

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB)-917(ND)2019

IN THE MATTER OF:

**Ved Contracts Private Limited
9-10, Vats Complex, U-158,
Shakarpur, Main Vikas Marg,
Delhi-110092**

...Operational Creditor

VERSUS

**RG Infra Build Private Limited
1601, RG Trade Tower, Plot No. N-7,
Netaji Subhash Place, Pitampura
New Delhi-110034**

...Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on: 25.09.2019

Quorum:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SHRI. L. N. GUPTA, HON'BLE MEMBER (T)**

PRESENT:

For the Petitioner : Mr. Amit Prabhat Deshpande, Advocate
For the Respondent : Mr. Sandeep Bhuraria & Mr. Aman Anand
Advocates

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M/s. Ved Contracts Pvt. Ltd. Vs. RG Infra Build Pvt. Ltd.

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ORDER

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

The present Petition 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. Ved Contracts Pvt. Ltd. (for brevity 'Operational Creditor') through its authorized representative Mr. Ved Prakash Upadhyay, who is duly authorized vide Board Resolution dated 11.02.2019, with a prayer to initiate the Corporate Insolvency process against M/s RG Infra Build Private Limited. (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, Ved Contracts Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U45201DL20001PTC113460 having its Registered office at 9-10, Vats Complex, U-158 Shakarpur, Main Vikas Marg, Delhi-110092
3. The Corporate Debtor namely, M/s RG Infra Build Private Limited is a Company incorporated on 15.04.2005 under the provisions of Companies Act, 2013 with CIN No. U70101DL2005PTC135052, having its Registered office at 1601, RG Trade Tower, Plot No. B7, Netaji Subhash Place, Pitampura, New Delhi-110034.



4. The Authorised Share Capital of the Respondent Company is Rs. 5,00,00,000 and Paid Up Share Capital of the Company is Rs. 4,55,50,000 as per Master Data of the Company annexed.

5 That the Petitioner had made the following averments in the Petition, which are reproduced below :

“Vide Agreement dated 16.01.2013 the Corporate Debtor awarded the construction work of Towers G & H of its project ‘RG Luxury Homes’ situated at Plot No. GH-07A, Sector-16B, Greater Noida (West), Uttar Pradesh along with Non-Tower Basement and Podium.

The corporate debtor further awarded to the operational creditor the “Civil and Structural Work for Non Tower Area (NTA)” by way of amendment dated 1.12.2015 to the already executed and under way Contract/Agreement dated 16.1.2013.

*The operation creditor completed the contract work awarded by the corporate debtor and vide letter dated 17.4.2017 submitted the final bill for the entire contract works along with a summary of bill and supporting documents (pages 1 to 1747 in three volumes). As per the said letter/final bill, a principal sum of **Rs. 6,35,43,991/-** [Rupees six crores thirty five lacs forty three thousand nine hundred ninety one only] (without late payment interest and GST) was due and payable by the corporate debtor.*

Vide e-mail dated 4.5.2017 the operational creditor again submitted the bills for work pertaining to Tower G & H along with supporting documents, index sheets, abstracts of quantities.

Vide email dated 2.6.2017, the corporate debtor acknowledged receipt of the final bills of the operational creditor.

The operational creditor vide email dated 3.6.2017 once again reiterated the submission of bills.

The operational creditor vide letter dated 24.09.2018, brought the defaults in deposit of statutory dues by the corporate debtor and also notified corporate debtor that the respective departments were

pressurizing the operational creditor for payment/clearance of the dues on account of taxes and interest thereon.

The operational creditor also sent a mail on 24.9.2018 to the corporate debtor containing the same content as of the letter dated 24.09.2017.

The operational creditor further sent an email on 13.12.2018 to the corporate debtor claiming an amount of Rs. 10,98,34,551.86 (including interest up till 31.10.2018 and GST as applicable) along with all the calculations, supporting documents, break-up of various amounts including interest and GST up till 31.10.2018.

*Summary of claims for **Rs. 11,42,71,149.68** (Rupees Eleven Crores Forty Two Lacs Seventy One Thousand One Hundred Forty Nine and Paise Sixty Eight only) due and payable by the corporate debtor to operational creditor up till 28.2.2019.”*

6. As per the Ledger Account Annexed by the Petitioner, the last payment received by them is of Rs. 5,00,000 on 04.07.2018.
7. It is stated by the Petitioner that since the Respondent Company had failed to liquidate its dues, it had sent a Demand Notice dated 09.03.2019, under Section 8 of IBC 2016 vide Registered Post and *Dasti* on 11.03.2019 at the Registered Office of the Respondent. They have added that the Respondent Company had given the receiving of the Demand Notice and the same is annexed at Page number 245 of the Petition.
8. That the Petitioner in their Affidavit, submitted in compliance of Section 9(3)(b) of IBC 2016, had made specific averment regarding non-receipt of Notice of any dispute issued by the Respondent. Further, the



Petitioner has annexed Certificate dated 05.04.2019 of Yes Bank in compliance of Section 9(3)(c) of IBC, 2016.

