

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. No.2250/I&B/2019

Under section 8 &9 of the IBC, 2016

In the matter of

Nuvoco Vistas Corporation Limited

Equinox Business Park Tower- 3, East
Wing, 4th Floor, Off Bandra Kurla
Complex, LBS Marg, Kurla (West),
Mumbai-400070.

.... Petitioner

V/s.

Shetty- Patil Developers LLP

Wanawadi S.N.-61/62/63, Oxford
Village Phase-II, Pune Maharashtra-
411040.

.... Corporate Debtor

Order delivered on:20.01.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

For the Petitioner: Adv. Anirudh Ganu
Adv. Rishikesh D. Chindarkar

For the Corporate Debtor: PS Thakre Practicing Company Secretary

Per: -Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This company Petition is filed by Nuvoco Vistas Corporation Limited(hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Shetty-Patil Developers LLP (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of

₹31,91,917/- with interest @24% per annum by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Petitioner engaged in the business of manufacture and sale of cement concrete. The Corporate Debtor engaged in the business of construction. The Petitioner supplied the ready mix concrete ("RMX") for its project site at Hubli, Karnataka, amongst other sites and Petitioner had raised Invoices on the Corporate Debtor. The Corporate Debtor made the part payment of ₹3,00,000/- on 27.11.2018.

3. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues on 17.01.2019, the Petitioner issued Demand Notice, under Section 8 of the Code, demanding a sum of ₹31,91,917/- plus interest @24% per annum. However, there was no reply from the Corporate Debtor for the demand notice.

4. The Petitioner filed an additional affidavit and confirmed that on 21.01.2019 the Corporate Debtor has made a part payment of ₹2,00,000/- now the total outstanding is ₹29,91,917/-. He also produced the balance confirmation signed by the Corporate Debtor on 26.04.2019 and filed statement of accounts for a period from 01.01.2015 to 12.08.2019.

5. The Corporate Debtor filed its reply to the petition and following are the contentions:

- I) The Corporate Debtor submitted that there is the pre-existing dispute between the parties regarding the quality of the ready mix concrete supplies by the Petitioner, the structure was

demolished made by using the aforesaid material and the Corporate Debtor had to bear the cost for the reconstruction of the structure.

- II) The Corporate Debtor Relying on the judgement of the Hon'ble supreme Court of India in the matter of *K Kishan Vs M/s Vijay Nirman Company Pvt. Ltd. (CIVIL APPEAL NO. 21824 of 2017)* that debt has to be crystal clear debt and duly acknowledged debt and the same has to be an undisputed debt in order to initiate proceedings under section 9 of the Code i.e. by the Operational Creditors and it is the settled law as far as application under section 9 of the Code is concerned that the application shall be admitted only and only when the matter is crystal clear and there is no doubt left with respect to any dispute between the parties.
- III) The Corporate Debtor enclosed the trails of the email'scommunications exchanged between the parties dated 13.05.2018 and 13.06.2018 regarding the pre-existing disputes.
- IV) The Corporate Debtor referred to an email dated 21.02.2018 which states as follows"*please arrange to conduct the rebound hammer test for structural element as per attached list as the cube test result had been failed*"
- V) Then another email dated 05.02.2018 was sent which stated as follows"*cube casted on the following dates are failed at 7 days & 28 days test, please test the necessary action*". The Petitioner responded to the email and stated as follows "*Please send me the THIRD PARTY RESULT COPY for the results you sent as our results are excellent*"
- VI) The email dated 06.06.2018 of the consultant Mr. DL Kulkarni, contained the following averments:

"Dear Sir,

Please find all column results in excel test results in green are ok whereas red not acceptable and to be demolished. Also note that test results for ASW1, ASW2, AC36, ASW4, AC44, AC45, AC46, AC4, AND ASW5 are missing also these results are only for Block A and Block B other block not included".

The said email was addressed to the Corporate Debtor.

6. The Petitioner filed the rejoinder of the reply and submitted that there is no pre-existing dispute between the parties as alleged or at all. The Corporate Debtor has acknowledged the debt by way of a balance confirmation dated 10.04.2019 for the amount of ₹29,91,917/-. The Corporate Debtor has signed and also has affixed his seal on the same on 26.04.2019, more than one year after the alleged dispute. The Petitioner contended that the Corporate Debtor did not raised this alleged dispute in the trail mails exchanged between the parties and even after receiving the demand notice under Section 8 of the Code. The Petitioner further submitted that the ratio laid down in K Kishan's case is not applicable to the facts of the present case and that there is a clear confirmation of debt on 10.04.2019 and confirmed by the Corporate Debtor on 26.04.2019.

7. During the course of hearing the parties attempted settling the matter amicably for a full quit of ₹27,00,000, it was agreed that the first installment of ₹2,00,000 will be paid on or before 02.12.2019 and the balance would be paid in two equal tranches of ₹12,50,000/- each payable on 15.01.2020 and 15.02.2020. However, the matter was not settled, and the matter was argued on 05.12.2019.

8. The counsel for the Petitioner claimed the amount of ₹29,91,917/- vide several invoices which remain unpaid along with interest @24% per

annum and also enclosed statement of accounts showing the outstanding balance. The Corporate Debtor sought to claim that there is preexisting disputes by referring to an email dated 21.02.2018. He also relied on the email sent by the consultant Mr. DL Kulkarni who confirmed on 06.06.2018 that the all column results in green are ok, whereas red are not acceptable and to be demolished also note that test result for ASW1, ASW2, AC36, ASW4, AC44, AC45, AC46, AC49 and ACWS are missing. Also these results are only for Block A and Block B other block not included. The said report from the consultant has not be forwarded by the corporate Debtor to the Petitioner and cannot be relied on. The Petitioner issued demand notice on 17.01.2019, but the Corporate Debtor failed to reply to the said notice. The Corporate Debtor failed to raise any dispute about such defect and in fact confirmed the balance of ₹29,91,917/- on 26.04.2019 which is subsequent to the issue of the demand notice. Therefore, there is no dispute existing as on the date of the demand notice and the Corporate Debtor having confirm the balance outstanding due and payable to the Petitioner on 26.04.2019 is liable to pay the said amount to the Petitioner. Hence it is proved that there is debt and default of payment of outstanding dues and the petition deserves to be admitted.

9. One Mr. Laxman Digambar Pawar, residing at Flat No 16, First Floor, Bhakti Complex, Behind Dr Ambedkar Statue, Pimpri, Pune, Maharashtra 411018; having Registration No. IBBI/IPA-003/IP-N00015/2017-18/10104 having email id cmapawar1@gmail.com has given his consent in Form No. 2 to act as an Interim Resolution Professional.

10. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this petition declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) that the order of moratorium shall have effect from 20.01.2020 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Laxman Digambar Pawar, residing at Flat No 16, First Floor, Bhakti Complex, Behind Dr Ambedkar Statue, Pimpri, Pune, Maharashtra 411018; having Registration No. IBBI/IPA-003/IP-N00015/2017-18/10104 having email id cmapawar1@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the Code.

11. Accordingly, this Petition is admitted.

12. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-
Suchitra Kanuparthi
Member (Judicial)