

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

IA (IB)/158/2020 in IBA/316/2019

*(Filed under Sec. 17, 18, 20, 25(2)(b) read with Sec. 60(5) of 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 – 625 014

.. .. Applicant

-Vs-

Tussor Machine Tools (I) Pvt. Ltd.

PSG Foundry Premises

1/247, Avinashi Road,

Neelambur Post

Coimbatore – 641 062

.. .. Respondent

Present:

For Applicant : Muthuiah Thevar Rajapandian, RP

For Respondent : Suraj Chandrasekaran, Advocate

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 29th September 2020

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. The IA (IB)/158/2020 has been filed by the Applicant under Section 17, 18, 20, 25(2)(b) r/w Section 60 (5) of Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

That the Hon'ble Tribunal may be pleased to direct the respondent to pay the balance outstanding 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 averred in the Application that, this Tribunal vide order dated 04.10.2019 passed in IBA/316/2019 initiated Corporate Insolvency Resolution Process (CIRP) and appointed the Applicant herein as the Insolvency Resolution Professional (IRP). Subsequent thereto, the IRP made public announcement under Section 15 of IBC, 2016 on 11.11.2019. In the meantime, the Suspended Director of the Corporate Debtor has filed an Appeal before the Hon'ble NCLAT, which is pending disposal.

3. The Learned Resolution Professional submitted that the Corporate Debtor's business activities are making steel building



design as per the purchase order, and manufacturing of steel structure, sale of steel materials, etc., and the Corporate Debtor is having their own cranes which are used for the erection of structure & Roofing sheet in the work place and they also used to hire cranes from outside, whenever required.

4. The Learned Resolution Professional submitted that, while perusing the records of the Corporate Debtor, it was found that there were receivable to be received by the Corporate Debtor from the Respondent. It was submitted that the Respondent has issued a Purchase Order No. PO-CAP/21/15-16 dated 12.01.2016 and PA/2388/15 - 16 dated 08.02.2016 to the Corporate Debtor, for the supply of structural materials at their workplace and accordingly the Corporate Debtor has supplied the materials to the Respondent and raised invoices on various dates for a total sum of ₹13,79,440/- and the date of last invoice being 09.02.2016.

5. The Learned Resolution Professional submitted that the Respondent has received materials on various dates and out of the total amount of ₹13,79,440/-, the Respondent has paid only ₹12,36,941/- and as per the books of the Corporate Debtor a

balance sum of ₹1,42,499/- is due from the Respondent to the Corporate Debtor till date and by levying interest @ 18% p.a., the total amount claimed by the Resolution Professional is ₹2,43,095/- which is due to the Corporate Debtor by the Respondent.

6. The Learned Counsel for the Respondent *prima facie* contended that the Application as filed by the Resolution Professional is barred by limitation and is liable to be dismissed on the said ground itself. Further, it was stated that the purported invoices as submitted by the Applicant and based on which the present application is being filed, were not issued by the Corporate Debtor, at the first instance. It was submitted by the Learned Counsel for the Respondent that the goods were delivered in respect of the Purchase Order PO-CAP/17/15-16 dated 14.11.2015 and the services were rendered by the Corporate Debtor in respect of the Purchase Order PO-SER/579/15-16 dated 18.01.2016 and initially a sum of Rs.6,30,000/- being 50% of the contract value of the aforesaid Purchase order was paid in advance on 14.11.2015 by the Respondent and upon the delivery of the goods and completion of the services, the Corporate Debtor has raised further 7 Invoices on various dates and upon receipt of those Invoices the Respondent

paid a sum of ₹6,05,441/- on 03.02.2016 and thus a total sum of ₹12,36,941/- out of the total Invoice value of ₹12,67,150/- was paid by the Respondent to the Corporate Debtor and the same was acknowledged by the Corporate Debtor.

7. Further, the Learned Counsel for the Respondent submitted that, thereafter no goods and services were provided by the Corporate Debtor with respect to the two Purchase Order No. PO-CAP/21/15-16 dated 12.01.2016 and PA/2388/15 - 16 dated 08.02.2016 as alleged by the Applicant and the Corporate Debtor has failed to fulfil its obligation with respect to the aforesaid Purchase Order and had not supplied any goods nor rendered any service and as such the purported Invoices as alleged by the Applicant in pursuance of the aforesaid Purchase Order were not served to the Respondent at first instance and moreover the Corporate Debtor at the first instance is not entitled to raise any Invoices, since they have not supplied any goods to the Respondent in pursuance of the aforesaid Purchase Order.

8. The Learned Counsel for the Respondent submitted that even assuming without admitting that these purported Invoices were

raised by the Corporate Debtor, the entire outstanding sum of ₹2,43,095/- as alleged by the Applicant is barred by limitation as the last payment was made by the Respondent on 03.02.2016 and the CIRP in relation the Corporate Debtor was initiated on 04.10.2019 and thereby, the claim falls beyond the 3 years period of limitation.

