

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
COMPANY PETITION NO. IB-3239/ND/2019**

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

M/s. VIORP INTERIOR

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S.SOLAR PRINT PROCESS PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 30.11.2021

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

M/s. Viorp Interior

(Through its Proprietor)

R/O at H No.6, Khasra No.-39-a,

Shivalaya Road, Chattarpur,

New- 110074

...Applicant/Operational Creditor

Versus

M/s. Solar Print Process Private Limited

D-10/7 Okhla Industrial Area Phase-III

New Delhi- 110020

...Respondent/ Corporate Debtor

FOR THE APPLICANT : Mr. Sanjay Kumar, Mr. Aarif Khan,
Advs.

FOR THE RESPONDENT : Ms. Himanshi, Mr. Arjun Mahajan, Mr.
Raghav, Adv.

ORDER

Per-Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by M/s Viorp Interio (for brevity 'Applicant') through its Proprietor Mr. Puneet Aggarwal, with a prayer to initiate the corporate insolvency resolution process against M/s. Solar Print Process Pvt. Ltd. 'Corporate Debtor').
2. The Applicant is the proprietor of a proprietorship firm bearing MSME Udhdyog Aadhar registration No. DI08A0006436 incorporated on 01.03.2017 under the provisions of MSME Act, 1956 having its registered office at House No.6, Khasra No. 319-A, Shivalya Road, Chattarpur, New Delhi. The applicant is a business of manufacture of furniture and other interior design services.
3. The Corporate Debtor is a private limited company, incorporated on 13.04.1994 under the provisions of Companies Act, 2013 bearing CIN U74899DL1994PTC058409 having its registered office at D-10/7 Okhla Industrial Area Phase - II, New Delhi- 110020. The company is involved in the business of printing and packaging.
4. The applicant submits that the corporate debtor approached them for interior work at its three sites located at:
 - a) 405, DLF Emporio, Vasant Kunj, New Delhi, 110070 on 25.06.2018.
 - b) 23, Gadaipur, Mehrauli, New Delhi, 110030 on 05.07.2018.
 - c) Foyer Area, The Lodhi Hotel, Lodhi Road, New Delhi, 110003 on 23.08.2018

5. Thereafter, the estimates for interior work were to be sent to the corporate debtor for approval. Pursuant to the approval of estimates and after work for all three work orders was duly executed within stipulated time and with full satisfaction of the corporate debtor, the applicant raised invoices. The applicant states that the work at site No.3 was delayed as there were frequent changes in the work, Moreover, extra work was also added from time to time. It is stated that the work was completed as per the requirement of corporate debtor and after completion of work, the same was also endorsed by the corporate debtor.
6. The applicant states that due to the major changes made by the corporate debtor, the applicant raised query for increase of Costing of work. At that time the corporate debtor assured to revise the costing. On 01.02.2019 the applicant sent mail to corporate debtor to inform that all the work has been completed and same was also endorsed by the corporate debtor.
7. The applicant had issued three separate invoices for all three-site work done by the applicant, the same was duly acknowledged by the corporate debtor. Thereafter the corporate debtor made payments of two invoices dated 02.11.2018 and 05.12.2018 respectively. However, failed to make payment of third invoice dated 10.02.2019 and never raised any dispute regarding the said invoice.
8. The applicant made several requests from time to time to the corporate debtor to make payment of the invoice dated but the corporate debtor avoided payment on pretext or the other 10.02.2019. Hence the applicant sent demand notice dated 24.04.2019 under Section 8 of IBC, seeking payment of Rs.17,47,349.31/-. The said notice had been duly served upon the corporate debtor at the registered office of the corporate debtor as per the master data through courier and speed post. The Copies of postal receipts

and its tracking reports are annexed. The corporate debtor failed to make any payment rather sent a vague reply to the notice sent by the applicant.

9. The Applicant filed the present application under section 9 of IBC, 2016 and served the copy of this application which is duly served to the Corporate Debtor as per service affidavit through speed post, courier and email as per Master data. As per Form V, the total debt outstanding is INR 17,47,349.31/- (Rupees Seventeen Lakh, Forty-Seven Thousand three Hundred forty-nine and thirty-One paisa only) till date of filing of application which is due and payable by the corporate debtor to the applicant.

