



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-1468/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

NUVOCO VISTAS CORPORATION LIMITED

Registered office at:

**Equinox Business Park Tower-3,
East Wing, 4th Floor Off Bandrakurla Complex,
LBS Marg, Kurla (West)**

Mumbai-400070

...Operational Creditor

Versus

DVS INFRASTRUCTURE PRIVATE LIMITED

Regd. Office:

**House NO. 117, Vilalge Sadauliab
P.O. Mehrauli New Delhi**

...Corporate Debtor

Delivered on: 7.09.2022

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)

ADVT



Appearances:

Operational Creditor : Adv. Gaurav Bahl

Corporate Debtor: Adv. Parveen Rao

ORDER

Per: Binod Kumar Sinha, Member (Technical)

1. The instant application bearing IB-1468/ND/2019 is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditors, M/s Nuvoco Vistas Corporation Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s DVS Infrastructure Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -


- a. It is submitted that both Operational Creditor and Corporate Debtor had entered into an Agreement for supply of Aggregates for project sites. The total amount of debt due and payable by the Corporate debtor to the Operational creditor is Rs. 35,70,353/-. Operational



creditor supplied the goods during the period 2017 to 2019. Various invoices were raised on the Corporate debtor from time to time.

- b. It is submitted that, payments towards those orders is still due and pending despite receiving the material invoices, raised on the Corporate Debtor against the Purchase Orders, however, the same are pending and have not been cleared by the Corporate debtor.
- c. It is further submitted that on 20th March 2019, Demand notice was issued in accordance with Section 8 of the Insolvency and Bankruptcy Code, 2016. The same notice was sent to the head office of the Corporate debtor and was duly received by the Corporate Debtor. However no payments have been received from Corporate Debtor. On 23rd May, 2019 another Demand notice was issued at the registered Address of the corporate debtor in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016. However the same has been received with the Endorsement "No such person" and further no payments have been received.
- d. It is averred that thereafter, Operation Creditor has further issued an e-mail dated 4th June, 2019 at the registered email address of the Corporate Debtor enclosing the demand notice under section-8 along with all the documents.
- e. It is further submitted that Corporate debtor failed to respond to the said notice within 10 days. The Corporate debtor has not repaid the

A handwritten signature in green ink, appearing to be 'Amit', located at the bottom center of the page.



amount in default till date of filing the instant application even after persistent reminders and notices.

3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 02.07.2019. Corporate debtor has also filed their reply to the captioned petition.

4. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate debtor and also perused the record.

5. The Operational Creditor's claim is based on the facts that goods amounting to Rs. 35,70,353/- were supplied by the Operational Creditor to the Corporate debtor. The debt is still not paid by the Corporate debtor. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his operational debt, applicant had issued two Demand Notices dated 20.03.2019 and 23.05.2019 under section 8 of IBC, 2016 at the registered office of the Corporate Debtor. However no response was given by the Corporate debtor to the notice and payments are still due.

6. Per contra, Corporate debtor has raised two contentions:-

I. Operational creditor has issued incorrect invoices upon Corporate debtor bearing incorrect GSTIN numbers.





II. Power of Attorney authorised by Company Managing Director cannot file present petition u/s 9 of IBC. Mr. Ujjwal Batria is not authorised to appoint POA as Mr. Ujjwal is not the Director of the company.

7. As regards the issue of mentioning the incorrect GSTIN No. it is observed that the applicant had entered into an Agreement dated 18.05.2017 with the Corporate debtor for the supply of Aggregates on project sites. After, perusing the record, it is confirmed that both GSTIN No. are registered on the name of M/s DVS Infrastructure Private Limited i.e., the Corporate debtor. It appears to us that Corporate debtor was fully aware about the goods which are provided by the Operational creditor. The excuse of bearing a wrong GSTIN No. does not mean that M/s DVS Infrastructure Private Limited has not availed services from Operational creditor. When both the GSTIN No. are allotted in the name of the same Corporate debtor, it would be termed as a fallacious argument to say that Operational creditor has mentioned incorrect GSTIN No. in the impugned invoices.

8. The next issue raised by the Corporate debtor is that, Power of Attorney authorised by Company Managing Director cannot file a petition u/s 9 of the IBC code. It is advantageous at this juncture to refer Rule 23 (1) of NCLT Rules, 2016. The relevant rule is reproduced below:-

(1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or



petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.

