

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI
COURT-III

IB-585/ND/2018
(CA-32/C-III/ND/2019)

In the matter of :

Ashtech. Buildpro (P) Ltd

.. PETITIONER

vs.

Grip Infrastructure (P) Ltd

.. RESPONDENT

SECTION

Under Section 9 of IBC, 2016

Order delivered on 20.2.2019

Coram :

**Sh. R. Varadharajan,
Hon'ble Member (Judicial)**

For the Petitioner /Op. Creditor : -

For the Respondent/Corporate Debtor :

For the Intervener :

ORDER

Based on the petition filed by the Operational Creditor, a claim of Rs.12,23,911/-, is made by the Operational Creditor, namely, Ashtech. Buildpro India (P) Limited, in the capacity of Operational Creditor. This petition was admitted on 03.12.2018 and the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor was initiated by virtue of the said Mr. Alok Kumar Agarwal, who was appointed as IRP by this Tribunal.

Pursuant to the admission of the Petition, Ld. Counsel for the IRP represents that on 10.1.2019 vide diary No.0710102002062019, paper publication was caused as mandated under the IBC, 2016 and till the last date,

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no claim was received thereafter. Ld. Counsel for the IRP also relied upon the averments made in the Application at Paragraph 6, which is reproduced below

Para-6. That, as per the aforesaid public announcement made in the newspapers, the last date for submission of claim was 01.1.2019 and till the last date no claim was received by the Interim Resolution Professional. Further, no claim has been received after the last date as per public announcement and till date of filing of this application. It is further submitted that the Applicant sent a reminder e-mail to the Operational Creditor (who filed the aforesaid Company Petition) for filing its claim, but the Operational Creditor deliberately avoid to file its claim on the ground that after filing of its claim, the Operational Creditor will be the sole member and the Operational Creditor has to bear all the expenses. It is further submitted that the Operational Creditors knows very well that all the Directors of the Corporate Debtor are not traceable and the registered office address as well as the project office address were not found or shifted to some other place. Copy of reminder e-mail sent to the Operational Creditor for submission of its claim form is annexed and marked as 'Annexure-A-5'.

It is evident from the perusal of the above Paragraph that the Operational Creditor, even though, had preferred this Petition and had chosen to seek for initiation of CIRP process had chosen to back out after admission

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and initiation of CIRP from participating in it ^{thereby} ~~the reply~~ strangulating the entire process as contemplated under IBC, 2016 from taking effect. Ld. Counsel also relies that in the absence of COC being constituted, the Corporate Insolvency Resolution Process cannot be proceeded further as contemplated under the provisions of IBC, 2016 and also in relation to the same reliance upon the decision of the Hon'ble NCLT, Mumbai Bench in the matter of HGC India Limited vs. Ms. Geo API Solutions Private Limited (NCLT Mumbai Bench C.P. IB/1632/9/MB/2017) dated 07.9.2018, is placed wherein under the abovesaid circumstances, the Mumbai Bench has permitted for the withdrawal of the petition under Section 12A of the Insolvency Code by discharging the IRP from its duties. Even though, the principles as enunciated in the absence of any claim filed before the IRP by the Mumbai Bench may be the way out as insolvency of Corporate Debtor, in the absence of any claim being filed on publication in newspapers calling for claims including even by the Operational Creditor being the petitioner, however, the Operational Creditor who has initiated this process before this Tribunal is ^{the} at lvery least required to apprise the IRP about the settlement, if any as arrived at between the parties and in case of the absence of the same, is required to file the claim before the IRP so that COC could have been formed as contemplated under the provisions of IBC, 2016 and acted so that CIRP could be proceeded with in right earnest. The

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conduct of the Operational Creditor is highly deprecated by this Tribunal. Ld. Counsel for the IRP also represents that a sum of Rs.1,55,773/- also remains to be paid which are the expenses incurred by him in relation to CIRP of the Corporate Debtor after admission of this petition and in the absence of COC, there is nobody to defray these expenses/fees of the claim made by the IRP is Rs.1,45,000/- which he is legitimately entitled.

Since the admission of the initiation of CIRP against the Corporate Debtor has been initiated by the Operational Creditor by filing the above petition which has failed to participate in the CIRP earnestly, the fees to the IRP is directed to be paid by the petitioner/Operational Creditor to the tune of Rs.1,55,773/-. Let the same be paid within a period of 3 weeks from today by the Operational Creditor, failing which, the I.R.P. will bring to the notice about the non-compliance of the directions contained in this order of the Tribunal in relation to the fees of the IRP to be paid as stated above.

In relation to the IRP, he is discharged from further responsibilities in relation to the Corporate Debtor in view of no claim being submitted as reported before this Tribunal.

The conduct of the Operational Creditor as brought forth in the above paragraphs literally subverts the Insolvency Resolution or otherwise of the

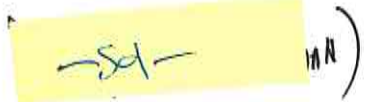
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Corporate Debtor and seems to be wilful, prima facie, bordering on malicious or fraudulent initiation of proceedings of IBC, 2016 as extracted below :

65. (I) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crores rupees".

In the circumstances, Operational Creditor/petitioner to show cause as to why this Tribunal should not impose a penalty as contemplated above within a period of three weeks the date of this order.

Dasti Process is permitted.



(R. VARADHARAJAN)
MEMBER (JUDICIAL)

Surjit
20.2.2019