

NATIONAL COMPANY LAW TRIBUNA, NEW DELHI
SPECIAL BENCH (Court-II)

(IB)-894(ND)2019

IN THE MATTER OF:

**Mr. Ram Niwas Gupta
Proprietor of Sh. Ram Niwas Gupta & Sons
Z-115/1, Loha Mandi
Naraina, New Delhi-110028**

...Operational Creditor

VERSUS

**M/s Palm Developers Private Ltd.
Plot No. 1, Ground Floor, Kilkori
Maharani Bagh
Delhi - 110065**

...Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 27.01.2020

CORAM:

DR. DEEPTI MUKESH, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Kapil Rustagi, Advocate
For the Respondent : Mr. Karan Rajpurohit, Advocate



JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Sh. Ram Niwas Gupta, Proprietor of Ram Niwas & Sons (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Palm Developers Private Limited (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s. Palm Developers Pvt. Ltd. is a Company incorporated on 23.08.2013 under the provisions of Companies Act, 2013 with CIN No. U45300DL2013PTC256843, having its registered Office at Plot No.1, Ground Floor, Kilkori, Maharani Bagh, Delhi-110065.

3. The Authorized Share Capital of the Respondent Company is Rs.1,00,000 and its Paid-up Share Capital is Rs.1,00,000 as per the Master Data of the Company annexed.

4. It is submitted by the Operational Creditor that it is engaged in the business of supplying Steel TMT Bars of various specifications to Construction and Infrastructure Industry. It is added by the Operational



Creditor that Corporate Debtor had approached the Operational Creditor for supply of Steel TMT Bars of various specifications.

5. It is submitted by the Operational Creditor that it had supplied steel TMT Bars as per the requirement of the Corporate Debtor on the terms and conditions agreed by the Parties. It is stated by the Operational Creditor that since August, 2017, the Corporate Debtor has not paid the outstanding payments.

6. It is stated by the Operational Creditor that the total liability of the Corporate Debtor comes to Rs.1,20,27,624.71, out of which Rs.93,64,284.20 is the Principal Amount, for which it had sent a Demand Notice dated 27.12.2018, under Section 8 of the IBC 2016 vide Speed Post at the Registered Office of the Corporate Debtor. It is further submitted by the Operational Creditor that the Corporate Debtor had not replied to the Demand Notice. The same has been averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016. Further, the Operational Creditor has annexed the Certificate issued by Kotak Mahindra Bank and IDBI Bank dated 02.03.2019 and 27.02.2019 respectively in compliance of Section 9(3)(c) of IBC 2016.

7. That on 04.06.2019, the Operational Creditor had withdrawn the Petition No. (IB)-894(ND)/2019 on the ground of settlement in terms of post-dated cheques of Rs.1,18,00,554 between the Parties. Liberty was,



however, granted by this Tribunal to the Operational Creditor to seek restoration of the present Petition in case any of the Cheques are dishonored.

8. On 07.10.2019, the Operational Creditor filed an Application under the Rule 11 of the NCLT Rules, 2016 for seeking restoration of the Present Petition on the ground of dishonoring of the Post-dated Cheques issued by the Corporate Debtor by virtue of settlement dated 01.08.2019. On 07.01.2020, this Bench allowed the Application to be restored to its original stage and number. Ld. Counsel for the Corporate Debtor appeared at this stage and did not dispute that the terms of compromise have not been adhered to. He further added that their reply dated 25.11.2019 to the main Petition is already on record.

9. The Operational Creditor has placed on record the Settlement Agreement dated 01.08.2019 executed between the Parties, as per which settlement was arrived for the total amount of Rs.1,18,00,554. The Operational Creditor has submitted that out of the total settlement amount, only Rs.40,00,000 was paid by the Corporate Debtor.

10. The Cheque dated 31.08.2019 bearing No. 214803 amounting to Rs.20,00,000 was dishonored. It is submitted by the Operational Creditor that the fact of the aforesaid cheque getting dishonored was duly



communicated to the Corporate Debtor, however, no steps were taken by the Corporate Debtor to cure the default.

11. The Corporate Debtor in its reply filed on 25.11.2019 has raised objection with regard to the maintainability of the present Petition on the ground that the Petition has been filed by Sole Proprietorship Firm, which is not a legal entity and is not covered under the definition of Person, under Section 3(23) of the IBC, 2016. The Petitioner, in response, has filed an Amended Memo of Parties on 22.01.2020 for curing this technical defect. The same is taken on record.

12. It is submitted by the Corporate Debtor that the Operational Creditor has added interest component to its claim and has contended that the interest component by the Operational Creditor can only be claimed if it is stipulated in the agreement.

13. The Corporate Debtor has, however, admitted its liability and averred in its reply dated 25.11.2019 the following :

“17. That the Respondent Company is looking forward to get new projects and more business opportunities, therefore, in coming few months the Respondent would be able make the entire outstanding payment to the Applicant herein. It is pertinent to mention that the Respondent has the intention to clear the outstanding amounts from April, 2020 onwards.”

14. After hearing submissions of both the Parties, this Bench is of the view that the Corporate Debtor had clearly acknowledged its liability (a) by entering into the settlement agreement dated 01.08.2019, and (b) in its reply dated 25.11.2019 wherein, the Corporate Debtor has clearly expressed its intention to clear the outstanding dues of the Operational Creditor from April, 2020 onwards. Further, the dishonoring of cheque dated 31.08.2019 bearing No. 218403, issued at the time of settlement amounts to default on the part of Corporate Debtor. The plea raised by the Corporate Debtor regarding the interest component added to the claim amount does not merit consideration as the default of principal amount itself is above Rs.1,00,000.

15. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoice, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :



- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor 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 corporate debtor.”

16. The Operational Creditor has not proposed any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Mr. Manoj Kumar Singh as an IRP, having Registration No. IBBI/IPA-003/IP-N00050/2017-18/10443 (Email:cma.msingh@gmail.com, Mobile No. 9818647829) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under the IBBI Regulations, 2016 are made within a period of one week from this Order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.



17. The Operation Creditor is directed to deposit Rs.2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

18. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Dr. Deepti Mukesh)
Member (J)