

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

Company Petition No. IB-2552/ND/2019

(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:

CREATIVE INFRAHEIGHTS PVT. LTD.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

JBK DEVELOPERS PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON:17.08.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MEMO OF PARTIES

CREATIVE INFRAHEIGHTS PVT. LTD.

Registered office:

Office No. 111, First Floor,
Maharja Agrasen Shopping Complex,
LSC-7, Sector-9, Rohini
Delhi-110085

...Applicant/Operational Creditor

Versus

JBK DEVELOPERS PVT. LTD.

Registered office:

99, Patparganj,
Delhi-110091

Site Address:

Green Avenue Plot No.10,
Surajpur Site – C, Phase-2,
Greater Noida – (U.P.)

...Respondent/ Corporate Debtor

FOR THE APPLICANT	:Mr. Anshuj Dhingra, Adv. Ms. Shubhangda Singh, Adv.
FOR THE RESPONDENT	:Ms. Praveen Mahajan, Adv. Ms. Ruchi Mahajan, Adv. Mr. Siddharth Srivastava, Adv.

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Creative Infraheights Pvt. Ltd. (for brevity 'Applicant') through Mr. Krishna Kumar Verma, being the Director of the applicant firm, duly authorized vide Board Resolution dated 01.07.2019, with a prayer to initiate the Corporate Insolvency process against JBK Developers Pvt. Ltd. (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated on 13.07.2011 under the provision of Companies Act, 1956 bearing CIN No. U45400DL2011PTC222229 having its registered office at 111, First Floor, Maharaja Agrasen, Shopping Complex, LSC-7, Sector-9, Rohini, Delhi-110085. The authorized share capital of the company is Rs. 1,00,000/- and the paid up capital of the company is Rs.1,00,000/-. The applicant is a contractor to carry out works in the nature of under Ground Tank, Sewer Treatment Plant, Sewage & Drainage Civil Work at Green Avenue Plot No.10, Surajpur Site- C, Greater Noida, (U.P.).
3. The Corporate Debtor is a private limited Company incorporated on 23.07.2003 under Companies Act, 2013 having its registered office at -99, Patparganj, Delhi-110091 and site address on which the work was done under the guidelines given by the Corporate Debtor was at – Green Avenue Plot No. 10 ,Surajpur Site – C, Phase – 2. The authorized share capital of the company is Rs. 14,00,00,000/- and paid up capital of Rs. 3,76,38,000/-The corporate debtor is engaged in real estate business and has obtained approval from the concerned authority.

4. The applicant submits that on 03.01.2019 the applicant and corporate debtor entered into an agreement bearing no. WO/GA/2019-20, which was in the form of a work order for execution of certain work at the site of the corporate debtor. In terms of the said work order, the applicant was mandated to carry out work in the nature of under Ground Tank, Sewer Treatment Plant, Sewage & Drainage Civil Work at the corporate office of the corporate debtor. The work order was fixed for a total amount of Rs.17,59,68,574/- (Rupees Seventeen Crores Fifty Nine Lakh Sixty Eight). The copy of agreement dated 03.01.2019 has been annexed herein.
5. The applicant submitted that after execution of work order as per the agreement, three running account bills dated 29.03.2019, 30.03.2019 and 25.04.2019 ("hereinafter referred to as RA Bills") were raised to the corporate debtor for payment. The bills were duly verified by the project manager as per the measurement sheets of the applicants and after finalization of the amounts claimed there under, the said RA bills were duly received by the Authorized Signatory of the corporate debtor and approved for an amount of Rs.34,081,24,52/-. The said approved and signed bills along with measurement sheets have been annexed herein. Consequently, the applicant made several reminders through various mode of communication, for payment of the aforementioned amount payable.
6. The applicant issued a demand notice dated 11.09.2019 under Section 8 of the code calling upon the corporate debtor to pay the total outstanding amount of Rs.36,35,021.52/- The said notice was served upon the corporate office of the corporate debtor on 13.09.2019, the tracking report has been annexed herein. As per applicant no reply was received with respect to rising of dispute.

