

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

MA/1393/2019 in IBA/316/2019

*(filed under Sections 17, 18, 20, 25 (2) (b) read with Section 60 (5) of
the Insolvency and Bankruptcy Code, 2016)*

In the matter of **M/s. Unique Roof Private Limited**

Muthuiah Thevar Rajapandian,

Resolution Professional of

M/s. Unique Roof Private Limited,

Registration No.IBBI/IPA-003/IP-N00090/2017-18/10854

3/158, Bharathiyar Street,

Indian Bank Colony,

Narayanapuram,

Madurai, Tamil Nadu – 625 014

... Applicant

1. Kalimati Carbon Pvt. Ltd.,
Plot No.115, Sipcot Industrial Complex,
Bargur,
Pochampalli Taluk,
Krishnagiri District,
Tamil Nadu 635 205.

2. Mr. Abhishek Jain,
Director,
M/s. Kalaimati Carbon Pvt. Ltd.,
No.10-C, Middleton Row, 7th Floor,
Kolkata – 700 071.

... Respondents

Order pronounced on 1st June 2021

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Applicant / RP : Muthuiah Thevar Rajapandian

For Respondents : P. Raja, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This is an Application filed by the Applicant viz., Muthuiah Thevar Rajapandian, Resolution Professional of M/s. Unique Roof Private Limited under Sections 17, 18, 20, 25 (2) (b) read with Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) seeking reliefs as follows:-

“The Hon’ble Tribunal may be pleased to direct the respondent to pay the balance outstanding amount of Rs.39,08,034/- to the Corporate Debtor in pursuant to the supplies made by the Corporate Debtor to the respondent company and pass any such other order, orders, direction and directions and thus render justice”.

2. It is seen from the averments made in the Application that the Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor viz., M/s. Unique Roof Private Limited was initiated by this Tribunal vide order dated 04.10.2019 passed in IBA/316/2019 and the Applicant herein was appointed as the Interim Resolution Professional (IRP).

3. Thereafter, it is seen that the Applicant has caused a public announcement under Section 15 of the IBC, 2016 on 11.10.2019 calling for claims to be submitted by the Creditors of the Corporate Debtor. Subsequent to the above a Director, whose powers stood suspended, of the Corporate Debtor upon initiation of CIRP had

filed an appeal before the Hon'ble NCLAT and it is seen that the said appeal is still pending adjudication as represented by the IRP.

4. Learned Resolution Professional has submitted that the Corporate Debtor is engaged in the activities of making steel building design as per the purchase order and manufacturing of steel structure, sale of steel materials etc.

5. It was submitted by the Learned Resolution Professional that upon perusal of the records of the Corporate Debtor, the Applicant found that there are certain receivables which are yet to be received by the Corporate Debtor from the Respondent. In this regard, it was submitted that the Corporate Debtor issued a quotation for supply of structural materials to the Respondent on 23.11.2018 for supply of structural materials at their work place. In pursuance of the same, it is seen that the Respondent has issued a purchase order dated 23.11.2018 to the Corporate Debtor and based on the same, the Corporate Debtor has supplied the materials to the Respondent and has raised invoices on various dates and delivered the materials to the Respondent at their workplace. The details lists of invoices as provided in the Application are as follows:-

SL. No.	INVOICE NO. & DATE	INVOICE AMOUNT (₹)
1.	U-1/854/27.12.2018	1,51,795.00
2.	U-1/884/02.01.2019	1,12,147.00
3.	U-1/015/06.04.2019	13,00,891.00
4.	U-1/036/16.04.2019	5,87,758.00
5.	U-1/049/24.04.2019	4,78,431.00
6.	U-1/091/11.05.2019	8,01,397.00
7.	U-1/113/21.05.2019	13,55,914.00
8.	U-1/146/01.06.2019	14,76,416.00
9.	U-1/155/04.06.2019	1,03,132.00
10.	U-1/227/29.06.2019	16,83,766.00
11.	U-1/256/06.07.2019	6,76,329.00
12.	U-1/266/09.07.2019	10,313.00
13.	U-1/292/16.07.2019	15,198.00
14.	U-1/304/22.07.2019	9,770.00
15.	U-1/365/08.08.2019	4,777.00
16.	U-1/517/01.10.2019	10,40,000.00
Total		98,08,034.00

6. It was submitted that the Respondent has issued the work completion report on 14.08.2019 as against the total invoices amount of Rs.98,08,034/-, the Respondent has paid a sum of Rs.59,00,000/- as such a balance amount Rs.39,08,034/- is due from the Respondent to the Corporate Debtor as on date and the same is being reflected in the Books of the Corporate Debtor as due and payable by the Respondent.

7. Under such circumstances the Applicant has filed the present Application seeking thereof to direct the Respondent to pay the balance amount pending of Rs.39,08,034/- to the Corporate Debtor in pursuance to the supply being made by the Corporate Debtor to the Respondent.

