

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-370/(ND)/2020

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:

M/s. Luxmi Electricals and Engineering Works

Through Its Sole Proprietor Mr. Varinder Arora

Registered Office at:

1 D/98, N. I.T., Faridabad, Haryana-121001

...Applicant/Operational Creditor

Versus

M/s. SNG Techno Build Pvt. Ltd.

Formerly known as M/s SNG Vardhman Techno Build Pvt. Ltd.

Registered Office at:

112, Indraprakash Building, 21 Barakhamba Road,

New Delhi 110001

Corporate Office at:

C-13, Community Centre,

Janak Puri, New Delhi – 58

...Respondent/Corporate Debtor



Coram:

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

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Ashish Chauhan & Mr. Kushagra
Bansal, Advocates

Counsel for Respondent: Mr. Prashant Katara, Advocate

ORDER

Per SH.RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 14.03.2022

1. This is an application filed by the Applicant M/s. Luxmi Electricals and Engineering Works through its Sole Proprietor Mr. Varinder Arora, seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. SNG Techno Build Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 68,74,486/- (Rupees Sixty Eight Lakhs Seventy-Four Thousand Four Hundred and Eighty Six rupees only), including 18% interest annually till



20.09.2019, as alleged by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

- i. That the Operational Creditor is one of the leading Electrical Solutions providers offering a range of products that help customers meet their electrical demands and can provide fully combined Mechanical and Electrical Service in which clients benefit from seamless supplies covering all their Mechanical and Electrical requirements.
- ii. That the Corporate Debtor, looking at its own need of electrical installation works at one of its projects namely SNG Plaza, Greater Noida had floated tender inviting offers for the aforesaid work. The Operational Creditor thereafter submitted its offer and being satisfied with the offer of the Operational Creditor, the Corporate Debtor gave its work order to the Operational Creditor for electrical installations works vide Work Order dated 25.07.2011 for an estimated value of Rs. 1,92,64,559.78/- (Rupees One Crore Ninety Two



Lakhs Sixty Four Thousand Five Hundred and Fifty Nine and Seventy Eight Paise Only).

- iii. That the Operational Creditor had done the aforesaid works from time to time and raised bills whereby the Operational Creditor mentioned each detail of the electrical installation work undertaken by the Operational Creditor.
- iv. That subsequent to the completion of electrical works by the Operational Creditor, the Corporate Debtor vide email dated 11.09.2015 asked the Operational Creditor to submit the final bill of work. The Operational Creditor after the completion of the remaining electrical works and taking into account that no new work order was issued to the Operational Creditor, sent the proposed Final Bill vide email dated 12.12.2017 for SNG Plaza, Greater Noida to the Corporate Debtor. Thereafter, the Operational Creditor raised the final bill bearing Invoice No. 1116 dated 24.03.2018 for a total due amount of Rs. 14,84,805/ (Rupees Fourteen



Lakhs, Eighty Four Thousand Eight Hundred and Five Only).

- v. That the Corporate Debtor, after thoroughly checking, had duly received and acknowledged the Final Bill raised by the Operational Creditor by signing it as is evident from the email dated 09.04.2018 sent by the Operational Creditor.
- vi. That subsequent to the submission of Bills, the Operational Creditor started asking for the payment of the due amounts against the aforesaid Bills from the Corporate Debtor. Corporate Debtor in spite of having acknowledged the completion of all the electrical installation works did not make payment of the due amount to the Operational Creditor and sought time to make payment thereby prolonging the whole process of payment. That over time the Corporate Debtor made part payments to discharge its liability against the aforesaid amount but at the same time delayed in making the timely payment. The Corporate Debtor still has to pay Rs. 68,74,486/- (Rupees Sixty Eight Lakhs



Seventy Four Thousand Four Hundred and Eighty Six Only) including interest @ 18% interest annually till 20.09.2019, under the Code.

- vii. That in the above circumstances since the Respondent had failed to make payment of the outstanding amount to the Applicant, the Applicant filed the present application under section 9 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process of the Respondent.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

- i. That the operational creditor is admittedly a sole proprietorship firm, and further as per the law laid down a "sole proprietorship firm", has no separate/independent identity, and hence does not fall within the definition of "person", as described in the code. That the present petition is to be dismissed on this sole ground alone being non maintainable.



