

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB-285/ND/2019**

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

**IN THE MATTER OF:**

**M/s DEVI INDUSTRIAL ENGINEERS**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s CHANDRELEKHA CONSTRUCTIONS**

**PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on: 08.11.2019**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Ahsan Ahmad, Adv.

For the Respondent : Mr. Mukesh Rana, Adv.

: Ms. Mamta, Adv.

## **MEMO OF PARTIES**

### **M/s DEVI INDUSTRIAL ENGINEERS**

Having its registered office at:  
A-295, Okhla Industrial Area,  
Phase 1, Delhi-110020

**...Applicant/Operational Creditor**

**VERSUS**

### **M/s CHANDRALEKHA CONSTRUCTIONS**

#### **PRIVATE LIMITED**

Having its registered office at:  
119, 1<sup>ST</sup> Floor, Sant Nagar,  
East of Kailash,  
New Delhi- 110065

**...Respondent/Corporate Debtor**

## **JUDGEMENT**

**PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

M/s. Devi Industrial Engineering, a partnership firm (for brevity 'Applicant'), through its partner Mr. Samarth Khurana, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s Chandralekha Constructions Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, namely M/s Devi Industrial Engineers is a Small Scale Unit as defined under the Micro, Small & Medium Enterprises Development Act, 2006, with PAN no. AAAFD3205C, having its registered office at A-295, Okhla Industrial Area, Phase-1, New Delhi-110020.
3. The Respondent, namely M/s Chandralekha Constructions Private Limited, is a company incorporated on 21.09.1995 under the provisions of Companies Act, 1956 with CIN No. U45400DL1995PTC072597, having its registered office at 119, 1<sup>st</sup> Floor, Sant Nagar, East of Kailash, New Delhi-110065. The Authorised Share Capital of the respondent company is Rs.50,00,000/- and Paid Up Share Capital of the company is Rs.50,00,000/- as per Master Data of the company.

4. It is the case of the applicant, that respondent company approached the applicant in the year 2017 and placed a work order bearing no. CCPL/082 dated 09.09.2018 for deployment of Boom Pump 36 mts, on hire basis, for its site at Godrej Golf Link, Plot No. Rep. 1, Sector-27, Opp. Bironda Village, Gautam Budh Nagar, Greater Noida. The applicant deployed Boom Pump 36 mts at the project site of the respondent as per the specification of the said Work Order.
5. The applicant states that, it raised invoice no. DEVI/17-18/056 dated 01.10.2017, DEVI/17-18/085 dated 31.10.2017 and DEVI/18-19/143 dated 29.09.2018, for total amount of Rs.11,93,375/- (Rupees Eleven Lakhs Ninety Three Thousand Three Hundred Seventy Five), against the respondent for the service rendered by it. The respondent made advance payment of Rs.1,96,000/- (Rupees One Lakh Ninety Six Thousand), to the applicant after deducting TDS as per the terms of the Work Order dated 09.09.2017. The Applicant sent various e-mails to the respondent about the payment due and payable by the respondent and requested

for release of the outstanding amount. However, the respondent failed to pay the amount due, i.e., Rs.11,93,375/- (Rupees Eleven Lakhs Ninety Three Thousand Three Hundred Seventy Five), as on 01.11.2018.

6. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply.
7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 01.11.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.11,93,375/- (Rupees Eleven Lakhs Ninety Three Thousand Three Hundred Seventy Five), along with interest, as per the invoices, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
8. The applicant has annexed postal receipt along with the tracking report showing the delivery of the said demand notice at the registered office of the Corporate Debtor.

