BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) NO. 3687 OF 2018

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(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 Aluwind Architectural Pvt. Ltd.
16, Municipal shopping centre, Mitha Nagar, Link Road, Goregaon West, Mumabi 400090

versus

New Haven Reators Pvt. Ltd.
Simran Centre, 30H, Parsi Panchayat Road, Opp Harish Textiles, Andheri East, Mumabi 400069

…. Corporate Debtor

Order delivered on: 05.03.2021

Coram: Hon'ble H.V. Subba Rao, Member (Judicial)
Hon'ble Shyam Babu Gautam, Member (Technical)

Appearance:

For the Petitioner: Adv. Sadiya Mehek

Per: H.V. Subba Rao, Member

ORDER

1. This Company Petition is filed by M/s Aluwind Architectural Pvt. LTD., (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against New Haven Realtors Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor under the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter

called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is an Architectural Aluminum Company of repute based out of Mumbai. Besides curtain walls and cladding and glazing system, the Company also specializes in installations of aluminum windows and doors. The Operational Creditor has provided the said services to the Operational Debtor in their project named 'Fleet House' near Marol Naka. The Operational Creditor and Operational Debtor had agreed to the Terms and Conditions stated in the Quotation dated 12th September, 2013and the ensuing Work Order dated 19th September, 2013 thereby forming an enforceable contract between the Operational Creditor and Corporate Debtor. The said Work Order was issued by the Corporate Debtor for supplying and fixing up glasses of façade elements. The Operational Creditor had written a letter dated 25th May, 2015 as a reminder, post the several emails sent by the Operational Creditor and neglected/failed to reply to by means of issuing the payment, for the amount of Rs. 14,36,083 (being the principal amount excluding the interest as applicable) due and payable by the Operation Debtor to the Operational Creditor against the work completed as per the terms and conditions agreed upon. The Operational Creditor thereafter giving sufficient time to the Operational Debtor to make the said due payment, has written another letter dated 24th November, 2016 as a reminder of the amount to be paid by the Operational Debtor till that date.

3. However, in both the abovementioned cases the Operational Debtor has failed/neglected to make the payments due to the Operational Creditor by the Operational Debtor.

4. The counsel appearing on behalf of the Operational Creditor submitted that the amount claimed to be default Rs. 24,12,619/- (Rs. Twenty Four Lakhs Twelve Thousand and Six Hundred and Nineteen Only) (being principal amount of Rs. 14,36,083/- and interest at the rate of 24% per annum amounting to Rs. 9,76,536/-) the debt fell due from 24th November, 2016, which was the date on

which the last reminder was issued to the corporate debtor to make the necessary payments.

5. The matter has been listed from time to time on board ample opportunity was given to the Corporate Debtor to file its reply. The Corporate Debtor not only failed to file reply but also failed to make any oral/written submissions before this Bench. Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 15.02.2021.

6. Heard the counsel appearing for the Operational Creditor and perused the documents submitted by him. Upon hearing the arguments submitted by the petitioner and after perusal of the record the issue that falls for consideration in the above company petition is:

   Whether the above company petition is within limitation?

7. It is clear from the pleadings that the Operational Creditor and Corporate Debtor entered into a work order dated 19.09.2013 and the above Operational Debt pertains to the dues arising under the above work order. The Operational Creditor has sent a demand notice on 25.05.2015 calling upon the Corporate Debtor to pay an amount of Rs. 14,36,083/-. Once again, the Operational Creditor issued another Registered Notice dated 24.11.2016 demanding the same amount from the Corporate Debtor. Therefore, it is very clear from the above work order and the two notices issued by the Operational Creditor that the date of default is much prior to May 2015. The above company petition being filed on 25.09.2018 is clearly barred by limitation according to its own pleadings and the documents relied by the Operational Creditor. The Operational Creditor calculated the 3 years period from the date of issuing the subsequent notice dated 24.11.2016 which is not correct. Mere issuing notice once again will not extend the period of limitation when once the period of limitation begins to run. Thus, the above company petition is not only beyond three years from the date of default but also beyond three years for recovery purpose also.

8. In the light of above observations, this tribunal has no hesitation in holding that the above company petition is barred by limitation and liable to be dismissed.

9. Accordingly, the above company petition is dismissed without cost.

Sd/-	Sd/-
SHYAM BABU GAUTAM	**H V SUBBA RAO**
Member (Technical)	**Member (Judicial)**