

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT No. IV)**

COMPANY APPLICATION No. IB-437/ND/2017

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

In the Matter of:

Me Casa Furnishings Private Limited ... **Applicant/
Operational Creditor**

Versus

Bhasin Infotech & Infrastructure Private Limited ... **Respondent/
Corporate Debtor**

Order Pronounced on: 12/01/2022

Coram:

Dr. Deepti Mukesh, Hon'ble Member(Judicial)
Ms. Sumita Purkayastha, Hon'ble Member (Technical)

MEMO OF PARTIES

Me Casa Furnishings Private Limited
P-25 Laxmi Industrial Estate
New Link Road
Andheri (West)
Mumbai 400 053 ... **Applicant/Operational Creditor**

Versus

Bhasin Infotech & Infrastructure Private Limited.
28, Raja Garden,
New Delhi 110 015

And corporate address at
615-618 Le Meridian Commercial Tower
Janpath,
Delhi 110 001 ... **Respondent/Corporate Debtor**

CP (IB) /437/ND/2017

Appearance:

For the Applicant :
For the Respondent : Mr. Lokesh Bholra and Mr. Karan Grover
And Mr. Govind Bharadwaj, Advocates

ORDER

Per: Ms. Sumita Purkayastha, Hon'ble Member (Technical)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by **Me Casa Furnishings Private Limited**, through its Director Mr. Sanket Kumar Suri, Director who is duly authorised by Board Resolution dated 12.07.2017 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against **Bhasin Infotech & Infrastructure Private Limited** (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the provisions of the Companies Act, 1956 having CIN U52100DL2009PTC189135 and having registered office at Andheri (West), Mumbai engaged in the business of decorative paintings and plasters.
3. The corporate debtor is a Private Limited Company, incorporated under the provisions of companies Act, 1956 on 23.05.2006, duly



registered with Registrar of Companies, New Delhi with CIN: U72300DL2006PTC149113 and having registered office at Raja Garden, New Delhi 110 015. The Authorized share capital of the Respondent is Rs. 25,00,00,000/- and Issued, Subscribed and Paid up share capital of the company is Rs. 16,71,95,808/-. The respondent company is engaged in the business of civil construction.

4. It is submitted by the applicant that for the purpose of carrying out decorative paintings, plasters and for supply and application of material for phase I of the Grand Venezia Mall, Greater Noida, the corporate debtor had placed work order dated 13.02.2012. The applicant having completed the work for phase I to the satisfaction of the corporate debtor, the applicant was further granted work for phase II in November, 2013 again for texture painting works at Grand Venice Mall, Greater Noida. For the services rendered, the applicant kept raising its invoices on the corporate debtor, however, the corporate debtor defaulted in payment of the debts. That by August 2015 contracted quantum of work was completed and the applicant raised invoices which was duly accepted by the corporate debtor. That the last payment was received by the applicant in October, 2015.
5. It is further submitted by the applicant that despite repeated request by e-mails, phone calls and personal meetings the invoice amount was not paid by the corporate debtor. That as



per the accounts maintained by the applicant, in normal course of business, an amount of Rs. 75,39,055/- is due and payable by the corporate debtor with interest @ 18% per annum which comes to Rs. 58,37,781.82. Thus, the total amount due and payable by the corporate debtor works out to Rs. 1,33,76,836.54.

6. It is further submitted by the applicant that having failed to receive the outstanding debt, demand notice under Section 8 of the IB Code dated 18.09.2017 was sent to the corporate debtor through courier on 19.09.2017 and through speed post on 20.09.2017. The applicant has brought on record copy of track report of the postal department as also delivery report of the courier services as proof of service. That no dispute was raised by the corporate debtor towards the aforesaid demand notice nor any reply was received thereof. Provisions of Section 9 (3) (b) of the IB Code, 2016 has been complied with. An affidavit has been filed as required u/s 9 (3) (c) of the IB Code, 2016 along with letter from the bank of applicant evidencing non-payment of operational debt.
7. The corporate debtor has filed affidavit in reply to the application controverting the averments made in the application and has asserted as follows:-
- That there is no debt or liability or obligation of the corporate debtor in respect of the alleged claim made by the applicant as



the corporate debtor has already made all the payments as per the certified invoices annexed by the applicant along with the demand notice;

