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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**


ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 17.03.2020

CAUSE LIST


PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 17/BB/2020	For admission	Sec 9 of I&B code 2016	M/s Varsha Transport Pvt Ltd	K Chethan Kumar, Advocate	M/s J S R Constructions Pvt Ltd	

ADVOCATE FOR PETITIONER/s:


K Chethan Kumar
9902925762

ADVOCATE FOR RESPONDENT/s:


17/03/20
G. VENKATESH
ORDER

ORDER

Heard Mr. K. Chethan Kumar, Learned Counsel for the Petitioner and Mr. G. Venkatesh, Learned Counsel for the Respondent. CP (IB) No.17/BB/2020 is disposed of by separate order.


MEMBER (T)


MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.17/BB/2020

U/s.9 of the IBC, 2016

R/w Rule 6 of the I&B (AAA) Rules, 2016

Between :

Varsha Transport Private Limited,
No.371/1, Behind Philips Godown,
Manjambakkam, Manali,
Chennai – 600 068

- Petitioner/Operational Creditor

And

M/s. J.S.R Constructions Private Limited,
No. 318, Sri Soudha,
Indiranagar, I Stage,
Bengaluru – 560 038

- Respondent/Corporate Debtor

Date of Order: 17th March, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : K.Chethan Kumar

For the Respondent : G.Venkatesh

ORDER

Per:Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.17/BB/2020 is filed by M/s. Varsha Transport Private Limited(Petitioner/Operational Creditor) U/s. 9 of IBC, 2016, R/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect ofM/s. J.S.R



Constructions Private Limited (Respondent/Corporate Debtor) on the ground that it has committed default for an amount of Rs.38,83,325/- (Rupees Thirty Eight Lakhs Eight Three Thousand three Hundred and Twenty Five only) along with interest @ 18% p.a.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. Varsha Transport Private Limited (Petitioner/ Operational Creditor) is a Company registered under the Companies Act, 2013, with its registered office at No.371/1, Behind Philips, Godown, Manjambakkam, Manali, Chennai – 600 068. It is engaged in the business of Transportation of goods.
- (2) M/s. J.S.R Constructions Private Limited (Respondent/ Corporate Debtor) is a Company was incorporated on 22.06.1990 bearing CIN: U45203KA1990PTC011018 under the Companies Act. Its Authorized Share Capital is Rs.1,00,00,000/- (Rupees One Crores only) and the Paid-up Capital of Rs.95,00,000/- (Rupees Ninety Five Lakhs only). The Corporate Debtor is engaged in the business of construction of Roads, Bridges, Industrial, Residential, Commercial Buildings etc.,
- (3) The Corporate Debtor released a work order dated 28.12.2013 bearing reference No. JSRMTPL/BIT-Transport/004/2013-14 infavour of the Petitioner engaging the Petitioner Company for Transportation of bulk Bitumen VG-30 From Indian Oil Corporation Limited, CPCL Campus, Chennai to their other project site at Yelavahalli Cross, 2ndKM, N. VaddehalliPunganur Road, Mulbagal Taluk, Kolar



and the Corporate Debtor/Respondent agreed to pay Rs. 2/- per M.T per KM both ways as per the terms of the work order and the same was a continuing contract until the completion of their project work in Kolar.

- (4) In furtherance of above work order, the Respondent took the services of the Petitioner on multiple occasions and the Petitioner Company has raised various invoices against the services rendered. According to the understanding between the parties, the Respondent was supposed to make the payment within 30 days from the date of invoice. The Respondent used to make part payments to the service rendered and the Respondent used to maintain running account with the Petitioner. Since the orders were placed on regular basis, the Petitioner Company continued to render services as per the requirement of the Corporate Debtor. The Tabular representation of the services rendered by the Petitioner Company and the amount paid by the Corporate Debtor is as detailed below:

Financial Year	Services rendered by OC to CD (in Rs.)	Amount paid by CD to OC (in Rs.)	Amount due
2013-14	13,28,859	5,45,158	
2014-15	48,06,899	8,60,774	
2015-16	1,57,131	10,03,633	
	68,92,889	24,09,565	38,83,325
Interest at the rate of 18% p.a from the last bill raised			29,03,237
Total amount pending from C.D to O.C			67,86,562

- (5) It is stated that the Respondent, after receiving the services from the Petitioner, started dodging to make payments for the invoices raised. The Petitioner sent legal notice dated



05.08.2016 demanding to pay the pending amount for the services rendered. The Respondent after receipt of the legal notice sent a vague reply and demanded the Petitioner Company to furnish documents and assured that it will investigate and revert back to the Petitioner Company. Further the Respondent categorically admitted the services rendered to it by the Petitioner, however in its reply has only disputed the claimed amount. The Petitioner furnished all the documents to the Respondent and substantiated its claims. The Respondent kept on postponing the payments to be made to the Petitioner on one pretext or the other.

