

FREE OF COST COPY

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH - II  
IB-433/ND/2018

IN THE MATTER OF:

Nuvoco Vistas Corporation Ltd.  
Registered office at:  
Equinox Business Park Tower-3,  
East Wing, 4<sup>th</sup> Floor,  
Off Bandra Kurla Complex,  
LBS Marg, Kurla (West),  
Mumbai-400070, India

...Applicant

VERSUS

Maxout Infrastructures Pvt. Ltd.  
Registered office at:  
715, Navrang House,  
K.G.Marg,  
Connaught Place,  
Delhi-110001.

...Respondent

Order Delivered on:01.02.2019

CORAM:

MS. INA MALHOTRA, MEMBER(JUDICIAL)

DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)

Present - Mr. Gaurav Bahl, Advocate for the Applicants

RRG & Associates, Advocates for the Respondent



C.P. IB-433/ND/2018

Nuvoco Vistas Corporation Ltd. vs. Maxout Infrastructure Pvt. Ltd.

1

06/2/19

*[Handwritten signature]*

**ORDER**

**Per Dr. V. K. Subburaj (Member Technical)**

1. This is an application filed by M/s Nuvoco Vistas Corporation Limited seeking to invoke the provision of Corporate Insolvency Resolution Process (“CIRP”) u/s 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent Company M/s Maxout Infrastructures Private Limited for the alleged default of the Respondent Company in clearing the debt of Rs. 60,54,582/- along with interest at 24% p.a. for the supplies of Ready-Mix Concrete (“RMX”) effected by the Applicant. The transaction leading to the filing of this application is as follows:
- i. It is stated that the Applicant had supplied RMX to the Respondent Company’s site at Air Force Nawal Housing Board, Jhotwara at Jaipur.
  - ii. The said supplies were made on the basis of purchase orders issued by the Respondent to the Applicant and various invoices were raised on the Respondent by the Applicant from April 2014 to November 2015.
  - iii. The payments became due 30 days from the date of invoices raised by the Applicant. The debt is pending since the respective due date of each invoice.

2

C.P. IB-433/ND/2018

Nuvoco Vistas Corporation Ltd. vs. Maxout Infrastructure Pvt. Ltd.



iv. In order to discharge a part of the Respondent Company's liability the Respondent issued a cheque no. 884044 dated 30.09.2015 for Rs. 25,00,000/- which was returned unpaid vide cheque return memo dated 01.10.2015 with reasons "payment stopped" by drawer after which notice dated 23.10.2015 was issued by the Applicant after which a criminal complaint was filed which is still pending.

v. It is stated that the Applicant on 25.09.2017 issued a demand notice under Section 8 of the Code calling upon the Respondent Company to make the payments within 10 days of receipt of the notice.

2. The Respondent company was proceeded against exparte, as no one appeared for the Respondent, despite service. However, the orders were set aside in the next hearing and the Respondent Company was allowed to file the reply. Accordingly, the Respondent Company filed reply on 11.06.2018 in which the Respondent Company has contended as follows:

i. The Applicant has approached this Tribunal with unclean hands and has submitted a fabricated computation sheet, wherein, the Applicant has not mentioned the details of the following payments made by the Respondent to the Applicant:

C.P. IB-433/ND/2018

Nuvoco Vistas Corporation Ltd. vs. Maxout Infrastructure Pvt. Ltd.



*[Handwritten signature]*

S.No.	Date	Amount	Bank
1.	18.04.2015	20,00,000	PNB
2.	16.05.2015	10,00,000	PNB
3.	16.07.2015	17,00,000	IDBI
Total		47,00,000/-	

- ii. It is most humbly submitted that the Respondent has made the entire payment to the Applicant through its bank account and through the bank account of its joint venture company namely M/s VIPL MIPL JV. The Applicant has deliberately produced an incorrect statement of account with respect to the payment made by the Respondent to the Applicant and suppressed the entire details of the payment made by the Respondent.
- iii. The Applicant wrongly in the computation reflected only an amount of Rs.93,52,625/- as paid by the Respondent to the Applicant from 05.11.2014 to 06.08.2015. On the contrary, the Respondent has paid a total sum of Rs. 1,40,29,400/- between 05.11.2014 to 06.08.2015 to the Applicant, which would be clear from a perusal of the account statements of the account of the Respondent and its joint venture. Further, the Applicant has placed the invoices of Rs. 61,39,102/- and the said amount in



*[Handwritten signature]*



the invoices is lesser than the payment made by the Respondent to the Applicant.

3. The Respondent was permitted to file additional details by the Tribunal and the Respondent place on record the statements of its bank account obtained from IDBI and Punjab National Bank.
4. The Applicant was also directed to file details of payments received and accordingly an additional affidavit was filed by the Applicant on 30.07.2018 in which the following contentions were made:
  - i. The Applicant has supplied RMX to the Respondent Company at Air Force Naval Housing Board, Jhotiware, Jaipur and an amount of Rs. 60,54,582/- along with interest at 24% is due and payable by the Respondent Company.
  - ii. For the same site another set of purchase orders was issued by VI IPL-MIPL ("JV"), a joint venture of the Respondent. It is respectfully submitted that for the JV the Applicant maintains a separate account. The invoices were issued to the JV for the supplies made to the JV and the JV accordingly made payments for the same. However, the account of the JV is still not clear and the amount of Rs. 64,85,649/- is still due and payable by the JV to the Applicant and is not the subject matter of the present claim.



*[Handwritten signature]*

5. It was considered expedient to give an opportunity to the parties for reconciliation of their accounts and accordingly they were directed to meet at the Respondent Company's office.
6. During the hearing on 04.12.2018, the Respondent brought to the notice of this Tribunal that a petition has been filed by M/s Ultra Tech Cement Ltd., against the Respondent initiating winding up proceedings. However, the appointment of an Official Liquidator has been kept in abeyance by the Hon'ble High Court of Delhi. The learned counsel for the Applicant submitted that the pendency of the proceedings before the Hon'ble High Court of Delhi would not be a bar to initiation of the CIRP of the Respondent Company.
7. The case was listed for final arguments on 22.01.2019 and arguments heard from both sides. The issues to be decided in this case are as follows:
- i. Whether there is a debt and default as outlined in the Code?
  - ii. Whether the pendency of winding up petition in the Hon'ble High Court is a bar to initiate CIRP of the Respondent Company?



8. It is significant to note that despite opportunities given to the parties, they could not reconcile the accounts. The Applicant vide his additional affidavit has furnished the details of the payment made by the JV and it is shown that the payment has been accounted for the purchase orders placed by the JV itself. The Respondent Company has not provided conclusive proof for settlement of the dues raised by the Applicant company, despite opportunities for reconciliation of accounts, it is held that the amount claimed by the Applicant is due by the Respondent to the Applicant.

9. In relation to the second issue, the Applicant has placed relied on *Jaipur Metals & Electricals Employees Organization vs. Jaipur Metals & Electricals Ltd.* and *Union Bank of India vs. Era Infra Engineering Limited* wherein it has been decided that there is no bar to initiation of CIRP by NCLT if a winding up petition is pending unless an official Liquidator has been appointed and a winding up order has been passed. In the instant case the Hon'ble High Court has kept the appointment of an official liquidator in abeyance. Hence, we are of the view that there is no bar to initiation of CIRP of the Respondent Company.



10. Since the Applicant has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Anup Kumar, with registration number IBBI/IPA-002/IPN-00333/2017-18/10911 (email – sachanlawanalyst@gmail.com, Mobile No.9811622913) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order. 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) and as extracted hereunder shall follow in relation to the Respondent:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

11. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by



the Central Government in consultation with any financial sector regulator.

12. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

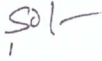
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of respondent under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

13. The Applicant is directed to pay a sum of Rupees two lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under



the provisions of IBC, 2016 to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which shall be reimbursed to him upon constitution of the Committee of Creditors (“CoC”) to be recovered as CIRP costs. The interim resolution professional shall submit the accounts to the CoC for the same.

14. Based on the above terms, the application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Respondent above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.

  
(Dr. V.K. SUBBURAJ)  
MEMBER (TECHNICAL)

  
(INA MALHOTRA)  
MEMBER (JUDICIAL)

Deepak

C.P. IB-433/ND/2018  
Nuvoco Vistas Corporation Ltd. vs. Maxout Infrastructure Pvt. Ltd.

11

  
व.वि.बं. राजु / V.V.B. RAJU  
उप पंजीयक / DEPUTY REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
Block-3, 6th Floor, CGO COMPLEX,  
LODHI ROAD, NEW DELHI - 110003

FREE OF COST COPY