

- 1 -

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT-III**

IB-1495 /ND/2019 filed under Section 9 of the
Insolvency and Bankruptcy Code, 2016 r/w Rule
6 of the Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules, 2016

In the matter of **M/s. Goyala Infrac. Projects Pvt. Ltd.**

M/s. Loyal Scaffolding Pvt. Ltd.

...Operational Creditor

Vs.

M/s. Goyala Infrac. Projects Pvt. Ltd.

...Corporate Debtor

Order delivered on 30.10.2019

CORAM:

CH. MOHD. SHARIEF TARIQ,
Member (Judicial)

SHRI KAPAL KUMAR VOHRA,
Member (Technical)

For the Operational Creditor: Mr. Sushil Kabra,
Mr. Suresh Bharati, (Advocates)

For the Corporate Debtor: Mr. Jaskaran Singh, (Advocate)

ORDER

Per: CH. MOHD. SHARIEF TARIQ, MEMBER (J)

1. Under adjudication is an application filed under Section 9 of I&B Code, 2016 r/w the Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with the prayers to initiate the CIR Process, declare Moratorium and appoint IRP.

2. As per submissions of the Counsel for the Operational Creditor, there have been mutual discussions between the parties on 18.03.2017 wherein scaffolding products were agreed to be rented to the Corporate Debtor. The communication signed by both the parties is placed at page 51 of the typed set filed with the Application that gives detail about the item with size, rate of rent per day, quantity and rate of damages for missing & broken items supplied. The terms and conditions of the hire purchase are annexed with the document which provides details with regard to the delivery and return of the material and monthly hire charges. Para 4 of the terms and conditions provides that monthly hire charges bills shall have to be paid before 15th of next month against bills and for delayed payments interest @18% per annum shall be charged. In addition to this security was deposited amounting to Rs.25.00 lakhs drawn on Axis Bank, given by the sister concern of the Corporate Debtor. It is worthwhile to note that as per the terms and conditions after the delivery of the items, no complaint was to be entertained by the supplier. Counsel for the Operational Creditor has referred to document placed at pages 57-58 that indicates that on 21.03.2017 the supply of 2100 units was made to the Corporate Debtor. Another document placed at pages 59-60 is evidencing the supply of material to the Corporate Debtor of 4400 packets on 04.04.2017. On 07.05.2017 supply of 1686 packets was made to the Corporate Debtor. Besides this, Counsel for the Operational Creditor has referred to a request made by the Corporate Debtor for supply of materials as required through a communication dated 28.07.2017 which was supplied on 02.09.2017 and 05.09.2017. One more communication was sent by the Corporate Debtor on

20.09.2017 wherein the Corporate Debtor indicated the extent of the quantity of material required. In short, the remaining quantity of the material was sent on 23.09.2017.

3. After supply of the above stated material, the Operational Creditor raised invoices placed at pages 74-97 of the typed set filed with the Application. It is evident from the statement of accounts that the closing balance is Rs.56,59,008.64. An affidavit is also filed to satisfy the requirement of sub-section (3) clause (b) of Section 9 of I&B Code, 2016. It is deposed in the affidavit that there is no pre-existing dispute, as no notice has been received from the Corporate Debtor in relation to the unpaid operational debt. The Operational Creditor had sent notice on 23.04.2019 under the provisions of Section 8 of I&B Code, 2016, copy of which is placed at page 36 of the typed set filed with the Application. The reply given by the Corporate Debtor to the said notice is placed at page 44 of the typed set filed with the Application, wherein the Corporate Debtor has denied the claim of the Operational Creditor. It was further stated that the material sent by the Operational Creditor to the Corporate Debtor was not as per the order and was not useable and remained unused. It is contended that the Corporate Debtor is not liable to pay any rent for the period between 18.03.2017 to 20.09.2017 on account of short fall of material. It is stated by the Corporate Debtor that on 20.09.2017, another order was placed but the material was not supplied in time as per the order. In short, the Corporate Debtor contends that the claim is false, fictitious and it is not acceptable. It is noted that the Corporate Debtor has issued four

cheques for an amount of Rs.20.00 lakhs, three of which were dishonored, one of them was not presented by the Operational Creditor as per the instructions of the Corporate Debtor because the Corporate Debtor was not ready to make the payment. The Accounts statement of the Operational Creditor maintained by the HDFC Bank is on record that reflects that the Corporate Debtor did not pay any amount after the issuance of the notice under Section 8 of I& B Code, 2016.

4. It is further submitted by Counsel for the Operational Creditor that security deposit amounting to Rs.25.00 lakhs could not be realized due to dishonoring of cheque given by the sister concern of the Corporate Debtor.

