(2020) 01 NCLT CK 0077

In the National Company Law Appellate Tribunal

Case No : Company Petition No. IB-62/ND Of 2019

M/S Vinayak Laser Tech Private Limited — APPELLANT

Vs

M/S Instapower Limited — RESPONDENT

Date of Decision : 14-01-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 8, 9
Limitation Act, 1963 — Article 137
Limitation Act, 1963 — Section 5
Insolvency And Bankruptcy Code (Application To Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency And Bankruptcy Code (Second Amendment) Act, 2018 — Section 238(A)

Citation : (2020) 01 NCLT CK 0077

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

Bench : Division Bench

Advocate : Anil Kumar Sharma, Mudit Gupta, Harsh Gattani

Final Decision : Dismissed

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 Code (Application to Adjudicating Authority) Rules, 2016 by, M/S Vinayak Laser Tech Private Limited (for brevity

â??Applicantâ??), through Mr. Vineet Sharma who is authorized vide board resolution dated 02.12.2018 with a prayer to initiate the Corporate

Insolvency Resolution Process against M/S Instapower Limited (for brevity â??Corporate Debtorâ??).

2. The Applicant is a private limited company incorporated under the provisions of the Companies Act, 1956 bearing CIN U28113DL2010PTC203659

and having its registered office at C-257, Sector-10, Noida Work Unit-1, C-201, Sector -10, Noida Work Unit-2 Plot No. 365, Udyog Kendra,

Extension-II, Greater Noida.

3. The Corporate Debtor is a limited company, incorporated under the provisions of Companies Act, 1956 on 13.08.1986 bearing CIN

U74899DL1986PLC025082 and having its registered office at S-19, Panchsila Park, New Delhi-110017 as per master data.

4. The Applicant submits that the corporate debtor had placed an order for Metal Fabrication Items, which were duly supplied to the corporate debtor

and received without any complaint by the corporate debtor. The applicant had raised invoice dated 10.08.2015 in respect of the delivery of the said

metal fabrication items to the corporate debtor totaling to Rs 48,85,800/- (Rupees Forty-Eight Lacs Eighty-Five Thousand Eight Hundred Only).

5. The Applicant submits that in spite of various reminders and requests through emails dated 09.08.2016, 13.04.2016, 01.03.2017, 13.06.2017 and

through telephonic conversation to clear the payments, the corporate debtor neither replied to the reminders nor made the payments.

6. The Applicant issued demand notice dated 27.11.2018 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 in Form 3 as

prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding total amount from the Corporate

Debtor of Rs 12,99,795/- (Rupees Twelve Lacs Ninety Nine Thousand Seven Hundred Ninety Five Only) out of which Rs 8,60,800/-being the

principal amount and Rs 4,38,995/- being an interest @24% p.a. The corporate debtor has replied to the said notice vide its letter dated 21.12.2018,

raising a dispute stating that the claim of the applicant has already been paid off and no dues are outstanding on part of the corporate debtor.

7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application to the Corporate Debtor as per the

postal receipt filed by the applicant.

8. It has further stated that as per the purchase order, the applicant had agreed that the entire work was to be completed within a period of 45 days

and in case of any delay, the applicant was liable to pay a penalty @2% p.m. on the total bill amount. The applicant had failed to complete the work on

time and therefore the corporate debtor had suffered huge losses. The Corporate

Debtor further submitted that the applicant has escalated the prices

of the invoices and it is asserted that once the purchase order has been accepted and the work had been carried out, the applicant cannot raise the

inflated invoice.

9. The Corporate Debtor has filed a reply stating that the claim of the applicant is time barred. It is further stated that since the claim of the applicant

is based on the invoice dated 10.08.2015, raised by the applicant, the limitation for filling the present claim is deemed to have commenced from the

date of the invoice i.e. from 10.08.2015, within 3 years which came to an end on 09.08.2018. The present application is filed on 21.12.2018 beyond the

limitation period of three years. It is thus stated that the present application is barred by limitation, under Article 137 of the Limitation Act, 1963 r/w

section 238(A) of I & B code (Amendment) Ordinance, 2018 dated 06.06.2018. As per the submissions made by the corporate debtor, the application

filed by the applicant is not maintainable in the eyes of law and liable to be dismissed in limine.

10. The Applicant in its rejoinder controverted the averments made in the reply and has submitted that the cost of material or commercial transaction

entered between the parties was increased and the corporate debtor had agreed upon the increased cost and had sent his consent vide email dated

28.04.2015 to the applicant. The Applicant had further denied to the allegations of the corporate debtor with respect to the delay in work carried out

by the applicant. No averments for limitation issue have been averred by the applicant.

11. The Applicant has not filed any application for condonation of delay under section 5 of Limitation Act while filing application under section 9 of the

IBC, 2016. Admittedly invoice for claim is of 10.08.2015 and the application is filed on 21.12.2018.

12. Therefore, the application filed under section 9 under I & B code, 2016 by the applicant is time barred. In this connection reliance is placed on the

judgement of the Honâ??ble Apex Court given in M/S B.K Educational Service Private Limited Vs M/S Parag Guptha & Associates in civil Appeal

No. 23988/2017, wherein it was held that the provision of the Limitation Act, particularly Article 137 of the Limitation Act, 1963, is attracted in relation

to the application filed under section 7 & 9 of the I & B Code, 2016.

13. In view of the above discussion the present application is barred by limitation. Therefore, the application stands rejected and is dismissed. A copy

of the order shall be communicated to the Applicant as well as the Corporate Debtor, by the Registry. A copy of the order shall be forwarded to IBBI

for its records.