

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)**

Company Petition No. IB- 274/ND/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s ASHUTOSH STEELS PRIVATE LIMITED

...Applicant/Operational Creditor

VERSUS

M/s ROYAL PRESSING AND COMPONENTS PRIVATE LIMITED

...Respondent/ Respondent

Pronounced on: 15 .03.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant: Mr. Abhishek Anand, Adv.

Mr. Tushar Tyagi, Adv.

For the Respondent: Mr. Atul Aggarwal, Adv.

Mr. Anshul Chowdhary, Adv.

MEMO OF PARTIES

M/s ASHUTOSH STEELS PRIVATE LIMITED

Having its registered office at:

Plot No.8, Mujessar, Main Road,

Sector-24, Faridabad,

Haryana- 121005

...Applicant/ Operational Creditor

VERSUS

M/s ROYAL PRESSING AND COMPONENTS PVT. LTD

Having its registered office at:

C-9-C DDA Flats, Munirka,

New Delhi- 110048

...Respondent/ Respondent

ORDER

1. The present application is filed under Section 9 of 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

M/s Ashutosh Steels Pvt. Ltd. (for brevity 'Applicant') through its director Mr. Ram Kumar Rathi authorizing him to file present application vide Board resolution dated 10.01.2018, with a prayer to initiate the Corporate Insolvency process against M/s Royal Pressing and Components Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely M/s Ashutosh Steels Private Limited is a company incorporated under the provisions of Companies Act, 1956 with CIN No. U45201HR1989PTC036566, having its registered office at Plot No.8, Mujessar, Main Road, Sector-24, Faridabad, Haryana-121005.
3. The Respondent, the Respondent namely M/s Royal Pressing and Components Private Limited is a company incorporated on 26.05.2005 under the provisions of Companies Act, 1956 with CIN No. U28939DL2005PTC136736, having its registered office at C-9-C DDA Flats, Munirka, New Delhi- 110048. The Authorised Share Capital of the respondent company is Rs. 1,00,00,000/- and Paid Up Share Capital of the company is Rs. 43,00,000/- as per Master Data of the company.

4. It is the case of the applicant that Respondent company approached the applicant for purchase of various steel products. It was specifically agreed that upon receiving the goods by respondent and raising of invoices by applicant, the entire payment for such invoices shall be made in a timely manner. As per this arrangement, the Respondent placed various purchase orders for a supply of varieties of steel products. The Applicant supplied the goods as per the orders placed by Respondent and raised invoices against the said supply.
5. The said tax invoices were duly acknowledged by the Respondent and the part payments were made, last of which was made on 26.02.2016, the details of which are as follows:

SUMMARY OF DUES	
Invoices between 01.04. 2011 to last invoice on 16.02.2016	Rs. 41,90,449/-
Payments received between 01.04.2011 to Last Payment received on 26.02.2016	Rs. 23,13,155/-
Principal Outstanding	Rs. 19,29,881/-
Interest at the rate of 18% p.a. upto 11.01.2018 in respect of the unpaid bills	Rs. 14,24,254/-
TOTAL OUTSTANDING	Rs. 33,54,135/-

6. In spite of various requests made and reminders sent by the Applicant, the Respondent never bothered to reply.
7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 12.01.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs. 33,54,135/- (Rupees Thirty- Three Lakhs Fifty- Four Thousand One Hundred and Thirty- Five only) inclusive of interest within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
8. Despite the demand notice sent under Section 8 of the Code, the Respondent has failed to pay the amount demanded neither raised any notice of dispute nor replied to the said notice, hence this application, seeking to unfold the process of CIRP.
9. The applicant has stated that total debt due and payable is Rs. 33,54,135/- (Rupees Thirty- Three Lakhs Fifty- Four Thousand One Hundred and Thirty- Five only) which includes Principal

amount of Rs. 19,29,881/- and interest of Rs. 14,24,254/- @18% p.a. from 26.02.2016 to 11.01.2018.

10. Respondent has filed its reply and raised objections that there are several infirmities with regard to tally of statement of accounts between the Applicant and the Respondent and consequently it was discovered that some employees of the Respondent were issuing forged bills/ invoices/ documents on behalf of the Respondent and the said factum has been brought to the knowledge of the applicant many a times.

11. It is the case of the Respondent that whenever a delivery is made to the Respondent, the invoices were duly acknowledged by the 'store incharge' with stamp and his signature and most of the invoices are not acknowledged by the Respondent or any authorized person on its behalf. The principal amount of Rs. 19,29,881/- is imaginary and based on forged documents. Further there is no agreement regarding the payment of interest @18% in case of default. Therefore, the debt amount as mentioned in application is not payable by the Respondent.

Inspite of all these disputes, the Respondent has not brought forward any evidence in support of the said contention.

12. In rejoinder of the applicant dated 23.08.2018, the submissions made in the application are reiterated and controverting the assertions in the reply.

13. It is pertinent to note that the applicant has placed on record all the tax invoices, stating that the respondent itself had acknowledged the said invoices. There is no documentary evidence on record to show that any complaint was ever made or any proceedings were initiated by the respondent regarding malafide acts of its employees nor any correspondence is placed on record with respect to issuing fake/ bogus bills. The invoices were from 2011-2016 and not a single document from Respondent is produced with respect to such alleged fake bills issued by 'store incharge' or falsely issuing of bills to the Applicant. Once the debt shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details, material

particulars and evidence the fact of existence of a dispute cannot be sustained.

14. 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.
15. 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 defence which is mere

bluster. However, in doing so, the Court does not need to be satisfied that the defence 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.”

In the present case, there is no such dispute is pre-existing, albeit a hypothetical or illusory dispute has been raised by the ‘Corporate Debtor’ and the same is a moonshine defense.

16. The applicant has attached the copy of bank certificate issued by Indian Overseas Bank. and also Bank statements issued by Indian Overseas Bank in compliance with the requirement of Section 9(3)(c) of the IBC 2016.
17. 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.

18. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
19. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Shashi Sharma having registration no. IBBI/IPA-001/IP-P01261/2018-2019/12093 and email address is shashi@firmca.com and contact number is 9312078117, 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.
20. 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 proviso (a) to (d) 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 vogue.

21. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.
22. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)