



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III (SPECIAL BENCH)**

Item No.401
IB – 2866/ND/2019

IN THE MATTER OF:

M/s. S.A. EQUIPMENTS PVT. LTD.

..... Applicant/ Operational Creditor

VERSUS

M/s. RYSN INFRA LLP

..... Respondent/Corporate Debtor

SECTION

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

Order Pronounced On: 09.05.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-2866/ND/2019 is **dismissed**.

-SD-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III (SPECIAL BENCH)
IB – 2866/ND/2019**

Order 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. S.A. EQUIPMENTS PVT. LTD.

Having Its Registered Office at:

I-54, 1st Floor, Lajpat Nagar,

Part-1, New Delhi-110024

CIN: U22334DL2002PTC118025

Through Its Director/ Authorised Representative

SHRI SHARAD RASTOGI

..... Applicant/Operational Creditor

VERSUS

M/s. RYSN INFRA LLP

Having Its Registered Office at:

309, Delhi Chamber, 3453,

Delhi Gate, Delhi-110002

LLPIN.: AAL-1972

Through Its General Manager

SHRI KOJA RAJA SEKHAR

..... Respondent/Corporate Debtor

Order Pronounced On: 09.05.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

M/s. S.A. Equipments Pvt. Ltd. vs. M/s. RYSN Infra LLP

IB – 2866/ND/2019

Date of Order : 09.05.2023



APPEARANCES

- For the Applicant : Mr. Rakesh Makhija, Ms. Ananya Singhal,
Advocates
- For the Respondent : Mr. Jai Sahai Endlaw, Mr. Ashutosh Rana,
Advocates

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

Description of the Parties:

1. This Application has been filed by M/s. S.A. EQUIPMENTS PVT LTD, the Applicant/Operational Creditor on 12.09.2019, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. RYSN INFRA LLP, the Respondent/Corporate Debtor on the ground that the Respondent/Corporate Debtor has defaulted to make payment of a sum of Rs. 90,89,624/- (Rupees Ninety Lakh Eighty Nine Thousand Six Hundred Twenty Four Only) as on 18.10.2018. The Application has been filed through its Director SH. SHARAD RASTOGI (Authorised Representative of the Applicant), DIN: 00234340 duly authorized vide Board Resolution dated 01.03.2019 which is filed along with the Application.
2. The Applicant Company namely M/s. S.A. EQUIPMENTS PVT LTD, was incorporated on 13.12.2002, as a Company Limited by Shares (Non- govt. Company) having CIN: U22334DL2002PTC118025, under the erstwhile Companies Act, 1956 with the Registrar of Companies, NCT of Delhi and Haryana. The Authorised Share Capital of the Applicant Company is Rs.30,00,000/- (Rupees

M/s. S.A. Equipments Pvt. Ltd. vs. M/s. RYSN Infra LLP
IB - 2866/ND/2019
Date of Order : 09.05.2023



Thirty Lakh Only) and the Paid-up Share Capital of the Applicant Company is Rs.18,00,000/- (Rupees Eighteen Lakh Only).

3. The Respondent Corporate Firm namely M/s. RYSN INFRA LLP was incorporated on 21.11.2017, as a Limited Liability Partnership having LLP Identification No.: AAL-1972, under the Limited Liability Partnership Act, 2008. The total obligation of contribution is Rs. 1,00,000/- (Rupees One Lakh Only). The Registered Office Address of the Respondent Corporate Firm is 309, Delhi Chamber, 3453, Delhi Gate, Delhi-110002. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Company Details/Master Data of the Respondent Corporate Firm is filed along with the Application.

4. **Submissions of the Applicant:**

- i. The Respondent through its officials had approached the applicant/ Operation Creditor in its office at New Delhi and apprised/represented that the Respondent is engaged in the business of construction, Infra projects, etc. It was further apprised to the applicant that the respondent is desirous of buying the scaffolding material i.e. shuttering material, cup lock, etc for their site at Nauroji Nagar Project, New Delhi.
- ii. In pursuance to the discussions and meeting as held between officials of the respondent and the applicant, the respondent had placed certain purchase orders upon the applicant in respect of scaffolding consisting of Timber Beams of the brand-Kaufmann.
- iii. In terms of the purchase order, the applicant supplied the ordered material to the Corporate Debtor/ Respondent in the amount of Rs. 7,41,17,230/- in total. The material was duly received by the respondent in proper condition and quantity and it is only after complete satisfaction that the delivery of the same was accepted by the respondent. In discharge of its



admitted liability, the respondent made part payment of Rs 6,50,27,606/- after all of the adjustments to the applicant thereby leaving the balance amount of Rs 90,89,624/- remaining unpaid. The true copy of the Invoices with challans and material receipts are filed along with the application.