(6) Even after repeated reminders and follow up, the Respondent neglected and failed to pay the said amount. The Petitioner was forced to send a demand notice in Form 3 and 4 calling upon to pay the said amount. The Respondent through his reply notice gave untenable reply. Since the Respondent gave vague and untenable reply, the Petitioners sent a letter to the Respondent demanding it to show statement of accounts of the Petitioner Company maintained by it. However the Respondent, though received the letter, has not replied to the same. Further the Petitioner has also registered the debt owned by the Respondent in National E-Governance Services. The Petitioner has an apprehension that the Respondents may siphon off the funds and divert their income to other companies or to the personal benefit of directors. Hence this petition.

3. The Respondent/Corporate Debtor has filed Statement of Objections dated 11.03.2020, by inter-alia contending as follows:

(1) It has denied that there is an admitted debt or liability or dues in present instance. The Respondent has already paid



off the legitimate dues under the subject work order and balance, which is ostensibly claimed by the Petitioner is not liable to be paid by the Respondent. Further, the amount demanded by the Petitioner was disputed by the Respondent way back on 19.08.2016 in its Reply to a legal notice dated 05.08.2016 issued on behalf of the Petitioner. The fact that the amounts involved in subject matter of pre-existing dispute is in fact admitted by the Petitioner, in the pleadings raised in the petition itself.

- (2) It is stated that the admission of the fact of receiving services in the reply letter dated 19.08.2016 is a matter of fact and to the extent of such admitted amount, the payment have already been made and which is also admitted by the Petitioner and the balance remains unaudited and is subject matter of pre-existing dispute. Further, the subsisting dispute is on account of the fact of huge discrepancy and fraud on the part of the Petitioner. This was stated in unmistakable, unequivocal and categorical manner in the above reply of the Respondent dated 19.08.2016. It is in this context that detailed records were sought by the Respondent to investigate the matter. However nothing was provided or done by the Petitioner to dispel the assertion of the Respondent on the fraudulent raising of the invoices. Further a demand notice dated 24.12.2018 under I & B Code, 2016 was issued to which the Respondent replied on 05.01.2019 bringing it to the attention of the Petitioner of the pre-existing dispute of more than three years old. Thereafter, a second attempt under the code is made by the Petitioner and against a demand notice dated 24.09.2019 was issued for which the



Respondent replied on 04.10.2019. Thereafter, it was not incumbent upon the Respondent to answer repeated correspondences of the Petitioner.

- (3) It is stated that it is by now an established principle of law that existence of undisputed debt is sine qua non of initiating insolvency resolution proceedings under the code.
4. Heard Shri K.Chethan Kumar, learned Counsel for the Petitioner, and Mr. G. Venkatesh learned Counsel for the Respondent. We have carefully perused the pleadings of both the parties, and the extant provisions of the Code, the Rules made thereunder, and the law on the issue.
5. Mr. K. Chethan Kumar, Learned Counsel for the Petitioner, while reiterating the various averments made in the pleadings already placed on record, as briefly supra, has further submitted that the debt and default in question are not in dispute and the Petitioner made several attempts by issuing several demand notices, but the Respondent did not come forward to settle the claim made by the Petitioner. The instant Company Petition is filed in accordance with law, and qualified RP is also suggested to appoint him as IRP. Therefore, he urged the Tribunal to initiate CIRP in respect of the Corporate Debtor appointing IRP, imposed moratorium etc.
6. Mr. G. Venkatesh, Learned Counsel for the Respondent, on the other hand, while reiterating the various averments made in the reply, as briefly stated supra, has further submitted that the Respondent started raising dispute about the claim right from first Demand dated 5.08.2016 issued by the Petitioner, vide its Reply dated 19.08.2016. And the claim is also barred by laches limitation as the alleged claim arisen in the year 2014 and eligible claims have been settled by the Respondent. By keeping quiet from 2016, the Petitioner has again started issuing Demand



notices in the year 2018 and 2019 issued by the Petitioner. The Petition is not only a pre-existing dispute and it is also barred by law of limitation. In support of his case, he has relied upon the judgements of Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2017) 144 SLC 37* and in *B.K. Educational Services (P) Limited v. Parag Gupta & Association (2018) 150 SCL 293*. Therefore, he has urged the Adjudicating Authority to dismiss the Petition.

