



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
(IB)-598/ND/2022

IN THE MATTER OF:

Bhotika Trade & Services Pvt. Ltd. ... Applicant/Petitioner

Versus

Avinash EM Projects Pvt. Ltd. ... Respondent

Under Section: 9 of IBC, 2016

Order delivered on 13.07.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. L. N. GUPTA
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Anup Kumar D Sayare

For the Respondent : Ms. Prakriti Joshi, Adv.

ORDER

In terms of the order dated 14.11.2022, this Adjudicating Authority dismissed the Company Petition (IB)-598/ND/2022 with the specific view that when in the case of “Prashant Agarwal Vs. Vikas Parasrampuria and Anr.” (Company Appeal (AT) No. 690/2022 referred to in Para 15 of the order, there was a specific provision made in the invoice regarding liability to pay interest on the amount claimed in terms thereof, in the captioned petition neither any such invoice was placed on record nor was placed any specific agreement between the parties, in terms of which, the interest was payable on the amount due to the Operational Creditor.

Nevertheless, the judgment was taken by the Petitioner herein in Company Appeal (AT) (Ins.) No. 83/2023 before the Appellate Tribunal. Along with the said Appeal, as submitted by the Ld. Counsel for the Petitioner thus enclosed the letter dated 17.02.2016 & 28.11.2017 as additional documents in terms of which, in the event of failure on the part at CD to pay the invoiced amount, the Petitioner was entitled to @ interest 24% per annum on the due amount. The said letters read thus: -



BHOTIKA TRADE & SERVICES PVT. LTD.

SF-11, 2ND FLOOR, VASANT SQUARE MALL, SECTOR-B, VASANT KUNJ,
NEW DELHI-110070 Phone : 91-11-40000222, 40000212-219 Fax : 91-11-40000227

E-mail : saroj@bhotika.com

CIN No. : U29299DL2005PTC319328

Website : www.bhotika.com

Ref: BTS/AEMP/2015-16/117
Date: 17.02.2016

ANNEXURE B

To,
Avinash EM Project Pvt. Ltd.,
National Arcade 308, Plot No.4,
LSC Main Road, Ghazipur,
Delhi-110096.

Subject : Regarding of our due payment

Dear Sir,

This is with reference to the above mentioned subject. We would like to inform you that the vendor has to make the payment within 60 days (on credit basis) of the issuance tax invoice if delayed more than the above time mentioned after that M/s Advance EM Projects Pvt. Ltd. shall be entitled to pay 24% interest per annum on the due amount against Tax Invoice issued and for tax invoices to be issued in future.

Kindly send the acknowledgement of this letter as token of acceptance duly signed and stamped so that we can continue the business transaction and start dispatching the material at the earliest.

Thanking you,
Yours sincerely
For BHOTIKA TRADE & SERVICES PVT. LTD.,

For Bhotika Trade & Services Pvt. Ltd.

Sr -

(AUTHORIZED SIGNATORY) Director

For M/s Avinash EM Projects Pvt. Ltd.

For AVINASH EM PROJECTS PVT LTD

Authorized Signatory

(AUTHORIZED SIGNATORY)

XXXX

XXXX

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BHOTIKA TRADE & SERVICES PVT. LTD.

SF-11, 2ND FLOOR, VASANT SQUARE MALL, SECTOR-B, VASANT KUNJ,
NEW DELHI-110070 Phone : 91-11-40000222, 40000212-219 Fax : 91-11-40000227
E-mail : saroj@bhotika.com
CIN No. : U29299DL2005PTC319328 Website : www.bhotika.com

Ref: BTS/AEMP/2017-18/118
Date: 28.11.2017

To,
Avinash EM Project Pvt. Ltd.,
National Arcade 308, Plot No.4,
LSC Main Road, Ghazipur,
Delhi-110096.

Subject : Regarding of our due payment

Dear Sir,

This is with reference to the above mentioned subject. We would like to inform you that the vendor has to make the payment within 60 days (on credit basis) of the issuance tax invoice if delayed more than the above time mentioned after that M/s Advance EM Projects Pvt. Ltd. shall be entitled to pay 24% interest per annum on the due amount against Tax Invoice issued and for tax invoices to be issued in future.

Kindly send the acknowledgement of this letter as token of acceptance duly signed and stamped so that we can continue the business transaction and start dispatching the material at the earliest.

Thanking you,
Yours sincerely
For BHOTIKA TRADE & SERVICES PVT. LTD.,

For Bhotika Trade & Services Pvt. Ltd.


(AUTHORIZED SIGNATORY) Director

For M/s Avinash EM Projects Pvt. Ltd.

For AVINASH EM PROJECTS PVT. LTD.


Authorized Signatory
(AUTHORIZED SIGNATORY)

In the wake of the said letters brought on record, at the level of the Appeal, the Hon'ble NCLAT passed the order dated 24.04.2023, relevant excerpts which reads thus: -

"5. Be that as it may there being material on record to indicate that Corporate Debtor has issued the debit balance which include the interest, the application filed by the appellant could not have been rejected on the ground i.e. less than threshold."

At his stage, Ms. Prakriti Joshi, Ld. Counsel appearing for the CD did not question these letters and rather admitted the debt. She stated that due to financial difficulty, they are not in a position to pay the debt. Hence, in view



of the aforementioned order passed by the Hon'ble NCLAT and admission of debt on behalf of the CD, **the petition is admitted and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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 corporate debtor.”

As proposed by the Operational Creditor, this Bench appoints Mr. Sumit Shukla (Email id: sumit_shukla@rediffmail.com) as IRP having Registration No. IBBI/IPA-003/IP-N00064/2017-18/10550 subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that:

“Mr. Sumit Shukla (Email id: sumit_shukla@rediffmail.com) as IRP having Registration No. IBBI/IPA-003/IP-N00064/2017-18/10550, is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed about the present order by all modes. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

The Petitioner Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will 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.

A copy of this Order shall immediately be communicated by the Registry/Court Officer to the Operational Creditor, the Corporate Debtor and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer to the IBBI for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)