5. The Corporate Debtor filed reply stating therein that the material supplied by the Operational Creditor was used for 182 days i.e. upto 31st March, 2018 and the rent payable to the Operational Creditor comes to Rs.7,14,168/-, out of which the Corporate Debtor has already paid a sum of Rs.10,50,000/- and the Operational Creditor is liable to refund excess amount of Rs.3,35,832/- to the Corporate Debtor. It is further averred that on 31.03.2018, the Operational Creditor was requested to remove the scaffolding, as the same was not required by the Corporate Debtor. A verbal request is stated to have been made by the Corporate Debtor to the Operational Creditor for removing of scaffolding. It is further contended by the Corporate Debtor that on several occasions the Operational Creditor was reminded, both telephonically as well as personally, to remove the scaffolding. The Corporate Debtor contends that due to delay in execution of work, the whole project is on the verge of cancellation by Govt. of



India. According to Corporate Debtor, the Operational Creditor failed to replace the faulty scaffolding in spite of being informed to do so. It is further recorded in the reply that the cheques amounting to Rs.20.00 lakhs were given in advance as blank cheques which were mis-used by the Operational Creditor with mala-fide intention by filling amounts on its own. It is contended that the said cheques were not issued towards any legal liability or payment of dues. It is noted that the Corporate Debtor has raised dispute in reply given to the notice issued under section 8 of I&B Code, 2016. The Corporate Debtor has contended that I&B Code, 2016 is not intended to be a substitute for recovery. It is further contended by Counsel for the Corporate Debtor that the document dated 18.03.2017 placed at page 51 of the typed set filed with the Application is admitted but the terms and conditions attached thereto were never brought to the notice of the Corporate Debtor. However, as seen from the said document, the following is clearly mentioned under the table in the document i.e., "*accepted and agreed as per overleaf terms and conditions*". Counsel for the Corporate Debtor failed to clarify, as to why the Corporate Debtor has not asked to the Operational Creditor for providing the terms and conditions at the time of signing the document dated 18.03.2017. The Counsel for the Corporate Debtor fairly admitted that it is a lapse on the part of the Corporate Debtor. Based on this, the counsel for the Corporate Debtor prayed to dismiss the Application filed by the Operational Creditor.

6. Counsel for the Operational Creditor has submitted that the material supplied has been used upto 13.03.2018 and thereafter the material is lying

with the Corporate Debtor for which the Corporate Debtor is responsible to pay rent, as was agreed. It is further noted that para 1 of the terms and conditions attached with the document dated 18.03.2017 signed by both the parties provides as follows:


"After issue the material, we are not responsible till we receive material back at our godown 9 a.m. to 5 p.m. Sunday being holiday. Hire charges will be calculated from the date of the issue the material and till received back at godown. Material shall be inspected by your authorized agent before delivery if required by you, after which no complaint shall be entertained. Godown B-111, Maya Puri, New Delhi."

From the above, it becomes clear that material was to be returned by the Corporate Debtor to the godown of the Operational Creditor between 9 a.m. to 5 p.m., Sunday being holiday and the hire charges were to be calculated from the date of issue of the material till the same is received back at the godown of the Operational Creditor. It is also noted that when the material is delivered, it was the choice of the Corporate Debtor to have authorize agent to conduct inspection of the material, if required, after which no complaint was to be entertained by the Operational Creditor as per the terms and conditions, which are clear and unambiguous. The defence that has been projected by Counsel for the Corporate Debtor is hollow, as the same is not substantiated with any documentary evidence. It is an admitted fact that the material

supplied has been used by the Corporate Debtor which is still in its possession. Therefore, the Corporate Debtor cannot deny the liability; the dispute raised is spurious, mere bluster and afterthought. In view of it, the defence projected by the corporate Debtor is devoid of merits and stands rejected.

7. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt as claimed by the Operational Creditor. Therefore, Application is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.

8. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit all of the following, namely: -


- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- 

(c) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. The Operational Creditor has not proposed the name of any Resolution Professional for appointment as Interim Resolution Professional (IRP). Therefore, Mr. Shri Bharat Chaufla, registered with IBBI having registration number IBBI/IPA-001/IP-P01090/2017-18/11809, mail: bharat.chaufla@gmail.com, mobile: 9999816500, is hereby appointed as IRP. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.




11. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of I&B Code, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

12. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

13. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor with immediate effect.

14. The Order is dictated and pronounced in the open court in the presence of the Counsels for the parties.


(K.K. VOHRA)
MEMBER (TECHNICAL)


CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)