

IN THE NATIONAL COMPANY LAW TRIBUNAL

DELHI BENCH, COURT NO. IV

Company Petition No. IB-615/ND/2018

(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. QUAZAR INFRASTRUCTURE
PRIVAVTE LIMITED**

... Applicant/Operational Creditor

VERSUS

**M/s. MINARCH OVERSEAS
PRIVATE LIMITED**

...Respondent/ Corporate Debtor

Pronounced on: 25.02.2020

CORAM:

**Dr. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
SHRI HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Lalit Mohan, Adv.
Mr. Nakul Mohta, Adv.
For the Respondent : Mr. Vipul Ganda, Adv.

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(Signature)
27/2/2020

MEMO OF PARTIES

M/s. QUAZAR INFRASTRUCTURE PRIVATE LIMITED

Having its registered office at:
B-64, CHHATARPUR ENCLAVE,
NEW DELHI-110074

...Applicant/Operational Creditor

VERSUS

M/s. MINARCH OVERSEAS PRIVATE LIMITED

Having its registered office at:
G7, ASHOK PLAZA,
BUILDING 12A/14, WEA
KAROL BAGH, NEW DELHI- 110005

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

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 (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Quazar Infrastructure Private Limited (for brevity

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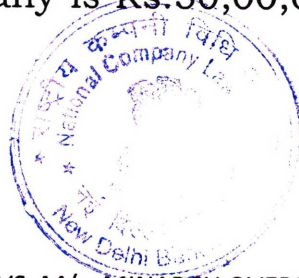
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'Applicant'), through its authorized signatory Mr. Shadab Ahmad, authorizing him to file present application vide Board resolution dated , with a prayer to initiate the Corporate Insolvency Resolution Process against (CIRP) against M/s. Minarch Overseas Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a company incorporated on 26.08.2010, under the provisions of Companies Act, 1956 with CIN No. U70109DL2010PTC207549, having its registered office at B-64, Chattarpur Enclave Chattarpur, New Delhi-110074.
3. The Respondent, the Corporate Debtor, is a company incorporated on 25.11.1991 under the provisions of Companies Act, 1956 with CIN No. U74899DL1991PTC046514, having its registered office at G-7, Ashok Plaza, Building 12 A/14, WEA Karol Bagh, New Delhi-110006. The Authorised Share Capital of the respondent company is Rs.50,00,000/- and Paid Up Share Capital of the company is Rs.50,00,000/- as per Master Data of the company.



4. It is the case of the applicant, that the Corporate Debtor vide agreement dated 18.01.2013 awarded work contract to the Operational Creditor for carrying out 'civil work' for construction of a 'proposed office complex' at Plot No. 4, Sector 44, Gurugram. Subsequently, vide Agreements dated 21.12.2013 the Corporate Debtor also awarded Plumbing Work, Fire Fighting Installation Work and Electrical Work, respectively, to the Applicant. The Applicant duly carried out the Civil Work, Plumbing Work, Electrical and Fire Fighting Installation Work at the project site from May 2013 to May 2016. For the work done under the aforesaid Agreements the Operational Creditor periodically raised several RA bills on the Corporate Debtor.
5. The Applicant further states that, the Respondent had appointed M/s. N+U Design as Architect and Project incharge for construction of the proposed office complex. As per the Agreement, the Architect was responsible for supervising the work, certifying and clearing the Bills raised by Operational Creditor on the Corporate Debtor. As per the Applicant, it had carried out the work strictly in accordance with the



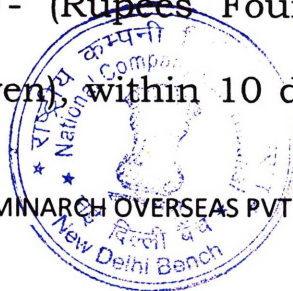
Agreement, instructions and drawing given by the Architect and Project In-charge from time to time. For the work done, the Applicant has raised RA Bills for Rs. 11,09,46,395/- on the Respondent, whereas total payment received by Operational Creditor is only Rs. 6,14,15,261/- and total deductions made by the Respondent towards TDS is Rs. 34,30,427/-.