- ii. That the Operational Creditor with malicious intentions has tried to mislead this Tribunal by creating a confusion between the corporate debtor being "SNG Techno Build Pvt. Ltd", and a third party /separate entity being "SNG Developers Pvt. Ltd". That the documents annexed by the operational creditor, have been issued/executed by the said third party being SNG Developers and not by the corporate debtor.
- iii. That the operational creditor has mischievously omitted mentioning the date of default in the petition, for the sole reason that the claim is barred by limitation.
- iv. That no proof/authorization of the signatory "Mr.Varinder Arora" stands annexed with the petition.
- v. That in essence, even in the year 2010-2011 the understandings between the parties resulted in a "non-starter", thereby never actually culminating into anything concrete/substantial.
- vi. That the basis of the claim of the OC is bills raised/stamped by one SNG developers Ltd, and not the corporate debtor.



- vii. That the notice sent under Section 8 of the Code also is defective in as much as it does not meet the requirements as mandated under the Rule 5 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.
- viii. That the OC has bifurcated the alleged claim into two parts being Rs.34,41,494/- towards "principal" & further Rs.19,74,403/- towards "interest, levied at 18% annually". However not a single document has been produced describing the calculations for arriving at the said principal amount or depicting that payment of interest was agreed to.
- ix. That the present petition is also hit by the amendments at the I & B Code, wherein the threshold for triggering the process now stands at 1 crore, and the petition in question does not meet the said requirement.
- x. That as per the claim of the OC, petition arises from the "conditional work order" dated 25/07/2011, issued by the corporate debtor wherein subject to completion of the work in the manner and time as described in the said work



order certain payments were to be made. That certain salient features were a "condition precedent" towards any payments of the said conditional work order. That none of the conditions/pre conditions as mentioned in the said conditional work order stood satisfied by the OC and hence the arrangement resulted in a non-starter.

- x. That various other one sided emails sent to third parties much after the limitation period have been annexed. However, they were never served on the corporate debtor and under any circumstances cannot revive a dead cause of action.
- xii. That the OC has based his claims on "alleged RA bills" which as per the corporate debtor were never supplied, however even if the service is assumed for the sake of arguments, even then mere service of the said bills will not amount to any debt being due, rather the conditional work order describes a process which even as per the version of the OC was never adhered to.

3. The Counsel for the Operational Creditor has filed rejoinder to the reply of the Corporate Debtor stating that:



- i. It is denied that the as per the law laid down a "sole proprietorship firm", has no separate/ independent identity, and hence does not fall within the definition of "person" as described in the code. It is submitted that Hon'ble National Company Law Appellate Tribunal in the matter titled as "*Neeta Saha v. Ram Nivias Gupta*" bearing Appeal No. 191(IBC)156/2020 has held that a sole proprietor can initiate Corporate Insolvency Resolution Proceedings ("CIRP") under the Insolvency and Bankruptcy Code, 2016 ("Code").
- ii. It is denied that the Operational Creditor with malicious intention has tried to mislead this Tribunal thereby creating confusion between the Corporate Debtor being "SNG Techno Build Pvt. Ltd." and a third party/ separate entity being "SNG developers Pvt. Ltd." The documents annexed with petition were duly executed by the Corporate Debtor as evident from the fact that it bears the signature of the official of the Corporate Debtor namely Mr. RNP Singh (Sr.



GM Contracts) on behalf of the Corporate Debtor who was also the signatory on the Work order dated 25.07.2011.

- iii. It is wrong and denied that the said alleged "RA bills" bear no receiving from the corporate debtor. It is submitted that the RA Bills issued by the Operational Creditor are duly acknowledged by the Corporate Debtor as evident from the signatures of the acknowledgements/signatures given by the officials of the Corporate Debtor. The Corporate Debtor had also made the part payments against the aforesaid RA bills as evident from the ledger account statement. Furthermore, the Corporate Debtor had not only made the part payments but also deposited the TDS amount in the account of the Operational Creditor under the name of "M/s SNG Vardhman Technobuild Private Limited" as evident from the TDS Form 26AS.



4. Vide order dated 17.12.2021, both the parties were directed to file their written submissions. The written submissions have been filed by both the parties.
5. The Counsel for the Operational Creditor has filed its written submissions stating that:
- i. That as per the terms and conditions of the work order dated 25.07.2011; the Operational Creditor had carried out the work and accordingly raised the RA Bills. The said RA Bills were duly acknowledged by the officials of the Corporate Debtor as evident from the acknowledgements/signatures given by the officials of the Corporate Debtor. The Corporate Debtor had made the part payments against the aforesaid RA bills as evident from the ledger account statement.
 - ii. That the Corporate Debtor had not only made the part payments but also deposited the TDS amount in the account of the Operational Creditor under the name of "M/s SNG Vardhman Technobuild Private Limited" as evident from the TDS Form 26AS.