9. On entering appearance, the Respondent has filed its reply on 30.07.2019 and has raised certain objections, which are reproduced below :

“5. That further, the present application seeking to initiate Corporate Insolvency Resolution Process (CIRP), on behalf of the Applicant has been made before this Hon’ble Tribunal, on the misrepresented premise that the Respondent has not paid the Applicant, monies as per due and payable invoices/bills for the work done already done, finished and concluded by the Applicant. The said misplaced claim against monies has been made by Applicant, under the Clauses of the ‘Construction Agreement’ dated 16.01.2013, signed by the parties herein, and its subsequent amendment dated 01.12.2015. However, there has been major breach of terms of the ‘Construction Agreement’ dated 16.01.2013, by the Applicant, along with the fact that the Applicant/ Contractor abandoned the accepted works midway, without completing obligations undertaken.

6. Further, as per the clauses of the said ‘Construction Agreement’ dated 16.01.2013, the billing process was duly provided, which included joint inspection and measurements of works completed by appointed engineers of both the parties and parallel entries in the ‘Measurement Book’. The even in present Application, the Applicant has not attached any Bill in the proper format, accompanied by certificate issued by the Respondent. The extracts of alleged bills relied herein are neither generated under due process as per agreed contract, and neither have they been generated against any actual work done or completed. It is submitted that the Applicant has not filed the detailed Bills (if any) as no such validly executed Bills exist or are valid. The Applicant, vide the provisions of the IBC, 2016, has tried to arm-twist and extort monies out of the Respondent Company, and therefore this is misuse of law.

7. Moreover, such abandonment of works, breach of Construction Agreement, and delay of about 3 Years caused by the Applicant has brought the Respondent’s Project at standstill and delayed its completion. The Respondent Company is already in talks with new contractors, trying to estimate the cost of completion of works



abandoned by the Applicant. The said breach and delay by Applicant has subjected the Respondent Company to exorbitant financial losses, loss of reputation and loss of opportunity. And the Respondent reserves its rights to claim compensation through Counter-claim under appropriate legal proceedings.

8. *That therefore, the nature of disputes are such, which needs evidence and cross production of documents and proof to adjudicate upon the claim and counter-claim between parties. That the object or the intention behind the legislation herein. i.e. Insolvency and Bankruptcy Code, 2016 does not corresponding to that of the jurisdiction of Courts where evidences are recorded and issues are framed. For the very reason itself, the proper dispute mechanism, considering the requirement of evidences and proof involved herein, is an Arbitral Tribunal, provided for under the Construction Agreement, under Clause 27.*

9. *Without Prejudice, as the Respondent Company is facing huge monetary losses due to the act of abandonment of works undertaken as per agreement, the Respondent Company is still open to the possibility that, the Applicant/ Contractor resumes and finishes the pending work at hand, and the Respondent undertakes to pay all amounts legally due and payable, as per terms of the Construction Contract dated 16.01.2013.*

I. MISREPRESENTING FACTS WITH REFERENCE TO WORK UNDERTAKEN:

10. *It is submitted that the Applicant herein is a freelance contractor, who undertakes construction related work orders and contracts, from builders/ Developers, like the Respondent herein. Accordingly, the 'construction agreement' dated 16.01.2013 herein, encompassed various types of work. To simplify it, among other works, the work of the Applicant/ Contractor included:*

- a) Balcony fixing and furnishings.*
- b) Doors and window fixings and furnishings.*
- c) Plaster work on the complete building (29 Floors of 2 towers). (Interior and exterior).*
- d) Shuttering of beam, column, stair case etc.*
- e) Brick Work.*
- f) Lintel Repair and chipping.*
- g) (Malva Cleaning) Removal of garbage / waste/ extras from every unit apartment.*
- h) Hand-over of extra material left over (Steel Bars, cement, equipment etc.) to the Developer, as the material for*



construction were supposed to be supplied by the Developer itself.

That the details of all the work undertaken, and the quantities therein, were duly detailed in the Annexure 1 to the 'Construction Agreement' dated 16.01.2013.

11. *As is clear, the contract and the compensation agreed in total, are decided upon a consideration of easy work + complex and time-taking work. That is compensation payable to the Applicant/ Contractor, therefore, was an amount, duly agreed upon by the Applicant himself, taking into consideration, all the combined work and effort involved.*

12. *It is the case of the Respondent that the Applicant, has played fraud with the Respondent/Developer and misrepresented facts herein. The Applicant, undertook all works that consume lesser time, effort and investment on his part, whereas, the elaborate works of exterior plasters, construction waste management, malwa removal, repair work and final finishing, have all been left behind.*

13. *That the parties herein, on mutual trust and in commercial benevolence, worked on the basis of RA bills and payments (Running Account). But it has not been disclosed by the Applicant herein, that an amount of around Rs. 14,55,22,862.00 (Rupees Fourteen Crore, Fifty Five Lakh, Twenty Two Thousand, Eight Hundred and Sixty Two only), has already been paid to the Applicant/Contractor herein against the work done or undertaken to be done.*

A copy of the Ledger account of the Respondent, showing the payments made have been attached herewith as Annexure R/3.

