

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP (IB) 38 (MB)2018

Under section 9 of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

**Shubhrrattan General Suppliers Private
Limited**

Tejender Pal Singh – Director

Lakdi Mandi, Chamkani, Bahadurganj,
Shahjahanpur, Uttar Pradesh - 242001.

... Operational Creditor

V/s.

Gammon India Limited

Gammon House, Veer Savarkar Marg,
Prabhadevi, Mumbai - 400025.

... Corporate Debtor

Order delivered on :- 19.01.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Operational Creditor : Adv. Ruchi Thakur

For the Corporate Debtor : Adv. Karishni Khanna a/w Yash Jain

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. The present Petition has been filed by the above-named Petitioner/Operational Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process on account of default on part of the Respondent/Corporate Debtor to repay the amount of Rs. 15,64,244/- with interest.
2. The Petitioner is the Proprietor of Shubhrattan General Suppliers carrying out the Business of Supplying of Timber, Plywood and aggregate blast. The Petitioner had supplied Timber, Plywood & Aggregate blast for Rosa Power Plant and Shahjahanpur, U.P. of the Respondent since the 09.04.2014.
3. The Petitioner was engaged by the Respondent for supplying goods and services as per purchase orders no. 9101/587 dated 11.09.2014, 9101/586 dated 11.09.2014, 9101/588 dated 11.09.2014, 91.01/645 dated 25.03.2015 for Rosa Power Plant as Shahjahanpur, Uttar Pradesh.
4. The Petitioner generated number of invoices which are affirmed and accepted by the Respondent Company out of which 13 no. of invoices from 02.09.2014 to 14.04.2015 are outstanding and remain unpaid by the Respondent Company for a total amount of Rs. 10,49,220/-.
5. The Petitioner had supplied Timber, Plywood & Aggregate blast for Rosa Power Plant at Shahjahanpur, U.P since the year 2014 for a total of Rs. 19,69,228/- till last invoice dated 14/04/2015. Further the Petitioner was in receipt of Rs. 9,20,008/- and thereafter there was no payment by the respondent company for the balance amount of Rs

10,49,220/-.

6. The total debt outstanding as on 01/11/2017 (date of issue of notice) is 10,49,220/- along with interest Rs 5,15,023/- @18% per annum Amounting to total aggregate claim of Rs 15,64,244/-.
7. The Petitioner served the Demand Notice to Respondent Company on 01/11/2017. The said notice informed the respondents to make the payment within 10 days from the date of receipt of the notice i.e., 02/11/2017 under the Insolvency and Bankruptcy Code, 2016.
8. The Reply letter by Respondent dated 08/11/2017 was received by the Petitioner as against the Demand Notice dated 27/10/2017 served on 1/11/2017 raising the following allegations: .
 - a. The sum of Rs. 10,49,220/-along with interest claimed by Petitioner is untenable.
 - b. Substantial part of the Petitioner's claim is time barred as invoice no. 12 dated 02/09/2014 invoice no. 13 dated 12/09/2014, Invoice No. 14 dated 12/09/2014, Invoice No. 15 dated 12/09/2014, Invoice No. 16 dated 20/09/2014, Invoice no. 18 dated 10/10/2014, Invoice no. 17 dated 10/10/2014 Invoice no. 17 dated 10/10/2014 are beyond three year period.
 - c. That the invoices/RA Bills annexed do not bear acknowledgment by the Respondent and therefore they deny the claim in respect of invoices.
 - d. The Respondent denies the application of Interest 18% per annum on the outstanding amount.
9. The aforesaid false allegations made by the respondent was an after-

thought to deny the genuine outstanding payments to Petitioner. It is admitted fact that there are no instances of return of goods by the Respondents against the Petitioner's services and the Respondents have never, in the past, raised any such objections.

10. The Respondents deny the substantial part of the claim stating that its time barred. However as per NCLAT, the Insolvency and Bankruptcy Code, 2016 is not an act for recovery of money claim as it relates to initiation of Corporate Insolvency Resolution Process. There is nothing on record that Limitation Act 2013 is applicable to Insolvency and Bankruptcy Code, 2016. Further it proves from the reply of the Respondent that the other remaining claimed invoices dated 12/01/2015, 13/02/2015, 13/02/2015, 24/02/2015, 24/02/2015, 14/04/2015 are accepted by the Respondent as they are not time barred according to them. Therefore, the Respondent Company is liable to pay all the 13 outstanding invoices.
11. All the Invoices are affirmed and accepted by the Respondent Company and the invoices without affirmation and acceptance are supported with Purchase Orders affirmed and accepted by the Respondent Company. Further the Petitioner has taken loan from Bank and as per prevailing bank rates is paying interest @ 18% per annum on such bank loan. Thus, it is deemed that the Respondent Company is liable to pay the Outstanding amount with interest. i.e Rs. 15,64,244/-.
12. The Reply of the Respondents dated 08/11/2017 is misleading, malafide and in bad faith. The reply challenges the validity and legality of the invoices raised by the Petitioner. The Respondent has not produced any evidence disputing the said invoices prior to issuance of

the aforesaid Demand Notice dated 27/11/2017 served on 01/11/2017. As per section 8 (2) (a) of IBC, 2016, the dispute needs to be pre-existing and cannot be not raised once the demand notice has been served. Therefore, this clearly shows that the reply is malafide and in bad faith.

