

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)**

Company Petition No. IB 1329/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:

MAGICRETTE BUILDING SOLUTIONS PVT. LTD.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S JD CONTRACTS PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 07.07.2021

CORAM:

**DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

IN THE MATTER OF:

Magicrette Building Solutions Pvt. Ltd.

Having registered office at:

702B, 22 Business Point,
SV Road, Andheri Station,
Mumbai - 400058.

Also, at:

K2/3, Second Floor,
Behind Central Arcade Market,
Front of HDFC Bank, M.G. Road,
DLF City Phase – II,
Gurugram – 122002,
Haryana

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s JD Contracts Pvt. Ltd.

Having registered office at:

E-323, Opp. Samadhan School,
Dakshinpuri Delhi 110062.

Also, at:

H No. 125, K H N-406/1,
Neb Sarai, New Delhi

...RESPONDENT/ CORPORATE DEBTOR

 **FOR THE APPLICANT** : Mr. Virendra Tarun, Adv.
Mr. Chirag Mahalwar, Adv.
FOR THE RESPONDENT : Mr. Ankur Dhall, Adv.

IB-1329/ (ND)/2018

Magicrette Building Solutions Pvt. Ltd. Vs. M/s JD Contracts Pvt. Ltd.

ORDER**Per-Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') through Mr. Prasen Sharma being the executive (finance & Accounts) of Magicrette Building Solution Pvt. Ltd., (for brevity 'Applicant'), authorized vide board resolution dated 23.04.2018 with a prayer to initiate the Corporate Insolvency process against M/s J.D. Contractors Pvt. Ltd. (for brevity 'Corporate Debtor').
2. The Applicant is a Private company limited by shares incorporated on 24.04.2008, under the provisions of Companies Act, 1956 bearing CIN No. U26931MH2008PTC243333 and having its registered office at Business Point, Office No.702-B, Plot No.22, S.V.Road, Opposite Andheri Subway, Andheri (West) Mumbai MH-400058 IN.
3. The Corporate Debtor is a Private company limited by shares incorporated on 17.02.2011, under the provisions of Companies Act, 1956 bearing CIN No. U45400DL2011PTC214287 and having its registered office at E-323, Dakshinpuri Delhi, New Delhi -110062 IN. The corporate debtor is engaged in the business of real estate and construction.
4. The applicant stated that it is one of India's leading manufacturers and engaged in the business of Autoclaved Aerated Concrete, a path-breaking technology in the construction industry, which are durable and eco-friendly construction materials. The corporate debtor approached the applicant to provide materials worth Rs. 6,53,803/-, which was duly supplied and invoices were raised accordingly. The said invoices were also accepted and


IB-1329/ (ND)/2018***Magicrette Building Solutions Pvt. Ltd. Vs. M/s JD Contracts Pvt. Ltd.***

acknowledged by the corporate debtor. Further credit limit of 45 days was also provided to the corporate debtor for payment of debt. However, the corporate debtor failed to make payment and the said amount still remains due.

5. The applicant issued a demand notice dated 12.05.2018 sent on 22.05.2018, under Section 8 of the code calling upon the corporate debtor to pay the total outstanding amount of Rs.6,53,803/- (Rupees Six Lakh Fifty Three Thousand) along with interest @ 24% per annum. The notice was served upon the directors as well at the registered office of the corporate debtor, as per the MCA master data, via speed post. The copies of proof of delivery and tracking report have been annexed.
6. The corporate debtor neither filed reply to the said demand notice nor made payment. Thereafter the applicant filed the present application under section 9 of IBC, 2016 and served the copy of this application, which was duly delivered to the Corporate Debtor as per service affidavit. As per Form V, the total debt outstanding is Rs.6,53,803/- along with interest calculated @24% from its due date.
7. The applicant filed an additional affidavit dated 27.11.2018, wherein it was stated that during the course of business the corporate debtor on 10.02.2016 admitted the liability for a sum of Rs. 5,54,633 (Rupees Five Lakhs Fifty Four Thousand Six Hundred & Thirty Three only) The copy said acknowledgment, which is a customer statement, is annexed.
8. The Corporate debtor filed reply denying the averments made by the applicant and raised the following objections:
 - a) The corporate debtor raised dispute with regards the substandard quality of goods and delayed delivery, due to which the corporate debtor suffered monetary loss. Also, requested the applicant to

exchange the defective goods, but the applicant failed to fulfill the request of the corporate debtor.

- b) The corporate debtor states that the demand notice was duly replied by them on 25.07.2017, the same was duly served upon the applicant. The copy of the same along with tracking report has been annexed.
- c) The corporate debtor states that no dues have been admitted by them and that the company is in a position to pay all its dues. Hence CIRP should not be initiated.

9. The applicant filed a rejoinder contravening the averments made in the reply and reiterating the facts of the application:

- a) The applicant has raised objection with regards the board resolution and hence, the reply filed must be dismissed.
- b) The applicant states that the material was duly supplied to the satisfaction of the applicant and no concern till date had been raised by the corporate debtor, further the dispute raised by the corporate debtor is a moonshine dispute to deny the legitimate claim of the applicant. The applicant states that the corporate debtor has failed to produce any supporting emails/letter to show that the request to return the material had ever been made.

10. The bills raised are of the year 2014, the last payment in the running account was received on 24.10.2015. Further, there is an admission of debt on 10.02.2016 and the present application is filed on 01.10.2018. Hence the application is not time barred and filed within the period of limitation.

11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

12. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete.

13. Considering the documents on records and submissions made, it is clearly established that the default in payment of the operational debt has occurred by the corporate debtor. Though the corporate debtor has raised dispute with regards the delayed delivery and defective goods belatedly, but has not placed on record any document which proves the pre-existing dispute between the parties. There is no merit in the so-called dispute raised by the corporate debtor as mere reply filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature. Moreover, the applicant has annexed documents, wherein the corporate debtor has admitted the liability of more than Rs. 1 Lakh. The said document produced by the applicant has also not been denied by the corporate debtor.

This leaves no doubt that the default has occurred for the payment of the operational debt to the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down in "**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**", the Hon'ble Supreme Court observed :

"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 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 required 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.”

Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. In the light of above facts and records, the present application is admitted.

14. The applicant has not proposed the name of an IRP. Therefore this bench appoints Mr. Vivek Sharma, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01077/2020-21/13442 and email id fcsviveksharma@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
15. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Vivek Sharma 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 one week from 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.
16. 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 as per 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 force.

17. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.


SUMITA PURKAYSATHA
MEMBER (T)


DR. DEEPTI MUKESH
MEMBER (J)