10. The corporate debtor filed reply denying the claims of the applicant through its authorized representative Mr. Randeep Handa and raised the following objections:

- a) That there exists no relationship between the applicant and corporate debtor. The present case is a dispute about a contract that was carried out in full and the balance amount was to be paid. The present application is not the appropriate remedy sought and is only a means of harassing the corporate debtor. Hence the present application is liable to be dismissed.
- b) That the notice of dispute dated 03.05.2019 under Section 8(2)(a) was also sent by the corporate debtor to the applicant. That the applicant does not fall under the ambit of Section 5 within the meaning of operational creditor. The amount as claimed by the applicant is not due and payable as the applicant had raised another revised invoice dated 10.02.2019 for the work amounting to Rs. 7,70,127/-. However, the applicant failed to annex the said invoice with wrongful intention. Hence the present application is liable to be dismissed.

- c) The applicant has misrepresented the figures of authorized share capital and the paid-up share capital of the corporate debtor. The address of the corporate debtor has been wrongly mentioned in the address of the respondent. Hence the summons could not be served on the corporate debtor, the notice of the present proceedings was intimated to the applicant through a message. Further the date of incorporation is also wrongly mentioned.
- d) It is the contention of the corporate debtor that the applicant has delayed the work and despite repeated assurances delivered substandard and incomplete services, which is contrary to the terms agreed between the parties. Further also stated that the dissatisfaction regarding the quality and delay in services was also raised via WhatsApp. The WhatsApp conversations exchanged between the parties have been annexed. Hence due to the delay and non-performance of the applicant, the corporate debtor vide email dated 05.12.2018 intimated the applicant that if the work is not completed at site on time, then from 21st December onwards a sum of 10% shall be deducted from the balance amount which was due to the applicant. In response to the said email on 05.12.2018, the applicant agreed upon the terms of the corporate debtor. The copies of emails have been annexed.
- e) The applicant stated that left with no other option, the corporate debtor had to engage services of other vendor, in addition to that of the applicant. Hence the corporate debtor had to incur additional cost of Rs.13,00,000/- The ledger statements dated 01.04.2018 to 31.03.2019 reflecting payment to the 'Karma Décor' is annexed. Hence it is clearly established that there exists an admitted pre-existing dispute.

11. The applicant filed rejoinder reiterating the contents of the application sated the following

That all contentions of the corporate debtor with regards the present application are denied as being misconceived false and frivolous. It is stated that the revised bill as alleged by the corporate debtor, was a part bill made on request of the Architect Mr. Balbir an Mr. Sandeep Khurana. It is also stated that all works were done to the satisfaction of the corporate debtor and also initiated, photographs were also shared with the corporate debtor.

12. As per the applicant the date of default is 10.02.2019 and the present application is filed on 14.05.2019. Hence the application is not time barred and 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 Applicant has filed an affidavit in compliance of section 9(3)(b).

15. 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.

16. Considering the submissions and documents on record, the corporate debtor has raised disputes with regards the substandard and delay in services. The same was also raised in the Notice under Section 8. However, the dispute raised by the applicant is not supported with any documentary evidences to prove the defense of pre-existing dispute. Hence, it is clearly established that the applicant is entitled to claim its dues, establishing the default in

payment of the operational debt. The so-called dispute raised by the corporate is merely a moonshine to evade the liability of the applicant. Further, the email exchanges between the parties as relied upon by corporate debtor does not anywhere make out a case of genuine dispute of substantial nature. Out of three invoices raised two are already paid and with respect to payment of third there being no concrete evidence assumption can be drawn that the balance is payable. In terms of the above the present application is admitted.

17. The IRP name has not been suggested by the applicant; hence this Bench appoints Mr. Santanu Kumar Samtana having email id: santanukumar@yahoo.com and registration no. IBBI/IPA-001/IP-P02324/2010-21/13511 as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, within a period of one week from this order.
18. 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.
19. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Santanu Kumar Samtana to meet out the expenses and 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 applicant. 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 applicant.

20. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said 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.

SD/-
SUMITA PURKAYASTHA
MEMBER (T)

SD/-
DR. DEEPTI MUKESH
MEMBER (J)