

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IB No. 3013/ND/2019

IN THE MATTER OF:

M/s Reach International

Office No.702, 7th Floor
27, Barakhamba Road
New Delhi – 110001.

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

Altech Infrastructure Private Limited

CIN: U70109DL2006PTC155875
Plot No.293, Kehar Singh Estate
West End Marg, Saidulajaib
New Delhi – 110030.

...RESPONDENT/ CORPORATE DEBTOR

Order Delivered on: 21.01.2022

Section: 9 of the Insolvency and Bankruptcy Code, 2016

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Vaibhav Mahajan, Adv.

For the CD : Ridhima Verma, Adv.

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

M/s Reach International (**Applicant/Operational Creditor**) has filed this Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through its authorized partner Mr. Dhruv Sharma with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Altech Infrastructure Private Limited (**'Corporate Debtor/ Respondent'**).

2. The Corporate Debtor namely, Altech Infrastructure Private Limited, CIN: U70109DL2006PTC155875 is a company incorporated on 23.11.2006 under the provisions of the erstwhile Companies Act, 1956, having registered office at Plot No.-293, Kehar Singh Estate, West End Marg, Saidulajaib, Opp. Saket-D Block, New Delhi 110030, which is within the territorial jurisdiction of this Tribunal.

3. It is stated by the Applicant/Operational Creditor that in the month of February, 2018 the Corporate Debtor approached them for hiring certain industrial machines for facilitating their construction activities. After assurance of the corporate debtor, the applicant leased out and transported the same to the desired location for a consideration of monthly rent, dependent upon the number of hours the machines were operated (excluding other charges and receivables).

4. It is added that the Corporate Debtor issued purchase order No. ALT/P.O./2017-18/35 dated 09.02.2018 to the applicant for supply of two scissor lift machines-10 meters platform height with operator for Samsung firefighting project at Bhiwadi, Jaipur. The said purchase order was revised on 23.05.2018 for a period of three months.

5. The Applicant further states that after commencement of operations, the invoices were raised at the end of each month when the machine was used. The Corporate Debtor was required to make payment within 15 days from the date of the invoice. The details of invoices raised, as submitted by the Applicant, are reproduced below :

S.No.	Invoice No.	Month	Reach Invoice Amount
1.	707	Feb'18	Rs.54959/-
2.	708	March'18	Rs.272181/-
3.	165	April'18	Rs.290392/-
4.	231	May'18	Rs.267388/-
5.	342	June'18	Rs.305130/-
6.	492	July'18	Rs.267187/-
7.	637	Aug'18	Rs.192663/-
Total			Rs.1649900/-
Less: Payment received			Rs.5,63,020/-
TOTAL AMOUNT			Rs.10,86,880/-

6. The Applicant submits that after repeated request to clear the outstanding liability, the Corporate Debtor as a part payment towards the total legal liability issued a cheque in favour of the applicant dated 15.10.2018 for Rs.4,00,000/- only drawn on SBI Vasant Kunj, Delhi. The cheque, on being presented to the bank, got dishonored and was returned vide Return Memo dated 17.10.2018 with the remark "Account Closed".

7. The Applicant further submits that vide email dated 25.10.2018 and 31.10.2018, they again requested the corporate Debtor to pay off the outstanding dues. In the said emails the applicant also annexed the copy of ledger to show the outstanding dues. It is added that in response, the corporate debtor sent an email dated 12.11.2018 enclosing a revised/updated ledger. As per the ledger, an amount of Rs.9,30,178/- is due and payable. However, the Corporate Debtor failed to make payments of the outstanding dues.

8. The Applicant states that under the circumstances, it was constrained to issue a Demand Notice dated 30.11.2018, under Section 8 of the IBC, 2016 to the Corporate Debtor. The notice was duly served upon the Corporate Debtor. The Corporate Debtor sent its reply/notice of dispute dated 11.12.2018. The same is averred under the Affidavit filed under Section 9(3)(b) of IBC, 2016.

9. That as per Part-IV of the Application, the applicant has claimed an amount of Rs.9,29,120/- only as due and payable by Corporate Debtor, the relevant extract of which is reproduced below :

2.	Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)	That as stated and described earlier, the total amount of operational debt owed to M/s Reach International by Altech Infrastructure Private Limited with break up is tabulated below:			
		S.No	Invoice No.	Month	Total
		1.	707	Feb'18	Rs.54959/-
		2.	708	March'18	Rs.272181/-
		3.	165	April'18	Rs.275414/-
		4.	231	May'18	Rs.233240/-
		5.	342	June'18	Rs.242426/-
		6.	492	July'18	Rs.255605/-
		7.	637	Aug'18	Rs.159913/-
		TOTAL			Rs.14,93,738/-
		Less: Payment Received			Rs.5,64,618/-
		Total Amount			Rs.9,29,120/-

For REACH INTERNAT
[Signature]

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Total in Words: Nine Lakhs Twenty Nine Thousand One Hundred and Twenty Only	
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10. That on issuance of notice, the Corporate Debtor has filed its reply to the aforesaid application and raised the following objections:

- a) That the amount claimed in the default has been disputed by the corporate debtor time and again and hence, the requirement of Section 9 of the Code is not fulfilled.
- b) That on 09.02.2018, the Applicant and the Corporate Debtor entered into a contract under which the applicant was required to provide services of scissor lifts by their manpower at a rental rate as decided. The contract was subsequently revised and the supply of scissor lift services was to be provided for a period of Feb. 2018 to August 2018. As per the terms, the employees of the applicant were mandatorily required to work for 26 shifts in a month and 10 hrs./day. The petitioner was required to provide log books detailing hours put in by their employees and the invoices were raised accordingly against the hours detailed in Log Books. As per the contract, the Corporate Debtor was supposed to remit the amount due only after proper verification of the invoices and records.
- c) That in due course, it was noticed that there were blatant over writings and suspicious entries without corroboration to log books submitted by the applicant. It was further noticed that the Applicant through fraudulent means had increased their work hours there by inflating the amounts in the invoices.
- d) It is the averment of the Corporate Debtor that a dispute pertaining to the discrepancies in the log book such as

overwriting, improper monthly reports and increase in work hours for 21 hours or more which is in violation of industry standards had already been raised prior to the issue of demand notice. Further, the applicant has also failed to file the monthly reports and the existing disputes render the invoices of the petitioner completely redundant. Also, in the reply dated 11.12.2018 to the notice dated 30.11.2018, the corporate debtor again stated that there is a dispute as regards the discrepancies that have been time and again noticed in the log books and the corresponding monthly reports. The corporate debtor also requested the applicant to provide the original log books to get the same audited by the accounting team for proper reconciliation of records and accounts. But the applicant failed to provide the rectified log books.

- e) It is further averred that the Applicant has provided falsified and incomplete data, which does not substantiate a valid debt through legitimate invoices and hence, the petition is prima facie defective and liable to be dismissed on this ground.
- f) The Corporate Debtor has highlighted that the Applicant has not acted as per the contract and has breached the contract time and again. The invoices had been raised even for the occasions when the machine was down. The corporate debtor further states that the issues in the invoices were already intimated to the applicant prior to issue of demand notice but the same has been deliberately ignored by the applicant.

- g) That the applicant had concealed material fact regarding the transaction between the parties. Reliance is placed upon the case of Hon'ble NCLAT in *Unigreen Global Private Limited Vs. PNVB & Ors. [CA (AT) No.81 of 2017]*, wherein it was held that non-disclosure of relevant facts may lead to rejection.
- h) That the instant case is based upon the contract between the parties and whether or not the contract is completed or not, can only be demonstrated by the log books and the corresponding monthly reports. The dispute as to performance of contract and genuineness of the alleged debt has been highlighted by them time and again.
- i) That the application is liable to be rejected under section 9(5) of the code as being incomplete, defective and failing to conform to the form and format specified under the code. The applicant has also failed to provide a statement from information utility and also failed to annex the bank account. It is also contended that the application has been filed by the person not duly authorized in this regard. Furthermore, the Affidavit filed under Section 65B of the Evidence Act is defective and the same along with the other documents must be rendered inadmissible.

