

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.92/BB/2020
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

Rolastar Private Limited

Plot No.25 & 26, Sector -2A,
HSIIDC, IMT Manesar,
Gurugram – 122050.

- Operational Creditor/ Petitioner

Versus

Infragreen Airconditioning Private Limited,

Plot No. 1626-B, 18th Main,
30th Cross, 1st Stage, 5th Block,
HBR Layout, Bengaluru-560043

- Corporate Debtor/Respondent

Order pronounced on: 01.06. 2021

Coram:

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Operational Creditor :Adv. B. K Arun;
For the Corporate Debtor : None

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.92/BB/2020 is filed by Rolastar Private Limited, (hereinafter referred to as 'Operational Creditor /Petitioner) under Section 9 of the IBC, 2016 R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of 'Infragreen Airconditioning Private Limited' (hereinafter referred to as 'Corporate Debtor/Respondent') on the ground that the Corporate Debtor has committed default for a principal outstanding amount



of Rs.5,61,672/- (Rupees Five Lakh Sixty One Thousand Six Hundred Seventy Two Only) along with an interest of Rs.1,87,408/- (Rupees One Lakh Eighty Seven Thousand Four Hundred and Eight only). The Petitioner claims total amount of Rs.7,49,080/- (Rupees Seven Lakh Forty Nine Thousand Eighty only).

2. Brief facts of the case, as per the Petitioner, which are relevant to the issue in question, are inter alia as follows:

(1) The Petitioner is engaged in the business of manufacturing of factory-fabricated ducting with over 23 years of experience. The Respondent is an airconditioning company covering the entire range of air conditioning products, applications and associated services for their entire range of products and services.

(2) It is submitted that on 13.02.2017, the Respondent issued purchase order to the Petitioner for supply of various types of ducting materials, marking the commencement of business relationship between the Petitioner and the Respondent. Thereafter, various purchase orders were issued by the Respondent for supply of various ducting materials manufactured by the Petitioner from 13.02.2017 to 09.09.2017. In respect of the purchase orders, the Petitioner raised 13 invoices for Rs.9,92,307/- out of which invoices, a sum of Rs.5,61,672/- was due from CD till date 07.02.2019. An interest of Rs.1,87,408/- has been levied at 24% interest p.a from the date each payment became overdue as per the respective invoices till 07.02.2019 making the total outstanding amount Rs.7,49,080/-.

(3) The Petitioner has annexed to the petition, Demand Notice dated 07.02.2019 under section 8 of the Code, 2016 which was duly served on the Respondent on 13.02.2019. Copies of the Notice and proof of delivery are annexed to the Petition.

(4) It is submitted that the Respondent has neither responded to the Demand Notice nor made any payment to the Petitioner.



3. The Respondent has not appeared before this Tribunal despite service of Court Notice.
4. Heard Shri. B. K Arun, Learned Counsel for the Petitioner, through video conferencing. We have carefully perused the pleadings of the parties and extant provisions of the Code and the Rules made thereunder.
5. We have perused the material brought on record by the Petitioner. On perusal of the financials of the Respondent, it is seen that as on 31.03.2019, the company has reserves and surplus of Rs.3,14,08,974/-, tangible assets of Rs.15,69,866/-, trade receivables of Rs.4,01,97,365/-, trade payables of 2,06,10,263/- and net worth of the company being Rs.3,24,08,974/- the Respondent can in no stretch of imagination called an insolvent company unable to pay its dues. The object of the Code, 2016 being resolution of insolvency, a company with ongoing business generating revenue of Rs.14,46,43,488/-and with a positive net worth with trade receivables being twice the payables cannot be pushed into the rigours of CIRP as that would only defeat the object of the Code, 2016.
6. Although the Respondent has not appeared before us, the Petitioner has failed to establish the insolvency of the Respondent. On the contrary, the financials of the Respondent clearly establish that the company is a healthy unit and generating good revenue. The Petitioner has to approach the relevant and appropriate forum for recovery of monies due.
7. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*¹ has inter alia held that I & B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency. It is also pertinent to mention here that the Hon'ble Supreme Court in the case of *K. Kishan v. Vijay Nirman Company Private Limited*² clarified that the Petitioners cannot use IBC either prematurely or for extraneous considerations or as substitute for debt enforcement procedures.

¹ 2018 (1) SCC 353

² (C A) No.9597 of 2018 dated 23rd October, 2018, (147 CLA 112 (SC)



8. We are of the considered opinion that this petition has been filed with an intention to substitute recovery proceedings with an application under section 9 of the Code, 2016. Allowing such a petition would only defeat the purpose of the Code.
9. In view of the foregoing, C.P. (IB) No.92/BB/2020 is hereby dismissed with no order as to costs.



**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**



**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

Aparna