

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P. (I.B) No.263/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL ,
AHMEDABAD BENCH ON 17.03.2020**

Name of the Company: Nuvoco Vistas Corporation Ltd.
V/s.
Pushpam Projects Pvt. Ltd.

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.


2.

ORDER

The present matter is kept for pronouncement of order.

The order is pronounced in open Court vide separate sheet.


**(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)**


**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 17th day of March, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

C.P. (I.B.) No. 263/9/NCLT/AHM/2018

In the matter of:

Nuvoco Vistas Corporation Limited,
Having its Registered Office at:
Equinx Business Park, Tower-3,
East Wing, 4th Floor, off Bandra Kurla Complex,
LBS Marg, Kula (West)
Mumbai-400070

..... Petitioner

Versus

Pushpam Project Private Limited,
Having its Registered Office at:
“P Group”, A/412, Siddhi Vinayak Tower
Near Kataria Tower, Corporate Road,
Pralhad Nagar, Ahmedabad,
Gujarat-380051

.....Respondent

Order delivered on 17.03.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Vibhor Chaplot, Advocate for the Petitioner.
Mr. Amit Laddha, Advocate for the Petitioner.

ORDER

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, **M/s. Nuvoco Vistas Corporation Limited**, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (here-in-after referred to as a “Code”) seeking initiation of

Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor Company namely, **M/s. Pushpam Projects Pvt. Ltd.**

2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – **U26940MH1999PLC118229**. The registered office of the Petitioner is situated at Equinox Business Park, Tower-3, East Wing, 4th Floor, off Bandra Kurla Complex, LBS Marg, Kurla (West) Mumbai-400070
3. The Respondent/Corporate Debtor, namely, **M/s. Pushpam Projects Pvt. Ltd.** was incorporated 08.12.2009 with CIN: U45201GJ2009PTC058797. The authorised capital of the company is INR. 1,00,00,000.00 (Rupees One Crore Only) and the paid-up capital is INR. 1,00,00,000.00 (Rupees One Crore Only). The registered office of the Corporate Debtor Company is situated at: "P Group", A/412, Siddhi Vinayak Tower, Near Kataria Arcate, Corporate Road, Prahalad Nagar, Ahmedabad, Gujarat-380051.
4. The present petition has been preferred by the Operational Creditor, M/s. **M/s. Nuvoco Vistas Corporation Limited**, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, M/s. **M/s. Nuvoco Vistas Corporation Limited**. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for **INR. 9,43,685.00** (Rupees Nine Lakhs Fourty Three Thousand Six Hundred Eighty Five Rupees Only) **along with interest @ 24% per annum** pending payment. That the Operational Creditor is Limited Company, engaged in the business of manufacture or sale of **Cement, Ready Mix Concrete** ("RMX") and quarrying,

processing, selling of hard rock/sand and gravel aggregate products. The Corporate Debtor approached the Operational Creditor to purchase of Ready Mix concrete ("RMC") to be used at their site at **Rajkot**. After due negotiations, the Respondent placed the purchase orders dated 28.06.2014, 12.07.2014, 27.07.2014 and 02.08.2014 for supply of RMC M-10 and 25. The purchase order specifically provides a condition of payment i.e., **30 days from the date of invoice**.

5. It is submitted that the above mentioned purchase order dated, the applicant supplied RMC to the Respondent in various batches i.e., July, 2014 to August, 2014 as per their agreement with the respondent and raised delivery challans in respect of delivery of the materials. **These challans had been duly signed and acknowledged by the Respondent**, which shows that the materials were received by the Respondent at their site. And it is further submitted that the respondent accepted and acknowledged receipt of RMC without any protest and never objected with regards to the cost and quality of the material and over and above drawn the profit/benefit of using the material supplied by the applicant. The copy of invoices along with delivery challans are annexed. **(at page no. 27 to 29 of the paper book)**.

6. It is submitted that the respondent admitted the due amount of INR. 6,56,383.000 (Rupees Six Lakh Fifty-Six Thousand Eight Hundred Eighty-Three Only) through following cheques.