- iii. That the Corporate Debtor had never complained nor objected about the work executed by the Operational Creditor.
- iv. That the Operational Creditor had come across the balance sheet of the Corporate Debtor wherein the Corporate Debtor had acknowledged an outstanding amount of INR 8,54,593/- (Rupees Eight Lacs Fifty Four Thousand Five Hundred and Ninety Three Only) to be paid to the Operational Creditor for electrical installation work executed by Operational Creditor. It is a clear cut admission on the part of the Corporate Debtor in view of the recent judgment of the Hon'ble Apex Court in the matter titled as "*Asset Reconstruction Company India v. Bishal Jaiswal*" bearing Civil Appeal No. 323 of 2021 wherein it has been held that the acknowledgment of debt in the balance sheet is an admission on the part of the Debtor.
- v. That the Operational Creditor was regularly approaching the Corporate Debtor for the release of its balance payment for the work executed but the Corporate Debtor



did not pay any heed to the same. However, the aforesaid official namely Mr. RNP Singh of the Corporate Debtor vide his email dated 11.09.2015 had asked the Operational Creditor to submit its final bill against the work done as per the work order dated 25.07.2011. The aforesaid email dated 11.09.2015 was sent by Mr. RNP Singh (Sr. GM Contracts) on behalf of the Corporate Debtor from the same email as used by Mr. RNP Singh (Sr. GM Contracts) from the inception of the contract and execution of work. The Operational Creditor had issued final bill and submitted the same vide its email dated 12.12.2017. The final bill was also sent on the registered address of the Corporate Debtor i.e. 112, Indraprakash Building, 21Barakhamba Road, New Delhi- 110001 as evident from the registered address mentioned in the company master data of the Corporate Debtor.

- vi. That the Corporate Debtor was originally incorporated by the name of "M/s Vardhman Techno Build Private Limited", thereafter the Corporate Debtor had changed its name from "M/s Vardhman Techno Build Private Limited"



to "M/s SNG Vardhman Techno Build Private Limited" and thereafter from "M/s SNG Vardhman Techno Build Private Limited" to "M/s SNG Techno Build Pvt. Ltd." as evident from Certificate of Incorporation pursuant to the change of name dated 05.11.2015. It is submitted that the contention of the Corporate Debtor in respect to the documents annexed by the Operational Creditor is executed by some other third entities namely M/s SNG Developers Pvt. Ltd. and M/s Vardman Estates and Developers Pvt. Ltd. is wrong. It is also submitted that the documents annexed with petition are duly executed by the Corporate Debtor as evident from the fact that it bears the signature of the official of the Corporate Debtor namely Mr. RNP Singh (Sr. GM Contracts) who was also the signatory on the Work Order dated 25.07.2011.

- vii. That the Corporate Debtor had also objected that the present petition is time barred and not filed within the period of limitation. There is continuous cause of action and period of limitation for filing the present petition accrues when the final bill was submitted by the



Operational Creditor. Therefore, the present petition is filed within period of limitation.

- viii. That the Corporate Debtor had raised the objection that the claim petition arises from the "conditional work order" dated 25.07.2011, issued by the Corporate Debtor wherein subject to completion of work in the manner and time as described in the said work order dated 25.07.2011. The Corporate Debtor had admitted its part liability vide Confirmation of Account Dated 01.10.2012 from 01.04.2011 to 30.09.2012 as well as Balance Sheet of the Corporate Debtor and had asked the Operational Creditor vide email dated 11.09.2015 to submit the final bill. There was no any pre-existing dispute pertaining to the terms and conditions of the contract and the Corporate Debtor with the sole motive to raise a sham dispute is taking such objections to escape its admitted liability.
- ix. That the Corporate Debtor had failed to make the payment of outstanding dues, even after the acknowledgment of the debt and is raising false and sham disputes to escape its liabilities.



6. The Counsel for the Corporate Debtor has filed its written submissions in respect to the submissions made in the application:

- i. It was submitted that in order to hide the petition being barred by limitation, no date of default has been mentioned in the petition.
- ii. That the RA bills annexed have no receiving from the CD, and further as per the work order the cause of action arose in the year 2011.
- iii. That the sheet anchor qua limitation being the email dated 11/09/2015, has been sent by SNG developers Ltd and not the Corporate Debtor.
- iv. That the understanding in the year 2010-2011 resulted in a non starter.
- v. That the work order strictly prescribes a time span of four months, hence since OC failed to complete the work, any claims qua him stand barred in view of "reciprocal promises", Section 51-54 of the Contract Act.
- vi. That the corporate debtor is a different company, different from SNG Developers Ltd as well as Vardhman Estates &



Developers Pvt. Ltd hence not bound by the agreements signed by them.