13. The reply issued by the Respondent does not have a legal basis, and therefore becomes void in law. The dispute thus raised by the Respondents, stands invalidated.
14. There was no credit from the Respondent's side from the date of the receipt of the notice on 2/11/2017 till the expiry of 10 days from such date i.e. 11/11/2017.
15. Despite several follow ups and reminders by the Operational Creditor, the Corporate Debtor has failed to repay the outstanding amount to the Operational Creditor. Hence the present Petition.

Submissions of the Corporate Debtor: -

16. At the outset the Respondent submits that on 11.06.2018 when the aforesaid petition reached hearing before this Hon'ble Tribunal, the Advocate representing the Petitioner requested this Hon'ble Tribunal to allow them to change the name of the Proposed IRP mentioned in the petition as name of IRP as proposed in the petition has been suspended. The Respondent states that such an application has been made without giving a copy of application to Respondent. The Respondent submits that after the matter was adjourned, the Respondent has found out from the website of Insolvency and Bankruptcy Board of India (IBBI) that vide an order dated 3rd May, 2018 the Disciplinary Committee of IBBI has suspended the

registration of Ms. Bhavna Sanjay Ruia for a period of one year whose name was proposed as IRP in the present petition.

17. So far as claim of the Petitioner for interest is concerned the Respondent states that as per Exhibit I the interest has been claimed at 18% p.a. The Respondent submits that in the notice dated 27th October, 2017 under Section-8 of the said code issued by the Petitioner prior to filing of the petition does not contain purchase orders as annexures to the notice. The petitioner has annexed purchase orders in the petition, the copies of invoices annexed in the notice and the petition are same. It is very clear from the aforesaid facts that the Respondent is somehow trying to pressurize the Respondent so that the Respondent pays the amounts, as claimed in the petition.
18. The Respondent submits that so far as issue of limitation is concerned, the invoices. annexed to the petition, have become time barred in view of the fact that no claim in respect of these invoices has been made so far. In the present petition, as pointed out by the Respondent hereinabove, the invoices annexed to the petition have no relevance as the same are not issued under the purchase orders annexed to the petition. The Respondent reserves its rights to file additional reply in this regard.
19. Hence, Corporate Debtor prayed that in view of the above this petition is to be dismissed in the interest of justice.

Finding

20. We have heard the Counsel for the parties and have gone through the records.
21. Before advertng to the contentions raised by the Ld. Counsel for the

parties it would be pertinent to refer to the fact that so far as the principal amount of Rs. 10,49,220/-, the Corporate Debtor has submitted an affidavit dated 31.08.2023 stating that the said amount has already been paid to the Operational Creditor by way of RTGS and this fact has not been disputed by the Counsel for the Operational Creditor. Now the question arises as to whether after the receipt of the principal sum of Rs. 10,49,220/-, can the Operational Creditor continue with the present Petition u/s 9 of the Code, 2016 qua the recovery of the interest amount of Rs. 5.15 lakhs. In this regard, a reference can be made to the law laid down in *Krishna Enterprises vs. Gammon India 2018 SCC Online NCLAT* whereby it was held that when the principal amount has already been paid, the Application u/s 9 of the Code, 2016 on the basis of claim for entitlement of interest is not maintainable for which it will be open to the Operational Creditor to move before a court of competent jurisdiction. In this regard, a further reference can also made to *Rohit Motawat vs. Madhu Sharma Proprietor Hind Chemical Corporation and another 2023 ibclaw.in 128 NCLAT*, whereby also it was held that once the principal amount has been paid in its entirety and the issue was only with regard to interest for which the Application u/s 9 of the Code, 2016 is not maintainable as the sprit of the legislation of the Code is for 'Resolution of debt' and not for recovery.

22. In the light of the law laid down in the aforcited cases, we are of the considered view that after the receipt of the principal sum, it would not be justifiable for the Operational Creditor to continue to prosecute the Application u/s 9 of the Code, 2016 with the sole object of recovering the interest amount as the object of the IB Code is resolution and not recovery.

23. In view of the above brief discussion, the Application u/s 9 of the Code, 2016 is hereby **dismissed**. The Applicant shall be at liberty to pursue appropriate remedy against the Corporate Debtor for the recovery of the interest amount, if any, as per law.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

ANKIT