

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III**

C.P. No. IB-525/(ND)/2018

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

In the matter of:

J.P.C ENTERPRISES

Mr. Praveen Chauhan (Partner)
The Eastern Summit, 'A' 903
Plot No.56, Sector-15, CBD,
Belapur, Navi Mumbai-400614.

...Operational Creditor/Applicant

Versus

JAGSON INTERNATIONAL LIMITED,

Registered office at:
5 Krishnamenton Lane,
New Delhi-110011.

...Corporate Debtor/Respondent



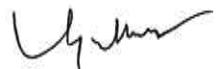
Coram:

**R. VARADHARAJAN,
Hon'ble Member (Judicial)**

**Dr. V.K. SUBBURAJ
Hon'ble Member (Technical)**

Counsel for Operational Creditor: Mr. Avdesh Bairwa, Advocate

Counsel for the Respondents: Mr. Nitin, Mr. Deepjyot Singh, Advocates



ORDER

Date: 11 .09.2018

1. This is an application filed by M/s JPC Enterprises (“the Applicant”) seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s. Jagson International Ltd. (“the Respondent”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) for the alleged default in settling the dues to an extent of Rs. 11,60,612 including interest at the rate of 18% for the services rendered by the Applicant. The transaction leading to this application is as follows:

- i. The Respondent engaged the Applicant for supply of service engineers for cutting dryer installation at Jagson Rig DS Fortune. The Respondent requested quotation of work from the Applicant on 15.12.2015 and the same was submitted through email. Accepting the quotation sent by the Applicant on 20.02.2015, the Respondent requested the Applicant to send his team for initiation of work. The Applicant completed the work and sent an invoice of Rs.7,20,000/- to the Respondent on 28.04.2015.
- ii. According to the Applicant, the Respondent booked an invoice of Rs.7,20,000/- for TDS and deposited Rs.12,816/-, therefore,

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accepting its liability to pay the bill. However, despite requests through multiple emails, the Respondent has not cleared the outstanding payment and hence the Applicant has approached this Tribunal for initiating action against the Respondent. The Applicant sent the demand notice under Section 8 of the Code to the Respondent on 22.03.2018, which was duly received by the Respondent company on 24.03.2018. According to the Applicant, the Respondent instead of clearing its debts asked the Applicant to provide the work order, work report and the work completion certificate, in reply to the demand notice.

2. Upon notice to the Respondent, it filed the reply to the application on 28.05.2018 and contends as follows:
 - i. The transaction as contained in the Invoice No. 003 dated 28.04.2015 is disputed by the Respondent as no such work/service as reflected in the said invoice was ever rendered by the Applicant to the Respondent. The concerned department initiated the process to comply with the statutory requirements and deposited payment towards TDS with the concerned authority. However, it was revealed that no such work was ever awarded to the Applicant nor any service was rendered by the

Applicant. Hence, the concerned invoice was not processed further.

- ii. On receipt of quotation by way of an email from an employee of M/s JPC Offshore Services (P) Ltd., the representative of the Respondent accepted the price and requested M/s JPC Offshore Service (P) Ltd., to send the respective team to a meeting on the next morning. The prices as quoted were found to be competitive. The job being highly technical in nature required specialized personnel to carry out the particular work. The team which was sent by M/s JPC Offshore Service (P) Ltd., were not capable of providing the service as required by the Respondent and accordingly no work as required was undertaken by M/s JPC Offshore Service (P) Ltd.
- iii. Though the Respondent deposited the TDS as per the routine procedures followed by a department of the Respondent, on due verification it was revealed that no such work was undertaken by the Applicant and there was no record available with the Respondent to reflect any work order was ever placed with the Applicant.
- iv. The Respondent cannot be compelled to pay the Applicant such amount which is seriously disputed and which is unjustified and unsubstantiated and contends the invoice as a bogus one. As the

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Applicant was trying to illegally extract and extort money from the Respondent company on the basis of a fabricated invoice, the Respondent company preferred a criminal complaint in a court of competent jurisdiction and the court has taken cognizance of the offences.