8. The Respondent has filed the counter. Learned Counsel for Respondent submitted that the Respondent has paid a sum of Rs.59,00,000/- as on 22.01.2019 even without any work being started by the Corporate Debtor and whenever the Respondent enquired about the delay in work, the Corporate Debtor used to give lame excuse for the same.

9. Further it was submitted that as per original purchase order, Corporate Debtor is required to complete the work on or before 28.03.2019, however, the Corporate Debtor has failed to complete the same, in pursuance of which the Respondent has sent various e-mails to the Corporate Debtor for not even starting the work and after several reminders it was submitted that the Corporate Debtor has acknowledged the e-mail dated 26.03.2019 and has sought time to complete the work on or before 25.05.2019 based upon the meeting of the parties which was held on 08.04.2019.

10. It is alleged in the counter that the Corporate Debtor has indulged in fraudulent activity by inflating the bills for which the Respondent has cautioned the Corporate Debtor for a number of times. Further it was submitted that even the Corporate Debtor was not able to complete the erection part of the work before 25.05.2019 and that the Respondent had engaged their staff to follow with the Corporate Debtor and the factory premises for

completion of the work and it is also alleged that the Corporate Debtor had diverted all funds paid by the Respondent and demanded more money from the Respondent.

11. Thereafter, it was submitted that in spite of long delay and in order to complete the construction, the Respondent had agreed for extension of time limit and thereby conveyed the same by sending an e-mail dated 07.06.2019 and that the work should be completed on or before 08.07.2019 thereby extending the time line for further period of two months.

12. It was submitted that Respondent is purely relying upon the funds from the financiers to start the construction work and as such without even the work being completed by the Corporate Debtor, it was difficult for the Respondent to disburse the amount to the Corporate Debtor and further the financiers of the Respondent raised too many questions by stating that the loan schedule is not correlating with the construction schedule which has put the Respondent in a precarious situation.

13. Thus, it was submitted that the project which was stated to be completed within a period of 60 days from the date of placing of the purchase order was not completed by the Corporate Debtor within the timeline, even after completion of 9 months period and

being fed up with the delay and the attitude demonstrated by the Corporate Debtor, the Respondent had decided to cancel the contract with the Corporate Debtor and informed the same to the Corporate Debtor by way of an e-mail dated 24.08.2019.

14. It was submitted that in spite of receipt of the e-mail, the Corporate Debtor had admitted to deliver the part of the goods without any discussion which was refused by the Respondent. It was submitted by the Respondent that they are well within their rights to cancel the contract owing to deliberate delay being caused by the Corporate Debtor and for not adhering to the several time lines given by the Corporate Debtor.

15. Pursuant thereto it is seen that the Corporate Debtor has issued a notice dated 30.09.2019 to the Respondent claiming balance payment of money under the purchase order and also demanded a compensation of Rs.30 lakh for a delay and damage caused to the Corporate Debtor to which the Respondent through its counsel had replied by denying the allegations made therein.

16. Learned Counsel for Respondent submitted that they had to complete the project by engaging some other persons and thereby the Respondent had incurred loss of time, money and energy and further Corporate Debtor has caused damage to the Respondent by

not properly fixing the purlins and other works done by the Corporate Debtor also remain to be defective.

17. It was also submitted that as on 24.08.2019, the Respondent has cancelled the contract and the work done at the site was estimated by a Chartered Engineer and the same was assessed as for a value of Rs.57,48,702/- including GST and the same was less than the payment which has been already received by the Corporate Debtor i.e., payment of a sum of Rs.59 lakh.

18. Further it was also submitted that the Corporate Debtor has been creating documents to boost their credit value in order to save themselves from the action of this Tribunal and in the said process they have inflated the bills unilaterally and has created sham documents dated 14.08.2019, styled as a "Work Completion Report".

19. It was submitted that a perusal of the said work completion report shows that there was certain items pending to be completed and under the said circumstances it was submitted by Learned Counsel for Respondent that this Application is liable to be dismissed.

20. The Applicant / Corporate Debtor has filed a rejoinder and the Applicant has sought to refute the contentions being made in the counter and has also sought to deny the same as false. The Applicant has stated in the rejoinder that the delay on the part of the Corporate Debtor to supply the materials was attributable only to the Respondent since they have not kept the site ready for delivery of materials and as such it is the Respondent who was not cooperating with the Corporate Debtor and not vice versa.

21. It was submitted that there is no defective work being done by the Corporate Debtor and as on date there is no correspondence and e-mail communication from the Respondent regarding this issue.

22. It was also submitted that the Respondent has issued the work completion Certificate dated 14.10.2018 and after issuance of work completion certificate, the Respondent is not having any right to raise the objection. It is also submitted that termination of contract issued by the Respondent unilaterally is not legal and the Respondent has cheated the Corporate Debtor and hence it was submitted by the Applicant that the present Application may be allowed and that the Respondent may be directed to pay the balance amount which is due and payable by the Respondent to the Corporate Debtor.

23. Heard the submissions made by Learned Counsels for the parties and perused the records including the pleadings placed on file. The issue as to whether the Respondent is liable to pay a sum of Rs.39,08,034/- to the Corporate Debtor is required to be decided in the present Application as per the documents being placed by Learned Counsels for both the parties.

