

THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-61/ND/2023

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

IN THE MATTER OF:

M/s. VENUS INDUSTRIES

Through its Partner,

Registered Office: -

208-B, Humayun Pur, Near Ambedkar

Park, Safdarjung Enclave,

New Delhi - 110029

.....Operational Creditor

Versus

BULLIONLINE LLP

Through its Partner,

Registered Office: -

1167/1094, 1st Floor, Kucha Mahajani,

Chandni Chowk, Delhi - 110034

..... Corporate Debtor

Delivered on: - 20.12.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

Appearances:

Operational Creditor : Mr. Rohit Oberoi, Advocate

Corporate Debtor : Mr. Kanishk Singhal, Advocate

ORDER

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Venus Industries is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., Bullionline LLP, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) The Operational Creditor is a reconstituted partnership firm incorporated under the provisions of Indian Partnership Act, 1932 and is engaged in the business of manufacturing of Gold Bullion which includes manufacturing of gold bars, silver bars, gold coins and other allied products. The Corporate Debtor is a registered Limited Liability Partnership engaged in the business of manufacturing gold items.

b) The Corporate Debtor approached the Operational Creditor in the year 2016 – 17 and commenced business transactions with the Operational Creditor. Further, based on the representations and warranties made by the

Corporate Debtor, the Operational Creditor used to pay advance for the Gold Bullion from time-to time and the Corporate Debtor provided the quality at the price as negotiated and mutually agreed between the Parties.

c) It is further submitted that, the Operational Creditor made the advance payment to the Corporate Debtor and requested the Corporate Debtor for the delivery of Gold Bullion but the Corporate Debtor on one pretext or another kept on delaying the delivery of Gold Bullion. The Corporate Debtor failed to deliver the goods to the Operational Creditor.

d) That Operational Creditor had been regularly following up with the Corporate Debtor over calls and emails for making the outstanding payment however no attentions were paid to the request of the Operational Creditor. The Operational Creditor herein issued a Demand Notice dated 08.12.2022 for Rs. 4,31,00,000/- (Rupees Four Crore Thirty One Lakh only) to the Corporate Debtor under the provisions of section – 8 of the Insolvency and Bankruptcy Code, 2016 through speed post and email which was duly served upon the Corporate Debtor. The Corporate Debtor has not replied to the demand notice.

3. Per Contra, Corporate Debtor has raised following contentions: -

I. The Corporate Debtor raised first contention that, the petition is barred by limitation as the Operational Creditor has placed on record confirmation of Account for the period 01.04.2016 to 31.03.2017 and ledger account for the year ending 31.03.2018. This instant petition was filed on 23.12.2022 which is filed beyond 3 years.

II. The Corporate Debtor raised the second contention that, the Partnership Firm with which the transaction took place no longer survives. The Operational Creditor itself admitted that, the Venus Industries was

reconstituted on 30.05.2022. The Corporate Debtor has no business dealing with the new reconstituted partnership firm.

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The first issue raised by the Corporate Debtor relates to the fact that, the present petition is barred by limitation. The Applicant in order to prove that, the instant petition is within limitation submitted that, the last cause of action arose on 09.08.2018 when the Corporate Debtor has admittedly written an email to the Applicant confirming the Ledger Account for the year 2017 – 2018 where closing balance is shown as Rs. 4,31,00,000/-. For a better appreciation of the matter at hand, we may also take note of some of the significant dates of the present case. As per Applicant new cause of action arose on 09.08.2018 and the petition is within the limitation. As per the data of NCLT the present Section – 9 application was filed on 23.12.2022.

