

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AT NEW DELHI**

Date of Decision: 04th May, 2017

Company Petition No. (IB)-77(ND)/2017

In the matter of

Under Section 9 of Insolvency & Bankruptcy Code, 2016

M/s. Ashlay Infrastructure Pvt. Ltd.

...Petitioner

Versus

M/s. LDS Engineers Pvt. Ltd.

...Respondent

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MR. S.K.MOHAPATRA, MEMBER (TECHNICAL)

For Petitioner (s) Mr. Joseph Pookkatt, Advocate
Mr. Dhawesh Pahuja, Advocate

For Respondent(s) None

ORDER

The present petition has been filed under the provisions of Section 9 of Insolvency and Bankruptcy code, 2016 (hereinafter referred to as the Code), praying for initiation of Insolvency Resolution process against the Respondent /Corporate Debtor.

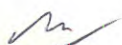
2. The Petitioner claims to be an Operational Creditor having provided services to the corporate debtor from time to time for which invoices had been raised. A work order dated 22.11.2013 was granted to them for hiring



of equipment namely, or SOILNEC Hydraulic Piling Rig Model SR-40. The corporate debtor is stated to be a sub-contractor of Senbo Engineering Ltd., who are retained to execute work for the Metro Railway Project at Dum Dum Kolkata. The operational creditor raised bills dated 09.01.2014, 01.02.2014 and 01.03.2014 for a total sum of Rs. 21,43,051/- in terms of the work order. It is submitted that against the said invoices, the corporate debtor has merely remitted a sum of Rs. 8,21,142/- on 8th January, 2014, leaving an outstanding balance of Rs. 13,05,151/-. In addition, the petitioner has also claimed interest at 20% on their outstanding dues. Despite notices, the corporate debtor has failed to liquidate its liability.

3. Though compliance of issuance of notice under Section 8 of the code has been made by the operational creditor which has not been responded to, we find that the claim made in the present case is barred by limitation. The last payment received by the operational creditor is dated 8th January, 2014, while the last invoice raised is dated 01.03.2014. Ld. Counsel for the operational creditor seeks to rely upon an e-mail dated 07.02.2014 sent by the corporate debtor acknowledging the debt and promising to pay them as and when they received their payments from Senbo Engineering Ltd. Ld. Counsel further submits that they have reasons to believe that the payment has been received by Corporate Debtor in February, 2015 and hence the limitation to repay the same would be calculated from the said period.

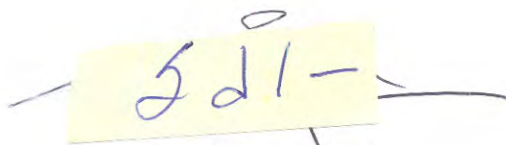
4. We are unable to appreciate the arguments advanced by the Ld. Counsel for Operational Creditor. The email dated 07.02.2014, no doubt acknowledges the debt, but extends the period of limitation by three years



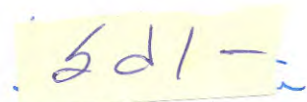
from that date. The argument that limitation would stand extended from the period when the corporate debtor received their own payments from Senbo Engineering Ltd. i.e. in February, 2015 is misconceived.

5. In view of the above, we find that this petition which was filed on 26.04.2017 is time barred and therefore not a legally recoverable debt.

6. The petition therefore fails on this account and is Rejected.



(S. K. Mohapatra)
Member Technical



(Ina Malhotra)
Member Judicial

(Sapna Bhatia)