

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-248/ND/2019

(Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code, 2016

(Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

ARGENTIUM INTERNATIONAL PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

UTM ENGINEERING PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on:17.10.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

MEMO OF PARTIES

ARGENTIUM INTERNATIONAL PRIVATE LIMITED

Registered Office at 79, Shyamlal Road, 2nd Road

Daryaganj, New Delhi-110002

...Applicant/Operational Creditor

VERSUS

UTM ENGINEERING PRIVATE LIMITED

Registered office at: Plot No-28, KH NO-154/14 Block-C,

Shiv Enclave, Najafgarh, PP No. NJF

Delhi-110043

...Respondent/ Corporate Debtor

For the Applicant: Mr. Ayush Sharma, Adv.

For the Respondent: Ms. Priyanka Kakar, Adv. Ms. Priyanka Jain, Adv.

ORDER

Dr. Deepti Mukesh, Member (J)

1. The present application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 by Argentium International Private Limited, (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process against Utm Engineering Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated on 14.02.1996 and is having its registered office at 79, Shyamlal Road, 2nd Road, Daryaganj, New Delhi-110002.
3. The Corporate Debtor is a private limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 12.08.2014 bearing CIN U14107DL2014PTC270321 as per master data. The Authorized Share Capital of the Corporate Debtor is Rs. 20,00,00,000/- and Paid Up Share Capital is Rs. 20,00,00,000/- and having its registered office at Plot No-28, KH NO-154/14 Block-C, Shiv Enclave, Najafgarh, PP No. NJF Delhi-110043.

4. The Applicant has stated that the corporate debtor had placed job orders upon the applicant for supplying of goods and the applicant had supplied the goods to the corporate debtor accordingly. The applicant raised invoices in respect of job order from 20.08.2017 till 18.01.2018 but the corporate debtor did not make the payment to the applicant.
5. The Applicant issued demand notice dated 20.09.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor. The said notice was sent by Speed Post at the registered address of the corporate debtor as reflected in the master data and which was duly delivered by the corporate debtor. The Corporate Debtor has neither replied to the aforesaid notice nor made any payment towards the outstanding dues.
6. As claimed by the applicant, the Corporate Debtor is liable to pay a sum of Rs.49,17,591.00/- (Rupees Forty-Nine Lakhs Seventeen Thousand Five Hundred Ninety-One Only), as per Form 5 under 'Part IV'.
7. The Applicant filed present Application on 14.01.2019 under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.

8. The Corporate Debtor has filed a reply and has asserted that there was drastic change in geology and the work of excavation was stopped since January 2018 and because of stoppage of work and also due to heavy loss of discontinuity of work, huge payment is withheld by M/s ITD Cementation India Limited. A work order dated 27.04.2017 was executed between corporate debtor and M/s ITD Cementation India Limited. corporate debtor further asserted that force majeure essential frees both parties from liability or obligation when an extraordinary event or circumstance is beyond the control of the parties.
9. The Corporate Debtor has indirectly accepted its inability to pay towards the outstanding dues of the applicant by asserting that there was a dispute resolution process being processed with M/s ITD Cementation India Limited and also because of the severe cash flow problem faced by the corporate debtor, the outstanding amount could not be paid. The corporate debtor has averred in reply as:

“We have already started dispute resolution process with M/s ITD Cementation India Limited with information to KRCL and demanded to make payment to our suppliers directly as soon as possible”

“Moreover the corporate debtor also sent an email dated 17th March to Mr. Subhash Kedi (Petitioner/Operational Creditor)

stating that there has been severe cash flow problem due to stoppage of work/slow work under abnormal geological conditions”

10. The Applicant has filed rejoinder controverting the averments made in the reply and reiterating the one made in the application. The applicant has stated that the clause of force majeure is not applicable to the goods supplied by the applicant as the contract relied upon is the work order between the corporate debtor and the contractor i.e. M/s ITD Cementation India Limited and there is no privity of contract as the applicant is not a party to the said contract. Therefore, the case is not hit by force majeure. The corporate debtor has not supported their defense with any evidence or documents to support the defense of dispute if any. Further, the corporate debtor itself has made an averment and contributed the failure to make the payment due to the default of the principal contractor, i.e. M/s ITD Cementation India Limited.
11. Having heard the learned counsels and perusing documents on record it can be inferred that the corporate debtor that the corporate debtor has tried to create and raise a dispute by asserting that the entire gamut of dispute is between the applicant and the corporate debtor, whereas the dispute as raised by the corporate debtor in its reply with respect to the

force majeure if any was not applicable to the applicant as the contract referred to, the applicant was not the party to it. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the applicant and the cd. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. Further, this leaves no doubt that the default has occurred as described in Part IV and default has occurred with respect to the payment of the operational debt of the applicant.

12. Date of default occurred on 08.01.2018 and hence the debt is not time barred and the application is filed within the period of limitation.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records the present application is admitted.
15. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Rajesh Jangra, with registration number IBBI/IPA-

003/IP-N00181/2018-19/12298 (email – jangraadvocate@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

16. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rajesh Jangra to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. 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. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, 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.

18. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named, by the Registry. Applicant is also directed to provide a copy of the complete paper book along with this order to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)