

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 3591/MB/2019

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

M/S SHILPA INTERIORS

Registered Office: 110, Navneelam Building

Dr. R.G Thadani Marg, Worli

Mumbai-400018, Maharashtra.

...Operational Creditor

V/s

WADHAWAN HOLDINGS PRIVATE LIMITED

[CIN- U74999MH2002PTC135601]

Registered Office: HDIL Tower, 4th Floor

Anant Kanekar Marg, Mumbai -400051

Maharashtra.

...Corporate Debtor

Reserved: 31.10.2023

Pronounced: 24.11.2023

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SMT. MADHU SINHA, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv Sanket Singh i/b Meraki Chambers.

Corporate Debtor: None (*ex parte*).

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. Background

- 1.1. This Application bearing CP (IB) No. 3591/MB/2019 was filed on 09.10.2019 under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016 (AA Rules) by M/s. Shilpa Interiors, the Operational Creditor (OC), through Mr. Ashok Surajmal Mistry, Partner of the OC for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Wadhawan Holdings Private Limited, the Corporate Debtor (CD).
- 1.2. The total amount of default involved is Rs. 1,51,35,072/- (One Crore Fifty-One Lakh Thirty-Five Thousand Seventy-Two Rupees) [Principal Amount- Rs. 1,02,74,246/- plus interest Rs. 48,60,826/- calculated at the rate of 18% per annum from 04.10.2016 to 31.07.2019] which is based on unpaid bills issued by the OC regarding the services provided to the CD by the OC for the execution of Carpentry and Labour Work.
- 1.3. The date of default as mentioned in Part IV of the Application is 04.10.2016 i.e., the date on which the OC had received the last payment from the CD.

2. Contentions of OC

2.1. The OC submits that it is engaged in the business of interior designing and the CD is carrying on the business of real estate. The OC had carried out carpentry and labour work for CD's project titled "Corporate Office", located at 4th Floor, HDIL Tower, AK Marg, Bandra (East), Mumbai-400051 (Project).

2.2. The OC submits that on 30.05.2014, the CD had issued a work order bearing No. PMG/Mumbai/WHPL/51/WO-4 (Work Order) to the OC for carrying out carpentry and labour work at the Project. The work order was duly signed and executed by the authorised representatives of both the parties and the OC duly provided all the requisite services as per the work order.

2.3. The amount payable by the CD to the OC arises on account of –

- a) The services provided by the OC against 7 running bills raised as per clause 8.01 of the work order for the period of 2014 - 2018 with GST Invoice No. 30/GST/2017-18 dated 20.03.2018, along with a statement of carpentry materials.
- b) The total amounts relating to the aforesaid bills fell due and payable by the CD to the OC was Rs.1,02,74,246/- (One Crore Two Lakh Seventy-Four Thousand Two Hundred and Forty-Six Rupees).
- c) Further, retention amount totaling to Rs. 8,10,044/ (Eight Lakh Ten Thousand Forty-Four Rupees) was held back by the CD till the expiry of defect liability period as per clause 9.01 of the work order which has now expired.

d) The CD made *ad hoc* payments of Rs. 45,40,000/- (Forty-Five Lakh Forty Thousand Rupees) on four occasions between the period of 2014-2016.

- 2.4. The OC contends that it constantly pursued the recovery of the said amounts from the due date by emails and other means.
- 2.5. The OC further submits that the CD, by an email dated 05.04.2019, acknowledged its financial crisis and inability to settle the outstanding amounts. The CD proposed offering a flat in the Project to resolve the matter. However, the amount as claimed by the OC in the Application remained unpaid.
- 2.6. In the light of these events, the OC issued a Demand Notice under Section 8 as per Form 3 of the IBC on 10.08.2019 to demand payment of the unpaid operational debt for which a default had occurred.
- 2.7. The CD replied to the aforementioned notice by a letter dated 19.08.2019, stating that the claim of the CD was barred by limitation, and it proposed a meeting to discuss settlement. In response, the OC addressed a letter dated 22.08.2019 refuting the allegations.
- 2.8. The OC further submits that it received the confirmation certificate dated 03.10.2019 from the Standard Chartered Bank which certified that no payment has been received from the accounts of the CD on or after 05.10.2016.

3. Contentions of CD

3.1. Since the CD was not available to present its case before us, we considered its reply dated 19.08.2019 to the Demand Notice, whereby denied every allegation and stated there seemed to be apparent errors in OC's claims informing the OC that they were in the process of compiling relevant documents to verify OC's claims, and would require some time to do the needful. It further replied that the OC's claims mentioned in the said Demand Notice were already time barred and therefore the CD was not liable to pay any sum to the OC. The CD invited the OC to approach them with all the statements and accounts for joint discussion, expressing their willingness to finalise/reconcile/settle the same. Hence, we observe that there had not been any specific denial of debt and liability of the CD due to the OC.

3.2. We, on 10.08.2023, directed the OC to serve notice to the CD by email, postal receipt and newspaper publication, in view of the non- appearance of the CD. In spite of serving the notice for hearing on 10.08.2021 and 16.03.2023 through registry, the CD did not care to appear before us or file its reply to the present Application. On account of CD's conduct during the entire proceedings, the CD's right to file reply was forfeited *vide* order dated 10.08.2023 and the CD was set *ex-parte vide* order dated 16.10.2023.

4. Analysis & Findings

4.1. The date of default mentioned by the OC in Part IV of the Application is 04.10.2016. The OC's Demand Notice dated 10.08.2019 also states the date of default as the same. The total amount of default has been shown as Rs. 1,51,35,072/-. Upon perusal of the documents available on record, we find that

the date of default for determining the maintainability of this Application is 04.10.2016, i.e., the date on which the OC received the last payment of Rs. 8,00,000/- from the CD. We find that the present Application was filed on 09.10.2019. That means the Application was filed after 5 days of the prescribed period of 3 years in terms of Article 137 of the Limitation Act, 1963 (Limitation Act). However, in its affidavit for condonation of delay, the OC has explained the reasons for delay of five days in filing the Application on the ground of court closure during Diwali vacation. We have verified the dates of Diwali vacation and found the same to be correct. Further, going by the law laid down by the Hon'ble Supreme Court in *Sabarmati Gas Limited Vs. Shah Alloys Limited*, (Civil Appeal No. 1669 of 2020, decided on 04.01.2023), it is clear that the limitation period for initiating CIRP under Section 9 of IBC is three years from the date of default as provided by Section 137 of the Limitation Act, 1963 and the same would commence from the date of default and is extended only by application of Section 5 of the Limitation Act which is incumbent on the Adjudicatory Authority to consider the claim for condonation of delay solely on 'sufficient cause' when once the proceeding concerned is found filed beyond the period of limitation. Hence, by holding that sufficient cause has been shown by the OC for the delay and that the explanation offered by the OC is satisfactory, we are inclined to condone the delay of five days, under Section 5 of the Limitation Act, in filing the present Application. Thus, we hold that the present Application is filed well within the limitation period under section 238A of the IBC r/w Section 5 and Article 137 of the Limitation Act.

4.2. We find that despite several opportunities granted by this Adjudicating Authority to the CD to file its reply to the Application and argue its case on

merits, it chose not to avail of the opportunities. In view of that the above, the CD was set *ex-parte* on 27.06.2023.

4.3. After perusal of the documents on record and the arguments advanced, this Bench is of the considered view that the dispute raised by the CD in its reply to the Demand Notice with respect to the debt being time barred and stating that the claim of the OC has some errors, is not proved by the CD with any document and merely making a statement that there is a dispute without bringing on record material documents to substantiate its case cannot cause prejudice to the right of the OC in initiating CIRP on account of non-payment of dues by the CD in furtherance of the services provided by the OC. The defence raised by CD in the Demand Notice is spurious and vexatious and raised with intention to evade the liability. The liability of the CD is proved already by its email dated 05.04.2019, wherein CD has acknowledged its financial crisis and inability to settle the outstanding amounts and offered a flat in the proposed project to resolve the matter. We find that this is nothing but an acknowledgement of debt by the CD.

4.4. We find that the debt against the services provided for Carpentry and Labour Work in furtherance of the work order issued, falls within the meaning of “operational debt” under Section 5(21) of the IBC.

4.5. On perusal of the documents submitted by the OC, it is clear that the operational debt of Rs. 1,51,35,072/- is due and payable by the CD to the OC in terms of Section 4 of the IBC, and thus, we have already found this Application under Section 9 of the IBC to be maintainable. The Application is complete and has been filed in the proper format. In view of the above, we find that the matter is fit for admission under Section 9(5)(i) of the IBC.

4.6. The OC has proposed the name of Mr. Ritesh Prakash Adatiya, a registered Insolvency Professional having Registration Number- IBBI/IPA-001/IP-P01334/2018-2019/12013 as the Interim Resolution Professional (IRP).

ORDER

This Application bearing C.P. (IB) No. 3591/MB/2019 under Section 9 of the IBC, filed by M/s. Shilpa Interiors, the OC, for initiating CIRP in respect of Wadhawan Holdings Private Limited, the CD is **Admitted**.

We further declare moratorium u/s 14 of IBC, with consequential directions as follows:

I. We prohibit-

- a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for the liquidation of the CD under section 33 of IBC, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Ritesh Prakash Adatiya, a registered Insolvency Professional having Registration Number- IBBI / IPA-001 / IP-P01334 / 2018-2019 / 12013 and Email ID- riteshadatiya01@gmail.com** as the Interim Resolution Professional (IRP), having valid Authorisation for Assignment up to 26.10.2024 to carry out the functions under the IBC, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow under the provisions of the IBC read with Rule 11 of the National Company Law Tribunal Rules, 2016

(NCLT Rules). The CD or any of its directors or officers shall not commit any offence under Chapter VII of Part II of the IBC.

- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the OC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors.
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this order to the OC, the CD and the IRP by way of email and WhatsApp, not later than two days from the date of this Order.
- X. C.P. (IB) No. 3591/MB/2019 to come up on 05.01.2024 for filing the periodical report.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
MADHU SINHA
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//