

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.184/BB/2020

U/s 9 of the IBC, 2016

R/w Rule 6 of I&B(AAA) Rules, 2016

Between:

M/s. Aster Technologies Pvt. Ltd.
A-2, Second Floor, Shopping Centre,
Naraina Industrial Area, Phase-II,
New Delhi - 110 028.

- Petitioner/Operational Creditor

And

**M/s.Solas Fire Safety Equipment
Private Limited**
No.2, 1st Main Road,
Vasanthnagar,
Bangalore - 560 052.

- Respondent/Corporate Debtor

Date of Order: 15th March, 2021

- Coram:**
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Vivekananda.S with
Theerthesh B.S

For the Respondent : Shri Ashok G.V

ORDER

Per:Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.184/BB/2020is filed by M/s. Aster Technologies Pvt. Ltd.('Petitioner/Operational Creditor') U/s 9 of the IBC, 2016, R/w Rule 6 of the I&B(AAA) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of



- M/s.SolasFire Safety Equipment Pvt. Ltd. ('Respondent/Corporate Debtor') on the ground that it has committed default for an amount of Rs.4,35,487.50/- (Rupees Four Lakh Thirty Five Thousand Four Hundred Eighty Seven and Fifty Paise Only) as on 09.11.2016.
2. Brief facts of this case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
- (1) M/s. Aster Technologies Pvt. Ltd. (hereinafter referred to as 'Petitioner/Operational Creditor') is incorporated under Companies Act, 1956 having CIN No. U74899DL1998PTC033500. *The Company is engaged in the business of manufacturing, supplying and trading of Commercial food service Equipment, Refrigeration equipment etc.*
 - (2) M/s.Solas Fire Safety Equipment Pvt. Ltd.(hereinafter referred to as 'Respondent/Corporate Debtor') is a Private Company limited by Shares incorporated on 18.07.2002 bearing CIN: U29299KA2002PTC030780. Its Authorized Capital is Rs.1,50,00,000/-and Paid-up share Capital is Rs.1,50,00,000/-.
 - (3) It is stated that the Corporate Debtor through its work order dated 27thMay 2016placed an order for installation of piranha, fire Suppression System at First Floor and NBS JLL on Ground Floor of M/s NETAPP, New Bangalore, site, Phase I, Building 1 located at Mahadevapura, Bangalore-560048. The Operational Creditor duly accepted the order dated 27.05.2016 and supplied the required materials and completed the work assigned to it. Subsequent to supply of materials and installation of piranha, fire Suppression System, an invoice bearing No. ASTER/2016-17/IC-113 dated 09.11.2016 for an amount of Rs.4,76,962.50/- was raised against the Corporate Debtor. The corporate duly accepted that invoice and also deduced the TDS @ of 10% amounting to Rs.41,475/-.

However, the Corporate Debtor failed to pay the balance amount of Rs.4,35,487.50/-.

- (4) In spite of several requests and reminders to make payment of the outstanding sum, the Corporate Debtor failed and neglected to make payment of the outstanding amount. Therefore, Operational Creditor was constrained to issue legal notice dated 24.02.2018 by calling upon the Corporate Debtor to pay outstanding amount. The Corporate Debtor, through its reply letter dated 13.03.2018, acknowledge the debt due and made assurance that payment will be cleared in next 30 days. However, till date the corporate debtor has not showed any interest in making the payment. Subsequently, on 04.10.2019, the Operational Creditor issued a notice to Corporate Debtor under Section 8 of the IBC 2016 through their counsel on the Registered Office of the Corporate Debtor. The Corporate Debtor almost after a span of two monthsgave an evasive reply to the said notice.
- (5) The Operational Creditor is small Company and because of the aforesaid event, the operational cycle was badly hit and they had to bring in additional funds from other sources to run the business. The Corporate Debtor is not willing to make the payment. Hence, the present Petition.
3. The Company Petition was earlier disposed by the Adjudicating Authority vide an order dated 09th September 2020 by directing the Respondent to settle the issue in question, failing which the Petitioner was granted liberty to file fresh Company Petition in accordance with law. Aggrieved by the order, the Petitioner preferred an appeal before the Hon'ble NCLAT bearing Company Appeal (AT) (Insolvency) No. 916 of 2020, which was disposed of by an order dated 05.01.2021 with the following directions:



“For the above reasons, we set aside the Impugned Order. We remand back the matter to the Adjudicating Authority. CP (IB) No.184/BB/2020 is restored to the file of Adjudicating Authority (NCLT Bengaluru Bench). The Adjudicating Authority is requested to consider the Application as per provisions of IBC and decide the same as per law, after hearing the parties. The Appellant and Respondent are directed to appear before the Adjudicating Authority on 27th January 2021.

The Appeal is disposed of accordingly.”

