



THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-2930/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF:

M/s. SPACEWOOD FURNISHERS PRIVATE LIMITED

Registered Office at:

T -48, Midc, Hingna Road,
Nagpur, 440016, Maharashtra
Through Its Authorized Signatory
Mr.Vipendra S/O Chakaudi Lal Verma.

..... Operational Creditor

Versus

M/S THAPAR BUILDERS PRIVATE LIMITED

Registered Office at:

A-3, Pamposh Enclave, 110048
New Delhi.

..... Corporate Debtor

Delivered on: 01.09.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

**Appearances:**

Operational Creditor : Mr. Garvesh Kabra, Advocate

Corporate Debtor : Mr. Anuj Tiwari , Advocate

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The instant application bearing IB-2930/ND/2019 has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s Spacewood Furnishers Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Thapar Builders Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a. It is submitted that, Operational Creditor is engaged in the business of manufacturing and sales of various furniture items. It is further submitted that, from 11.12.2017 to 21.06.2019. The Corporate Debtor demanded goods/materials from the Operational Creditor through various purchase orders.

b. The Operational Creditor supplied the material as per the demands and requirement of the Corporate Debtor from time to time, and Operational



Creditor raised various invoices upon the Corporate Debtor against the supply of the material.

c. It is further submitted that, despite several requests and demands for payment of outstanding dues. The Corporate Debtor ignored all the demands. The Operational Creditor having no recourse, issued a demand notice dated 24.09.2019 under section 8 of 'the Code', 2016 in Form 3 for the demand of Rs. 60,74,111/- as on 31.08.2019 along with interest at the rate of 18% per annum with effect from 01.09.2019. Corporate Debtor vide letter dated 7.10.2019 replied to the demand notice.

3. Per Contra, Corporate Debtor has raised following contentions:

I. It is submitted that, the Operational Creditor did not provide any goods or services to the Corporate Debtor and the amount claimed by the applicant herein does not fall under the definition of operational debt as envisaged in Section 5 (21) of IBC. Further, submitted that the transactions mentioned in the petition about sales contract was between Space Wood Furnishers and the Corporate Debtor, the Operational Creditor herein did not adhere with the terms conditions of the purchase order and no excess service was availed by the Corporate Debtor from the applicant.

II. There is a pre-existing dispute between the parties as the Operational Creditor was assigned the work of supply as well as installation but they left the site with unfinished job to support this contention the Corporate Debtor has placed on record a series of emails dated 07.01.2019, 01.03.2019 and 15.03.2019.



4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that the Applicant had supplied goods to the Corporate Debtor. As per the demands and requirements of the Corporate Debtor, the Operational Creditor issued tax invoices for the supply and installation of material which was accepted by the Corporate Debtor and thus, a contract between Operational Creditor and Corporate Debtor came into existence. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 24.09.2019 under Section – 8 of IBC, 2016 served at the registered office of the Corporate Debtor. The Corporate Debtor vide letter dated 7.10.2019 also replied to the demand notice.

6. As regards to the first issue raised by the Corporate Debtor that, Operational Creditor did not provide any goods or services to the Corporate Debtor and the amount claimed by the applicant herein does not fall under the definition of Operational debt it is observed that to prove the supply of goods to the Corporate Debtor the Operational Creditor has placed on record various invoices which mentions the name of the Corporate Debtor as a receiver of those goods. While perusing the records, we found an email dated 15.01.2019 wherein the Operational Creditor has requested the Corporate Debtor to pay the disputed amount. The said email is reproduced below for reference: -

Greetings From Spacewood.....

Dear Sir, Office Thapar Tue, Jan 15, 2019 at 2:58PM. Please go through with the details of invoices submitted to site as well as payment details made by you. Kindly arrange to release the outstanding amount of Rs 49,29,437/- less 10% against installation of Kitchen wardrobes and



Vanity which will be 49,29,44/-. The total outstanding will be Rs. 44,36,493/- Kindly arrange to release the same at the earliest and oblige.

Thanking and assuring you of our best services and attention at all the times.

Thanks & Regards, Ranjay Singh.

On perusal of email dated 15.01.2019 and the invoices, it is amply clear that the invoices were duly acknowledged by the Corporate Debtor however, no payment was made from the Corporate Debtor to the Operational Creditor.

7. The Corporate Debtor has, inter alia, raised the contention based on 'pre-existing' dispute. To support its contention, the Corporate Debtor has placed on record certain correspondence through e-mails.

8. The Corporate Debtor sent an email dated 14.03.2019 to Operational Creditor raising various issues. The extract of email is reproduced below for reference: -

Dear Mr. Ranjay,

We have already applied for completion and have already starting giving possession to our buyers but due to incomplete work in most of the apartment things are not moving forward, I would like to bring all of these issues to everyone one notice so it can be resolved at earliest.

1. All main door 81 which have been orders top wooden panelling is still pending, not even one is installed on site and even don't know if the material is available on site or it is taken as price of the main door.

