2014, subsequently other Purchase Orders dated 02.07.2014, 23.09.2014 and 04.10.2014 which are attached at page nos. 17 to 20 of the typed set filed along with the Application, that all the Invoices are to be sent to the address to the Corporate Debtor along with GRN copy to the Manager –

Accounts. Further, it is to be noted here that the Corporate Debtor is not rebutting the sum which is due and payable to the Operational Creditor, however is only stating that the said due is barred by limitation. For the purpose of defeating the claim of the Operational Creditor, the Corporate Debtor is raising a feeble defence, which is not supported by any documentary evidence, that the Purchase Manager is not the Authorized Signatory of the Corporate Debtor in order to acknowledge the accounts. Apart from the above, the Corporate Debtor has not placed on record any concrete evidence to show that the said signature has been obtained balance confirmation of accounts of the Corporate Debtor.

15. The confirmation of balance in relation to the accounts of the Corporate Debtor was obtained by the Operational Creditor for the year 01.04.2015, 01.04.2016, 01.04.2017, 01.04.2018 and 01.04.2019 and the present Application which is filed on 29.11.2019 is saved by Section 18 and 19 of the Limitation Act, 1963 and as such it cannot be said that the present Application is barred by limitation.



16. Hon'ble Supreme Court in the matter of **Sesh Nath Singh & Anr vs Baidyabati Sheoraphuli Co-Operative Bank Ltd and Anr.** Civil appeal no. 9198 of 2019.

“66. Similarly under Section 18 of the Limitation Act, an acknowledgement of present subsisting liability, made in writing in respect of any right claimed by the opposite party and signed by the party against whom the right is claimed, has the effect of commencing of a fresh period of limitation, from the date on which the acknowledgment is signed. However, the acknowledgment must be made before the period of limitation expires”.

17. In view of the above observations, this Bench is inclined to admit this Application as the Applicant has made out a case and also satisfied this Adjudicating Authority for admitting this Application. It is also proved that there is a debt due and payable by the Corporate Debtor in respect to the Invoice No. 868 dated 09.10.2014 and Invoice No. 1000 dated 11.11.2014 and Invoice No. 1157 dated 09.12.2014 and they have defaulted in making a payment and respective invoices, the Corporate Debtor has confirmed their account ledger outstanding balance for the Financial Years 2016-

2017, 2017-2018 and 2018-2019. The rate of interest is not expressly mentioned in the invoice. Hence the applicant is not entitled to interest at the rate of 36% per annum. As per confirmation of Balance dated 01.04.2019, the Corporate Debtor has agreed to a sum of amount Rs. 13,49,758/- as due and payable.

18. Since the Operational Creditor has not proposed the name of Insolvency Resolution Professional in Part-III of the application, this Bench is hereby appoints **Mr. Sanjeevi C, Reg. No. IBBI/IPA-003/IP-N000108/2017-2018/11215 Email: sanjeevicra@yahoo.co.in** as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

(I) That Moratorium is hereby declared prohibiting all of the following actions, namely,

(a) 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;

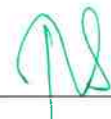
(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) 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.

(III) 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.

(IV) That the order of moratorium shall have effect from 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.

(V) That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.

19. Accordingly this petition is **hereby admitted**.

20. The Registry is hereby directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by way of e-mail.

-sd-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-

(R. SUCHARITHA)
MEMBER (JUDICIAL)

TJS

CP/1423/2019

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