In pursuant to the above order, the case was listed for hearing on various dates viz., 29.01.2021, 05.02.2021 and on 11.03.2021.

4. The Respondent has filed its Statement of Objections on 05.02.2021 to the petition, by inter alia contending as follows:

(1) The Operational Creditor was required to not only to supply fire safety materials but also undertake installation and commissioning of the materials at the designated site. However, the Operational Creditor failed to undertake the installation and commissioning work in a manner required of it. As a result of the Operational Creditor's deficiencies in performing its work, the Respondent not only suffered penalty from the end customer but it also incurred expenses approximately Rs.6,40,000/- to undertake the commission and installation work which the Operational Creditor failed to perform. **The Respondent has appraised the Operational Creditor's deficiencies by way of correspondences dated 26.05.2018 and 13.12.2019.** Therefore, the Respondent is not liable to pay any money to the Operational Creditor let alone what is claimed in the above Petition.

- (2) The Respondent has bona fide disputes regarding the Operational Creditor's claims. Further the petition is barred by law and laches as it was filed only on 10.03.2020 well beyond the period of limitation. The Respondent also denied the acknowledgement of due and issue of notice dated 04.10.2019 under Section 8 of the IBC and that the same was served on the Corporate Debtor on 09.10.2019.
- (3) All bills have to be certified by the site engineer and they are not due to defects in the work of the Operational Creditor and the same was notified to the Operational Creditor by way of written correspondence dated 26.05.2018. Consequently, the reliance upon the letter of 13.03.2018 is legally untenable as the same neither qualifies as admission of liability nor acknowledgment of debt. The Operational Creditor has failed to produce any such certification of the site engineer itself goes to show that the claim is not tenable.
5. Heard Shri Vivekananda.S learned Counsel for the Petitioner, and Shri Ashok G.V Learned Counsel for the Respondent. We have carefully perused the pleadings of both Parties, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
6. Shri Vivekananda.S, Learned Counsel for the Petitioner, while reiterating the various averments made in the petition, as mentioned supra, has further submitted that the debt and default in question is not in dispute. He has also filed Rejoinder dated February, 21 by interalia explaining that the Petition is within limitation. It is not the case of the Respondent that they are Solvent Company to pay the outstanding amount. He has further submitted that the instant Application/Petition is filed in accordance with Law, a qualified



Insolvency Professional namely Shri Atiuttam Prasad Singh, with Registration No. IBBI/IPA-001/IP-P01914/2019-2020/12914, is suggested, as IRP, who has also filed written Communication in Form-2 dated 14.02.2020, by *inter-alia* declaring that he is a qualified Insolvency Professional; there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI. Therefore, he urged the Adjudicating Authority, to initiate CIRP as prayed for.

7. Shri Ashok G.V, Learned Counsel for the Respondent, while reiterating averments made in the Reply as briefly stated supra, has also filed written submission dated 26.02.2021 by *inter-alia* stating as follows:

- (1) The Petitioner, instead of producing certification has relied on the alleged letter dated 13.03.2018. On perusal of the said letter, the same was written in response to the letter of the Petitioner dated 24.02.2018 which the Petitioner deliberately suppressed while filing the above application. As per the letter dated 13.03.2018 when the work of the Petitioner as well as the invoice based on which the application was filed was examined and reviewed there were serious defects and shortcoming in the Petitioner work as a result of which the Respondent wrote the letter dated 26.05.2018 to the Petitioner highlighting the said defects. Therefore, the Respondent raised a bonafide dispute as regards the Petitioner's work almost one and half years prior to the demand notice relied upon by the Petitioner dated 04.10.2019.
- (2) The Petitioner has relied on Form 26AS stating TDS @ 10% has been deducted by the Respondent which shows acceptance of the debt. It is pertinent to note that the issuance of TDS

Certificate does not amount to acknowledgement of debt. The certificate does not refer to any amount of loan or liability by the Respondent infavour of the Petitioner. Therefore the reliance on TDS Deduction to evidence acknowledgement of invoice or debt is misplaced.

(3) In the letter dated 13.03.2018, there is no reference to either the invoice ASTER 2016-2017/IC0113 dated 09.11.2016 and thus it does not acknowledge the alleged debt claimed by the Operational Creditor under the said invoice under the said application. Further the Petition is barred by laches and limitation and he has relied as following judgements in support of the case:

- a) *M/s. Sumilon Polyester Pvt. Ltd. v/s Parikh Packaging Pvt. Limited in Company Appeal (Insolvency) No. 695 of 2020 dated 20.03.02020*
- b) *Raymond Constructions Co. India Pvt. Ltd. v/s Larsen & Toubro Limited, in CP No. 2424/IBC/NCLT/MB/MAH/2018 order dated 08.04.2019 passed by Hon'ble NCLT*
- c) *Jayraj Engineering Contractors v.s Neo Structo Constructions Pvt. Ltd. C.P No. 432/I & BP/2018 order dated 09.10.2018 passed by NCLT, Mumbai Bench*
- d) *ACTAL v/s India Infoline Limited Manu/MH/1768/2012 passed by Hon'ble High Court Bombay*
- e) *Taipack Limited and others v/s Ram Kishore Nagar Mal, 2007 (3) ARBLR 402 (Delhi) passed by Hon'ble High Court of Delhi*

8. As stated supra, the purchase order dated 27.05.2016 and consequential Retail Invoice (Installation) order dated 9th November, 2016. Deduction of TDS on amount to be paid to the Petitioner are

not in dispute. In terms of purchase order, payment has to be paid 100 % on installation of system as per actual installed at site. The Respondent vide their Reply dated 13.03.2018, addressed to Shri Shankar Singh, Advocate to the Petitioner, by interalia stating that due to some unavoidable circumstances, payments were delayed from their clients and funds flow was also not good since financial year ending, and promised to clear the dues within 30 days period. When the Respondent failed to honour their promise, the Petitioner has issued demand notice dated 4.10.2019 under the provisions of Code, which was duly acknowledged by the Respondent. The Respondent, vide their Reply dated 13.12.2019 by interalia stating though goods as ordered as per invoice were supplied but failed to install them in a proper and required manner and in time bound manner. As stated supra, work order is dated 27.05.2016 and after two years, the Respondent has addressed a letter dated 26th May, 2018, which is enclosed to their Reply as Annexure R 2 , where in by expressing unsatisfactory work, has finally expressed to resolve the issue and expressed to pay 50% of due and to close the matter. Having accepted the dues of Petitioner as early as on 13.03.2018, the Respondent is estopped from changing its stand and raise untenable grounds of unsatisfactory work, delay and laches etc. Therefore, it is to be held that there is no bonfide pre-existing dispute as alleged and it is untenable.

9. It is also relevant to point out here that the Adjudicating Authority in the earlier order dated 09th September 2020, (which was set-aside in Appeal) has interalia observed that the dispute raised by the Respondent do not constitute valid legal dispute and thus directed the Respondent to settle the issue. Even after remanding the matter, the Respondent is not willing to settle the issue though ample opportunity



was given to them. Moreover, the Respondent, even not pleaded that it is solvent Company so as to pay its liabilities.

10. As rightly contended by the Petitioner in their Rejoinder, cause of action firstly arose in the case on 09.11.2016, when the petitioner has raised the invoice bearing No. ASTER/2016-17/IC-113 for an amount of Rs. 4,76,962.50/- and thereafter even after acknowledging and accepting the invoice, and deducting the TDS therein, Respondent has not made payment even after passing of more than one year. On persistent follow up by the petitioner by issuing earlier legal notice dated 24.02.2018, ultimately, the Respondent has acknowledged the dues vide Reply dated 13.03.2018, and the present Petition is filed within period of limitation counting from accepting of debt.
11. We have carefully perused the judgements cited by the Respondent, and found that facts and circumstances of those cases and observations/ratio held in those cases are not applicable to the facts and circumstances of the present case. The instant Application is filed in accordance with law and a qualified Insolvency Professional is also suggested to appoint him as IRP, who is prima facie eligible to be appointed as such. Therefore, we are of the considered opinion that it is a fit case to admit by initiating CIRP by appointing IRP, and declaring moratorium etc., in respect of the Corporate Debtor.
12. In the result by exercising powers conferred on this Adjudicating Authority, under provisions of Section 9 and other extant provisions of the IBC, 2016, we hereby admitted **C.P.(IB)No.184/BB/2020** by initiating Corporate Insolvency Resolution Process (CIRP) in respect **Solas Fire Safety Equipment Private Limited** the Respondent/Corporate Debtor, with the following consequential directions:



- 1) **Shri. Atiuttam Prasad Singh** bearing Registration No. IBBI/IPA-001/IP-P01914/2012-20/12914, e-mail: atiuttamsingh@gmail.com, New Delhi, who is qualified Insolvency Professional, is hereby appointed as Insolvency Resolution Professional, in respect of the Respondent/Corporate Debtor namely Solas Fire Safety Equipment Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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;
 - e) 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;

- f) 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;
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Since the IRP chosen by the Petitioner is not found in the list of Insolvency Professionals empanelled by the IBBI for Bengaluru Bench for the duration January-June 2021, the Registry is directed to forward a copy of this order immediately to IBBI for his confirmation or otherwise of his appointment.
- 6) The Registry is directed to forward a copy of this order immediately to both the Parties and also IRP.
- 7) Post the case for report of IRP on **16th April, 2021**.


(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

BY


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL