

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

C.P.No.IB-347/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Colliers International (India) Property Services Pvt. Ltd.

Having its Registered office at:-
Indiabulls Finance Centre,
17th Floor, Unit No.1701, Tower 3,
Senapati Bapat Marg,
Elphinstone (West), Mumbai-400013

Correspondence address:
Technopolis Building, 1ST Floor,
DLF Golf Course Road,
Sector-54, Gurgaon-122002

...Application

Versus

M/s ARDEE City Estate Management Pvt. Ltd.

Having its Registered office at:-
16th Floor, Dr. Gopal Dass Bhawan,
28, Barakhamba Road, New Delhi.



...Respondent

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C.P. IB-347/ND/2019

Colliers Intern. India Property Service P. Ltd. vs. Ardee City Estate Management P. Ltd.

Delhi
5/11/2020

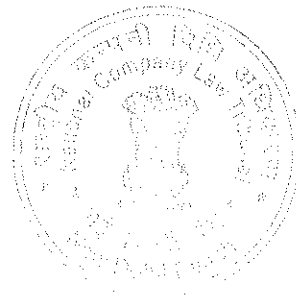
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Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: Ms. Lucky Palta, Advocate
Counsel for Respondent: Mr. Ashok Chhabra, Advocate



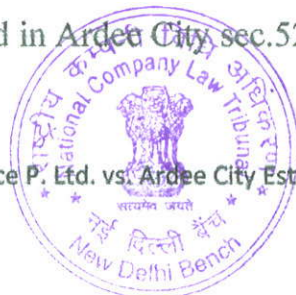
ORDER

Per Dr. V. K. Subburaj (Member Technical)

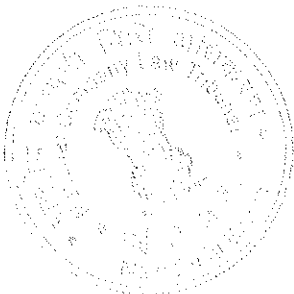
Date:14.01.2020

1. This is an application filed by the Applicant M/s Colliers International (India) Pvt. Ltd. seeking to initiate corporate insolvency resolution process ("CIRP") against the Respondent M/s Ardee City Estate Management Pvt. Ltd., under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling the amount of Rs. 1,02,24,052/- including the interest component towards the services rendered by the Applicant. In an amended petition dated 06.02.2019 the Applicant has sought the permission of this Tribunal to modify the amount of debt as Rs. 89,99,150/- plus interest at 17% from the date of default of each invoice till the date of its realisation. The request was acceded to by this Tribunal. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Applicant entered into an agreement dated 01.02.2016 with the Respondent for administering and providing certain services with respect to the condominium and maintenance of common area and facilities and its incidental works of Palm Grove Heights situated in Ardee City sec.52, Gurgaon.



- ii. The Respondent made payments against the invoices raised for the services provided by the Applicant for the period from 01.02.2016 to May, 2017.
- iii. The Applicant raised their bill for the service provided to the Respondent but the Respondent failed to fulfill to pay as per the invoice so raised for the service provided by the Applicant and accordingly for the said period Rs.41,709 fell due to be paid by the Respondent from 07.09.2016 to 27.03.2017.
- iv. The Applicant raised the bill for the service provided in the month of June 2017 for an amount of Rs.18,33,797/-. The Respondent failed to make the entire payment against the invoice dated 27.06.2017 raised by the Applicant herein, thereby committing "default" within the terms of the said invoice as an amount of Rs.85,000/- stood due.
- v. The Applicant raised the bill for the service provided in the month of September 2017 for an amount of Rs.18,69,865/-. The Respondent again failed to make the entire payment against the invoice dated 05.10.2017 raised by the Applicant herein, thereby committing "default" within the terms of the said invoice as an amount of Rs.27,900/- stood due.



- vi. The Applicant raised the bills for the service provided in the respective months of 2018 for amount of Rs.18,81,905/-, Rs.19,14,864/-, Rs.18,41,301/-, Rs.17,14,201& Rs.15,33,979/-. The Respondent failed to make the payment against the said invoices raised by the Applicant herein, thereby committing "default" within the terms of Section 3 (12) of the Code.
- vii. 'Property Management Service Withdrawal Notice' sent by the Applicant to the Respondent on 28.04.2018.
- viii. Applicant sent various mails to the Respondent to request payment of the outstanding dues but no response was received from the Respondent and no efforts were made to make the payments.
- ix. Last day of the Applicant to provide services to the Respondent was 30.06.2018.
- x. Since there was no response from the Respondent, the Applicant issued a Form 3 Demand Notice for an amount due of Rs. 90,04,316/- plus interest at the rate of 17% on 23.10.2018.
- xi. The Form Demand Notice was received by the Respondent on 24.10.2018



- xii. Respondent replied to the notice proposing to come and discuss the matter and resolve the issues amicably on 27.10.2018.
- xiii. Letter sent by the Respondent to the Applicant demanding recovery of losses amounting to Rs.60 lacs on 22.11.2018.
- xiv. Reply, to letter dated 22.11.2018, sent by the Applicant denying all the averments and reiterating payment of outstanding dues on 29.11.2018.
- xv. Letter sent on 11.12.2018 to the counsel of Respondent inviting for meeting as per the proposal in reply dated 27.10.2018.
- xvi. Meeting with the Respondent on 29.01.2019 for discussing the outstanding dues of the Applicant. In the said meeting, it was communicated by the Respondent that Ms. Shivani from their office was to be part of the meeting but she could not join the meeting and so it was informed to the Applicant that they shall be discussing the same with Ms. Shivani, for final approval and update the Applicant their final decision by 30th January, 2019.
- xvii. Email dated 31.01.2019 was sent to the Respondent stating that they did not receive any revert from the Respondent on the payment of the outstanding dues, however, last and final



opportunity was given to the Respondent's to settle this long pending issue amicably with Applicant till February 1, 2019 latest by 1300 Hours. There has been no response from the Respondent till date to the Applicant's email.

2. Consequent to the issuing of notice by this Tribunal as well as the by the Applicant, the Respondent has filed its reply on 29.03.2019 in which the following contentions are made:

i. That the Demand Notice/Invoice dated 12.10.2018 was not received by the Respondent and or it was never delivered by the Applicant and therefore nor replied. The Demand Notice/Invoice dated 12.10.2018 is unsigned and no notice in the eyes of law. The Reply/Dispute was made by the Respondent to the letter dated 15.10.2018 containing the agreement and copy of purported bills which was never admitted & recognized. The letter dated 15.10.2018 sent by the advocate of Applicant/Application was not in accordance with FORM 3 and therefore, the Director of the Respondent first time saw this Demand Notice/Invoice dated 12.10.2018 when the copy of the petition was received.

ii. That the similar demand notice dated 31.07.2018 containing two pages was sent by the applicant/Corporate Creditor



which was not in accordance with FORM 3 as per law. This letter has also been suppressed by the applicant/Corporate Creditor and has not been brought before this Hon'ble Court.

- iii. That the Applicant has not satisfied the provision of Section 9 (3) (b) in its true sense and has wrongly stated in its affidavit the reply to the Demand Notice/Invoice dated 12.10.2018 was given. In fact, no reply to the Demand Notice/Invoice dated 12.10.2018 was given by the Respondent or its advocate. In such situation, the application Applicant is liable to be dismissed.
- iv. That the applicant is not an Applicant because no direct services were supplied to the Respondent. The Applicant had supplied the direct services to the resident of Palm Grove Condominium and for this there was an agreement. The Alleged liability of Respondent cannot be treated as Operational Debt and the application is liable to be dismissed.
- v. That there is no admission of debt by the Respondent nor the documents filed by the Applicant reflect or indicate any admission of debt by the respondent. The Respondent/Respondent had pointed out the non-payment of debt was legally withheld and it was not payable in law or in



fact. The billing of Applicant and payment thereof was under the agreed performance of contract. The respondent reserves the right to file the copy of the writ petition as and when received from the Hon'ble High Court.