6. The Applicant further states that, it has not yet received balance outstanding payment of Rs. 4,61,00,707/- (without interest), the said outstanding amount is an Operational Debt due and payable by Corporate Debtor to the Operational Creditor for the services rendered by the later to the former.
7. In spite of various requests made and reminders sent by the Applicant, the Respondent did not reply. On failure to pay the outstanding dues by the Respondent, the Applicant sent a demand notice dated 22.03.2018, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent asking them to make the entire payment of unpaid debt to the tune of Rs. 4,61,00,707/- (Rupees Four Crore Sixty One Lakhs Seven Hundred Seven), within 10 days from receipt of

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the notice, failing which the Applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

8. The Applicant has sent the demand notice through email to the Respondent, the Applicant has annexed the copy of said email along with the Application.
9. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has filed its reply to the notice, in which the Respondent has disputed the said claim of the Applicant. However, it has failed to raise any material dispute nor has annexed any proof of dispute, hence this application, seeking to unfold the process of CIRP.
10. The Applicant has stated that total debt due and payable is Rs. 4,61,00,707/- (Rupees Four Crore Sixty One Lakhs Seven Hundred Seven). The date on which the debt became due as claimed by the Applicant is 28.06.2016.
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The Applicant has also filed affidavit of service wherein he states that the Respondent has been served dasti on 07.07.2018 and through speed post



on 22.06.2018 on both the addresses of the Corporate Debtor. The relevant documents in this regard have also been annexed along with the affidavit.

12. After the service of said notice, the Respondents have caused appearance in the matter and have filed their reply. In its reply to the present section 9 application, the Respondent states that, the Respondent vide an agreement dated January 18, 2013, commencing on January 15, 2013 awarded a works contract to the Applicant for carrying out 'civil work' for construction of office building at Plot No. 4, Sector 44, Gurugram, for a total contract value or Rs. 5,32,74,331/-. The project was to be completed within 9 months, ending on October 14, 2013. On December 21, 2013, the Respondent in addition to the Civil Works Contract awarded the work of carrying out the fire fighting, plumbing and the electrical work in the project (the "Other Works Contract") to the Applicant, the completion date of which was agreed to be September 30, 2014.

13. The Respondent further states that, the Applicant dragged the execution of the contracts and ultimately unilaterally stopped



execution of the contracts from April, 2015, without completion of the project. It is further pertinent to note that the last bill provided by the Applicant was in February 16, 2015, for which the payment has already been made to the Applicant. After February 16, 2015, the Applicant did not raise any final bill for the consideration of the Respondent. As per the terms of the Civil Works Contract, the Applicant was required to provide the running bills to the Respondent (along with the measurement bills) in relation to the work carried out by it, which were subject to verification (clause 58 of the Civil Works Contract). The said process of submission and verification was not complied with by the Applicant. In absence of the prescribed verification/ confirmation of the work, the entire amount per se was not payable. Accordingly, it would not constitute a debt, let alone an operational debt.

14. Additionally, the Applicant on completion of the entire works contract, was required to provide notice to the Respondent of completion of work (clause 61 of the Civil Works Contract). The Applicant did not provide any notice of completion of the works under the Works Contract. In terms of the Works



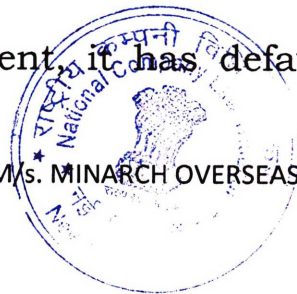
Contract, the Project would be deemed to have been completed only on issuance of a certificate in writing by the project-in charge (clause 61 of the Civil Works Contract). It is submitted that no such certificate has been issued by the project-in-charge certifying that the Project has been completed.

