

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IA (IB)/159/2020 in IBA/316/2019**

*(Filed under Sec. 17, 18, 20, 25(2)(b) read with Sec. 60(5) of Insolvency  
and Bankruptcy Code, 2016)*

In the matter of **M/s. Unique Roof Private Limited**

**Muthuiah Thevar Rajapandian**

Resolution Professional of

M/s. Unique Roof Private Limited

Registration No: IBBI/IPA-003/IP-N00090/2017 – 18/10854

3/158 Bharathiyar Street,

Indian Bank Colony,

Narayanapuram,

Madurai – 625 014

.. .. Applicant

-Vs-

**Elmech Engineering Company**

No.64/6, SJP Road,

Nagarathpete,

Bangalore – 560 002

.. .. Respondent

Present:

For Applicant : Muthuiah Thevar Rajapandian, RP

For Respondent : None – appeared

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*Order Pronounced on 29<sup>th</sup> September 2020*

## ORDER

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. IA (IB)/159/2020 has been filed by the Applicant under Section 17, 18, 20, 25(2)(b) r/w Section 60 (5) of Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

*That the Hon'ble Tribunal may be pleased to direct the respondent to pay the balance outstanding to the Corporate Debtor in pursuant to the supplies made by the Corporate Debtor to the Respondent Company and pass any such other order, orders, direction and directions and thus render justice.*

2. It is averred in the Application that, this Tribunal vide order dated 04.10.2019 passed in IBA/316/2019 initiated Corporate Insolvency Resolution Process (CIRP) and appointed the Applicant herein as the Insolvency Resolution Professional (IRP). Subsequent thereto, the IRP made public announcement under Section 15 of IBC, 2016 on 11.11.2019. In the meantime, the Suspended Director of the Corporate Debtor has filed an Appeal before the Hon'ble NCLAT, which is pending disposal.

3. The Learned Resolution Professional submitted that the Corporate Debtor's business activities are making steel building design as per the purchase order, and manufacturing of steel



structure, sale of steel materials, etc., and the Corporate Debtor is having their own cranes which are used for the erection of structure & Roofing sheet in the work place and they also used to hire cranes from outside, whenever it required.

4. The Learned Resolution Professional submitted that, while perusing the records of the Corporate Debtor, it was found that there were receivables to be received by the Corporate Debtor from the Respondent and as such the Corporate Debtor has supplied the materials to the Respondent at their workplace and raised invoices on various dates for a total sum of ₹57,29,075/- and the date of last invoice being 07.04.2015.

5. The Learned Resolution Professional submitted that the Respondent has received materials on various dates and out of the total amount of ₹57,29,075/-, the Respondent have paid only ₹53,82,580/- and as per the books of the Corporate Debtor a balance sum of ₹3,46,495/- is due from the Respondent to the Corporate Debtor till date and by levying interest @ 18% p.a., the total amount claimed by the Resolution Professional is ₹6,48,085/- which is due to the Corporate Debtor by the Respondent.



6. It is seen from the records that none appeared on behalf of the Respondent when the matter was listed for hearing on 17.09.2020 and in the circumstances, this Tribunal passed the following order;

“Ld. IRP / RP Mr. Muthuiah Thevar Rajapandian for the Corporate Debtor is present through Video Conferencing Platform. None appears for the Respondent today. Even on the previous hearing date, there was no appearance on the part of the Respondent and no reply has been filed by the Respondent. In the circumstances heard the Applicant, order stands reserved”.

7. Thereafter, it has been brought to the notice by the Registry of this Tribunal, that after the orders were reserved in the present case, one Mr. S. Charles, Advocate vide email dated 21.09.2020 has filed vakalat on behalf of the Respondent and also filed a memo to re-open the matter by stating thereon that summons was not properly served and the Respondent was unaware of the hearing of the case, which incapacitated the Counsel to appear when the matter was taken up for hearing. However, we are unable to accept the reasons as stated by the Learned Counsel for the Respondent in the said memo as from the records, it is seen that the summons were served upon the Respondent by the Registry of



this Tribunal on 18.02.2020 itself, by stating therein to appear before this Tribunal on 09.03.2020. On 09.03.2020, none appeared on behalf of the Respondent and hence the matter was adjourned to 23.03.2020. Under these circumstances, we are unable to accept the reasons as stated in the memo by the Learned Counsel for the Respondent and as such the memo filed by the Learned Counsel for the Respondent to re-open the present Application viz. IA (IB)/159/2020 stands rejected.

