

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, (COURT-V)

IB No. 625/ND/2021

IN THE MATTER OF:

M/s Dhawal Construction Co.

Block A IInd – 173, 1st Floor,
Madangir, Ambedkar Nagar, Sector IV,
New Delhi -110062

...APPLICANT/ OPERATIONAL CREDITOR

VERSUS

M/s Dhingra Jardine Infrastructure Private Limited

71, Chitra Gupta Road, Paharganj,
New Delhi, South Delhi – 110025 IN

...RESPONDENT / CORPORATE DEBTOR

Order Delivered on: 16.09.2022

Section: 9 of the Insolvency and Bankruptcy Code, 2016

CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Dushyant Yadav, Adv.

PATIBANDLA
SATYANARAY
ANA PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.09.16
16:42:44 +05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.09.16
16:59:49 +05'30'

ORDER

PER SHRI P.S.N. Prasad, MEMBER (J)

M/s Dhawal Construction Company (hereinafter known as **Applicant/Operational Creditor**) has filed this Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'IBC, 2016'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through its Partner/ SPA holder Mr. Rahul Dhawal, authorized vide SPA dated 04.12.2020, with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Dhingra Jardine Infrastructure Private Limited (**'Corporate Debtor/Respondent'**).

2. The Corporate Debtor namely, M/s Dhingra Jardine Infrastructure Private Limited, having CIN: U45201DL2006PTC147404 is a company incorporated on 13.03.2006 under the provisions of the erstwhile Companies Act, 1956, having registered office at, 71, Chitra Gupta Road, Paharganj, New Delhi, South Delhi DL 110025 IN which is within the jurisdiction of this Tribunal.

3. It is stated by the Applicant that it had entered into a construction agreement with the corporate debtor on 1st July 2015, for construction services on California Country Project at Sector 80, Village Barauli, Faridabad, Haryana. Thereafter Corporate Debtor also signed various construction agreement with Operational Creditor for different type of construction work on the said project and worked till 2018.

4. Thereafter to utter shock of the applicant the Corporate Debtor held the payments against the invoices raised by the operational creditor. However, the applicant consistently was inquiring about the status of payment from the corporate debtor.

PATIBANDLA
SATYANARAYANA
PRASAD
Digitally signed by PATIBANDLA
SATYANARAYANA PRASAD
Date: 2022.09.16 16:43:02 +05'30'

RAHUL
PRASAD
BHATNAGAR
Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.09.16
17:00:21 +05'30'

5. The Applicant states that under the circumstances, it was constrained to issue a demand notice dated 17.12.2020 under Form No. 4 of the IBC, 2016 r/w Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking payment of unpaid debt of Rs. 3,88,12,122/- including Principal amount of Rs. 2,62,24,407.76/- along with interest @ 24% per annum of Rs. 1,25,87715.44/-. That the said notice was duly served on the address of the corporate debtor through speed post on 28.12.2020 and vide email dated 22.12.2020 on the registered address and email id of the Corporate Debtor as per MCA master data. That the corporate debtor had failed to reply to the demand notice and no notice of dispute or payment of debt has been received by the applicant.

6. The applicant has filed an affidavit dated 22.02.2021 (Page 225 to 226), in compliance of Section 9 (3)(b) of the IBC, 2016 and stated the no Notice of Dispute u/s 8(2) of IBC, 2016 has been received and the Corporate Debtor has also not brought to notice of the Applicant/ Operational Creditor the existence of any pre-existing dispute.

7. That as per Part-IV of the application, an amount of Rs. 3,88,12,122/- including Principal amount of Rs. 2,62,24,407.76/- along with interest @ 24% per annum of Rs. 1,25,87715.44/- is due and payable by corporate debtor as on 25.03.2018.

8. On perusal of records, it is found that the corporate debtor is set ex-parte vide order dated 10.05.2021.

9. That during the course of hearing the applicant filed an affidavit of service dated 23.03.2022, stating that in terms of order dated 16.02.2022, notice has been served upon the Corporate Debtor vide speed post on 07.03.2022 and vide email on 23.02.2022. However, it has come to our knowledge that the service of petition via speed post was effected at New Friends Colony SO having Pin code 110005, which

PATIBANDLA
SATYANARAYAN
A PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA PRASAD
Date: 2022.09.16 16:43:13
+05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.09.16
17:00:38 +05'30'

Page 3 of 6

as per records is not the pin code of the corporate debtor. Further the petition has been served upon the Corporate Debtor via email at its registered address as per MCA master data. The proof of service has been annexed with the application.

