

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1176/ND/2019

(Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code, 2016

(Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S AYU INFRASTRUCTURE PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

SAMAK LANDSCAPE PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on: 26.02.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

MEMO OF PARTIES**M/S AYU INFRASTRUCTURE PRIVATE LIMITED****Registered Office at** RZ-74/1, East Sagarpur

New Delhi-110046

...Applicant/Operational Creditor**VERSUS****SAMAK LANDSCAPE PRIVATE LIMITED****Registered office at:** M-18, Green Park Extension

New Delhi-110016

...Respondent/ Corporate Debtor**For the Applicant:** Mr. Parveen Kumar, Adv.**For the Respondent:** Mr. Arvind Kumar Jadhon, Adv. Mr. N.K. Kantawala,
Adv.

ORDER

Dr. Deepti Mukesh, Member (J)

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 Code (Application to Adjudicating Authority) Rules, 2016 by, Ayu Infrastructure Private Limited (for brevity 'Applicant'), through Mr. Ravinder Singh who is authorized vide Board Resolution dated 10.09.2018, duly annexed, with a prayer to initiate the Corporate Insolvency Resolution Process against Samak Landscape Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the provisions of the Companies Act, 1956 bearing CIN U45200DL2012PTC230892 and is involved in construction and allied activities. The company is having its registered office at RZ-74/1, East Sagarpur New Delhi-110046.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 05.04.1991 bearing CIN U74899DL1991PTC043838, inter alia involved in landscape related activity. The company is having its registered office at M-18, Green Park Extension New Delhi-110016

4. The Applicant has submitted that the work order dated 22.09.2016 was executed and signed between the parties appointing the applicant for civil work for shifting of porta cabin. The copy of work order is annexed. The applicant submits that the work was completed as assigned by the corporate debtor and the applicant raised bills dated 25.12.2016 for an amount of Rs 7,90,666/-.
5. The Applicant has submitted that the corporate debtor had made payment of Rs 3,41,000/- as part payment in the year 2016 & 2017. The applicant sent reminder letters dated 10.11.2017 and 30.07.2018 to the corporate debtor for clearing the payment of outstanding dues but, the corporate debtor neglected to make the payments to the applicant.
6. The Applicant issued demand notice dated 11.09.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding total amount of Rs 4,49,646/- (Rupees Four Lakh Forty Nine Thousand Six Hundred Forty Six Only) from the Corporate Debtor. The notice was served via email as reflected in the master data of the corporate debtor. The notice was served through speed post at the corporate office address of the corporate debtor,

which was duly delivered as per the tracking report and as per the service affidavit filed with the report of service.

7. The corporate debtor has neither replied to the said notice nor made the payment against the outstanding dues.
8. The Applicant filed present Application on 03.05.2019 under section 9 of IBC, 2016 which was served on the Corporate Debtor as per the affidavit of service.
9. The Corporate Debtor has filed a reply stating that no statutory demand notice was served to the corporate debtor at their registered office neither was sent via email, rather were sent on the site office from where the corporate debtor had already shifted. The Corporate Debtor has further stated that material supplied by the applicant were of substandard & poor quality.
10. The Applicant in its rejoinder controverted the averments made in the reply and has submitted that the reminders and statutory demand notice were sent at the corporate office address. The notice was also served at the email address of the corporate debtor as reflected as per the master data. Therefore, the service of the statutory demand notice is considered to be the deemed service.

11. That statutory notice is served vide email dated 21.09.2018 which has not bounced back. No dispute is raised by the corporate debtor against the said notice. The corporate debtor has tried to create and raise a pre-existing dispute with respect to quality of services/goods of the applicant which was raised only after present application filed. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant. From the records before us and the reply of the corporate debtor to the present application, it cannot be inferred that dispute of the corporate debtor is of genuine nature, which merely is a moonshine dispute as laid down in “***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited***”.

“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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 defence which is mere bluster.”

In view of above observations, the dispute raised by the corporate debtor does not categorized as dispute as reproduced above, and the plea of dispute is nothing but moonshine defense, created by Corporate Debtor against the applicant without any evidence and hence merit, which is clear after thought to defeat the claim of applicant.

12. The date of default is occurred from 26.12.2016 and hence the debt is not time barred and the application is filed on 03.05.2019 within the period of limitation.
13. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
14. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
15. The present application is complete and the applicant has established the default in payment of the operational debt, hence is entitled to claim. The present application is admitted.

16. The Applicant has named Mr. Manoj Kumar Anand, with registration number IBBI/IPA-001/IP-00084/2017-18/10180 (email – anandmanoja@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP who is appointed as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of 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) Regulations, 2016.
17. We direct the operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Manoj Kumar Anand to meet out the expense 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 for the date of receipt of this order by the operational Creditor. 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 operational Creditor.
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 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 vogue.

19. A copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

HEMANT KUMAR SARANGI
MEMBER (T)

SD/-

DR. DEEPTI MUKESH
MEMBER (J)