9. Present petition is filed by one Mr. S. B. B. Ali., Authorised Power of Attorney appointed by Managing director of the applicant company. The present petition filed by the Operational creditor contains Letter of Authorizing marked as Annexure – I wherein, Mr. Ujjwal Batria, Managing Director & Country CEO appoints Mr. S. B. B. Ali as Assistant Vice President (Legal) to be the true and lawful attorney of the Company on its behalf to perform legal acts, deed and things. The letter of Authorizing Mr. S. B. B. Ali as Power of attorney is reproduced below:

A handwritten signature in green ink, appearing to be 'A. B. B. Ali', with a horizontal line underneath.



POWER OF ATTORNEY

TO ALL TO WHOM THESE PRESENTS SHALL COME, I, Ujjwal Batria, Managing Director of Nuvoco Vistas Corp. Ltd. (formerly Lafarge India Ltd.) a Company incorporated under the Companies Act, 1956 having its Registered Office at Equinox Business Park Tower-3, East Wing, 4th floor, LBS Marg, Kurla (West), Mumbai 400070, SEND GREETINGS;

WHEREAS the aforesaid Company authorized me in pursuance of a resolution of the Board of Directors of the Company dated May 07, 2012, to exercise, severally the powers of and for the Company in the manner and to the extent therein appearing.

AND WHEREAS vide the aforesaid resolution, the Company has conferred upon me, the right to appoint one or more official with power to exercise all or any of the powers by these presents conferred on me;


TRUE COPY

AND WHEREAS I desirous of appointing Mr. S. B. B. Ali, Asstt. Vice President-Legal, as an authorized representative to perform the following acts, in connection with the legal matters related to the company throughout India:

1. To prosecute, conduct, carry on represent and appear in any civil, criminal, direct or Indirect Tax proceedings for and on behalf of the company before any court, police authorities, Tribunal, Arbitration or any other forum or judicial, quasi-judicial or government authority;
2. To defend, resist and object to any proceedings to be commence in any court, under any law of India and receive, accept and give acknowledgment for service of all and every processes, summons or notices of any court above named.
3. To intervene in and/or be impleaded in any proceeding(s) above mentioned.
4. To file, institute or defend any suit, petition or complaint and prefer, file and maintain any appeal, revision or review from the judgement or order of any court in any proceeding(s) above mentioned and to defend, oppose, represent and appear in any appeal, revision or review file or to be filed against company;
5. To adjust wholly or part, compromise or settle dispute out of court (being subject matter of court proceedings or otherwise) on such terms as the attorney may deem expedient or appropriate in the circumstances of the case;






NOW KNOW YE THESE PRESENTS WITNESS THAT I, the above said **UJJWAL BATRIA** do in exercise of my power as aforesaid, hereby make, nominate, constitute and appoint the said **Mr. S. B. B. Ali** to be the true and lawful attorney of the Company and on its behalf to perform the above all acts, deed and things.

It is hereby agreed that all the acts, deeds and things lawfully done by the said attorney by virtue of this Power of Attorney shall be constructed as acts, deeds and things done by the Company and the Company hereby undertakes to ratify and confirm what the said attorney shall do or caused to be done on behalf of the company in respect of the above.

THIS Power of Attorney shall remain in force so long as the above Attorney is in the employment of the company or unless withdrawn by the Company.


TRUE COPY



Thus, on the proof of Letter of Authorizing marked as Annexure – I. we are inclined towards the view that the present petition filed by Mr. S. B. B. Ali as the Power of attorney is duly authorised to file such application as representative of the company.