11. We have heard the Ld. Counsels for both the parties and perused the averments made in the Application as well as Reply. The main objections of the Corporate Debtor are pre-existing dispute regarding the invoices raised by the applicant, the discrepancies

between the log books and the monthly reports of the applicant and breach of contract by the applicant.

12. In the present case, the main documentary evidences placed on record by the Applicant are the ledger statement, the invoices raised and the cheque for part-payment of Rs.4,00,00/- only which was received from the corporate debtor but got dishonored and returned vide Return Memo dated 17.10.2018 with the remark "Account Closed".

13. It is the case of Corporate Debtor that it had much before the date of issuance of the demand notice under Section 8 of the IBC had raised dispute regarding the discrepancies in the Log books, monthly report and the issuance of incorrect invoices. However, we notice that the corporate debtor has failed to place on record or produce any communication, exchanged with the applicant, evidencing any 'Pre-Existing Dispute' prior to the issue of Demand Notice. It is also pertinent to mention that in its Reply to the Application, the applicant apart from raising a bald denial of liability, has not filed any substantive material in support of their contentions. Therefore, we are of the considered view that the law laid down by the Hon'ble Supreme Court in '**Mobilox Innovations Private Limited' V/s. 'Kirusa Software Private Limited', (2018) 1 SCC 353** is squarely applicable to the facts of this case. At this juncture, we find it apt to reproduce the relevant paragraph as hereunder;

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been

*received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. **Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence.** It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at Company Appeal (AT) (Insolvency) No. 1017 of 2020 this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."*

(Emphasis Supplied)

The contention of the Corporate Debtor regarding false and fabricated invoices is unsustainable having regard to the fact that the invoices on record have even been acknowledged by the Corporate Debtor as per the attachment to its email dated 12.11.2018 (Pg 84-85 of the application). Moreover, the said email has also not been disputed by the corporate debtor. In the instant case, going by the aforesaid test of the 'existence of dispute', it is clear that the Corporate Debtor has tried to create a moonshine dispute and has not raised any plausible contention, which could require any further investigation.

14. Further, the corporate debtor on 15.10.2018 had also issued a cheque of Rs.4,00,000/- towards part payment of dues, which got dishonored and was returned vide return memo dated 17.10.2018. Thereafter, vide email dated 12.11.2018 (Pg 84-85 of the application)

the Corporate Debtor had sent the statement of account and the Ledger of the Applicant Company reflecting the Revised Invoice amount as Rs.14,93,738/-.

15. As per the averments made in the application in Form-5 : Part IV, a sum of Rs.5,64,618/-, has only been received by the Applicant and a sum of Rs.9,29,120/- is still due and payable. Accordingly, an unpaid operational debt of more than 1 Lakh is clearly due and payable to the Applicant. Further, the cheque issued by the Corporate Debtor towards part-payment of its liability is a clear admission of the outstanding liability. Also, during the course of hearing, the corporate Debtor has time and again stated that they are in the process of settling the matter amicably with the applicant, which is again, an admission of unpaid operational debt due and payable by them to the Applicant. In view of the above, we are further strengthened by the law laid down by the Hon'ble Supreme Court in the "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**" wherein, it is observed and held that :

"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has

occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”

16. That the invoices raised by the applicant pertain to the period from February 2018 to August 2018. The present application is filed on 12.11.2019. Hence, the present application is well within the limitation period.

17. That present Application is filed in the Form prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the Code and is complete.

18. In sequel to the above, **the Application is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:**

- “(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (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.”

19. The applicant has not proposed the name of IRP, therefore, this Bench appoints Mr. Vinod Kumar Chaurasia as IRP having IIBI Registration No. IBBI/IPA-001/IP-P00100/2017-18/10200 (Email Id : cavinodchaurasia@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 are to be filed by him within a week from this order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

20. The Operational Creditor is directed to deposit Rs. Two Lakh only with the IRP, Mr. Vinod Kumar Chaurasia to meet to the expenses and perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Applicant. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

21. A copy of the order shall be communicated to the Applicants as well as to the Corporate Debtor above named by the Registry. Applicants are also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for its record and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
(L. N. Gupta)
Member (T)

Sd/-
(Abni Ranjan Kumar Sinha)
Member (J)