14. *Further the said amount or Rs. 14,55,22,862.00, is over and above the mobilization advance of Rs. 56,95,320.00 (Rupees Fifty Six Lakh Ninety Five Thousand Three Hundred and Twenty only), paid by the Respondent to the Petitioner/Applicant, in terms of the 'Construction Agreement' dated 16.01.2013. A copy of the ledger showing payment of Mobilization advance to the Applicant is annexed herewith as Annexure R/4.*

II. DEFECTS IN WORKS UNDERTAKEN + BALANCE TASKS UNDER CONTRACT :

1. *That it is patently wrong on part of the Applicant to raise unilateral Bills and claim monies from the Respondent when works, as defined in Bills of Quantity (BOQ) attached as Annexure 1, and the*



Scope of Work, attached as Annexure II, to the agreement/contracted dated 16.01.2013, and not been completed and not concluded. That the said fact, that there are various balance/ pending works and incomplete tasks by the Applicant, has duly been accepted by the representative of the Applicant/Contractor on Floor-wise construction plan, depicting balance work and incomplete tasks by the Applicant, has duly been accepted by the Representatives of the Applicant/Contractor on Floor – Wise construction plans (29 Floors of Tower G, and other 29 Floors of Tower H), with acceptance of work-due by engineer of the Applicant, corresponding with list of balance-work details prepared by site-engineers of Respondent, and the relevant 'quality check report,..."

10. It is further submitted by the Respondent that the Petitioner has breached certain provisions of the contract. Further the Respondent has made the following observations regarding billing :

"16. Moreover, the Bills arbitrarily claimed by the Respondent is sans adjustment with regard to recoveries after permissible wastage of material (Clause 16€), steel reconciliation as per agreement, penalties with regard to massive delays on their part (Clause 1 (I)), recoveries with reference to defective works as per Clause 11 and Clause 12 of the Construction Agreement, along with adjustment of rent payable by Applicant to Respondent for equipment hired. That even in the letter dated 02.06.2017, annexed by the Applicant himself as Annexure P-10 to the Application, it has been clarified that list of all the remaining and unused material provided by Respondent (Steel, sad etc.) has to be returned and joint inventory has to be made. Therefore, is it wrong on part of the Applicant to claim that any valid and legally payable Bills were raised, which were not paid by the Respondent."

11. That the Petitioner has filed his written arguments on 09.09.2019 and has reiterated that after submission of the Final Bill, the Respondent had made a payment of Rs 10,00,000 on 09.08.2017 and Rs. 5,00,000 on 04.07.2018.



12. It is further submitted by the Petitioner that :

“Petitioner completed the contractual work and on 17.04.2017, Petitioner submitted Final Bill to the Respondent (at page 90). Clause 13 of the contract (at page 49) read as under:

“Defect liability period of the contract shall be 12 months from completion of work of different phases. The contractor during the said defect liability period shall be responsible to make good and remedy at his own expenses all defects pointed out by our (company) engineers.”

13. It is added by the Petitioner that the Respondent has not made any specific claim against the petitioner, nor any suit or arbitration proceedings are initiated for recovery.

14. Petitioner has further submitted that the Respondent had not replied to the E-mails, which were sent as a reminder for payment on 13.12.2018 and 12.01.2019. The Petitioner has also submitted that the Respondent has neither quantified its claim nor made any counter-claim. It was further submitted that the Respondent has not disputed the letters of demand made by the Petitioner from time to time which are at Page number 95,96,98,100,103 and 230 of the Petition.

15. After hearing submissions of both the parties, this Bench is of the view that the amount of default is above Rs. 1,00,000 for the invoices in respect of which no pre-existing dispute has been raised by the respondent. The Petition is, therefore, admitted in terms of Section 9(5) of the IB Code and 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 Securitisation 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 Smt. Sunita Umesh (Email Id: sunita.umesh@uccglobal.in) with IBBI Registration No. IBBI/IPA-001/IP-P00080/2017-18/10165 subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under 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.

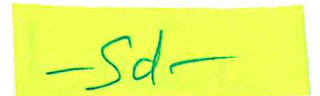


17. The Operational Creditor is directed to deposit Rs. 1,00,000 (One Lakh) only to meet the immediate expenses of the IRP, for which he shall be liable to account for.

18. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Petitioner, Respondent as well as to the IRP above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the IRP above named who is figuring in the list of resolution professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry of this Tribunal.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)