8. Heard the Learned Resolution Professional and perused the documents filed along with the typed set. Before this Tribunal embark into the facts of the case, this Tribunal is duty bound to examine the claim filed by the Applicant from the aspect of Limitation. It is seen from the documents filed by the Applicant that the last date of Invoice is stated to be 07.04.2015 and the CIRP in relation to the Corporate Debtor was initiated by this Tribunal on 04.10.2019. The Learned Resolution Professional has not placed on record any documents to show that the Corporate Debtor has been duly and diligently taking actions to recover the claim from the Respondent.



9. The Hon'ble Supreme Court of India, in the case of **B.K. Educational Services Private Limited -Vs- Parag Gupta And Associates** (2019) 11 SCC 633 has held that Limitation Act is applicable since the inception of the Code (IBC, 2016) while posing itself with a query as to whether the Limitation Act, 1963 will apply to Applications that are made under Section 7 and or Section 9 of the Code (IBC, 2016) on and from its commencement on 01.12.2016 to 06.06.2018 (date of amendment of insertion of Section 238-A coming into effect). At this juncture, it is pertinent to refer to the Report of the Insolvency Law Committee of March, 2018 in this regard and more particularly paragraph 28.1 to 28.3 of the said Report and highlighting that the Code (IBC, 2016) could not have been to give a new lease of life to debts which are time barred and has thereby gone to give a finding that the Limitation Act is applicable from the inception of the Code. The relevant extracts of the Report of the Insolvency Law Committee (supra) given in **B.K. Educational Services** case *supra*, with reference to the one on hand reads as follows:-

28.2 Further, non-application of the law on limitation creates the following problems : first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for CIRP, the trigger for which is default on a debt above INR one lakh.\* The purpose of the law of limitation is "to prevent disturbance or deprivation of



what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or latches". Though the Code is not a debt recovery law, the trigger being 'default in payment of debt' renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time-barred claims with the IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30 (4) of the Code.

- 28.3 Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case to case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy".

*(emphasis by underline supplied)*

*\* presently on and from 24.03.2020*

*Rs. 1 Crore*

10. The above paragraphs of the Report of the Insolvency Law Committee of March 2018 has been favourably noted by the Hon'ble Supreme Court of India in **B.K. Educational Services** (*supra*) case. The above paragraphs more particularly Paragraph 28.2 brings to light the intention for applying the Provisions of Limitation Act is not only confined with respect to the Petitions filed



under Section 7 or Section 9 of IBC, 2016 by the Creditors but equally applies in relation to claims that may be preferred before the IRP / RP during the process of CIRP. It is to be noted that the entire CIRP is a time bound process, for that matter even IBC, 2016 being a separate Code by itself is driven by time be it CIRP or Liquidation process in relation to Resolution or Liquidation which are equally in itself time bound, unless interdicted by Law, say the recent insertion of Section 10A by virtue of Amendment Ordinance, 2020 to IBC, 2016. The applicability of the Limitation Act, 1963 during the Period of moratorium and the computation of the period of Limitation, specified for any Suit or Application by or against the Corporate Debtor, is required to be excluded and which exclusion points out that as compared to ordinary laws, IBC, 2016 is a separate Code by itself and being of recent origin (2016) is still in its nascent stage and evolving what with several amendments effected by the Legislature within 3 years and 9 months of its existence in the Statute Books. It is also required to be noted that Section 3 of the Limitation Act, 1963 compels this Tribunal to consider the aspect of Limitation whether pleaded or not and hence non - appearance of the Respondent or non - filing of a reply may not be a material aspect while dealing with the angle of Limitation



and sustainability of the claim through the prism of the Limitation Act, 1963.

11. The Applicant, in the present case, would be not in a position to approach the Civil Court by way of a suit for recovery of money, as the claim amount admittedly falls beyond the prescribed period of limitation, even at the time of initiation of the CIRP and thereby by filing the present Application under Section 60(5) of IBC, 2016, cannot seek to enforce a claim, which is time barred as per the provisions of the Limitation Act, 1963. Hence, on the said count, the Application as filed by the Applicant is liable to be dismissed.

12. Thus, in view of the reasoning stated *supra*, it is seen that the claim made by the Applicant from the Respondent is barred by limitation and as such we are constrained to **dismiss** the Application, however without costs.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

*Raymond*

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)