

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

C.P.No.IB-311/(ND)/2019

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

In the matter of:

Hariprasad Gopikrishna Jewellers Pvt. Ltd.

Having its office at:-
2870-73, Shop No.207,
Gali No.17, Hardhyan Singh Road,
Karol Bagh, New Delhi-110005

...Applicant/Petitioner

Versus

Midas Infra Trade Ltd.

Having its Registered office at:-
301, 3rd Floor,
2633-2634, Bank Steet,
Karol Bagh, New Delhi-110005

...Respondent/Respondent Company



Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Mr. Rishi Kumar, Advocate

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ORDER

Date: 20.11.2019

1. This is an application filed by the Applicant M/s Hariprasad Gopikrishna Jewellers Pvt. Ltd., seeking to initiate corporate insolvency resolution process ("CIRP") of M/s Midas Infra Trade Ltd., the Respondent, under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in paying Rs. 4,15,60,309/- including the interest component towards the supply of gold bars. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. HDC Private Limited was looking for supplier of goods for its business. Applicant is a company engaged in the business of supply of goods required by HDC private limited. HDC placed orders from time to time for supply of goods with the Applicant. Accordingly, the Applicant supplied goods from time to time and raised its invoices on HDC private limited.
- ii. HDC accepted the goods and did not raise any disputes. However, HDC failed to make payments on time.



- iii. The Applicant was followed up with HDC for the payments of its due amount from 01.04.2017 to 09.01.2018 but no reply was received from HDC.
- iv. Vide agreement executed on 10th January 2018, between HDC private limited and Midas Infra Trade Limited the debts were taken over by the Midas Infra Trade Limited, the Respondent.
- v. The Applicant made various follow ups and discussions with the Respondent for payments from 10.01.2018 to 29.12.2018. Balance confirmation dated 29.12.2018 issued by the Respondent.
- vi. A demand notice under Section 8 of the Code was issued by the Applicant to the Respondent on 31.12.2018 via post and vide email on 12.01.2019.

2. Consequent to the serving of notices by the Applicant and this Tribunal the Respondent filed its reply on 01.04.2019, which states the following:

- i. At the outset, the amount alleged to be due by the Applicant is categorically denied by the answering Respondent. Rather, it is submitted that a sum of INR 1,08,50,341/- (Rupees One Crore Eight Lacs Fifty Thousand Three Hundred Forty-One) is due and payable by the Applicant to the Respondent.



- ii. From January 2018 till May 2018, Respondent followed up with the Applicant to take payment of the said sum of INR 3,23,13,669/- from the Respondent. However, the Applicant kept on avoiding the Respondent on the pretext of its banking issues with State Bank of India.
- iii. In the month of May 2018, the Applicant requested the Respondent that instead of making payment of the aforesaid INR 3,23,13,669/- into its bank account, the Respondent may send On Approval Finished Jewellery.
- iv. Pertinently, the Applicant denied accepting the outstanding payment of INR 3.23 Crores as the account of the Applicant had already been declared as Non-Performing Asset by State Bank of India on 05.02.2016 and any payment by the Respondent in the bank account of Applicant shall be adjusted by State Bank of India in the NPA account.
- v. It would not be out of place to state here that State Bank of India has filled recovery proceedings against the Applicant which are still pending adjudication before the Ld. Debt Recovery Tribunal, Delhi in O.A. No. 724 of 2018.
- vi. As the Applicant was a member belonging to the community of jewelers at Karol Bagh, New Delhi, the Respondent in bonafide manner and on faith in course of business, instead of making the




aforesaid payment. supplied On Approval Finished Jewelry worth INR 4,31,64,010/-.

- vii. On 30.12.2018. Respondent issued an invoice upon the Applicant for a sum of INR 4,31,64,010/- as the Applicant had intimated the Respondent that the aforesaid jewelry worth INR 4,31,64,010/- which was earlier sent for approval had been retained and accepted in business by the Applicant.
- viii. Accordingly, as on 30.12.2018, a sum of INR 1,08,50,341/- (INR 4,31,64,010 – INR 3,23,13,669/-) became due and payable by the Applicant to the Respondent.
- ix. Upon receiving the above invoice dated 31.12.2018 the Applicant immediately acted with malice and with a malafide intent issued a demand notice dated 31.12.2018 demanding the sum of INR 4,15,60,309/- (alleged principal amount due INR 3,23,13,669/- + alleged interest @ 18% p.a. of INR 92,46,640/-).
- x. Along with the said demand notice dated 31.12.2018 a forged confirmation letter dated 29.12.2018 was also enclosed. The forgery of the confirmation letter dated 29.12.2018 is implicit and conspicuous from the following:

- a) It does not bear signatures of any personnel of the Respondent.



- b) The seal of the Respondent affixed on the confirmation letter is fake and forged.
- c) It is well known that no confirmation of account is made on a date of 29.12.2018 in any usual course of business. In general commercial practice, all balance confirmation is issued at the end of financial year.
- xi. On receipt of the aforesaid demand notice dated 31.12.2018, the Respondent was clearly taken aback and thereafter ensued discussions with the Applicant and other mediating members from the jewelry market at Karol Bagh namely, Mr. Vinod K Patel who mediated between the parties.
- xii. While the mediation and discussions were going on, the Applicant started blowing hot and cold. On one hand, it kept on harping that it is not in a financial position to pay INR 1,08,50,341/- to the Respondent and the matter can be settled/compromised if the same can be deferred in the next 12 months. On the other hand, the Applicant also raised an issue that since his bullion was lying for more than 13 months with the Respondent, thereafter the amount of INR 1,08,50,341/- should be waived.
- xiii. Pertinently, on 31.12.2018, the Applicant issued a demand notice where for the very first time, it raised an issue of interest



on the alleged outstanding of Rs. 3.23 crores. It may be noted that neither in the invoice of April/May 2017 is there any whisper or noting of any interest nor is there any communication between the parties whereby the Respondent has accepted charging of this interest.

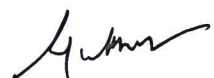
3. The Applicant filed a rejoinder to the points raised by the Respondent in which the following points were highlighted:

a) The Respondent has failed to show or prove that the existence of dispute existed before the receipt of the demand notice. On the contrary, the Respondent in order to create a dispute has concocted an invoice dated 30.12.2018 annexed along with the Reply, which has never been issued or delivered upon the Applicant. The Respondent has failed to show any document to demonstrate that the said invoice was delivered upon the Applicant. In order to further demonstrate that the said invoice is a sham and the same has been fabricated by the Respondent pursuant to the receipt of the Section 8 Notice it is pertinent to note that the Respondent has filed the GST Return only after the notice of the present application was delivered to the Respondent. It is submitted that on 02.02.2019 the notice of the present petition was



delivered upon the Respondent and the Respondent filed the GST Return on 24.02.2019 (the due date to file the GST Return was 11.01.2019).

- b) It is submitted that the Respondent has filed a cross petition before NCLT under Section 9 of the Code against the Applicant bearing number C. P. (IB)-1107/(ND)/2019. The said petition CP No. (IB)-1107 (ND) of 2019 was served upon the Applicant and the Applicant came to know that a notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was alleged to have been served upon the applicant by speed post. That the Respondent has annexed the speed post receipt and tracking report to substantiate that the notice was served upon the Applicant and the Applicant chose not to reply to the said notice. As the Applicant never received such a demand notice alleged to be issued by the Respondent, the Applicant lodged a request with post office for the detail of delivery of demand notice and later on filed RTI dated 22.06.2019 with the concerned post office in order to get an information regarding the said consignment.
- c) It was found that as per the report of RTI, the article was never delivered upon the Applicant. On 11.04.2019, the delivery executive found that the office closed at the time of



delivery but the a person, who had previously enquired about the parcel at the post office, was standing in front of the office and took the delivery from the delivery executive. As the same person was enquiring about said article in the post office, the delivery executive in the same apprehension handed over the said article to him and took the receipt in the form of his signature. The report clearly states that the article was never delivered upon the actual addressee but some other person impersonating the official from the Applicant's office took away the article.

d) In the counter petition filed by the Respondent it is mentioned that:

“the Respondent intended to purchase and took jewelry items having gross weight of 13628.23 grams on approval basis. Even after many follow ups, the Respondent did not respond regarding selection of jewelry from the lot taken on approval basis. Therefore, the Applicant issued invoice for the jewelry purchased by the Respondent.

e) In reply to the present petition of the applicant it is mentioned that:

“on 30.12.2018 Respondent issued an invoice upon the Applicant for a sum on Rs. 4,31,64,010/- as the Applicant

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had intimated the Respondent that the aforesaid jewelry worth INR 4.31.64.010/- which was earlier sent for approval had been retained and accepted in business by the Applicant.”

f) It is apparent from the above contradictions that the Respondent has been playing fraud upon the Applicant.