24. From the documents filed by the Respondent along with the counter, it is seen from the *e-mail* exchanged between the parties, the Respondent from the inception has categorically stated that the Corporate Debtor is delaying the completion of the project. For instance *e-mail* dated 11.06.2019 which is being sent by the Respondent to the Corporate Debtor is extracted hereunder:-

"16/10/2019 Kalimati Carbon (P) Ltd. Mail - Non Compliance of Terms of Contract / Project Delay / Kalimati Car (P) Ltd.

*KALIMATI
The Carbon Company*

*Abhisek Jain, Kalimati
Carbon <abhisek.jain@kalimaticarbon.com*

*Non Compliance of Terms of Contract / Project Delay /
Kalimati Carbon (P) Ltd.*

*Abhisek Jain / Kalimati Carbon (P) Ltd.
<abhisek.jain@kalimaticarbon.com>*

Tue, Jun 11, 2019 at 9:25 PM

To: Enquiry <enquiry@uniqueroof.net>

*Cc: bala@uniqueroof.net, vikram dixit kannaiyah
<vikramdixit@hotmail.com>, Suresh Carbon
<sureshcarbon2011@gmail.com>*

Dear Sir,

You have completely failed to comply terms of contract as agreed and signed by both parties. Moreover, you have been doing over billing despite of our repeated request.

The project has been suffered due to long standing delay in supplying roofing materials due to which we could not install activation machinery, This has caused our bank to charge us penal interest and held up with regards to further release of funds.

We have highlighted these points in emails and requested you during several meetings in your Coimbatore works. We had to station our employee at your works to monitor progress works as well in the past.

These clearly signifies non compliance and diversion / mismanagement of funds remitted to you,

Having said that, incurred bank interest, penalties by customers and suppliers due to delay in project will be billed back to you. We need to have your final confirmation in next six working days if you would like to comply with terms of contract and interested to complete the project, failing which you will be liable for legal implications as per the terms of contract.

Thank You.

With Regards,"

25. Subsequently, again an *e-mail* was sent by the Respondent to the Corporate Debtor on 24.08.2019 by stating the reason as to the delay on the part of the Corporate Debtor in completion of the project within the time stipulated thereunder which compelled the Respondent to cancel the contract. The said *e-mail* is extracted hereunder:

*From: Abhisek Jain / Kalimati Carbon (P) Ltd.
<abhisek.jain@kalimaticarbon.com>*

*Sent: Saturday, 24 August 2019, 19:37
To: Enquiry*

Cc: deva@uniqueroof.net; bala@uniqueroof.net; vikram dixit kannaiyah;

Suresh Carbon

Subject: Re: Request for payment - reg

Dear Sir,

Please refer to emails dated Aug 4th, Aug 22, Aug 21st, Aug 19th and several calls made to your number for status of dispatch as per commitment to deliver roofing sheets by 20th August.

None of our emails and calls were answered. We have sent you DD scanned copy on July 26th as per our agreed terms.

Now you have completely failed to comply with terms and conditions of contract and emails sent by you. A very poor response from your team is furthermore delayed our project by almost 4+ months now.

This has made us serious financial and reputation loss with our bank and equipment suppliers.

Kindly consider our contract to be cancelled with immediate effect.

An official letter with claims on part of bank interest & penalties levied by our suppliers onto us will be forwarded to you for settlement.

Thank you for your understanding and hope you do not make your other client's suffer like this.

Regards,

26. Perusal of the aforesaid two e-mail shows that there seems to be a blatant violation of the terms of the contract by the Corporate Debtor in relation to the supply of the materials to the Respondent.

27. Further proceedings before this Tribunal being summary in nature, this Tribunal cannot indulge in the luxury of taking evidence from the parties unlike a Civil Court and thereby coming to a conclusion as to any sum which is due and payable by both the parties.

28. Further as per the valuation which is given by Chartered Accountant in so far as the goods being supplied by the Corporate Debtor to the Respondent was being valued at a sum of Rs.57 lakhs and as per the demand made by the Applicant, the Respondent has paid a sum of Rs.59 lakhs.

29. Thus, it is seen that there has been a gross violation in relation to adhering to the terms and conditions *prima facie* by the Corporate Debtor in relation to the goods to be supplied by it and as such the Applicant, being a Resolution Professional of the Corporate Debtor and being appointed by this Tribunal and having taken charge only from 10.10.2019 cannot be in a position to explain as to what transpired between the parties and also being ignorant of the series of *e-mails* being exchanged between the parties and thus from the e-mail communications being exchanged between the parties, it is seen that the Corporate Debtor has acted in violation of the terms and conditions of the purchase order and as such we are of the considered view that the Corporate Debtor is

not entitled for any further payment to be made by the Respondent in this regard as claimed in the Application.

30. In the said circumstances and in view of the reasons stated supra, the Application stands **dismissed**, however, without any cost.

-Sd-
ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-
R. VARADHARAJAN
MEMBER (JUDICIAL)

Raymond