- v. The Respondent did not receive the communications as have been placed on record by the Applicant.

3. The Applicant filed his rejoinder to the reply given by the Respondent on 29.06.2018 in which it contends as follows:

- i. The Respondent received the demand notice on 23.03.2018 and replied via email on 30.03.2018 asking the Applicant for Work Order, Work Report and Work Completion Report. The email did not mention any pre-existing dispute with regards to the outstanding amount.
- ii. The Applicant sent the quotation vide its email dated 20.02.2015 to the Respondent and the same was duly accepted and confirmed by the Respondent by replying to the same email on 20.02.2015.
- iii. No dispute was raised by the Respondent either before the demand notice was issued to the Respondent or in the reply to the said demand notice. Despite the emails sent by the

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Applicant, the Respondent did not either reply to the emails or raise any dispute.

- iv. The workers of the Applicant were present at the site from 21.02.2015 till 16.03.2015 (24 working days) and details of the workers were communicated to the Respondent via email dated 19.03.2015. The Respondent never raised any dispute with regard to the work done in his reply dated 20.03.2015.
 - v. Without verifying the work done through inspection, the accounts department of the respondent cannot proceed to file the TDS.
 - vi. The partner of the Applicant is a director of the M/s JPC Offshore Services (P) Ltd., and hence the first quote with regards to the quotation was sent by the JPC Offshore's mail account. However, all other email interactions were in the name of the Applicant.
4. We have perused the documents filed by both the parties and heard the arguments made by the counsels. The main issue to be decided is whether the Applicant provided the services as required by the Respondent and whether dispute was raised by the Respondent prior to the issue of the Section 8 demand notice.

5. The Applicant has given proof of giving the quotation for the supply of engineers and enclosed the correspondence details between the Applicant and the Respondent in respect of supply of man power, procedure for arranging entry permits in the port area etc. In fact the Applicant company received a message from Shri Yadram Yadav of M/s Jagson International Ltd. requesting to send the team to the Mumbai port at 10 AM on 21.02.2015. All the above documents prove that the Respondent's officials corresponded with the Applicant and arranged for the man power to work in the rigs located in the deep sea area. Besides the Applicant has also enclosed the 26 AS Statement to prove that the Respondent has recovered the TDS of Rs.12,816/- for the booked invoice of Rs 7,20,000/- on 27.11.2015. The Applicant thus has clearly established that the service was provided by it.
6. Had the Respondent wanted to raise the dispute, nothing prevented them from doing so all this time, but it failed to do so even in the face of several reminders from the Applicant through emails to clear the outstanding payment. Instead the Respondent waited till the receipt of Section 8 of demand notice to raise the dispute.

7. Since the Applicant has established that there is a debt and the Respondent has defaulted in clearing the debt and the Respondent has not raised the dispute prior to the issue of the Section 8 of demand notice, the application is allowed and the Tribunal is inclined to initiate the CIRP against the Respondent company.
8. The Petitioner has proposed name of Shri S. Gopalakrishnan, an Insolvency Professional registered with ICSI Institute of Insolvency Professional having registration number IBBI/IPA-002/IP-N00151/2017-2018/10398, Mobile No.9870705437 as the Insolvency Professional and he is appointed as the Interim Resolution Professional and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed interim resolution professional. 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) and as extracted hereunder, shall follow in relation to the Corporate Debtor:
- (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;

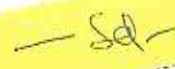


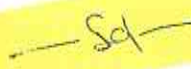
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action 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.
9. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:
- 2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - 3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
10. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:

- 4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

11. Based on the above terms, the application stands admitted in terms of Section 9(5) of the Code and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.


11/9/2018
(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


11.09.2018
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

Deepak