7. As detailed supra, the Petitioner, in the first instance, has issued a Demand notice dated 05.08.2016 to the Respondent by inter alia stating that the Petitioner had sent repeated reminders to the Respondent and they have not received any payment even though the assurance was given that payment would be paid and settle dues. Therefore, the Petitioner called upon the Respondent to settle the amount of Rs.45, 46, 124/- (Rupees Forty Five Lakhs Forty Six Thousand One hundred and Twenty Four only) which is due from them, within the period of 15 days from the date of the receipt of the notice, failing which, it was threatened to initiate appropriate legal proceedings against them as per law. In pursuance to this above notice, the Respondent replied on 19.08.2016 by inter alia stating as follows:

"M/s. Varsha Transport Private Limited has transported Bitumen VG 30 from Chennai to our site in Mulbagal, Karnataka State. It is stated that the Company is entitled to receive transportation charges at the rate of Rs.2 per ton per km. both ways.

M/s. Varsha Transport Private Limited has informed that we owe an amount of Rs.45, 46, 124/- for services rendered by them till date. In fact there has been a huge discrepancy



and fraud committed by M/s. Varsha Transport private limited.

We request M/s. Varsha Transport limited to submit details of the claim made through proper documents available in tis possession. We will investigate the matter again and revert back to you”.

However, the Petitioner has not initiated any legal action as warned in the legal notice.

8. The Petitioner, again sent another Demand notice dated 24.12.2018 in Form 3 & 4 under Rule 5 of I & B(AAA) Rules, 2016 by interalia demanding to pay the outstanding amount of Rs.62, 61, 835/- (Sixty Two Lakhs Sixty One Lakh Eight Hundred and Thirty Five only), for which the Respondent , given Reply dated 05.01.2019 by interalia denying the claim and liability much less the demanded amount of Rs.62, 61, 835/- and the claim has also time barred and they have also marked the dispute against the record of default with the Information Utility (NeSL) which was uploaded by the Petitioner on 24.12.2018. Subsequently, another letter dated 11.03.2019 was issued by the Petitioner to the Respondent by interalia asking them to provide them Statement of accounts from their books of accounts since inception till today to know and understand how their dues are settlement. Yet again another Demand Notice was issued on 24.09.2019, for which, the Respondent has given another dated 04.10.2019 by denying the liability by reiterating their stand taken earlier in their earlier replies.
9. The instant Company Petition is filed U/s 9 of the Code. The pre-requisite conditions to be fulfilled to file an Application/Company Petition, under Section 9 of the Code are the Operational Creditor has to issue demand notice in

prescribed form to the Corporate, once default is occurred with operational debt. In case, the Corporate Debtor do not raise any pre-existing dispute, or paid due amount, the Operational Creditor can file an Application/Company Petition in prescribed form by enclosing necessary fee and supporting documents. In the instant case, as detailed supra, the Petitioner issued the first demand notice on 05.08.2016 by claiming arrears against the invoices issued from 30.06.2014 for an amount of Rs.45,46,124/-. After giving Reply dated 19.08.2016 from the Respondent, the Petitioner did not initiate any action. Thereafter, other demand notices were issued on 24.12.2018 & 24.09.2019. Admittedly, both the demand notices are also replied by the Respondent by denying the liability. The Petitioner also addressed a letter dated 11.03.2019 to the Respondent by requesting the Respondent to furnish them the Statement of Accounts from books of accountssince inception till that day to know and understand how their dues are settled. It is also relevant to point out here, even the records given by NeSL filed along with the Petition also shows that the default was being disputed by the Corporate Debtor. Therefore, there is no doubtthere is pre-existing dispute with regard to the claim made in the instant Company Petition.

10. It is relevant to point out, here that both the Petitioner and Respondent are in business relationship over a period of time. Admittedly, the Petitioner Company is very small enterprise unlike the Respondent Company which is a big Company. Though, the Respondent is justified technically in refusing the claim of the Petitioner, the facts remains that the Respondent has not satisfactorily explained to the Adjudicating Authority as to how their dues have been settled. It is true that the



Provisions of the Code cannot be invoked in order to recover the disputed amounts, and it is not a recovery forum and the Adjudicating Authority cannot initiate CIRP when there is pre-existing dispute. Therefore, we are not inclined to initiate the CIRP in respect of the Corporate Debtor. However, it would be just and proper for the Respondent to reconsider the issue sympathetically, in view of the Petitioner Company being a small enterprise rather than to reject its claim.

11. In the result, C.P.(IB)No.17/BB/2020 is hereby disposed of by directing the Respondent to re-consider the claim and try to resolve the issue without giving further scope to raise the litigation in the interest of justice. And this order will not come in the way of Petitioner to invoke any other remedy available under any other law. No order as to costs.

**(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL**

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