- vi. That the resident association of the condominium namely Palm Grove Heights Owners Association has filed a Writ Petition bearing No. 38128/2018 in the Hon'ble High Court at Chandigarh regarding the deficiency in services which shows that there was a dispute between the parties as the Applicant/Applicant had failed to provide the services. That the negligent act of Applicant/Applicant has led to the filing of Writ Petition by the RWA against the Respondent/Respondent.
- vii. The dispute raised by the Respondent/Respondent can only be adjudicated by recording evidence, present proceedings being summary in nature and evidence cannot be recorded and therefore, the matter has to be decided by the Civil Court. The Applicant/Applicant has not satisfied the provisions of Section 8 & 9 of the IB Code 2016.
- viii. The Applicant has not provided the services in conformity with the terms and conditions of the Agreement. The Applicant failed to provide the best services of common




[Handwritten Signature]

maintenance to the condominium called Palm Grove Heights and despite warnings and reminders, the Applicant failed to improve services. It is respectfully submitted that the maintenance staff had warned the present Applicant that if the services are not improved, there will be no option on the part of the Respondent except to hold the payments of the bills. It is submitted that the Applicant had created the bad situation by not providing the services as per the Agreement which resulted into residents repeatedly filing complaints against the guards and other services and also resulted into filing of a police Complaint against the guards.

ix. The Applicant was even required to keep records of tenants, their verification report from the police and installation of machines items etc., but the Applicant failed to do any of these works nor did the Applicant ever submit any of these documents to the Respondent. The Applicant created a situation that the Respondent was urgently required to appoint another security agency called Tuskar Security Pvt. Ltd., who was handed over the security needs of the residents, vehicles and parking area of the condominium.

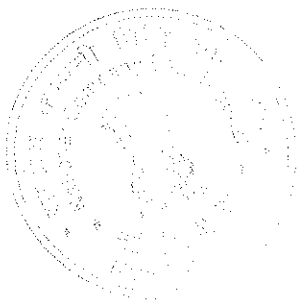
x. The Applicant was responsible for collection of CAM charges from the residents number about 380 flat owners

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along with managing disconnection and connection of electricity supply for non-payment of the dues and make periodic inspection of building, equipment to determine the security. However, the Applicant for their negligence did not collect the common area maintenance charges from the residents. The Applicant was required to collect the maintenance charges on account of the M/s. Ardee City Estate Management Pvt. Ltd. and during the subsistence of the Agreement, it was realized that an amount of Rs. 1,79,55,357/- has not been recovered by the applicant till 23rd June 2018 from the residents.

- xi. After 01.02.2016 when the Agreement was executed between the parties, the Applicant took over control of the entire accounts, appointed their accountants, security, supervisor, sweepers and other personnel but despite having a control, they did not complete the obligations as laid down in the Agreement. There was a clear deficiency on the part of the Applicant as despite being notified, the Applicant did not remove the belongings of the residents from the common areas in the towers, lift lobby area, bicycles, earthen pots, etc., which are fire exist hazards nor they every work on the



erratic Car parking in the area which was resulted into repeated complaints by some of the residents.

- xii. The Applicant is duty bound to indemnify to the Respondent in terms of the agreement because the residents did not pay the due maintenance amount despite the letter dated 22.11.2018 was sent to the applicant.
- xiii. From January, 2018, the numbers of people employed were drastically reduced which hampered the common services of the residential complex. Housekeeping staff was also reduced to a single unit which affected the overall service and the Director of the Applicant company was called and intimated to remove the deficiency but to no results.
- xiv. The Respondent repeatedly informed the Applicant that bills which have been raised are not as per the Agreement and demanded the salary statement of one of their employees. Mr. Vinod as the said employee had contacted the Respondent and had made allegations regarding non-payment of the salary. The said employee informed the Respondent that the Applicant was paying Rs. 40,000/- per month but in the records showing Rs. 55,000/- and receiving Rs. 70,000/- from the Respondent and he has not been paid the salary for 7 months. Under the Contract Labour

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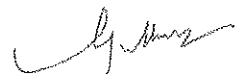
Regulation Act, the Respondent informed the Applicant to clear all the dues otherwise the said liability would unnecessarily come on the Respondent.

