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IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI

IB-1893/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

**Salasar Techno Engineering Limited**

Registered office at:  
E-20, South Extension-I,  
Delhi-110049

Acting Through:  
Mr. Manish Agarwal  
General Manager (Finance)  
S/o Shri A.K.Agarwal,  
C-12, Omicron-2,  
Gautam Budh Nagar,  
Greater Noida-201310  
Uttar Pradesh

...Applicant

Versus

**Netsoft Consulting Services Private Limited**

Registered office at:  
24, 2<sup>nd</sup> Floor,  
Community Centre,  
East of Kailash,  
New Delhi-110065



...Respondent

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6.12.2019

**Coram:**

**DR. P.S.N. PRASAD**  
**Hon'ble Member (Judicial)**

**DR. V.K. SUBBURAJ**  
**Hon'ble Member (Technical)**

Counsel for Applicant: Mr. Ajay Garg, Advocate



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## ORDER

Date:03.12.2019

1. This is an application filed by the Applicant M/s Salasar Techno Engineering (P) Ltd., seeking to initiate corporate insolvency resolution process ("CIRP") against the Respondent M/s Netsoft Consulting Services (P) Limited, under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 8,60,673/- towards the services offered by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That Applicant is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing of telecommunication and transmission tower structure.
- ii. The Respondent is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of managing large-scale infrastructure implementations, migrations, consolidations, and technology refreshes.

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*[Handwritten signature]*

- iii. The Respondent issued a Purchase Order No. NCSPL/VPO/2018-19/RT/071 dated 12.06.2018 in favour of the Applicant for supplying and installation of certain telecom towers of peculiar specification. The Applicant supplied and installed telecom towers for the Respondent as per the terms and conditions of the purchase order. The Applicant raised its invoices as and when the goods were sold to the Respondent pursuant to its purchase order.
- iv. The purchase order stipulated that the Respondent would make 15% payment in advance and rest of the payment was to be released after adjusting advance as per the work completion of sites.
- v. The Respondent never raised any concern regarding the quality and quantity of the goods supplied by the Applicant. The quality and quantity of the goods supplied and installed by the Applicant were strictly as specified under the PO. However, the Applicant could not complete installation of a telecom tower at a particular site as the work was stopped by Respondent due to certain issues raised by local residents and authorities of the area, which are beyond the control and scope of the Applicant.

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*[Handwritten signature]*

vi. The Applicant has time and again sent various reminders to the Respondent for payment of outstanding amount of Rs. 16,02,500/-. In response to reminders sent by the Applicant, the Respondent acknowledged the aforesaid outstanding debt and in response, Respondent always assured to clear the outstanding amount at the earliest. The Respondent acknowledged and confirmed the outstanding amount of Rs. 56,02,500/- as on 31.12.2018. The authorized representative of the Respondent confirmed the outstanding balance vide letter dated 31.12.2018 and also provided its ledger for the same.

vii. Pursuant to the aforesaid confirmation as on 31.12.2018 the Applicant received four payments of Rs. 10,00,000 each on 12.02.2019, 01.03.2019, 20.03.2019 and 03.04.2019 respectively from the Respondent.

viii. The Applicant issued demand notice dated 07.05.2019 to the Respondent demanding payment of outstanding debt of Rs. 16,02,500/-. In response to the aforesaid demand notice sent by the Applicant, the Respondent made part payment of Rs. 7,37,500/- on 20.05.2019 and Rs. 1,27,500/- on 06.06.2019 respectively, totaling Rs. 8,65,000/-. The Respondent had also sent a reply dated 20.05.2019 to the aforesaid demand notice.

In its reply, the Respondent has wrongly claimed that it has not



made the payment for the 24<sup>th</sup> tower as the same is partially erected by the Applicant.

ix. The Respondent is trying to wriggle out of its lawful liabilities by raising frivolous and unsubstantiated assertions. The Applicant has already supplied the 24<sup>th</sup> tower to the Respondent and has also completed the foundation work, which constitute 95% of the invoice value. The Applicant started erecting the aforesaid tower but was forcefully stopped by the Respondent due to certain issues raised by local residents and authorities of the area. This was beyond the control and scope of the Applicant. The terms of purchase order clearly state that the payment shall be done to the Applicant by the Respondent as per work completion at site.

2. Consequent to the issuing of notices by the Applicant as well as by this Tribunal the Respondent filed its reply on 25.09.2019 in which the following contentions are raised:

i. The Applicant has knowingly and purposely concealed in his application the fact that the Respondent had notified them of a dispute in respect of the alleged unpaid operational debt and it has been falsely stated in the affidavit under Section 9(3)(b) filed on behalf of the Applicant that the Respondent has not

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issued any notice of dispute in terms of the provisions of the code. By doing this the Applicant deserves to be prosecuted and punished under the provisions of Section 76 of the Code.

ii. The present application is not maintainable because the very first step i.e demand notice dated 07.05.2019 under section 8(1) of the IBC has not been issued in the prescribed Form-3. As per Form-3 the person signing the Demand Notice must write his name in block letters and disclose his position with or in relation to the Applicant. Further, the person so signing the Demand Notice must be authorized through corporate action/board resolution to sign and send the Demand Notice to the Respondent. But, in the present case not only default has been made in writing the name of the person signing the Demand Notice in block letters and disclosing his position with or in relation to the Respondent, but also he has not been authorized by the board of the Respondent to sign and send the Demand Notice.

iii. That it is submitted that Demand Notice in the present case was issued on 07.05.2019, whereas the generic board resolution placed on record to show authorization in favour of authorized representative(s) of the Respondent namely Mr. Shashank Agarwa, Managing Director, Mr. Manish Agarwal, GM



Finance, and Mr. Pramod Kumar Kala, Chief Financial Officer, of the Respondent company authorizing them jointly and/or severally inter alia to engage and appoint advocates, solicitors, etc. and to sign Vakalatnama or other necessary documents was passed in the meeting dated 28.05.2019. The Applicant submits that in all probability Demand Notice dated 07.05.2019 signed and sent by the counsel for the Respondent was/is without proper authorization, therefore the present application is not maintaining in the eyes of law.

