



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-459/MB/2020

Under Section 9 of the IBC, 2016

In the matter of

J. Kumar Infracore Limited

...Operational Creditor

v/s.

Reinvent Lifestyles Private Limited

...Corporate Debtor

Order Pronounced on: **12.04.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Ms. Soniya Parab, Advocate.

For the Respondent : Mr. Avinash R. Khanolkar, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Technical)

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **J. Kumar Infracore Limited**, ("the Operational Creditor") on 03.02.2020, seeking to initiate Corporate



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Insolvency Resolution Process (CIRP) against **Reinvent Lifestyles Private Limited** ("the Corporate Debtor").

2. The Corporate Debtor is a company incorporated on 13.02.2014 under the Companies Act, 2013, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45209MH2014PTC253203. Its registered office is at Neev Vittoria, Nesbit Road, Near Sales Tax Office, Mazgaon, Mumbai – 400 010. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of ₹28,18,488/- (Rupees Twenty-eight lakh Eighteen thousand Four hundred and Eighty-eight only). The date of default is 01.03.2017 as per the statement showing receivables from the Corporate Debtor.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that the Corporate Debtor approached the Operational Creditor for their requirement of construction material such as DBM, mastics and emulsion. Upon negotiation, the Operational Creditor agreed to supply those materials as per the requirement of the Corporate Debtor. Thereafter, the Corporate Debtor issued Purchase Order for supply of DBM, mastics and emulsion, the same was supplied by the Operational Creditor as



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and when required by the Corporate Debtor. After supply of material, the Operational Creditor raised invoices and submitted to the Corporate Debtor along with relevant lorry challans and excise invoices. The total invoices raised was for sum of ₹28,18,488/-. The invoices were duly received and accepted by the Corporate Debtor without any dispute.

- b) The Operational Creditor submits that though it constantly pursued with the Corporate Debtor for the payment, the invoices remained uncleared and the Corporate Debtor cited their weak financial position as the reason for the delay in making payments and sought for time. Initially the Corporate Debtor asked time till July 2016 but it repeatedly many times sought time and did not make the payment. As the payment was not forthcoming after several requests, the Operational Creditor sent the Demand Notice on 05.12.2019, the same was duly received and acknowledged by the Corporate Debtor. However, no reply received from the Corporate Debtor, hence, this Petition seeking initiation of the CIRP of the Corporate Debtor.
- c) The Operational Creditor further stated in the Petition that in July 2017 due to heavy rain, water entered into their office and consequently many documents were damaged and lost. The Purchase Order and Delivery Challans pertaining to the invoices in discussion are also lost amongst other documents. Therefore, the Operational Creditor could not attach copy of the P.O. and D.C. along with the Petition.



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5. Corporate Debtor has filed reply to the Petition submitting that no payment(s) are due and payable to the Operational Creditor; the Petition barred by limitation as the transaction has taken place in the year 2015, as claimed by the Operational Creditor; the fact that the records were destroyed by flood is a triable issue and cannot be adjudicated by the adjudicating authority; and the invoices are false. It has been vehemently argued that it is the case of the Operational Creditor that the supply of goods happened during the year 2015 and the invoices are also raised in that year. Though the Operational Creditor claimed that it has frequently contacted the Corporate Debtor for payment and each time the Corporate Debtor sought extended period of time for making payment, there is no evidence authenticating for the same. Therefore, the said claim is vague and cannot be taken into consideration.

a) The Corporate Debtor further relied upon certain judgments of the Hon'ble Supreme Court such as (i) in the case of *"B.K. Educational Services Private Limited v. Parag Gupta and Associates (2018) SCC Online SC 1921*, (ii) in the case of *"Jignesh Shah & Anr. v. Union of India & Anr. [Writ Petition (Civil) 455 of 2019]*, (iii) in the case of *"Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952 of 2019]*.

b) The Corporate Debtor further states that in view of the citations given as above and there is no proof of acknowledgement regarding confirmation of balance due and payable to the Operational Creditor, the present Petition to be dismissed.



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FINDINGS:

6. The Operational Creditor has claimed an amount of ₹28,18,488/- towards the outstanding operational debt for supply of construction materials such as DBM, mastics and emulsion. The Operational Creditor has raised invoices and copy of invoices along with delivery challans are attached with the Petition. However, the applicant has not filed any P.O. or other relevant documents. We notice that the applicant had raised two invoice(s) i.e. Inv. No. 06/T/A/15-16 dated 7.11.2015 for a sum of ₹18,35,885/- & Inv. No. 02/T/A/15-16 dated 11.07.2015 for a sum of ₹9,82,603/-. The invoice(s) does not state any credit period and copy of purchase order is also not on record to compute the due date. However, assuming the credit period of 30 days, the invoices fell due for payment on 07.12.2015 & 10.08.2015 respectively. No evidence has been placed on record to prove any acknowledgement of liability by the Corporate Debtor within three years from the date invoice(s) fell due. Further, no payment has been claimed to have been received at any subsequent date justifying the extension of limitation period. Accordingly, we feel that the applicant could have filed an application u/s 9 of the Code on or before 06.12.2018 i.e. 3 years from the date of default. The present application has been filed on 03.02.2020, which is beyond the period of 3 years from the date of last default. Hence, we agree with the contention of the Corporate Debtor that the present application is not maintainable on the ground of limitation and feel that the present application deserves to be dismissed.



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7. Accordingly, CP(IB)-459(MB)/2020 is hereby **dismissed** as not maintainable on the ground of limitation.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)

12.04.2023/pvs