2. Magic eye is not installed in any main door yet.



3. All other fitting except handles is pending (door stopper and buffer) remaining in all doors.

4. Architraves material is still pending; material is not available for around 40 doors.

5. There was a commitment of all main door will be installed by one week but there are still 5 doors are pending as of today.

6. We have paid for 55 wardrobes/kitchen/vanity and as per your billing received the material is short for 2 apartments a site.

Please understand it is already March and we have already applied for completion and should be getting it in 10 days' time, due to all work mentioned above our customers are not taking possession and withholding our payment till all of the above activities are completed.

Kind Regards,

Arjun Thapar.

In response, to the above mentioned e-mail, the Operational Creditor sent an email on 15.03.2019 wherein, the Operational Creditor explained the reasons for the delay in work and summarised all points, which are raised by the Corporate Debtor in a tabular form. The extracts of the email and the table are reproduced below for reference: -

Dear Sir,

I would like to summarize the last discussion and also points raised in mail below.

1. I agree; we had discussed not to deposit cheque when work for 26 flats door installation had not started. We deposited cheque only after 21 doors out of 26 were installed. I would also like to inform you that this PDC was against supply of material and not against installation.



Payment terms are 50% advance and 50% against delivery and so there was no reason to stop our payment.

Points Raised	Status as on 15.03.2019	Remarks
1- All main door 81 which have been orders top wooden panelling is still pending, not even one is installed on site and even don't know if the material is available on site or it is taken as price of the main door.	Material is already delivered at site. Could not fix wall panels as wall finishing and false ceiling work is pending. More over it has been informed at site that wall panel pasting can only be done after oil based primer is applied on wall.	Please inform date floor wise by when we will get this civil work completed to start panelling work above door.
2. Magic eye is not installed in any main door yet.	Eyepieces are not available at site. M'oreover this is to be installed only in last to prevent from working labour at site damaging the same	After your mail today we have received 52 pes today itself issued from store. Also if site project team owes the responsibility for any damages we can start fixing immediately. Today we have already installed 22 pes rest will be completed by tomorrow.
3. All other fitting except handles is pending (door stopper and buffer) remaining in all doors.	The fixing of these fitting are kept on hold by the building engg./ project in-charge, as painter and other labour damages the fittings while working in that flat.	if site project team can owe the responsibility for any damages we can start fixing immediately. Please confirm



4. Architraves material is still pending, there is material short for about 40 doors.	There was a change in 55 toilet door architrave at site after drawing approval and fixing of doors at site.	We have manage to change in 42 flats. Balance 13 flats will be done soon.
5. There was a commitment of all main doors will be installed by 1-week march there are still 5 door pending as of today	5 main doors were kept on hold because UPVC windows are not yet fixed in these flats. Day before yesterday your project team has confirmed that will take the responsibility of locking these door.	Kindly confirm should be go ahead with door Installation without windows fixing?
6. We have paid for 55 wardrobes/kitchen/vanity and as per you billing received also but as per today we are short of material for 2 apartment at site.	You are right these shortages are due to site damages and have been identified.	Replacement has been orders and will be replaced before 31/3/19.

On a perusal of the above mentioned e-mail and table attached therein it can be observed that, the Operational Creditor was willing to complete the work of fixing the wall panels but was unable to do so, because false ceiling work was pending. Moreover, the Operational Creditor asked the Corporate Debtor to get the civil work completed first so, that the work of panelling of door can be completed. Further, five doors were kept on hold by the Operational Creditor as UPVC windows were not fixed in flats. Therefore, we are of the considered view that, Operational Creditor was not at fault and was ready to



complete the work but was unable to do so because of non-compliance of the Corporate Debtor. The Corporate Debtor did not perform its obligations so, the second contention raised by the Corporate Debtor on the issue of a 'pre-existing Dispute' is neither tenable in the eyes of the law nor on facts. Further, we are of the considered view that goods were supplied as per the invoices on the basis of purchase order by the Corporate Debtor and subsequent cancellation thereof without any legal justification by the Corporate Debtor is nothing but an unlawful act as the goods were already delivered to the Corporate Debtor on site.

9. In the light of findings of the present petition, when we consider the submissions of the Operational Creditor for the claims towards the goods supplied to the Corporate debtor it appears to us that the same shall also fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. The averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate Debtor by placing suitable evidence. Therefore, this Adjudicating Authority admit the Corporate Debtor into CIRP under the provisions of the Code.

10. The Operational Creditor has not proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Rabindra Kumar Mintri having Regn. No. IBBI/IPA-001/IP-P00707/2017-2018/11194 (mintri-ca@rediffmail.com) as IRP form IBBI list. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.



11. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period".

12. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.



13. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

14. The Operational Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

15. The Operational Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

16. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

17. The application bearing IB – 2930/(ND)/2019 is admitted.

SD/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

SD/-

BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)