- iv. That initiation of Corporate Insolvency Resolution Process under IBC should be used with utmost care and caution as it entails serious consequences against the Respondent. Therefore specific authorization of the board of the Applicant is needed to initiate Corporate Insolvency Resolution Process under IBC, which is not the case herein. The board resolution dated 28.05.2019 placed on record by the Applicant does not specifically even mentions the name of this Tribunal, nor refers to the IBC. Since a general board resolution without giving any reference to this Hon'ble Tribunal, provision of IBC, and the present matter/Respondent has been filed, the present application should be dismissed on this ground, because



specific authorization is needed for initiating Corporate Insolvency Resolution Process under IBC.

- v. The Respondent released advance to the tune of 15% of the purchase order amount in respect of all 28 towers, however because RISL did not grant approval for 4 towers, therefore work was confined to 24 towers only. As per the purchase order terms remaining payment was to be made after adjusted advance in the billing as per the work completion of all sites. Since work was completed only for 23 towers, the Respondent rightly adjusted the advance and made rest payment in full against all 23 towers.
- vi. The Applicant is using provisions under the Code as an alternative remedy to ordinary civil recovery suit, which would be evident from sequence of events and communications between the parties. On the one hand the Applicant is claiming that they have completed tower works of 24<sup>th</sup> tower (Reodhar) to justify their claim amount, and on the other hand on the contrary they admit that the tower is only partially erected upto 20 mtr and the works was on hold due to local Pradhan issue. The Respondent responded to the said counsel's letter dated 25.05.2019 through its letter dated 10.06.2019.



vii. Through email dated 11.06.2019 the Applicant raised another demand of Rs. 2,92,660/- on account of extra activities beyond agreed terms of the purchase order along with demand of Rs. 6,25,000/- against 24<sup>th</sup> tower. The Respondent replied on 18.06.2019 stating that the issue of extra charges had been taken up with RISL and its approval was awaited and with regard to the 24<sup>th</sup> tower it was stated that a report of fully erected tower be shared with the Respondent. The Applicant replied that no manpower will be mobilized until all payments pending for erection of 24 towers is received. The Respondent, vide email dated 25.06.2019, offered to pay 15% advance against 24<sup>th</sup> tower, which amounts to Rs. 93,750/- with commitment to pay the balance 85% amount after completion of work and requested the Applicant to resume work for 24<sup>th</sup> tower. In reply to the bonafide email dated 25.06.2019 and genuine request of the Respondent, the Applicant asked the Respondent to remit the Rs. 11,80,000/- immediately, failing which insolvency petition will be filed. The Respondent appropriately responded to the email dated 25.06.2019 of the Applicant narrating true facts of the matter. The Applicant, vide email dated 03.07.2019, repeated its illegitimate demands threatening action/legal proceedings under the Code. The

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Respondent appropriately responded to the email dated 03.07.2019 of the Applicant through email dated 05.07.2019. The Managing Director of the Applicant got annoyed and terminated discussion directing his official to take appropriate legal action against the Respondent.

viii. At no point of time the Respondent has admitted and acknowledged liability to pay claim amount towards 24<sup>th</sup> tower. Since work commenced for 24<sup>th</sup> tower but got stopped for want of clearance the Respondent booked the invoice for 24<sup>th</sup> tower on provisional basis in its books of accounts. Therefore, reliance of the Applicant upon balance confirmation letter dated 31.12.2018 and ledger account for the period 01.04.2018 to 31.12.2018 to show that the Respondent has admitted its liability and full payment has become due and payable towards 24<sup>th</sup> tower is highly misplaced.

3. We have perused the documents filed by both the parties and heard the arguments made by both the counsels. From the details of reply filed by the Respondent along with its enclosures, it is clear that the Respondent has raised the disputes only after the demand notice under Section 8 of the Code was served on the Respondent by the Applicant. The email correspondences enclosed by the Respondent in



its reply are all in the months of June and July 2019 whereas the demand notice was issued by the Applicant on 07.05.2019. Hence these correspondences cannot be taken as 'disputes' raised by the Respondent prior to the issuing of the Statutory Demand Notice. The other points raised by the Respondent like issuing authorization by the Board after the issuing of the statutory demand notice and not enclosing the 9(3)(c) are mere technical issues which do not effect the merit of the case. In fact the petitioner was directed by this Tribunal to file the 9(3)(c) affidavit which was duly done by the Applicant. He has also filed the certificate issued by the bank along with his application.

4. The Applicant has enclosed the copy of the letter dated 31.12.2018 wherein the Respondent has acknowledged the outstanding debt. It is clear from the details as discussed above that the Applicant has established the existence of debt above Rs. 1 lakh and its default on the part of the Respondent and this Tribunal initiates CIRP on the Respondent with immediate effect.
5. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

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“(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.



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- (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.”
6. The interim resolution professional (“IRP”) proposed by the Applicant is Mr. Sandeep Kumar Agrawal, email id: [ipsandeepagrawal@gmail.com](mailto:ipsandeepagrawal@gmail.com), phone number: 9811337758 and being confirmed by this Bench. 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.



- Sd -

**(Dr. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**

Deepak

- Sd -

**(Dr. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

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*Sh...* 06/12/19  
**Deputy Registrar**  
National Company Law Tribunal  
CGO Complex, New Delhi-110004

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