6. Thus, from the perusal of the record it is evident that the Present petition was filed on 23.12.2022. Even if we assume that, the argument advanced by the Ld. Counsel for the applicant is correct that the fresh cause of action for calculating the period of limitation will start from 09.08.2018 still the limitation period of 3 years to file the petition will end on 09.08.2021. The Applicant also placed reliance on the order passed by the Hon'ble Supreme Court of India in case bearing no. ***Suo Motu Writ Petition (C) No.3 of 2020***, qua the extension of limitation owing to the outbreak of COVID-19, the period from 15.03.2020 to 08.08.2021 would stand excluded. It is pertinent at this stage to refer the observation of Hon'ble Supreme Court same is reproduced below for reference: -

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

Thus, from the perusal of the above it is observed that, all persons shall have a limitation period of 90 days from 03.10.2021. In the case in hand the limitation period of 3 years to file the petition ends on 09.08.2021 and this present petition was filed on 23.12.2022. We have no hesitation to hold that, still the present petition is barred by limitation.

7. The Hon'ble Supreme Court in ***B.K. Educational Services Private Limited Vs. Parag Gupta and Associates [Civil Appeal No.23988 Of 2017 And 439/2018, 436/2018, 3137/2018, 4979/2018, 5819/2018, 7286/2018]*** and other cases had clarified that the period of limitation for filing applications for initiation of insolvency proceedings would be three years from the date of default, with Article 137 of the Limitation Act being applicable in case of Applications.

8. However, it is also trite now that an application under Section 9 of the Code, 2016 would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of default when the debt became due, if there were an acknowledgement of the debt or part payment by the Corporate Debtor/Operational Creditor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years as envisaged under Section 18 of the Limitation Act, 1963 or under Section 19 of the Limitation Act, 1963 respectively. However, there is no such acknowledgement in the present matter.

9. As regards to the second issue raised by the Corporate Debtor that, in the present case, the partnership was first reconstituted on 08.02.2016 and with Mr. Shishir Chaudhary retiring and the partners being Mr. Arun Kumar Agarwal and Mr. Akansh Agarwal. There were only two partners. Mr. Akansh Agarwal passed away on 02.02.2020. With his death, the partnership firm stood dissolved by operation of law. The, present petition is liable to be dismissed as the Partnership Firm with which the transaction took place no longer survives as with the death of one of the two partners the partnership firm stands dissolved. The Respondent placed reliance on judgments passed by the Hon'ble Supreme Court of India in ***Mohd. Laiquiddin v. Kamla Devi Misra (Dead) by Lrs., 2010 (1) SCALE 227 and Commissioner of Income Tax, Madhya Pradesh, Nagpur v. Seth Govindram Sugar Mills Ltd., 1965 SCR (3) 488.*** While perusing the judgements placed on records, we find force in the contention raised by the Respondent that, when there are only two partners constituting the partnership firm, on the death of one of them, the firm dissolves. In the present case, even as per the Partnership Deed, the firm dissolved on the death of Mr. Akansh Agarwal.

10. We would like to place reliance upon the judgement of the Hon'ble NCLAT in the case of ***"Gammon India Ltd. Versus Neelkanth Mansions and Infrastructure Pvt. Ltd."*** (2018 SCC Online NCLAT 994) at para 11 held as below: -

"It is not in dispute that the amount due to Appellant is from 'Gammon Neelkanth Realty Corporation.' The bill was raised against the said partnership firm namely-- 'Gammon Neelkanth Realty Corporation'. 'Neelkanth Realtors Pvt. Ltd.', 'Gammon Housing and Estates Developers Ltd.' And 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' are the partners, therefore, even if one of the partners or more than one partner is the 'Corporate Debtor' as the amount is due from the partnership firm,

the application under Section 9 of the 'I&B Code' against one of the partners of such partnership firm will not be maintainable."

11. Thus, having regard to the conspectus of all relevant facts and circumstances and the judgement cited **supra**, we are of the considered view that, in the background of facts narrated in the Petition and above legal provisions, the IBC does not protect the interest or claim of the partner against another partner or the firm. The Operational Creditor may seek to the claims against the Corporate Debtor under any other law in force which may provide the legal recourse to the Operational Creditor.

12. Accordingly, the present application IB – 61(ND)/2023 filed under Section 9 of the Code, 2016 being non-maintainable stands **dismissed**.

SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)