

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V

C.P. No.283/I&BP/2019

Under section 8 & 9 of the
Insolvency and Bankruptcy Code ,
2016

In the matter of

Lahs Green India Pvt. Ltd.

Flat No. B-508, 5th floor, Palash
Upvan, GowandBaug, Pokharan
Road No. 2, Thane west, Mumbai –
400 610

.... Petitioner

v/s.

Chemtrols Solar Pvt. Ltd.

910, Tulsiani Chambers, 212,
Nariman Point, Mumbai – 400 021

.... Corporate Debtor

Order delivered on:17.06.20

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner :Mr.Pritesh Burad,i/b PBA Advocates.

For the Corporate Debtor :Ms.Seetalaxmi Swamy, Advocate.

Per:Suchitra Kanuparthi, Member (J)

ORDER

1. This company Petition is filed by Lahs Green India Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Chemtrols Solar Pvt. Ltd. (hereinafter called "Corporate Debtor")

alleging that Corporate Debtor committed default on 17.02.2017 in making payment of Rs. 17,74,750/-plus interest @18% p.a., by invoking the provisions of Sections 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner provided certain consultancy services and claimed project referral fees raising Tax invoice dt 12/01/16 for Rs. 4,58,000, Proforma Invoice dt 23/07/16 for Rs.4,58,000 and Proforma invoice dt 23/07/16 for Rs.8,58,750, all amounting to Rs. 17,74,750/-.

3. The Petitioner claimed the amount due from the Corporate Debtor under several emails. The Petitioner claimed that they have provided services of consultancy which resulted in several leads given to the Corporate Debtor till 31.03.2015. The leads referred to by the Petitioner include the three projects given below;

- i. JSSW- Baroda, Gurgaon and Patalganga Plant Sites.
- ii. Technova – Panvel MIDC.
- iii. Unity Infra – EIL Bangalore Site, NTPC's Research Centre for Netra at Grater Noida (U.P.)

4. It is submitted by the counsel for the Petitioner that in 2016 the Corporate Debtor has executed the project referred by the Petitioner and the Corporate Debtor towards the part-payment of the invoices, issued the cheque to the Petitioner which was not handed over to the Petitioner. When the Petitioner demanded the fee, the Corporate Debtor was ready to partly pay and was demanding a full and final settlement for the total fees which was denied by the Petitioner.

5. After several reminders made by the Petitioner to the Corporate Debtor, the Corporate Debtor failed to pay the outstanding dues. The Petitioner issued 2 Demand Notices on 08.08.2017 and 06.09.2018 demanding a sum of Rs. 21,00,477/- including interest @18% p.a. and Rs. 24,96,636/- including interest @18% p.a. respectively under Section 8 of the Code.

6. On 06.09.2018 and 14.09.2018, the Corporate Debtor replied to the demand notices denying the liability. The Corporate Debtor also filed a reply to the petition raising following contentions;

- i. The claim of the Petitioner is admittedly for 'referral fees' for allegedly referring a project to the Corporate Debtor. Thus, the claim of the Petitioner is not an 'operational debt' within the meaning of Section 5(21) of the Code, as the same is not in respect of the provision of any goods or services to the Corporate Debtor.
- ii. The two alleged invoices dated 23.07.2016 filed by the Petitioner along with the petition appears to be proforma invoices and were never received by the Corporate Debtor at the relevant time and were annexed for the first time by the Petitioner to the demand notice dated 08.08.2017 served upon the Corporate Debtor.
- iii. The Petitioner raised its claim for 'referral fees' against the Corporate Debtor i.e. in the year 2015, the claim for 'referral fees' was just a claim made by the Petitioner and the Corporate Debtor has always disputed the same as is inter alia evident by the emails dated 13.01.2015, 16.07.2015, 28.12.2015, 15.02.2016, 18.09.2016 and 18.02.2017. Thus, there was clearly a prior dispute raised by the Corporate Debtor in relation to the claim of the Petitioner.

- iv. There was no contract between the Petitioner and the Corporate Debtor for payment of any 'referral fees', the Corporate Debtor offered to pay a sum of Rs. 4,00,000/- plus service tax to the Petitioner towards 'referral fees'.
- v. The Corporate Debtor had also prepared a cheque dated 22.01.2016 for a sum of Rs. 4,18,000/- in favor of the Petitioner. However, the Corporate Debtor made it clear to the Petitioner that the said cheque would be handed over only upon an unconditional acceptance of the amount by the Petitioner and on a condition that there would be no further claim or dispute. However, the Petitioner chose not to receive the said cheque and continued the dispute with the Corporate Debtor.
- vi. In spite of the offer made by the Corporate Debtor to pay the 'referral fees' though there was no contract for the same, the Petitioner continued to raise further claims against the Corporate Debtor and finally also issued a demand notices to the Corporate Debtor.

