

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-645(ND)2019

In the matter of

**M/s. Ved Contracts Pvt. Ltd.
9-10, Vats Complex, U-158,
Shakarpur, Main Vikas Marg,
Delhi – 110092
E-mail: vedprakash23@yahoo.co.in**

.....Operational Creditor

V/s

**M/s. Pan Realtors Pvt. Ltd.
Regd. Office
S-406 (LG),
Greater Kailash – II
New Delhi - 110048**

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 18.07.2019

Coram:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SH. V.K. SUBBURAJ, HON'BLE MEMBER (T)**

**Present for the Petitioner: Mr. Amit Prabhat Deshpande, Advocate
Present for the Respondent: Mr. Dhir, Ms. Varsha Banerjee and Mr.
Kunal Godhwani, Advocates**

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. The Operational Creditor has filed the present petition praying for initiation of Insolvency Resolution process of the Corporate Debtor. The Operational Creditor is engaged in the business of construction and was awarded a contract by the Corporate Debtor to undertake civil

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construction of their project PAN OASIS at Sector 70 Noida. Four work orders were awarded to the Operational Creditor between January 2010 and January 2014 pursuant to which the work was executed. The Corporate Debtor made part payment of the running bills raised and deducted TDS as per their statutory obligation which has been duly reflected in Form 26AS of the Operational Creditor.

2. It is submitted by the Operational Creditor that Rs. 16,83,03,963/- has been paid by the Corporate Debtor including TDS, WCT, payments through cheques and RTGS. The Operational Creditor has claimed a sum of Rs. 2,41,58,130/- as the balance amount due and payable. It is submitted that the Corporate Debtor had raised a debit note of Rs. 6,21,164/- which was never accepted by the Operational Creditor.

3. As the aforesaid amount remained unpaid, a demand notice dated 05.01.2019 u/s 8 of the Insolvency of Bankruptcy Code was issued to the Corporate Debtor demanding the outstanding balance together with the interest accruing thereon as well as the GST and other charges payable. This demand notice was duly replied to by the Corporate Debtor disputing any liability.

4. On notice of the petition being issued, the Corporate Debtor has put in their appearance and have filed their reply.



5. Ld. counsel for the Operational Creditor has reiterated the aforesaid facts and has argued that without prejudice to his rights and contentions in the present case, even assuming if the deduction as stated by the Corporate Debtor are taken into consideration, the outstanding amount due is Rs. 2,41,58,130/- inclusive of Rs. 69 lakhs as the retention amount.

6. Ld. counsel for the Corporate Debtor vehemently disputes this allegation. It is submitted that the Operational Creditor has not adhered to the specification of the work order. The demand raised is only in respect of the running bills and the final bill has neither been raised nor accepted by the Corporate Debtor. The contract stands concluded only on submission of the final bill duly approved and certified by them.

7. It is submitted that the claim made by the Operational Creditor was disputed even prior to the issuance of the demand notice. Reliance is placed on various emails. Vide an email communication dated 24th October, 2018, the Corporate Debtor negated the liability towards the claims. This email is being reproduced as under: -

*"From: - Rahul Rajvanshi,
Dear Prashant,*

With reference to trailing mail regarding updated payment to you (M/s. Ved Contracts), confirmation is still pending, please do the needful on priority basis.

Further, you have shared a statement "Claim PAN 3.10.2018" without references and supporting documents, it seems to be totally baseless, please

submit your claim with the consideration of work order's Terms & Conditions and mutually agreed, as following

- *Final Bill certified Amount w.r.t. work order*
- *Payment Received in any Account*
- *Recovery against electricity*
- *Recovery against client supplied Machinery as Tower Crane, Boom Placer etc.*
- *Recovery against client supplied material as Bricks, Scaffolding Material, Sand, Badarpur etc.*
- *Recovery against client supplied labour*
- *Debit against incomplete work which was executed by third party on your risk and cost*
- *Debit against quality.*
- *Tax deductions as per work done and payment.*
- *Recovery against reconciliation of material as per work order terms and condition.*
- *Balance (if any) will be considered at the time of finalization.*

Up to Finalization of submitted bills, we negate your exaggerated claim. Any other information/detail required not stated as above will be intimated to you after received receipt of above information.

This mail is without prejudice to all our rights which are hereby expressly reserved.

Thanks & Regards,

*Rahul Rajvanshi,
Sr. Manager – Billing & Contracts,
Pan Realtors Pvt. Ltd.
GH- 01, Sector- 70,
Noida, U.P.
M- 9560095584”*

8. On 26th September, 2018 the Corporate Debtor had sent an email pointing out the discrepancies in respect of the missing entries as per the ledger account maintained by them. There are other mails which point out various discrepancies raised prior to the issuance of the demand notice dated 05.01.2019.

9. It is further submitted that as per their accounts, the Corporate Debtor needs to recover Rs. 1,05,63,976/- from the Operational Creditor.

Ld. counsel for the Corporate Debtor has also argued that in view of the dispute raised with respect of reconciliation of the accounts, the same can only be adjudicated through arbitration in terms of their agreement and it is beyond the scope and jurisdiction of this Bench to look into the same.

10. Rebutting the submissions of ld. counsel for the Operational Creditor that there is still a huge outstanding liability even if the proposed deductions of the Corporate Debtor are taken into account, Ld. counsel for the Corporate Debtor seeks to demolish this submission by pointing out that the statement prepared by the Operational Creditor does not include all deductions or recoveries claimed by them. He has pointed out a few. It is further contended by the ld. counsel for the Corporate Debtor that they had to get the work completed through other contractors and the retention money has to be retained till one year after submission/reconciliation and acceptance of the final bill, which in this case has not been done.

11. Be that as it may, on appraisal of the arguments advanced by the ld. counsels, it emerges that there were disputes existing prior to the issuance of the Demand Notice. We find the mails on record corroborate the Corporate Debtor's defence that a dispute in respect of the payment claimed existed even prior to the issuance of the demand notice. A pre-existing dispute does not entitle the Operational Creditor to seek



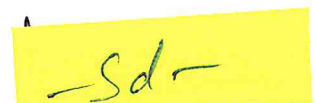
Insolvency Resolution of the Corporate Debtor. Whether the Corporate Debtor is entitled to seek recovery or is justified in withholding the amount/retention money is not for the consideration of this Bench. The disputes in-existence pertain to an outstanding liability for which a provision for resorting to arbitration exists. It is not for this Bench to weigh the evidentiary value of the Corporate Debtor's defence. The defence raised by the Corporate Debtor needs adjudication which may or may not culminate in their favour, but suffice it to say that a plausible defence has been raised by way of a dispute, raised prior to the issuance the demand notice under section 8 of the Code, which prima facie does not appear to be mere moonshine.

12. In view of the above, this Bench is of the view that the prayer for initiating Corporate Insolvency Resolution process of the Corporate Debtor is not sustainable.

13. Petition is therefore Rejected. File be consigned.



(V.K. Subburaj)
Member (T)



(Ina Malhotra)
Member (J)