

(2019) 09 NCLT CK 0077

In the National Company Law Appellate Tribunal

Case No : Company Petition No. IB-660/ND Of 2018

M/S Marmo Stone Pvt. Ltd.

APPELLANT

Vs

M/S Glow Softech Pvt. Ltd.

RESPONDENT

Date of Decision : 20-09-2019

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 6
Insolvency And Bankruptcy Code, 2016 — Section 8, 8(1), 9, 9(3)(c), 9(5), 14(1), 14(2), 14(3), 15, 17, 18, 20, 21

Citation : (2019) 09 NCLT CK 0077

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

Bench : Division Bench

Advocate : Ajit Sharma, Mayank Aggarwal, Manasvi Sharma, Nayati Bansal, Varun Kathwad

Judgement

S.No.,DATE OF PAYMENT,PAYMENT AMOUNT,MODE OF PAYMENT

1.,16.06.2017,"Rs.20,00,000/-",RTGS

2.,22.06.2017,"Rs.20,00,000/-",RTGS

3.,11.07.2017,"Rs.20,00,000/-",RTGS

4.,17.07.2017,"Rs.60,00,000/-",-

15. In *Innoventive Industries Ltd.(Supra)*, the Hon'ble Supreme Court held that pre-existing dispute is the dispute raised before demand",,,

notice or invoices was received by the *Corporate Debtor*. Any subsequent dispute raised while replying to the demand notice under Section,,,

8(1) cannot be taken into consideration to hold that there is a pre-existing

dispute.,,,

16. In *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited* 2017 SCC On Line SC 1154, Hon'ble Supreme Court held:",,,

"40. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention",,,

which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported,,,

by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing",,,

so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the",,,

dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the",,,

adjudicating authority has to reject the application.â?,,,

In the present case, there is no such dispute as pre-existing, albeit a hypothetical or illusory dispute has been raised by the 'Corporate Debtor'",,,

and the same appears to be a moonshine defense.,,,

17. The applicant has attached the copy of Bank statements issued by HDFC Bank Ltd. and also the certificate issued by the CA confirming the,,,

operational debt in the books of accounts of the applicant in compliance with the requirement of Section 9(3)(c) of the IBC 2016.,,,

18. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the",,,

default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application",,,

is admitted.,,,

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

20. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Dharm Veer",,,

Gupta having registration no. IBBI/IPA-001/IP-P01492/2018-2019/12342 and email address is dv Gupta@hotmail.com and contact number is,,,

9871777133, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of",,,

Sections 15,17,18,20 and 21 of the Code.",,,

21. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Dharm Veer Gupta to meet out the,,,

expenses 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 three days from the date of receipt of this order by the",,,

Operational Creditor. The amount however will 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.,,,

22. 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 Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the",,,

pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.",,,

23. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional",,,

and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update",,,

his website by updating the status of â??Corporate Debtorâ?? and specific mention regarding the admission of this application must be notified.,,,