- iv.** It is pertinent to mention here that the respondent not only duly received the material as supplied by the applicant between February, 2018 to August, 2018 but the respondent duly used and utilized the same for its project activities and there was neither any complaint nor any grievance in any manner in respect of the supplied material. The material dispatch reports were also prepared in respect of the supplied material and which was duly verified by the respondent. The true copy of the Copy of Material Dispatch Report dated 31.07.2018 duly verified on 03.08.2018 is filed along with the application.
- v.** Towards the supplies as made by the applicant to the respondent, the applicant also opened and maintained a running account in the name of the respondent as the respondent in pursuance of the supplies started making part payments to the applicant, which was duly credited to the account of the respondent. The true copy of the Ledger Account /Statement of Account as maintained by the applicant in its routine course of business along with the certificate under Section 65-B of the Evidence Act is filed along with the application.
- vi.** The Hon'ble High Court of Delhi in August, 2018 stayed further construction of the project and on account/due to which the respondent also started delaying the payments of the applicant and despite reminders, the respondent did not make the payments and even did not respond to the emails of the applicant and started giving lame excuses which was apparent from the contents of the emails itself.



- vii.** Since the Corporate Debtor defaulted in making payments to the Operational Creditor in the amount of Rs. 90,89,624/-, thus a Statuary Notice dated 02.03.2019 as provided under the provisions of the Code read with rule 5 of the Adjudicating Authorities Rules, was sent to the Corporate Debtor through Speed Post on 05.03.2019 thereby notifying the Corporate Debtor to make the payment of Rs. 90,89,624/- to the Operational Creditor. The notice dated 02.03.2019 has been duly served and delivered upon the Corporate Debtor at the Office's address of the Corporate Debtor on 07.03.2019. The true copy of the Demand Notice dated 02.03.2019 along with postal records is filed along with the application.
- viii.** In response to the Demand Notice dated 02.03.3019, the applicant received the reply dated 15.03.2019 from the Corporate Debtor in which the respondent tried to raise the frivolous pleas, though neither denying the liability nor the receipt of the material and usage thereof. The true copy of the reply dated 15.03.2019 is filed along with the application.
- ix.** As the reply dated 15.03.2019 was completely malafide and incorrect and contrary to the factual matrix, thus the applicant duly replied and responded to the reply dated 15.03.2019 by its rejoinder dated 01.05.2019 thereby advising the respondent to make the payments and comply with the notice dated 02.03.2019. The true copy of the rejoinder dated 01.05.2019 is filed along with the application.
- x.** The respondent has replied to the rejoinder dated 15.03.2019 of the applicant, vide its response dated 07.06.2019 wherein the respondent again tried to raise the frivolous pleas, though neither denying the liability nor the receipt of the material and usage thereof but raising the quality issue. The true copy of the response dated 07.06.2019 is filed along with the application.
- xi.** Since the Respondent/Corporate Debtor has miserably failed to make the payment of Rs. 90,89,624/- to the Operational



Creditor and the manner in which the Corporate Debtor has defaulted and failed to clear off its dues, clearly depicts that the corporate debtor is commercially insolvent and in the premises it is just, fit and equitable that the Corporate Debtor should be wound up under the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016.

5. Submissions of the Corporate Debtor:

- i.** It is submitted by the Corporate Debtor that the Applicant/ Operational Creditor was well aware of the disputes and concerns raised by the Respondent in respect of the quality and quantity of the material supplied to the Respondent. The said objection was also brought in the knowledge of the Applicant vide the replies dated 15.03.2019 and 07.06.2019, to the Demand Notice and a subsequent response, respectively (hereinafter referred to as the "replies to the demand notice"). However, the Applicant despite being aware of the said pre-existing dispute between the parties, decided to file the present application, which is not maintainable under the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC").
- ii.** It is also important to note that the aforementioned disputes regarding the quality and quantity of the materials supplied by the Respondent were raised prior to the issuance of the demand notice by the Applicant. Therefore, in light of the said facts and circumstances, the Applicant cannot be allowed to take undue advantage of the provision of the IBC.
- iii.** The Respondent, had engaged the services of the Applicant for manufacturing and supply of Scaff Table Form Systems (Kauffmann Make Timber Beams, Heavy Duty Props, Special Table Head, U-Bolt and Cleats, etc) including extensions, as per the approved drawings, vide the Purchase Orders dated 23.02.2019, 23.05.2018 and 23.05.2018. The said material was



required for the construction of multi-storied commercial spaces (hereinafter referred to as "Project") at GPRA Colony at Nauroji Nagar, New Delhi on Design, Engineering, Procurement and Construction (EPC) basis.

- iv.** The said project was undertaken by NCC-SCIW (JV) of which the Respondent is one of the Sub-contractors. The scope of work awarded to the Applicant under the said Purchase Orders included necessary supervision for training in usage of material by the Applicant's technical expert at the Project site free of cost for the material purchased from the Applicant.
- v.** It is pertinent to note that there were serious deficiencies in the material supplied which were brought to the notice of the Applicant vide the following emails:

 - a. Vide Emails dated 29.12.2018 and 30.12.2018, the Respondent was informed about the cracks in the timber H-beams, worn out edges/corners and the requirement of an anti-termite treatment to the material supplied. Email dated 30.12.2018 specifically mentioned about the "quality problem" with the material supplied.
 - b. Vide email dated 19.01.2019, the Applicant was again informed that the material supplied was highly deficient and of inferior quality. Photographs were also sent as proof of the appalling condition of the said material. It was specifically informed to the Applicant that most of the sections of the material were developing cracks before even a single use, that the upper layers were being attacked by the termites, the timber beams were peeling out in layers in the form of powder, and that the sections were breaking under the own weight of 6 to 8 layers, and hence a request was made to the Applicants to replace the mentioned defective items.
 - c. Vide its email dated 21.01.2019, the Respondent categorically informed the Applicant that the quality of material supplied was not certified at the time of acceptance



of material at the site, because of which it was rejected unconditionally as the same was not acceptable in any manner. The Applicant was again requested to replace the said defective material with standard certificates and warranties.

In reply to the said emails, the Applicant vide e-mail dated 31.12.2018 admitted that "there were visible signs of degeneration in lowermost beams" and vide its further email dated 03.01.2019, undertook to get the treatment done on the affected material as required. However, despite the said acknowledgment, the Applicant did not take any steps to replace the deficient material.

- vi.** It is denied that the Respondent has duly used and utilized the material supplied by the Applicant and made no complaints or grievances in any manner. It is important to note that the Respondent had time and again informed the Applicant about the abysmal quality of products that were supplied by the Applicant and the Applicant had even exchanged correspondence on this aspect. Moreover, the Applicant has admitted that the material supplied to the Respondent required treatment and maintenance. For the sake of brevity, the contents of the said email correspondence are not reproduced herewith, as the same forms part of the record. It is not disputed that the material dispatched report was duly verified by the Respondent, however, as mentioned before, the said report in no manner proves the quality or standard of the material required to be supplied.
- vii.** For the sake of clarification, it is reiterated that the part payments made by the Respondent do not hold it liable to pay the remaining amount of money, until the defective material provided by the Applicant is replaced.
- viii.** The Respondent had defaulted in making payments to the Applicant. It is submitted that the Applicant preferred the said



notice dated 02.03.2019 despite being aware of the pre-existing dispute in relation to the quality and quantity of the material supplied.

- ix.** It is denied that the Respondent vide its reply dated 07.06.2019 raised any frivolous plea or did not deny its liability towards the material supplied by the Applicant. The Respondent, like its previous reply dated 15.03.2019, provided further details and documents to fortify its contention of receiving inferior quality of material from the Applicant.
- x.** It is denied that the Respondent has failed to make payments of Rs. 90,89,624/- or clear off its dues. It is further denied that the Respondent is commercially insolvent and it is fit and equitable that the Respondent should be wound up under the provisions of Section 9 of the IBC.
- xi.** It is denied that the said sum of money is payable by the Respondent to the Applicant. It is further denied that the Respondent is unable to pay its creditor, or that its liability far exceeds its present and probable assets. It is denied that the Respondent is commercially insolvent, or that it is fit and equitable that the Respondent should be wound up under the provisions of Section 9 of the IBC.

6. In Rejoinder, the Applicant has reiterated its stand in the application. During the oral arguments, the Ld. Counsel for the Corporate Debtor brought our attention to the three e-mails dated 29.12.2018, 30.12.2018, & 19.01.2019 sent by the Corporate Debtor to the Operational Creditor, to reiterate his arguments that there exists a dispute between the parties prior to the issue of the demand notice under Section-8 of the Code. He also contended that since the dispute between the parties was duly informed by the Corporate Debtor to the Operational Creditor in its reply to the Seciton-8 notice, the present application cannot be admitted. The Ld. Counsel for the Operational Creditor, on the other hand,



contended that the material got degraded due to vagaries of nature as the same was not stocked properly by the Corporate Debtor and the Operational Creditor cannot be held responsible for the same. Moreover, the Corporate Debtor had continued to use the same material and never returned the same to the Operational Creditor.

7. **Analysis and Findings**

- i. We have heard the Ld. Counsels appearing for both the parties. Records as well as pleadings and written submissions have been perused.
- ii. The main defence of the Corporate Debtor is based on the existence of a prior dispute before the issuance of the Section-8 demand notice. Their argument is based on the following three e-mail communications dated 29.12.2018, 30.12.2018 and 19.01.2019 as extract below:

E-mail dated 29.12.2018

“Find attached photographs of timber H-beams supplied by Scaff India are getting cracks and edges/corners are getting worn out so early. You are here with requested to replace the stored material at our stockyard and whichever are utilized for making table forms are to be repaired and all the stored materials need to be treated with anti-termite treatment immediately because we found termites are attacking at few places.

This is for your immediate and needful action.”

E-mail dated 30.12.2018

“As expressed in trailing mail, most of beam sections effecting with termite and mild cracks. It seems quality problem.

Please visit our stock point immediately. All the H-beam products of any manufacturer should have



termite treated material, without single use all beam sections showing mild cracks. Please arrange to replace the beam sections with standard quality material.”

E-mail dated 19.01.2019

“In continuation to below mails, it is reiterate that, we have shocked by inspecting the quality of timber beams supplied by you while shifting from point to project location as the quality of beam sections are very bad and not acceptable to anyone.

As soon as our store personals Informed to me, our team members including myself visited the material stock point and under use materials inspected and photographs and video recording captured for our management and your reference.

The following team members of WTC-NCC are visited for inspection.

- 1. Myself accompanied by***
- 2. Mr. Lalit Pathak - Manager (Mech)***
- 3. Mr. Satish - Sr. Manager (Purchase)***
- 4. Mr. Yogesh - Accounts officer***
- 5. Mr. Santosh - Stores incharge***
- 6. Mr. Bhaskar - Stores officer***
- 7. Mr. Susheel - Planning Engineer***

Every one surprised by seeing the very bad quality of beam sections supplied by your company, all are the team members expressed that, the duplicate product material and which cannot be acceptable.

As per our observation, these beam sections are of duplicate quality material and not having any standard norms and which cannot be a pro organisation. None of section seems to be seasoned and treated.



The following defects noted and photos enclosed for your reference.

1). Most of sections are developing cracks before single use

2). Upper layer sections also attacking termite within 4 months

3). Timbers beams getting out in layers and in the form of foliated / powder

4). sections breaking with self load of other beam sections of 6 to 8 layers.

please view photographs & videos

The timber beam sections are not acceptable to us and please replace the material with standard quality product with proper warranty.”

iii. It is also not in dispute that the applicant also acknowledged the issue of the quality of goods vide its emails dated 03.12.2018 and 03.01.2019 and assured the Corporate Debtor to look into the matter, as reflected in the two emails dated 03.12.2018 and 03.01.2019. The extract of one of the e-mail dated 03.01.2019 is as follows:

E-mail dated 03.01.2019

“This refers to our trailing mail regarding issues raised about H2O Beams, supplied by us.

Kindly note that we have already visited the site on 31st of December 2018 and will like to get the treatment done on any effected material, wherever required.

We earnestly request you to provide the requisite manpower and machinery to take this up, at the earliest.

Needless to say any further delay will only worsen the situation for which we shall not be responsible.



We also request you to kindly release our outstanding payment as we are facing huge financial crunch due to Inordinate delay.

Hoping for your kind and early response.”

- iv.** In view of the above-stated correspondence, it is established that the Corporate Debtor had raised certain issues relating to the “quality” of the material supplied, much before the issue of the statutory demand notice by the Operational Creditor. It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument it would suffice for the Adjudicating Authority to reject the application filed under Section-9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.
- v.** In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has been able to raise a plausible contention regarding pre-existence of “dispute” between the parties regarding the quality of material supplied by the Operational Creditor. Consequently, we conclude that the instant application filed under Section-9 is not maintainable.
- Hence, we are inclined to **dismiss** this application.

8. Order

In light of the above facts and circumstances, it is hereby ordered as follows:-

- i.** The Application bearing **IB-2866/ND/2019** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.



- iii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-SD-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**