

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1051/ND/2020**

(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 SVS CLEANROOM AND ENGINEERING
SYSTEM OPC PVT LTD.****...APPLICANT/OPERATIONAL CREDITOR****VERSUS****M/S CORACIAS PROJECTS PRIVATE LIMITED****...RESPONDENT/ CORPORATE DEBTOR***ORDER DELIVERED ON: 09.04.2021***CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (JUDICIAL)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. P.Nagesh Adv,
Mr. Harshal Kumar Adv,
Mr. Shivam Wadhwa Adv,

For the Respondent : None

MEMO OF PARTIES**M/S SVS CLEANROOM AND ENGINEERING****SYSTEM OPC PVT LTD.**

Registered office at:

C-13 Anoop Nagar, Uttam Nagar

New Delhi 110059

...APPLICANT/OPERATIONAL CREDITOR**VERSUS****M/S CORACIAS PROJECTS PRIVATE LIMITED**

Registered office at:

H.No. 2067 B G/F, E-II

Molar Band Extn. Gali No. 57,

Badarpur New Delhi 110044

...RESPONDENT/ CORPORATE DEBTOR**ORDER****AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)**

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') by M/S SVS Cleanroom and Engineering



System Opc Private Limited (for brevity 'Applicant') through Mr. Sanjay Kataria (Director of the Applicant Company) with a prayer to initiate the Corporate Insolvency process against M/S Coracias Projects Pvt Ltd (for brevity 'Corporate Debtor').

2. The Applicant M/S SVS Cleanroom and Engineering System Opc Private Limited, claimed to be the Operational Creditor, is engaged in the business sale, purchase and installation of equipment and machines, having its registered office at C-13 Anoop Nagar, Uttam Nagar New Delhi 110059 .
3. The Respondent M/S Coracias Projects Pvt Ltd is a company incorporated on 10.01.2019 under the Companies Act, 2013 having its registered office at H.No. 2067 B G/F, E-II Molar Band Extn. Gali No. 57, Badarpur New Delhi 110044 and CIN U45309DL2019PTC344192 and is engaged in Building installation wherein the activities are usually performed at the site of construction, although parts of the job may be carried out in a special shop. Repair of installations are also included in the corresponding sub-classes.
4. As per the averments, the Applicant was selected as a contractor to undertake and perform the contract for the Corporate Debtor, to be carried out by the Applicant at Denso India Pvt Ltd (Noida, Uttar Pradesh). The work order dated 10.05.2019 with respect to the said work was sent to the Operational Creditor by email dated 15.05.2019.



The Applicant on scrutinizing the work order identified certain issues which were not subject matter of discussion and scope of the work, hence the Applicant by email dated 17.05.2019 requested the Corporate Debtor to make necessary changes in the work order dated 10.05.2019. It is submitted by the Applicant that on many days for lack of giving the complete work under the work order, Applicant`s employees were made to sit idle without any work which was brought to the Corporate Debtor`s attention by the Applicant by email dated 12.06.2019.

5. The Applicant has raised 41 invoices for both the supplies of material and towards installation totaling to Rs. 2,32,00,061/-. Upon receipt of invoices the Corporate Debtor have only paid an amount of Rs. 1,48,10,702/-. The Applicant sent reminders to the Corporate Debtor through emails for payment of the default. The Applicant was constrained to issue demand notice dated 23.01.2020 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs. 63,36,049/- which claimed by the Applicant . The notice was served upon the Corporate Debtor vide speed post and registered post as on 24.01.2020.
6. The Corporate Debtor filed its reply to the demand notice on 05.02.2020 and submitted in its reply that the work order dated 10.05.2019 was never signed by the Applicant. The work order mentioned the date of completion of project as on 30.06.2019 which



was extended to 15.07.2019 on the request of the Applicant, which was still pending till 04.10.2019. the project got delayed by 60 days, even after reminders vide e-mail dated 26.08.2019 and 28.08.2019 were sent to the Applicant by M/S Denso India (P) ltd and through the contractor M/S Daiichi Jitsugyo India(P) ltd. It is further submitted by the Corporate Debtor that the ESD flooring work was rejected by M/S Denso India Pvt Ltd and was conveyed to the Applicant vide email dated 21.07.2019 for poor quality of work.

7. The Corporate Debtor further in the reply to the Demand notice submitted that the Applicant refused to give the after sales services to M/S Denso India Pvt Ltd and the Corporate Debtor had to make payment of the various bills amounting to a total of Rs. 10,96,766/- on its own and made payment of the 50% to the suppliers as the Applicant did not pay. The said bills have been placed on record. The Corporate Debtor then issued various debit notes dated 27.01.2020 amounting to a total of Rs. 17,53,305/- after taking the bills of Rs. 10,96,766/- which was raised to the Applicant by the suppliers, since the Corporate Debtor had to pay the liability which was to be borne by the Applicant.
8. It is pertinent to mention that the Applicant vide its letter dated 14.02.2020 rejected these Debit notes stating that these were issued as an afterthought of the Corporate Debtor after receiving the Demand Notice dated 22.01.2020 which was served to the Corporate Debtor on



27.01.2020. the said Debit notes were rejected and returned back by the Applicant.

9. The Applicant has filed this application as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 63,36,049/- towards unpaid invoices for the material supplied by the Operational Creditor.
10. Notice was issued to the Corporate Debtor vide order dated 19.11.2020 of the Adjudicating Authority. Further, it has been observed that neither a reply to the Section 9 application was filed by the Corporate Debtor nor has the Corporate Debtor ever appeared before the Adjudicating Authority. We are of the view that the Corporate Debtor in its reply to the Demand Notice dated 23.01.2020 has raised various disputes which arose before the issuance of the Demand Notice, however the Corporate Debtor has never appeared before the Adjudicating Authority to support its claim therefore, vide order dated 15.12.2020 the Corporate Debtor was proceeded ex-parte.
11. The date of default is 27.09.2019 which is the date of the last invoice issued which was unpaid, and the present application is filed on 16.02.2020. Hence the application is not time barred and filed within the period of limitation.



12. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. Having considered the facts and circumstances and the material available on record, the Application filed by the Operational Creditor is complete in all respect. This authority is satisfied that an amount of Rs. 63,36,049/- towards unpaid invoices for the material supplied by the Operational Creditor, is due and payable by the Corporate Debtor to the Operational Creditor, which it failed to pay. Moreover, after reply to the Section 8 notice, the Corporate Debtor has not appeared to defend this application giving rise to the presumption that the case of the Applicant is to be admitted. Therefore, the Application is **admitted** and the commencement of the CIRP is ordered.
14. The Adjudicating Authority hereby appoints the interim resolution professional ("IRP"), as proposed by the Operational Creditor, Mr. Atul Kumar Kansal, IBBI/IPA-001/IP-P00035/2017/10088 mail id: cakansal@yahoo.com , Phone No. 9899027510 whose consent in Form2 is annexed with the application. 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.
15. 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.”


16. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the

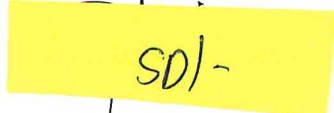


IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

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

18. The Application is allowed and disposed off in terms of above order.


Sumita Purkayastha
Member (T)


Dr. Deepti Mukesh
Member (J)