- vii. That the notice under Section 8 is defective as per the judgment of the Hon'ble National Company Law Appellate Tribunal passed in CP (AT) Insolvency 1354 of 2019, Neeraj Jain Vs Clound Walker Streaming & Anr, dated 24/02/2020, which stated as under:-

Likewise, where the operational debt involves the generation of the invoice, then in that case, invoice raising the demand may be sent to the Corporate Debtor demanding the invoice amount. In such a situation, the Operational Creditor has to issue the demand notice in Form 4 along with the invoice.

That the Hon'ble NCLAT vide the abovementioned judgment (para 46, 47, 79) clearly held that in case "invoices" have been generated for a part of the debt due, the OC has to issue the demand notice in Form 4, and in the present case despite invoices being filed with the claim etc the demand notice stood issued in Form 3 and no invoices were mentioned and/or supplied.



7. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.
8. The Corporate Debtor vide email dated 11.09.2015 had directed the Operational Creditor to close the work and asked the Operational Creditor to send the final bill for work executed. The Operational Creditor vide email dated 12.12.2017 had submitted its final bill to the Corporate Debtor. Thus, from the aforesaid facts, it is clear that there is continuous cause of action and period of limitation for filing the present petition commences when the final bill was submitted by the Operational Creditor. The above said facts clearly establish that both the parties were maintaining a running account in lieu of which invoices were being raised and part payment had been made and as the petition has been filed on 15.11.2019, hence it is well within the limitation period.
9. The Corporate Debtor in the present case has contended that the Corporate Debtor is a different company, different from SNG Developers Ltd as well as Vardhman Estates & Developers Pvt.



Ltd hence not bound by the agreements signed by them. The Corporate Debtor was originally incorporated by the name of "M/s Vardhman Techno Build Private Limited". The Corporate Debtor had changed its name from "M/s Vardhman Techno Build Private Limited" to "M/s SNG Vardhman Techno Build Private Limited" and thereafter from "M/s SNG Vardhman Techno Build Private Limited" to "M/s SNG Techno Build Pvt. Ltd." as evident from Certificate of Incorporation pursuant to the change of name dated 05.11.2015. The contention of the Corporate Debtor in respect of the documents annexed by the Operational Creditor that they were executed by some other third entities namely M/s SNG Developers Pvt. Ltd. and M/s Vardman Estates and Developers Pvt. Ltd. does not hold ground. The documents annexed with the petition will be taken to be executed by the Corporate Debtor as they bear the signature of the official of the Corporate Debtor namely Mr. RNP Singh (Sr. GM Contracts) who was also the signatory on the Work Order dated 25.07.2011.

- 10.** The contention of the Corporate Debtor that the Work Order dated 25.07.2011 strictly prescribes a time span of four months,



hence since the Operational Creditor failed to complete the work, any claims qua him stand barred in view of "reciprocal promises", Section 51-54 of the Contract Act does not hold ground as the Corporate Debtor had never complained nor objected about the work executed by the Operational Creditor and continued to give the Operational Creditor further work orders.

11. The Corporate Debtor in the present case has also contended that the notice issued under Section 8 is defective as the said notice has been issued in Form 3 instead of Form 4 even though invoices have been attached. Though the notice has been issued in Form 3, it is accompanied by the invoices, which is additional information, and hence it is acceptable for the purpose of these proceedings.

12. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view



that there is an operational debt which is due from the corporate debtor and the corporate debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.

- 13.** This Adjudicating Authority, hereby appoints Mr. Yogesh Kumar Gupta, (Email -ykgupta64@@@yahoo.co.in), Reg. No: IBBI/IPA-003/IP-N00078/2017-2018/10701 to act as Insolvency Resolution professional. 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.
- 14.** 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.
- 15.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation



to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

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

17. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit,



registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

- 18.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- 19.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost

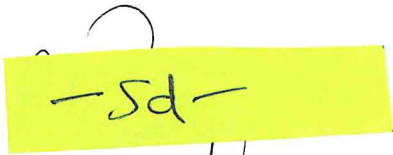


dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim



Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



(SH. RAHUL BHATNAGAR)

MEMBER (TECHNICAL)



(SH. P.S.N. PRASAD)

MEMBER (JUDICIAL)