

**IN NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT- V**

**C.P. 1185/IB/MB/2021**

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Hella Infra Market Private Limited,**

**(CIN: U45309MH2016PTC283737)**

Unit No. 401 to 413, Opal Square, Plot No. C-1, Wagle Estate, Thane (West)-400604, Maharashtra

**.....Operational Creditor/ Applicant**

**Vs**

**Fraser and Company Limited,**

**(CIN: L51100MH1917PLC272418)**

Divya Smit Co-Operative Housing Society Ltd, Gaurav Garden Complex, Opp. Gaurav Jamuna Building, Bunder Pakhadi Road, Kandivali (West), Mumbai-400067

**.....Corporate Debtor/ Respondent**

**Order Pronounced On: 01.08.2023**

**Coram:**

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

***Appearances***

For the Applicant: Adv. Vohra i/b Link Legal

For the Respondent: Adv. Devul Dighe

***Per: Kuldip Kumar Kareer, Member (Judicial)***

**ORDER**

1. This Company Petition has been filed by Hella Infra Market Private Limited (hereinafter called "**Applicant**"/ "**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Fraser and Company Limited (hereinafter called "**Respondent**"/"**Corporate Debtor**") alleging that the Corporate Debtor has committed a default to an extent of Rs. 1,24,83,600/- which includes interest at the rate of 24% per annum. This Petition has been filed 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.

**FACTS OF THE CASE**

1. The Applicant Company is engaged in supply of various real estate and construction related materials. The Respondent vide email dated 17.03.2020 placed its first Purchase Order bearing no. PO/09/03/19-20, for the supply of various grades of Ready-Mix Concrete ("RMC"). Subsequently, the Applicant supplied and delivered the different grades of RMC to the Respondent at the various sites as requested, and the said delivery has been duly acknowledged by the Respondent.
2. In this regard, the Applicant raised various invoices aggregating to an amount of Rs. 95,91,348/- for the supply of various grades of RMC at various sites of the Respondent pursuant to the first Purchase Order raised by the Respondent.

3. The Respondent vide email dated 30.06.2020 raised Second Purchase Order bearing no. *PO/58/06/30/19* for the supply of slurry. The Applicant supplied and delivered the slurry to the Respondent at the various sites as requested. In this regard, the Applicant raised an invoice dated 01.07.2020 amounting to Rs. 5,900/- for the supply of slurry.
4. The Respondent vide email dated 01.07.2020, placed its Third Purchase Order bearing no. *PO/01/07/20-21*, for the supply of various grades of Ready-Mix Concrete ("RMC"). The Applicant supplied and delivered the different grades of RMC to the Respondent at the various sites as requested and the said delivery has been duly acknowledged by the Respondent. In this regard, the Applicant raised various invoices aggregating to an amount of Rs. 87,02,725/- for the supply of various grades of RMC to the Respondent.
5. The Respondent vide email dated 24.07.2020, placed its Fourth Purchase Order bearing no. *PO/53/07/20-21* dated 18.07.2020 for the supply of various grades of Ready-Mix Concrete ("RMC"). The Applicant supplied and delivered the different grades of RMC to the Respondent at the various sites as requested and the said delivery has been duly acknowledged by the Respondent. The Applicant issued various invoices aggregating to an amount of Rs. 1,58,250/- for the supply of various grades of RMC.
6. The Respondent never raised any grievances or disputes, either orally or in writing, with regard to the quality and quantity of the RMC or slurry as supplied by the Applicant and neither raised any disputes on the issued invoices.
7. The Applicant has submitted that the aggregating amount of all the invoices was 1,84,58,223/- out of which the Respondent till date has

paid a sum of Rs. 84,31,227/-. The balance of Rs. 1,00,26,996/- is still outstanding.