10. The last issue raised by the Corporate debtor relates to the fact that Mr. Ujjwal Batria's name is not mentioned in Company's master data as the the Managing director of the company. While analysing the records we found Annexure P-1 annexed in the petition by the Operational creditor consists, "Extract of the Resolution passed at the meeting of the Board of Directors of M/s Nuvoco Vistas Corporation Limited". It is mentioned in the above annexed document that Mr. Ujjwal Batria was appointed as Managing Director of the company and the above mentioned document is duly signed by Vice President and Company Secretary of M/s Nuvoco Vistas Corporation Limited i.e., Operational creditor which proves that Mr. Ujjwal Batria is a Managing Director of the company. The extract of the resolution passed at the meeting of Board of Directors is reproduced below:





NUVOCO

9

EXTRACT OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF NUVOCO VISTAS CORPORATION LIMITED HELD ON MONDAY, MAY 7 2012

"RESOLVED FURTHER THAT, subject to the superintendence, control and direction of the Board of Directors of the Company Mr. Ujjwal Batria, Managing Director of the Company (hereinafter referred to as 'the said Attorney') and only so long as he holds the position of the Managing Director of the Company shall have the general conduct and management of the whole of the business and affairs of the Company except in the matters which may be specifically required to be done by the Board either by the Companies Act, 1956 or by the Articles of Association of the Company and the managing Director shall also exercise and perform such powers and duties as the Board of Directors of the Company (hereinafter called the 'Board') may from time to time determine and shall also do and perform all other acts and things which in the ordinary course of business he may consider necessary or proper or in the interest of the Company and in particular but without in any way restricting the general powers and authorities hereinbefore conferred upon the Managing Director, the attorney shall in particular have the following powers on behalf of the Company viz:

1. To manage, conduct and transact all the business affairs and operations of the Company including power to enter into contracts and to vary and rescind them.
2. To enter into and sign for and on behalf of the Company (not being required to be executed under its Common Seal or otherwise provided for in the Articles of

Provided always that no person / persons dealing with the attorney shall be concerned to see or enquire whether or not the Attorney is acting in accordance with the directions of the Board of directors in those matters wherein he is hereby required to act subject to such directions and notwithstanding any breach of such directions committed by the Attorney in regard to any act, deed, matter or thing hereby authorised to be done or executed the same shall between the Company and the person or persons dealing with the Attorney be valid and binding on the Company to all intents and purposes unless the person or persons dealing with the Attorney shall have notice of such directions.

"RESOLVED FURTHER THAT in the discharge of his duty Mr. Ujjwal Batria, Managing Director be and is hereby authorised to delegate his duties to suitable officials of the Company as he may deem fit."

**//Certified True Copy//
For Nuvoco Vistas Corporation Limited**

S. Sanghavi
Shruta Sanghavi
Vice President and Company Secretary
Date: November 7, 2019



Amr



11. It is pertinent to observe here that the Board Resolution extracted above not only confers upon him powers to transact all the business affairs and operations of the company, but also confers upon him powers to delegate his duties to suitable officers of the company as he may deem fit. Thus, the contention of the Corporate debtor in this regard stands overruled.

12. In the light of findings of the present petition, when we consider the submissions of the Operational Creditor for the claims towards the goods supplied to the Corporate debtor it appears to us that the same shall also fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. The averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate debtor by placing suitable evidence. Therefore, this Adjudicating Authority admit the Corporate Debtor into CIRP under the provisions of the Code.

13. The Operational Creditor has not proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Sumit Sharma having Regn. No. IBBI/IPA-001/IP-P022323/2020-2021/13513 (Email ID sumit@vptp.in) as IRP from IBBI list. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent

A handwritten signature in green ink, appearing to read 'Sumit Sharma', located below the text of paragraph 13.



Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

14. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor's assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

A handwritten signature in green ink, appearing to be 'Amit', with a horizontal line underneath it.



d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. The explanation below section - 14 (1) also stipulates “that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

15. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

16. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all

A handwritten signature in green ink, appearing to be 'A. B. S.', located below the main text.



assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

17. The Operational Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

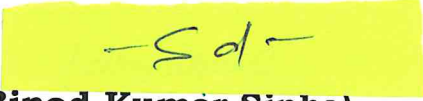
18. The Operational Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

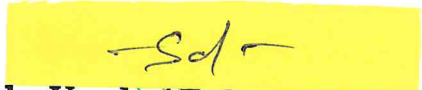
19. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA site of Ministry of Corporate Affairs for information of all concerned.

A handwritten signature in green ink, appearing to be 'A. K. Singh'.



20. The order is pronounced by this Adjudicating Authority in Virtual Hearing.


(Binod Kumar Sinha)
Member (Technical)


(Bachu Venkat Balaram Das)
Member (Judicial)