- xv. After abandoning the contract, when the accounts books came into the possession of the Respondent, it further realized that outstanding due from the residents towards maintenance etc. is Rs. 48,76,163/- Several letter and mails etc. have been written to the Applicant which resulted into no results and thus, forcing the Respondent to file a complaint before the National Consumer Forum.

3. The Applicant has filed its rejoinder on 05.04.2019 in which he has countered the arguments of the Respondent's reply as follows:

- i. The complaint before the National Consumer Dispute Redressal Commission ("NCDRC") against the Applicant was filed by the Respondent on 28.11.2018 which was clearly an afterthought as the Applicants had already issued a Form 3 Demand Notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Respondent on 12.10.2018. The Respondent replied to the said demand notice proposing to come and discuss the matter and resolve the issues amicably. However,

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in order to circumvent from paying their dues to the Applicant, the Respondent filed the aforesaid consumer complaint against the Applicant before the NCDRC as an afterthought.

- ii. The residents of PGH were charged at an electricity rate of Rs. 6.20 per unit as per the bill raised by the Dakshin Haryana Bijli Vitran Nigam (hereinafter referred to as "DHBVN"). Being a service provider as per the terms of the Agreement for Services, the Applicant is only responsible for collection of maintenance and electricity charges from the residents of PGH, a responsibility which the Applicant had fulfilled until the withdrawal of their services on 24.04.2018. any dispute with regard to the electricity bills of the residents of PGH has to be raised by the Respondent with the DHBVN, as is clear from the e-mail from Mr. Chandan Lakhanpal addressed to Mr. Vinod Kumar, dated 05.03.2018 at 02.33 P.M.
- iii. The demand notice dated 12.10.2018 has been duly signed by the authorized signatory of the CD i.e. Mr. Shashi Bhushan and the same can be seen on the left at the end of the aforesaid demand notice. Therefore, the demand notice is



completely valid in the eyes of law and it has been duly delivered to the Respondent.

- iv. The demand notice dated 12.10.2018 along with the cover letter dated 15.10.2018 have been duly received by the Respondent as part of the same document on the same date and not separately, and the receipt of the same has been acknowledged by the Respondent in their reply to the said demand notice dated 27.10.2018. Hence, the contentions made by the Respondent are baseless and misconceived. Furthermore, the suppression of the letter dated 15.10.2018 sent to the Respondent by the Applicant does not serve any interest of the Applicant.
- v. The Agreement for Services dated 01.02.2016 has been executed between M/S Ardee City Estate Management Private Limited (the CD) being the FIRST PARTY and M/S Colliers International (India) Property Services Private Limited (the Applicant) being the SERVICE PROVIDER and not between the Applicant and the residents of Palm Grove Condominium. Therefore, as per the aforesaid Agreement for Services, the Applicant was engaged to provide services to M/S Ardee City Estate Management Private Limited and was charged with the responsibilities of



administering the maintenance of Common Areas and Facilities and its incidental works of Palm Grove Heights. It is quite obvious that as per the Agreement for Services, the Applicant is the Applicant of the CD and not the residents of PGH.

- vi. The Applicant was neither provided a copy of the Writ Petition bearing No. 38128 / 2018. filed by the resident association of PGH Owners Association, nor were they made a party to aforesaid the Writ Petition. The contents of the aforesaid Writ Petition are completely unknown to the Applicant and the allegations made by the CD against the Applicant with regard to the said Writ Petition are denied.
- vii. The purported failure in terms of the services on the part of the Applicant that the Respondent is alleging, do not fall within the scope of the work of the Applicant at all. The Applicant would like to point out herein that in the several mails that the Applicant had addressed to the Respondent, reminding them to clear the outstanding dues owed by them to the Applicant, not once did the Respondent mention a whisper of any dispute with regard to deficiency in the services provided to them by the Applicant.