Cheque No.	Date	Rs.
069866	05.09.2014	1,48,850
069902	20.09.2014	1,48,850
069920	05.10.2014	3,59,138
Total		6,56,838.00

7. It is submitted that the above mentioned cheques were presented in Citi Bank N.A, Mumbai Branch for realization but the same were **returned by the bank vide its memo**

dated 29.11.2014 with reason “**payment stopped by drawer**”. The above act suffices to reveal the *mala fide* conduct of the Respondent and its disregard to clear the outstanding the dues of the applicant. **(at page no. 43 of the paper book).**

8. It is submitted that in lieu of such dishonour of cheque, the applicant issued a legal notice to the Respondent dated 09.11.2014 u/s 138 r.w. 141 of the Negotiable Instruments Act, 1881, calling upon the respondent to pay the applicant entire due amounting of INR. 6,56,838.00 within 15 days from the receipt of the notice.
9. It is submitted that as per legal notice dated 09.11.2014, the petitioner filed a Criminal Complaint before the Magistrate court at Mumbai which is still pending.
10. It is submitted that the respondent thereafter, in January, 2015 made the part payment of INR. 1,58,857.00. However, the entire liability **was not fulfilled by the Respondent.**
11. It is submitted that the respondent neither satisfied the claim of the applicant nor compounded or secured the same to the satisfaction of the applicant within the statutory period of 10 days from the date of demand notice, the respondent is deemed to be unable to pay its debts and therefore the CIRP procedure may be initiated against the respondent.
12. It is submitted that the no suit, arbitration proceedings or any other proceedings are pending before **any judicial forum** or authority relating to the unpaid operational debt except the proceedings initiated for bouncing of the cheques issued by the respondent. Till date the respondent has not disputed the liability to pay the outstanding amount to the applicant. Thus, the Respondent has not shown existence of dispute.

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13. It is submitted that Respondent committed a default in payment of unpaid operational debt. A copy of the intimation letter received from the bank confirming that there is no payment of the unpaid operational debt by the Respondent Company letter is enclosed as Annexure D. **(page no 48 of the paper book).**
14. It is submitted that the respondent is liable to pay to the applicant an unpaid total operational debt (with 24% per annum) of INR. 9,43,685.00 till the realization. Even otherwise the respondent has lost its substratum and is not in a position to clear its debts and liabilities and it is just fair and equitable that insolvency resolution process be initiated against the respondent.
15. It is submitted that the demand notice was issued by the operational creditor on 21.09.2017 under the provisions of Insolvency and Bankruptcy Code, 2016.
16. It is submitted that on 05.07.2018 this Tribunal was pleased to issue notice to the respondent Corporate Debtor and directed the respondent to file its reply. On 06.08.2019 last opportunity was granted to the respondent for filing its reply/objection within two weeks.
17. It is submitted that on failure to pay the amount as per legal notice dated 09.11.2014, the applicant filed a Criminal Complaint before the Magistrate Court at Mumbai and the same is pending till date.
18. In response to the present I.B. Petition filed by the Petitioner, **the Respondent has not filed its objections/replies.**
19. It is submitted that in light of the abovementioned facts and circumstance the Applicant's Prayer before this Adjudicating Authority is to Cause public announcement of the initiation

of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 to be dismissed and be pleased to pass any further order in the interest of justice.

20. Now, the Petition is filed on 30.05.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.9,43,685.00**

21. The matter was finally heard on 19.11.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may **be admitted** and an Interim Resolution Professional **appointed in** accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

22. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

OBESRVATIONS

23. The Application has been filed on 30.05.2018 for **operational debt due** and defaulted of **INR. 9,43,685.00** (Rupees Nine Lakh Fourty Three Thousand Six Hundred Five Only) as per the respective Invoices enclosed.

23.1. Purchase order dated 28.06.2014, 12.07.2014, 27.07.2017 and 02.08.2014.

23.2. The date of invoice and amount.

Date of invoice	Total Amount (INR)
04.08.2014	71,562.52
05.08.2014	65,325.00
06.08.2014	74,426.02
12.08.2014	74,426.02
13.08.2014	74,425.02
21.08.2014	21,776.03
31.08.2014	54,387.52
31.08.2014	1,11,637.53

- 23.3 The purchase order specifically provides a condition of payment i.e., **30 days from the date of invoice.**
- 23.4 Application is not filed within the limitation period **as the date of default is 02.09.2014 and the date of filing this petition under Section 9 of IBC is 30.05.2018 which is beyond three years of the default.**
- 23.5 **There is no acknowledgement of debt from the Respondent Company and thereafter no payment has also been received by the Operational Creditor from the Corporate Debtor.**


ORDER


24. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **23, 23.1, 23.2, 23.3, 23.4 and 23.5** this Adjudicating Authority is **satisfied that, this Application is barred by Limitation as invoices are of 2014 and the date of default is 02.09.2014 whereas this application is filed on 30.05.2018.**

Hence, this Application is rejected on the ground of Limitation.

No order as to cost.

The Registry is directed to communicate this order to the petitioner and respondent by Register post/Speed post.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)