7. The Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which was duly delivered to the Corporate Debtor as per service affidavit. As per Form V, the total debt outstanding is 36,35,021.52/- the said amount includes contractual interest @ 18% per annum calculated for the date the bill becomes due till 11.09.2019.
8. The corporate debtor filed reply and raised the following objections:
 - a) The main objection raised by the corporate debtor is that with regards the maintainability of the present application as the work contract is neither the goods nor services as contemplated under Section 5(20) read with Section 5(21) of IBC nor the alleged debt is an operational debt.
 - b) Further, the corporate debtor has raised an objection that the applicant has not complied with mandatory requirement of serving the demand notice under Form-3 at the registered office of the applicant. Hence application is not maintainable
 - c) That the affidavit filed under Section 9(3)(b) of the I&B code is defective as the applicant has failed to state the date on which notice was served upon the corporate debtor.
 - d) The corporate debtor submits that no operational debt is due and outstanding as the applicant had never undertaken any work on the site as per the agreed terms vide agreement dated 03.01.2019. Further, due to which the corporate debtor has incurred loss amounting to Rs 10,00,00/-. Hence, the corporate debtor has claimed the said amount as compensation.
9. The applicant has filed rejoinder wherein it is contended that the corporate debtor has raised misleading contentions. It is further submitted that the applicant has filed the ledger accounts in support of its claims. The

applicant opposing the contention of corporate debtor that no work was done pursuant to the execution of work order and has placed on record the copy of measurement bill maintaining the account of work performed by the applicant. The applicant submits that an email dated 22.04.2019 has been placed on record, which shows the communication between the official of corporate debtor and the applicant, wherein discussion regarding the format of the bill and correct GSTIN no. is being made, which clearly shows that work had been performed by the applicant. The applicant has relied upon the order passed by the Hon'ble NCLAT, in the matter of "Alloysmin Industries Vs. Raman Casting Pvt. Ltd" Appeal (AT) Insolvency No.684/2018 in support of the contention that service of Section 8 notice at the corporate office of the corporate debtor shall be treated as valid service.

10. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and establish a pre-existing dispute by asserting that the services had never been performed. Further, the corporate debtor has also raised contentions with regards to maintainability of the present application and sufficient proof to substantiate the contentions have not been provided. No documentary evidence or correspondence is placed on record by the corporate debtor to support the contentions, that there is a pre-existing dispute and the said dispute was raised for the first time only after notice under Section 8 of IBC was issued. In reply the various objections raised are mere statements made by Corporate Debtor which has not been substantiated with any proof.
11. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. The objection raised with respect to maintainability of the application, there is no merit as on the issue of service on Section 8 notice is overruled by Hon'ble NCLAT. The corporate debtor claims to have asked for compensation from applicant but no

document has been annexed, on the contrary the applicant has placed on record the document with respect to execution of work, and invoices received by the corporate debtor but not objected the so-called dispute raised by the corporate debtor, as mere reply filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature. This leaves no doubt that the default has occurred for the payment of the operational debt for which the invoices were raised by the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down In “**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**”, the Hon’ble Supreme Court observed that *“It is clear , therefore that once the Operational creditor has filed an application, which is otherwise complete , the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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.”*

In view of the above observation it can be concluded that the dispute raised by the corporate debtor, is spurious, plainly frivolous and unable to categorize as genuine dispute as reproduced above. Hence, contention of the corporate debtor, of a pre existing dispute without any evidence and merit is a clear after thought to defeat the claim of the applicant.

12. The date of default is 11.09.2019 and the present application is filed on 09.10.2019. Hence the application is not time barred and filed within the period of limitation.
13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The Applicant has filed an affidavit in compliance of section 9(3)(b) which is placed on record.
15. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.
16. As a consequence of application being admitted and IRP name suggested by the applicant, this Bench appoints Mr. Pankaj Kumar Singhal , having email id: aprlegalindia@gmail.com, mobile no.9871357353 and registration no. IBBI/IPA-002/IP-N00532/2017-18/11561as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP has filed consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and made disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016.
17. 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 corporate debtor, prohibiting as per

proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

18. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Pankaj Kumar Singhal, to meet out the expenses and perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.
19. A copy of the order shall be communicated to the Applicant and the Corporate Debtor as well as to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

DR. DEEPTI MUKESH

MEMBER (J)