9. Despite the demand notice sent under Section 8 of the Code, the Respondent failed to pay the amount demanded and has neither raised any notice of dispute. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
10. The applicant has stated that total debt due and payable is Rs.11,93,375/- (Rupees Eleven Lakhs Ninety Three Thousand Three Hundred Seventy Five), along with interest, as per the invoices from 01.11.2018
11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that the respondent has been served through speed post on 22.01.2019. The postal receipt along with the tracking report showing the delivery status has been annexed along with the application.
12. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply, in its reply to the present section 9 application, the respondent states that there is no default on the part of respondent as

has been alleged by the applicant. As per the respondent, the supply of goods and services of the applicant were deficient, and the approach of the applicant was very unprofessional during the performance of the work order. There were frequent breakdown of the pump during the operation leading to abrupt stopping of the casting process, which took days to mobilize the team thereby causing interruptions and loss of work hours of hired labour at the site.

13. The respondent, further states that, there existed a dispute prior to issuance of the demand notice under section 8 of the I & B Code, 2016 and to resolve the same the applicant has sought the intervention of the Construction Equipment Rental Forum (CERA), seeking conciliation and mediation to resolve the existing dispute vide an email dated 09.01.2018, which was acknowledged by the rental forum (CERA) vide its email dated 09.01.2018, with an assurance of looking into the same. Pursuant to this the respondent received an email dated 28.02.2018 from the rental forum (CERA) to release an undisclosed amount towards payments.

14. In its rejoinder the applicant states that, the respondent without any reason presumed that the services being provided by the applicant were deficient, inefficient and their approach was very unprofessional during the performance of the work order without appreciating the fact that the applicant has brought on record Log Books which form part of entries made by the applicant and verified by the respondent itself thereby showing efficient, diligent and timely services and the fact that the invoices were raised strictly on the basis of the entries made and verified by the respondent.
15. The applicant in its rejoinder, further denies the existence of any dispute prior to the issuance of Demand Notice under section 8 of the I & B Code, 2016 and to resolve the same the applicant had sought the intervention of the CERA, seeking conciliation and mediation to resolve the existing dispute vide an email dated 09.01.2018. The applicant states that it approached the CERA only as a gesture to conciliate and mediate and the same cannot be said to be a pre-existing dispute.

16. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. There is no documentary evidence on record to show that any complaint was ever made or any proceedings were initiated by the respondent regarding the alleged mala fide acts of the applicant nor any correspondence is placed on record with respect to issuing fake/ bogus bills. Once the debt shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.
17. In ***“Innoventive Industries Ltd.(Supra)”***, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be

taken into consideration to hold that there is a pre-existing dispute.

18. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

*“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.”*

In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the corporate debtor did not survive and section 8 notice was issued much later on 01.11.2018. Records reveal that as per email dated 28.02.2019 from Construction Equipment Rental Association (CERA), it had decided against the respondent, i.e., M/s Chandralekha Constructions Pvt. Ltd. in the following words; *“Mr. Mithlesh Kumar has brought to our attention that M/s Chandralekha Constructions Pvt. Ltd. and M/s Devi Industrial Engineers has come to settlement over payment dues, we would like to request you to release M/s Devi Industrial Engineers payment within 4 days delays of payment has already caused our member financial and mental harassment”*. Hence, it clearly indicates that the dispute was settled and the respondent has not challenged or taken any other steps against the decision of CERA, albeit a hypothetical or illusory dispute has been raised by the ‘Corporate Debtor’ and the same appears to be a moonshine defense.

19. The applicant has attached the copy of Bank statements issued by Standard Chartered Bank Ltd. in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
20. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
21. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
22. The Applicant has proposed the name of Interim Resolution Professional as Mr. Deepak Kumar Agarwal. In view of the same, this Bench appoints the same Mr. Deepak Kumar Agarwal, having registration no. IBBI/IPA-002/IP-N00584/2017-2018/11778, email address is dkagarwal.ip@gmail.com and contact number is +91-9818812226, as the IRP of the Respondent. The IRP is directed

to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

23. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Deepak Kumar to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
24. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of

the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

25. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

**S/D**

**(HEMANT KUMAR SARANGI)**  
**MEMBER (Technical)**

**S/D**

**(DR. DEEPTI MUKESH)**  
**MEMBER (Judicial)**