15. The Respondent further states that, as per clause 57(c) of the contract agreement, in the event the Applicant does not attend joint measurement, the measurements arrived at by the Respondent is to be taken as final and correct. Accordingly, upon measurement of the work executed by the Applicant, it was found out that the Respondent had overpaid the Applicant a sum of Rs. 1,03,85,442/-.
16. The Applicant has filed its rejoinder, in which the Applicant states that, though it was stipulated in the civil work contract dated 18.01.2013, that the project was to be completed within 9 months ending on 14.10.2013, however, time was not a condition of essence in the contract and spilling over of the contract outside the stipulated due date of 14.10.2013 was accepted and the Corporate Debtor, is obligated to



compensate the Applicant under the contract. Further, it is submitted that in so far as the contracts for firefighting, plumbing and electrical work at the project is concerned, the parties had not agreed to a firm date of 30.09.2014 for completion. It is accepted that detailed terms and conditions were not formulated for execution of firefighting, plumbing and electrical work, however, the parties had mutually agreed to apply the terms and conditions in the civil work contract dated 18.01.2018 to the extent applicable. The Applicant also states that, it performed the work and raised invoices after the completion date stipulated in the agreement and the Respondent has made some payments to the Applicant against the same. The Applicant also denies that the last bill provided by the Applicant was on 16.02.2015. it is stated that after 16.02.2015, the Applicant has raised several R.A. bills.

17. The Applicant further submitted that, it has been duly submitting the R.A. bills for verification and the Respondent has been verifying and approving the same for payment. However, despite verification and certification by the Architect appointed by Respondent, it has defaulted in repayment of



bills. Without prejudice, it is submitted that lack of verification of the bills by Respondent does not have a bearing on its obligation to pay the bill. As per the agreement, the Respondent was obligated to verify the bills within 30 days so that any deficiency or doubt could be immediately pointed out. The consequence of not doing the same means deemed approval by the Respondent and the bills become due and payable after the 30th day.

18. It is submitted that only the last R.A. bill are uncertified and that too because the Respondent did not wish to acknowledge its liability, even though the project incharge did not issue completion certificate the Respondent is still liable for making payments against the R.A. bills. The payment against the R.A. bills was not contingent upon completion certificate. Moreover, the completion certificate could not be issued because of the Respondent's default in meeting the payment obligations. The Respondent cannot take advantage of its own fault to refute its liability towards the Applicant.

19. It is submitted that, there is not a single contemporaneous document to show that the Applicant was deficient in

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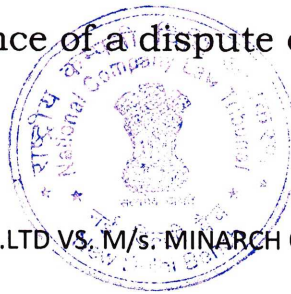
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performance of its work or left the work incomplete. The bills of third parties filed by Respondent are denied. These are doctored documents created to show a false claim. It is submitted that except for Four R.A. bills remaining all have been verified and are due and payable. The R.A. bills that are not verified are also due and payable because it was submitted to the Respondent well in time and the Respondent has not raised any objection thereon.

20. The Applicant by way of additional affidavit has filed Account Statements and Copy of R.A. bills, Bills of Quantities and Certificate of Payment issued by the Architect.
21. It is pertinent to note that the Applicant has placed on record all the invoices, stating that the Respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for Respondent to prove that there are no outstanding dues to be paid to the Applicant. There has been much cloud in the submission of the Respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.



22. In **“Innoventive Industries Ltd. (Supra)”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

23. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court



does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the corporate debtor did not survive.

24. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
25. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted..



26. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
27. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints the Mr. Vinod Kumar Chaurasia, having registration no. IBBI/IPA-001/IP-P00100/2017-2018/10200, email address is cavinodchaurasia@gmail.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
28. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Vinod Kumar Chaurasia to meet out the expenses 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 three days from the date of receipt of this order by the Operational Creditor. The amount however will 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.

29. 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 Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
30. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

Sd/-

(HEMANT KUMAR SARANGI)

MEMBER (Technical)

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Sd/-

(Dr. DEEPTI MUKESH)

MEMBER (Judicial)

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Jih 29/12/2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003