9. Heard the submission made by the parties in detail and perused the records. Before this Tribunal venture into the merits of the case as contended by the parties, this Tribunal is perform duty bound to examine the claim filed by the Applicant from the aspect of Limitation. It is seen from the documents filed by the Applicant that the last date of Invoice is stated to be 09.02.2016 and the CIRP in relation to the Corporate Debtor was initiated by this Tribunal on 04.10.2019 and as rightly contended by the Learned Counsel for the Respondent, the claim of the Applicant, even assuming that the said claim is a genuine claim, falls outside the sunset period of 3 years and hence it is barred by limitation. The Learned Resolution Professional has not placed on record any documents to show that the Corporate Debtor has been duly and diligently taking actions to recover the claim from the Respondent.

10. The Hon'ble Supreme Court of India, in the case of **B.K. Educational Services Private Limited -Vs- Parag Gupta And Associates** (2019) 11 SCC 633 has held that Limitation Act is applicable since the inception of the Code (IBC, 2016) while posing itself with a query as to whether the Limitation Act, 1963 will apply to Applications that are made under Section 7 and or Section 9 of the Code (IBC, 2016) on and from its commencement on 01.12.2016 to 06.06.2018 (date of amendment of insertion of Section 238-A coming into effect). At this juncture, it is pertinent to refer to the Report of the Insolvency Law Committee of March, 2018 in this regard and more particularly paragraph 28.1 to 28.3 of the said Report and highlighting that the Code (IBC, 2016) could not have been to give a new lease of life to debts which are time barred and has thereby gone to give a finding by taking into consideration the above noted Report that the Limitation Act is applicable from the inception of the Code. A portion of the Report which has been extracted by the Hon'ble Apex Court reads as follows:-

28.2 Further, non-application of the law on limitation creates the following problems : first, it re-opens the right of financial and operational creditors holding time-barred debts under the Limitation Act to file for CIRP, the trigger for which is default on a debt above INR one lakh.* The purpose of the

law of limitation is "to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches". Though the Code is not a debt recovery law, the trigger being 'default in payment of debt' renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time-barred claims with the IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30 (4) of the Code.

- 28.3 Given that the intent was not to package the Code as a fresh opportunity for creditors and claimants who did not exercise their remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying the Limitation Act to the Code. The relevant entry under the Limitation Act may be on a case to case basis. It was further noted that the Limitation Act may not apply to applications of corporate applicants, as these are initiated by the applicant for its own debts for the purpose of CIRP and are not in the form of a creditor's remedy".

(emphasis by underline supplied)

* *presently on and from 24.03.2020*

Rs. 1 Crore

11. The above paragraphs of the Report of the Insolvency Law Committee of March 2018 has been favourably noted by the Hon'ble Supreme Court of India in **B.K. Educational Services** (*Supra*) case. The above paragraphs more particularly Paragraph 28.2 brings to light the intention for applying the Provisions of

Limitation Act is not only confined with respect to the Petitions filed under Section 7 or Section 9 of IBC, 2016 by the Creditors but equally applies in relation to claims that may be preferred before the IRP / RP during the process of CIRP. It is to be noted that the entire CIRP is a time bound process, for that matter even IBC, 2016 being a separate Code by itself is driven by time be it CIRP or Liquidation process in relation to Resolution or Liquidation which are equally in itself time bound, unless interdicted by Law, say the relevant insertion of Section 10A by virtue of Amendment Ordinance, 2020 to IBC, 2016. The applicability of the Limitation Act, 1963 during the Period of moratorium and the computation of the period of Limitation, specified for any Suit or Application by or against the Corporate Debtor, is required no doubt to be excluded and which exclusion points out that as compared to ordinary laws, IBC, 2016 is a separate Code by itself and being of recent origin (2016) is still in its nascent stage and evolving what with several amendments effected by the Legislature within 3 years and 9 months of its existence in the Statue Books. However, the provisions of Sec. 60(6) of the IBC, 2016 read with Section 14 of IBC, 2016 cannot also be taken advantage of by the Learned Resolution Professional representing the Corporate Debtor, in view

of the position that as on date of initiation of the CIRP, the claim as made in this Application is barred by Limitation.

12. The Applicant, in the present case, would be not in a position to approach the Civil Court by way of a suit for recovery of money, as the claim amount admittedly falls beyond the prescribed period of limitation and thereby by filing the present Application under Section 60(5) of IBC, 2016, cannot seek to enforce a claim, which is time barred as per the provisions of the Limitation Act, 1963. Hence, also on the said count, the Application as filed by the Applicant is liable to be dismissed.

13. Further, even on merits, the Applicant, being the Resolution Professional of the Corporate Debtor, has failed to establish that in relation to the Purchase Order No. PO-CAP/21/15-16 dated 12.01.2016 and PA/2388/15 - 16 dated 08.02.2016, as raised by the Respondent, that the Corporate Debtor has supplied the materials to the Respondent, especially when the Respondent have totally denied that no services or goods were supplied by the Corporate Debtor in relation to the aforesaid Purchase order.

14. Thus, in view of the reasoning stated *supra*, the Application as filed by the Applicant stands **dismissed**, however without costs.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond