
(2020) 01 NCLT CK 0082

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : Company Petition No. IB-1763/ND Of 2018

M/S Allied Concepts India Private Limited

APPELLANT

Vs

M/S DSR India Infracon Private Limited

RESPONDENT

Date of Decision : 21-01-2020

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 — Regulation 6
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 5, 6
Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(5), 14(1), 14(2), 14(3), 14(4)

Citation : (2020) 01 NCLT CK 0082

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Hitesh Chopra, Pankaj Jaiswal, Manish Singh

Judgement

Dr. Deepti Mukesh, J

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity â??IBC, 2016â??) read with Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity â??the Rulesâ??) by M/s Allied Concepts India Private

Limited (for brevity â??Applicantâ??) through its Director Shri Sushant Agarwal who has been authorized vide Board Resolution dated 27.09.2018

with a prayer to initiate the Corporate Insolvency process against M/s DSR India Infracon Private Limited (for brevity â??Corporate Debtorâ??).

2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 08.10.2010, bearing CIN

U51900DL2010PTC209260, and having its registered office at D-217, WZ-29, Mansarovar Garden New Delhi-110015.

3. The Corporate Debtor is private limited company incorporated on 05.11.2015 under the provisions of Companies Act, 2013 bearing CIN

U70102DL2015PTC287147 and having its registered office at H. No. 34, Out of Khasra No. 109/2, Gali No. 16 Wazirabad Extension, Delhi-110084.

4. The Applicant has stated that stones, granite, slabs and allied material were supplied to the corporate debtor and in pursuant to that the applicant

had raised invoices against the supply of material. The details of the pending invoices are as follows:

i. Invoice no. T-190 dated 17.03.2017 amounting to Rs 3,85,394/-and amount received for this invoice is Rs 12,370/-

ii. Invoice no. T-191 dated 18.03.2017 amounting to Rs 5,03,832/-

iii. Invoice no. T-192 dated 18.03.2017 amounting to Rs 5,06,735/-

iv. Interest @24% p.a. from due date is Rs 6,36,855/-

5. The Applicant issued a demand notice dated 04.10.2018 in Form 3 and in Form 4 under the provisions of section 8 of I&B Code, 2016 (Under Rule

5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding

amount of Rs. 20,20,446/-. The said notice was served through speed post as well as through email at its registered address as reflected in MCA

website. The tracking report for the speed post reflecting â??Item Deliveredâ??. The corporate debtor neither replied to the said notice nor made the payment against the outstanding dues.

6. Hence, the Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the

Corporate Debtor as per the affidavit of service filed by the applicant.

7. As per Form V, the total debt outstanding is Rs 20,20,446/- (being principal amount of Rs 13,83,591/- and interest @24% p.a. Rs 6,36,855/-), which is due and payable by the corporate debtor to the applicant.

8. The Corporate Debtor has replied to the application and has contended that the applicant had never supplied the proper size of the granite slab,

which led to wastage of granite slab. The corporate debtor contended that no material/granite slab was received by the corporate debtor against some

vouchers and has asserted that the applicant might have sent the material to the site of the corporate debtor and the same might have been returned

due to irregularity in its size.

9. The corporate debtor submitted that it is evident from the facts that the corporate debtor has not claimed its VAT return against some voucher and

the applicant with the malafide intention has not cancelled the voucher. The corporate debtor has further submitted that several requests were made to

the applicant to settle their account but the applicant never came forward to settle their account.

10. The corporate debtor has averred that the applicant had to supply the material under sixteen vouchers but the applicant intentionally has not filed

all the vouchers. It is further averred by the corporate debtor that the applicant has not sent any emails to the corporate debtor nor any demand notice

has been received by the corporate debtor.

11. The applicant has filed a rejoinder controverting the averments made in the reply and has asserted that the corporate debtor had duly received the

material and the invoice bears the signature of the receiving officials of the corporate debtor. The applicant is in the business of marble, granites,

stones, random, regular, irregular, slabs and other allied products since past many decades across India and till date no complaint as to the quality of

the product is ever received against the applicant. It is submitted that the corporate debtor had used the goods supplied by the applicant for the

development of Delhi Metro Stations at Naraina and ESI sites in West Delhi apart from other sites of DMRC and till date no complaint as such ever

have been received from DMRC with respect to the quality of products.

12. The applicant submits that one of the officer of the corporate debtor was present at the outlet of the applicant and once the officer short listed the

articles, then only the invoice was prepared by the applicant, therefore the question of irregularity in size doesn't exist. The applicant has never

received any article back and moreover, the articles were selected only by the employee of the corporate debtor at his behest and then only the

invoice were duly raised, hence there is no question as such to the size of the articles as the same has been shortlisted and selected by the corporate

debtor only through its authorized representative.

13. The applicant has asserted that the corporate debtor consumed the products

which was duly sold by the applicant, over a period of time and it was never been returned to the applicant till date and moreover no intimation as to the bad or inadequate quality of the material has ever been communicated to the applicant till date.

14. The applicant further asserted that non-claiming of benefit of tax in its VAT return, doesn't prove that goods have not been supplied. The applicant submits that various follow ups, reminders via letters, phone, mails were made at regular intervals, but the corporate debtor chose not to reply and instead used to ignore the dates of the payment.

15. The applicant submits that the demand notice has been sent via Email through its advocate dated 08.10.2018 at the registered Email ID i.e.cacsrajeev@gmail.com and at its registered address which is updated with the MCA and as per the track report "Item Received" is shown.

Further, various communications have already been taken place between the parties. The E mails sent by the applicant has not bounced and are deemed as received.

16. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and raise a pre-existing dispute with respect to quality of services/goods of the applicant which was raised only after present application filed.

17. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. This leaves no doubt that the default has occurred with respect to the payment of the operational debt of the applicant. Hence, considering the replies by the corporate debtor to the present application, it cannot be inferred as pre-existing dispute of genuine nature and is not merely a moonshine dispute as laid down in "MobiloX Innovative Private Limited vs. Kirusa Software Private Limited".

18. The date of default occurred from 02.04.2017 and hence the debt is not time barred and the application is filed within the period of limitation.

19. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

20. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to

dispute of the unpaid operational debt.

21. The present application is complete and perusing the documents on records, we are of view that the Applicant is entitled to claim its dues,

establishing the default in payment of the operational debt. The application is complete as per the requirements of section 9 of the code and in the light

of above facts and records the present application is admitted.

22. The Applicant has named the Insolvency Resolution Professional, as Mr. Harish Taneja, with registration number IBBI/IPA-002/IP-N00088/2017-

18/10229 (email â?"harishtaneja78@gmail.com) as the Interim Resolution Professional who is hereby appointed as IRP, 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 should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 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.

23. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Harish Taneja to meet out

the expense 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 one week from the date of receipt of this order by the

Operational Creditor. The amount however 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 Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the

moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

25. In terms of the above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to

the Applicant, the Corporate Debtor as well as IRP above named, by the Registry.

Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.