7. Since it is clear that right from the inception i.e. in the year 2015 as well as after receipt of the two demand notices, the Corporate Debtor had always disputed the claim of the Petitioner vide emails dated 13.01.2015, 16.07.2015, 28.12.2015, 15.02.2016, 18.09.2016 and 18.02.2017. Email dated 16.07.2015 is extracted below;

- a. Email dated 16.07.2015 sent by the Corporate Debtor to the Petitioner;

"Dear Amit,

First of all there was no commission decided between LAHS & UIL. As per the understanding, we had quoted Rs. 92/Wp for the UIL's 40kW project at Bangalore. The complete responsibility of order collection, pre site visit, project

coordination, payment collection, document approval, liaisoning from UIL was under LAHS account. CSPL agreed to this arrangement with LAHS because the complete expense & payment risk was to be with LAHS & we were supposed to be just your EPC company. However, as LAHS failed to issue us the agreed token advance of Rs. 50000 against the LOI & further could not fulfill the eligibility norms of UIL/EIL, the order was cancelled. If the transaction had gone through as planned, we would have completed the said project with LAHS as their EPC company @ Rs. 92/Wp, as was committed. You would have then earned the full Rs. 20/Wp. UIL then placed the order onto us directly where there was no role of LAHS. CSPL got the order purely on its credentials. By doing so all the responsibilities & risks related to the project were directly taken by CSPL with no financial involvement of LAHS whatsoever.

However, appreciating LAHS efforts for this project, we have already agreed to share the difference of earlier agreed 92/Wp price & Rs. 112/Wp price from UIL @50/50. This amount of Rs. 4 Lakh can be released as project referral fee, within 7 days from receipt of 100% payment from UIL. Meanwhile, please submit your debit note for this amount for our accounting purpose.

*Sharad Saxena
CEO"*

- b. Email dated 28.12.2015 sent by the Corporate Debtor to the Petitioner;

"Dear Mr. Saj,

There seems to be some miscommunication from your team members to you. The debit note issued was earlier process by me internally to ensure your timely payment once we

receive our payment from UIL. However I received a call from Mr. Amit Lolekar to cancel the same sighting delay in payment & service tax obligation due to it. I have not received any fresh debit note post cancellation of the earlier debit note. I would request you to issue me a scan as well as a original hard copy immediately to process the payment internally.

Secondly, please note that we are paying this amount as a referral fee (and not as a commission) for this project only. We do not agree to pay any fee or commission to LAHS for any further business that we may do with UIL anywhere in India.

Kindly send your acceptance on the above understanding to process your payment.

Thank You,

With Best Regards,

Atul C. Kamathi"

- c. Email dated 15.02.2016 sent by the Corporate Debtor to the Petitioner;

"Dear Ashwini,

We are still awaiting for the unconditional acceptance from Mr. Sai Khanolar – LAHS for No Claims of any kind of fees/commissions for any business Chemtrols Solar shall do with UIL anywhere in India. We can release your cheque within one working day from the time we receive this acceptance.

Thank You,

With Best Regards,

Atul C. Kamathi"

d. Email dated 18.09.2016 sent by the Petitioner to the Corporate Debtor;

"Dear Sir,

Please see the mail sent to Mr. Nikam, it is given with bullet points which we have discussed on Saturday.

I thank you for being so humble and for promising us to resolve the issue, we are looking at you with high hopes. As given in appended mail we are looking for the full commission for unity infra Bangalore case and 5% commission on the case closed so far which are referred by us.

As discussed in our meeting, soon I will send you few communications that we had in regards to the said case.

Kindly look in to this and do the needful.

Regards,

Sai Khanolkar"

8. On going through the pleading and after hearing the Counsels for the Petitioner and the Corporate Debtor, this Bench is of the view that 'referral fee' though not agreed to be paid under any agreement between the parties, was being considered to be paid and several disputes have been raised by the Corporate Debtor before the issuance of section 8 demand notice vide above said emails.

9. In view of the judgement of the Hon'ble Supreme Court in the case of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154) wherein it was held as below:-

"40. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute"

is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.

It can be said that there is a pre-existing dispute regarding the quantum of 'referral fee' and a plausible dispute has been raised by the Corporate Debtor before the issuance of demand notice and therefore there is no crystallization of debt due and payable by the Corporate Debtor in the absence of any agreed terms.

10. In view of the above discussions, the petition is dismissed.
No cost.

-Sd-
V. Nallasenapathy
Member (Technical)

-Sd-
Suchitra Kanuparthi
Member (Judicial)