
(2023) 07 NCLT CK 0041

In the National Company Law Tribunal

Case No : C.P. (IB)- 3217 (MB)/ 2018

Shri Karvir Nivasini Mahalaxmi Ispat Pvt. Ltd Vs Vistacore Infraprojects Pvt. Ltd ?

Date of Decision : 21-07-2023

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 9

Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 6

Citation : (2023) 07 NCLT CK 0041

Hon'ble Judges : Kuldip Kumar Kareer, Member (J); Shyam Babu Gautam, Member (T)

Bench : Division Bench

Advocate : Suyasha Kakarla

Final Decision : Dismissed

Judgement

Kuldip Kumar Kareer, Member Judicial

1. This Company Application is filed by Shri Karvir Nivasini Mahalaxmi Ispat Pvt. Ltd.. (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Vistacore Infraproject Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor. This Petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present Application is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs. 62,11,349/- (Rupees Sixty-Two Lakhs Eleven Thousand Three Hundred and Forty-Nine Only) together with interest of Rs. 10,50,884/- (Rupees Ten Lakhs Fifty Thousand Eight Hundred and Eighty-Four Only) aggregating to a sum of Rs.72,62,233/- (Rupees Seventy-Two Lakhs Sixty Two Thousand Two Hundred and Thirty Three Only).

3. The Operational Creditor claims that it supplied goods to the Corporate Debtor vide as many 11 invoices issued from 19.01.2017 to 27.01.2017 aggregating to Rs. 62,11,349/-.

4. The Operational Creditor has sent undated demand notice to the Corporate Debtor. The Operational Creditor has annexed invoices to the Application. Despite notice, the payment was not made by the Corporate Debtor, hence the Application.

5. The Corporate Debtor has not filed the reply. The present Company Application was listed on various occasions, but the Corporate Debtor has not been appearing.

FINDINGS

6. We have heard the submissions of the Counsel appearing for the Operational Creditor.

7. It is seen from the records that the demand notice sent by the Operational Creditors is undated. Also, the Demand Notice is required to be delivered to the Corporate Debtor at the registered office either by hand or through registered post with acknowledgement or electronic mail service. However, it is seen from the record, that the Operational Creditor has not furnished any evidence to prove that the Demand Notice was duly served to the Corporate Debtor at its registered address of the Corporate Debtor. The Operational Creditor has not attached any proof of delivery receipt nor any acknowledgement of the demand notice.

8. The service of the Demand notice u/s 8 of the Code is a sine qua non of an Application u/s 9 of the Code. Since the service of a proper Demand notice is not shown to have been served by the Applicant, the Application deserves to be dismissed on this ground alone. Apart from this, the invoices, as attached, are also not acknowledged by the Corporate Debtor. Further, the Statement of accounts as produced before this Tribunal appear to be incomplete and are not in a proper format of ledger nor backed with Balance Sheet.

9. In view of the above discussion, Company Petition 3217 of 2018 is hereby dismissed being without any merits.