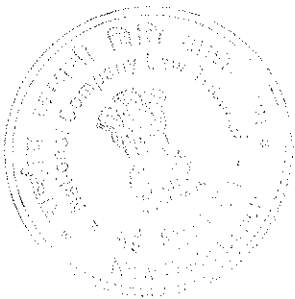
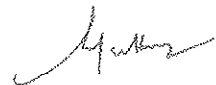
- viii. Moreover, it is due to the act of the Respondent of withholding the payment of bills to the Applicant that the Applicant was facing utmost difficulty in paying salaries to their employees deployed at the estate of PGH which compelled the staff deployed at the estate of PGH to stage a protest out of complete desperation. The Applicant respectfully submits that since the Respondent withheld the payment of bills to the Applicant that the situation with regard to the staff deployed at the PGH estate escalated to this such an extent that another security agency i.e. Tuskar Security Pvt. Ltd. had to be appointed.
- ix. The Applicant is simply a facilitator and is responsible for collection of CAM charges from the flat owners in PGH. However, if the residents refuse to pay the CAM charges, the Applicant cannot coerce the residents into making the requisite payments. The Applicant can only collect the CAM charges from the Flat owners of PGH if they are willing to pay. It is the Respondent and the flat owners of PGH who have a contract with each other and the Applicant is not privy to those contracts. Hence, any obligation that the flat owners have towards payment of CAM charges for PGH, is to the Respondent and not the Applicant.



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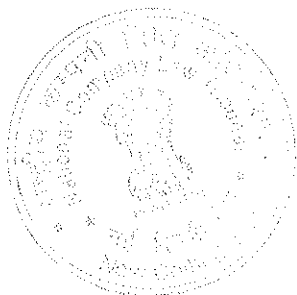
Colliers Intern. India Property Service P. Ltd. vs. Ardee City Estate Management P. Ltd.

- x. This demand notice dated 22.11.2018 sent by the Respondent to the Applicant is also quite evidently an afterthought as the same has been sent over a month after the demand notice dated 12.10.2018 was sent by the Applicant to the Respondent.
- xi. It is solely due to the paucity of funds created by the non-payment of bills owed by the Respondent to the Applicant that housekeeping staff had to be reduced to a single unit.
- xii. The Applicant reiterates herein that the complaint before the NCDRC against the Applicant was filed by the CD on 28.11.2018 is clearly an afterthought as the Form 3 Demand Notice was issued by the Applicant to the CD on 12.10.2018 itself.
4. We have gone through the details of the documents filed by both the parties and heard the arguments made by the counsels of both the parties. We have also perused the written synopsis and arguments filed by the parties. The main contention raised by the Respondent is that there are pre-existing disputes between the Respondent and the Applicant for which he relied upon the emails dated 05.03.2018, 08.03.2018 and 01.05.2018 sent by the Respondent to the Applicant. We have gone through the emails



which in our opinion show the day to day issues and not substantive claims which required further investigation through trial. In the detailed rejoinder the Applicant has explained the circumstances and the details furnished in the rejoinder amply account for the prevailing situation then. Nothing prevented the Respondent to issue a notice to the Applicant and follow the procedure to change the service provider for the deficiencies in service. The Respondent could have even deducted the cost for the deficiencies and issued debit notes. Instead he has continued to retain the services of the Applicant till the Applicant issued the notice for withdrawal of service. The Respondent approached the NCDRC only after the receipt of the demand notice under Section 8 of the Code. These facts cumulatively show that the Respondent is only trying to escape the consequences of the present proceedings by seeking refuge behind insubstantial disputes.

5. In view of the above discussions the arguments made by the Respondent are rejected and this Tribunal comes to the conclusion that the Applicant has established the existence of debt and default on the part of the Respondent and initiates CIRP on the Respondent with immediate effect.



6. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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

(2) The supply of essential goods or services to the Respondent as may be specified shall not be



terminated or suspended or interrupted during moratorium period.

- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

7. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Ajay Gulati (e-mail: ajaygulati.ca@gmail.com) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

- sd -

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

Deepak

- sd -

(Dr. P.S.N. PRASAD)
MEMBER (JUDICIAL)



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C.P. IB-347/ND/2019

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JM 15.1.2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003