- i. That as the applicant failed to execute the work to the satisfaction of the corporate debtor, corporate debtor had to get the work done from other professionals;
- ii. That the applicant concealed the fact in the application that despite the work not being executed to the satisfaction of the corporate debtor, all the invoices which were duly certified by the company in conformity of the applicant on the basis of assessment of the quantum of work executed by the applicant were duly paid;
- iii. That the applicant has obtained the certificate from Bank of India only and after the period May, 2015. That major payments were made prior to May 2015 and the applicant has concealed the fact of maintaining other bank accounts;
- iv. That the corporate debtor had to face huge losses and delays in the execution of the development work of the project due to unprofessional attitude and lack of skill in executing the work by the applicant,
- v. That the applicant has based the present claim under the Code solely on frivolous inflated invoices raised by the applicant having no connection with the actual quantum of work done;

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8. Subsequently, the respondent filed additional affidavit inter alia asserting as under: -
- i) that the applicant has referred the subject matter pending before this Tribunal to Mediation Centre at Delhi High Court on 18.05.2017;
 - ii) that there was an existing dispute regarding debt due as being alleged by the applicant;
9. The applicant filed counter affidavit inter alia stating that.
- i) that the applicant never suppressed the fact that it had referred the present subject matter to the Mediation Centre at Delhi High Court on 18.05.2017 and same is averred in the list of dates filed by the applicant along with the main application.
 - ii) That the applicant had specifically stated that the dispute was because the respondent refused to pay the debt payable to the applicant and the dispute was never regarding the quantum of amount payable or the time when the amount became payable or any other dispute. That the reference to the Mediation Centre was made only in order to allow the corporate debtor to clear the dues payable by it;
10. As per Form 5, Part IV, the corporate debtor is liable to pay an outstanding sum of Rs. 1,33,76,836.54 (Rupees one crore thirty-



three lacs seventy-six thousand eight hundred thirty-six and paise fifty-four only).

11. The application is filed on 16.10.2017. Last pending invoice filed by the applicant is 25.08.2015 which is considered as due date. Therefore, the debt is not time barred and the application is filed within the period of limitation and not barred by law.
12. The registered office of the corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. Heard submissions made and perused the documents on record. The present application is complete and the Applicant is entitled to claim its dues. The corporate debtor has disputed the payment of claim of applicant on the ground that the corporate debtor has already made all the payments as per the certified invoices annexed by the applicant and that the applicant has referred the subject matter pending before this Tribunal to Mediation Centre at Delhi High Court on 18.05.2017 and there was an existing dispute regarding the debt due, much prior to the statutory notice under Section 8 of the Code been sent to the corporate debtor. Regarding the pre-existing dispute, no documentary evidence is filed by the corporate debtor to substantiate the existence of a dispute. On the contrary, its claim that all payments were made prior to May 2015, the corporate debtor has not produced on record details of payment



made by it to the applicant as no debt is due. Surprisingly the corporate debtor has admitted the fact of mediation pending but no records of mediation proceedings were filed to support the genuine dispute pre-existing.

14. In the above circumstances, we are convinced that the debt is due and payable and default has occurred. As held by the Hon'ble Supreme Court in case of "Mobilox Innovative Private Limited vs. Kirusa Software Private Limited" the dispute has to be genuine and not mere moonshine dispute. Mere pendency of mediation reference cannot be termed as dispute specially when no documents/minutes recording any controversy regarding payment of debt is placed before us. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
15. The applicant has proposed the name of the Interim Resolution Professional (IRP), hence, we hereby appoint Mr. Umesh Gupta, having Registration No: IBBI/IP-001/IP-P00848/2017-18/11431 having Email Address: umesh@vamindia.in and having office at VAM & Associates, Unit No. 111, Tower-A, Spazedge Commercial Complex, Sector 47, Sohna Road, Gurgaon 122 018 to act as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to



Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

16. We direct the Operational Creditors to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Umesh Gupta to meet out the expense to 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 Operational Creditor. 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.
17. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
18. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In



addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



-Sd-

Ms. Sumita Purkayastha
Member (Technical)



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Dr. Deepti Mukesh
Member (Judicial)

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