4. The learned counsel for the Respondent filed an affidavit on record to bring an additional document viz. the letter of goods sent on approval basis dated 04/05/2018 by the Respondent.
5. We have gone through the various documents filed by both the parties and heard the arguments made by both the counsels. Both the parties were directed to file written arguments which they did.
6. The fact of receiving the goods issued by the Applicant is not denied by the Respondent. The Respondent contends that he has settled the account by supplying on approval jewels for the value of gold received along with the interest amount. It is important to point out the following actions on part of the Respondent:

- i. The Respondent contends to have issued an invoice dated 30.12.2018 for an amount of Rs. 4,31,64,010 and claims that it was delivered to the Applicant. However, the Respondent has not enclosed any document to prove that the invoice was delivered to the Applicant. In the absence of any proof, it is difficult to decide that the Respondent has raised any dispute prior to the date of issue of the section 8 notice.
- ii. Another issue to be analysed is the manner of serving the Section 8 notice relating to the cross-application by the Respondent to the Applicant herein. As per the documents filed by the Applicant herein the Respondent sent the Section 8 notice and before it could be received by the Applicant herein, another person pretending to be related to the Applicant accepted the delivery on behalf of the Applicant in a dubious way. This has been proved by the details stated in the reply to the RTI application of the Applicant. Hence it appears that the Respondent has tried to defraud the Applicant.
- iii. Further the Respondent in its reply to the present petition has contended that the jewelry worth Rs.4,31,64,010/- which was sent earlier for approval had been retained and accepted in business by the Applicant. However, in the cross-petition filed



by the Respondent. it is contended that the Applicant (M/s Hariprasad Gopikrishan Jewelers Pvt. Ltd.) did not respond regarding selection of jewelry from the lot taken on approval basis even after many follow-ups. Therefore, the Applicant issued invoice for the jewelry purchased by the Applicant (M/s Hariprasad Gopikrishan Jewellers Pvt. Ltd.). The contradictory stands taken by the Respondent in both the petitions show that the Respondent has been defrauding the Applicant.

7. The supply of goods by the Applicant to the Respondent, Respondent's acceptance of the said goods and Respondent's debt to the Applicant for the goods supplied amounting to Rs.3,23,13,669/- are undisputed. The only contention of the Respondent is that the said debt is no longer owed due to supply of on approval jewelry by the Respondent to the Applicant in lieu of payment of debt. However, the Respondent has not been able to show that such jewels were actually delivered and approved and that payment had become due. Further, the Respondent's contradictory statements in reply to the present application and the cross application and the conduct in delivery of the cross application to the Applicant herein, raise serious doubts about the contentions and intention of the Respondent. In view of the above



discussions, the reply filed by the Respondent is not convincing and Tribunal is convinced that the Applicant has adequately proved that that is a debt and default on the part of the Respondent and the Respondent has not raised any dispute prior to the issue of Section 8 notice by the Applicant. Hence this Tribunal initiates CIRP on the Respondent with immediate effect.

8. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the
Respondent as may be specified shall not be
terminated or suspended or interrupted during
moratorium period.

(3) The provisions of sub-section (1) shall not apply to
such transactions as may be notified by the Central
Government in consultation with any financial sector
regulator.

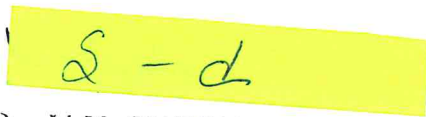
(4) The order of moratorium shall have effect from the
date of such order till the completion of the corporate
insolvency resolution process.”

8. The interim resolution professional (“IRP”), proposed by the
Applicant, is Ashok Kumar Gupta, (email id:
cmaashokgupt@gmail.com, LD-46, Pitampura) and is being
confirmed by this Bench. He shall take such other and further steps



as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

9. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.



(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)



(Dr. P.S.N. PRASAD)

MEMBER (JUDICIAL)

Deepak

Note: In terms of Rule 151 of NCLT Rules, 2016 and in view of Hon'ble Member (Judicial) sitting at the Jaipur Bench at NCLT, Rajasthan this order is being pronounced on behalf of Bench – VI by Hon'ble Member (Technical) Dr. V. K. Subburaj.