8. The Applicant vide its email dated 09.11.2020, issued Respondent, its Ledger account, as maintained by the Applicant which showed an outstanding balance of Rs 1,20,26,996/- as on that date, due and payable by the Respondent. The same was never disputed by the Respondent.
9. The Applicant vide Letter dated 08.02.2021, called upon the Respondent to pay the balance principal amount of its outstanding debt to Rs 1,20,26,996/- due and payable to the Applicant. However, the Respondent failed to pay its outstanding operational debts and accordingly committed a default, within the meaning of the Insolvency and Bankruptcy Code 2016 (" Code")
10. Subsequently, the Applicant issued a demand notice dated 20.08.2021, to the Respondent under section 8 of the Code ("**Demand Notice**") demanding a payment of the amount in default amounting to Rs 1,22,52,810/-, from the Respondent within a period of 10 days from the receipt of the said Demand Notice.
11. In reply to the demand notice dated 20.08.2021, the Respondent vide its letter dated 28.08.2021 ("Reply to Demand Notice") raised false and frivolous allegations for the first time of an alleged dispute on the quality of the RMC supplied by the Applicant during the month of July 2020
12. Since the Respondent has not made the repayment of the outstanding amount of Rs. 1,24,83,600/-, this necessitated the filing of the present application.

**REPLY FILED BY THE RESPONDENT**

13. The Respondent has submitted that the Claim of the Applicant are absolutely false and incorrect.
14. The Respondent has submitted that the Application filed by the Applicant is not maintainable as the purported claim of the Applicant related to of the Year 2020 as can be seen from the various invoices raised by the Applicant. Therefore, the invoices fall under the period of Section 10A for which the application under Section 9 can never be filed.
15. The Respondent has further submitted that the Applicant does not have any locus standi to invoke the provisions of the Insolvency and Bankruptcy Code, 2016 against the Respondent.
16. The Respondent has submitted that the Applicant has not settled the rejected and delayed delivery of the materials but unilaterally issued the demand notice dated 20.08.2021 and filed the present Application without resolving the dispute with respect to rejected and delayed delivery.
17. With the above averments, the Respondent has prayed for the dismissal of the present application.

**FINDINGS**

18. We have heard the Ld. Counsels appeared for the Parties and perused the documents available on record.
19. The present application has been filed by the Applicant seeking the initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent, where the Respondent has made a default in payment of outstanding dues of Rs. 1,24,83,600/- which includes interest at the rate of 24% per annum.

20. The Applicant has argued that the Respondent had issued the Four Purchase Orders dated 17.03.2020, 30.06.2020, 01.07.2020 and 18.07.2020 for the supply of Ready-Mix Concrete and Slurry to the Respondent. Pursuant to this, the Applicant supplied and delivered the material at various places as requested by the Applicant. In this regard, the Applicant raised various invoices aggregating to an extent of Rs. 1,84,58,223/-. The Applicant has further argued that till date, the Respondent has paid a sum of Rs. 84,31,227/- and thereby, the balance amount of Rs. 1,00,26,996/- is outstanding. The Applicant has also argued that till date an amount of Rs. 1,24,83,600/- including an interest at the rate of 24% per annum is due and repayable.
21. On the other hand, the Respondent has argued that the Application is barred under Section 10A of the Code as due date of all the invoices fall within the period covered under the said Section. Therefore, the present application is not maintainable and deserves to be dismissed.
22. Having heard the Counsels for the parties and after going through the records, we find that qua the first purchase order dated 17.03.2020, 158 invoices were raised and for second purchase order dated 30.06.2020, only one invoice was raised while for third purchase order dated 01.07.2020 as many as 114 invoices were raised. For the Fourth Purchase order dated 18.07.2020, only three invoices were raised. It is noteworthy that all the aforesaid invoices were raised during the period from 18.03.2020 to 29.07.2020. In each invoice, due date of payment is mentioned as within 60 days from the date of invoice. It is, thus, evident from the above that all invoices fell due for payment on or before 29.09.2020 and the date of default of the invoices fall within the period which is squarely covered under the Section 10A period as per IB Code. Therefore, in our considered view, the application under Section 9 is clearly hit by Section 10A of the Code which provides that no application shall ever be filed in respect of default arising within the 10A period i.e between 25.03.2020 and 24.03.2021.

23. As a result of the above discussions, we hold that the petition is barred under Section 10A of the Code and, therefore, the same is hereby **dismissed**.

24. Needless to add, this order will not preclude the applicant in any manner from taking steps to recover the due amount as per law as the debt, if any, cannot be treated to have extinguished.

SD/-

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

SD/-

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**