10. The applicant has relied upon the following documents to substantiate its claim:

- i. The Various Construction Agreements dated 01.07.2015, 03.09.2015, 04.09.2015, 07.09.2015, 03.11.2015, 07.01.2016, 23.04.2016, 12.05.2016 signed between the Applicant/Operational Creditor and Corporate Debtor along with invoices raised pursuant to said agreements,
- ii. Ledger Accounts Issued by the Applicant and Corporate Debtor,
- iii. The copy of bank statements of the Applicant.

11. After hearing the submission and perusing the documents placed on record by the Applicant/Operational Creditor, we observed that the Applicant / Operational Creditor had entered into construction agreement and subsequently raised invoices. To substantiate the said claim, the Applicant/Operational Creditor has also placed on record the statement of account of the corporate debtor in the books of the Applicant/Operational Creditor indicating an outstanding amount. Further, we observe that the Demand Notice under Section 8 and the application under Section 9 were duly served upon the corporate Debtor. The respective affidavit of service has been placed on record. Thereafter in terms of order dated 16.02.2022 passed by this Tribunal the Applicant/Operational Creditor again served the copy of the present applicant through all modes. An affidavit of service dated 23.03.2022, reflecting service of the said applicant upon the corporate Debtor has also has been placed on record. Despite notice none has appeared on behalf of the Corporate Debtor, this Tribunal was therefore constrained to proceed the matter *ex parte*.

PATIBANDLA
SATYANARAYAN
A PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA PRASAD
Date: 2022.09.16 16:43:28
+05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.09.16
17:00:48 +05'30'

Page 4 of 6

As per the averments in the application in Form-5 Part IV, a sum of Rs. 1,68,91,251/-, has only been received and a sum of Rs. 2,62,24,407/- out of the total amount of Rs. 4,31,15,658/- as per invoice raised by the applicant. Accordingly, an unpaid operational debt is due and payable to the Applicant.

12. On perusal of the documents on records, it is observed that the applicant has failed to mention that date of default in its Form-5, Part IV. Therefore, vide order dated 29.08.2022, the applicant was directed to file short affidavit regarding determination of date of default along with supporting documents. Consequently, the applicant filed an affidavit dated 05.09.2022. As per the averments of the applicant the last invoice was raised on 25.03.2018, which as per general terms and condition was payable within 15 days and therefore the same is the date of default. Hence from the date of last invoice the present application is within limitation.

13. In the given facts and circumstance, the operational creditor has been able to establish the default on part of the corporate debtor in payment of the operational debt. The present Application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The present application is filed on 30.01.2021 and the debt fell due on 25.03.2018, therefore the present application is not barred by limitation. Further the default being well above the threshold limit of Rs.1,00,00,000/- as per Section 4 of IBC, **the present application is admitted in terms of Section 9(5) of the IBC.**

14. **Accordingly, the CIRP is initiated** and moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

PATIBANDLA
SATYANARAY
ANA PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA PRASAD
Date: 2022.09.16 16:43:45
+05'30'

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.09.16
17:01:00 +05'30'

15. Since there is no name of IRP is proposed by the Operational Creditor, this Bench appoints Mr. Gautam Singhal having Registration No. IBBI/IPA-001/IP-P-01437/2018-19/12240, & E email id: gautam@klfindia.com as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and hereby:

“Mr. Gautam Singhal is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The court officer will inform the IRP so appointed by all modes.”

16. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet to the immediate expenses. IRP may on receipt of Rs.2 Lakhs inform in writing to this tribunal that Operational Creditor has complied with directions. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

17. A copy of the order shall be communicated to the applicants as well as to the Corporate Debtor above named by the Registry. Applicants are also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

RAHUL
PRASAD
BHATNAGAR
Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2022.09.16
17:01:12 +05'30'

(RAHUL BHATNAGAR)
Member (Technical)

PATIBANDLA
SATYANARAYANA
PRASAD
ANA PRASAD
Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2022.09.16
16:47:21 +05'30'

(P.S.N PRASAD)
Member (Judicial)