

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- V

IB No. 507/ND/2020

IN THE MATTER OF:

MR. NITIN GUPTA
P-3/42A, DLF CITY, PHASE-II,
GURUGRAM - 122 002, HARYANA

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

INTERNATIONAL LAND DEVELOPERS PRIVATE LIMITED,
B-418, NEW FRIENDS COLONY,
NEW DELHI - 110025

... RESPONDENT / CORPORATE DEBTOR

Order delivered on: 25.06.2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
MR. K.K. VOHRA, MEMBER (TECHNICAL)

For the Operational Creditor: Mr. Nitin Gupta
For the Corporate Debtor: None Present

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Petitioner/

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Operational Creditor, Mr. Nitin Gupta for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company International Land Developers Private Limited.

2. As per averments made in the petition, the Retainership Arrangement was executed between Operational Creditor and Corporate Debtor on 11.08.2018 as "Legal Advisor and Consultant" with the Operational Creditor for 1 (one) year, for a fixed yearly retainership fees of Rs.10,50,000/- and issued 12 post-dated cheques of Rs. 87,500/- each, i.e. Rs. 78,750/- less TDS of Rs. 8,750/- in favour of Operational Creditor. Further, Retainership Arrangement was executed between Operational Creditor and Corporate Debtor's group company on 01.11. 2018 as "Legal Advisor and Consultant" with Operational Creditor for 1 (one) year, for a fixed yearly retainership fees of Rs. 10,50,000/- and issued 12 post-dated cheques of Rs. 87,500/- each, i.e. Rs. 78,750/- less TDS of Rs. 8,750/- in favour of Operational Creditor. Further, Retainership Arrangement was executed between Operational Creditor and Corporate Debtor on 03.01.2019 as "Legal Advisor and Consultant" with Operational Creditor for 1 (one) year, for a fixed yearly retainership fees of Rs. 8,40,000/- and issued 12 post-dated cheques of Rs. 63,000/- each, i.e. Rs. 70,000/- less TDS of Rs. 7,000/- in favour of Operational Creditor.

3. Further, Out of the 36 cheques issued by Corporate Debtor and its group company, 10 cheques were honoured, 16 cheques became stale/ invalid as Corporate Debtor and its group company requested Operational Creditor not to present the cheques due to shortage of funds, 8 cheques



were dishonoured, and 2 cheques were expected to be dishonoured. On, 14.11.2019 and 18.11.2019, various notices were sent by the Operational Creditor to the Corporate Debtor Demanding payments along with interest. After receipt of the Notices, Corporate Debtor, its group company, their directors and authorised representatives approached and requested Operational Creditor to settle the matter amicably without initiating any litigation and without making any criminal complaint before the police/ court. Settlement Agreement dated 27th December 2019 was executed between Corporate Debtor, its group company, Mr. Alimuddin, Director of Corporate Debtor, Mr. Salman Jalaluddin Akbar, Director of Corporate Debtor and Operational Creditor to mutually settle the disputed matter amicably. For pending legal fees, various cheques were issued by Corporate Debtor's group company to Operational Creditor. Delay in payment on due date/ dishonour of cheques, amount payable by Corporate Debtor and its group company, was to be paid along with interest @2% per month for the first month and 2.5% per month there of till such time the payment is made. On 10.01.2020, first cheque no. 541510 issued by Corporate Debtor's group company in favour of Operational Creditor for Rs. 4,50,000/- dishonoured for the reason of "Funds Insufficient". Notice to Corporate Debtor's group company and its directors was sent on account of dishonour of cheque demanding Rs. 4,50,000/-.

4. On 28.01.2020, Second cheque no. 541511 issued by Corporate Debtor's group company in favour of Operational Creditor for Rs.



1,01,250/- was dishonoured for the reason of "Funds Insufficient" .First cheque no. 499007 issued by Corporate Debtor in favour of Operational Creditor for Rs. 3,48,750/- was dishonoured for the reason of "Funds Insufficient". Notice to Corporate Debtor's group company and its directors on account of dishonour of cheque demanding Rs. 1,01,250/. Further, Notice was sent to Corporate Debtor and its directors on account of dishonour of cheque demanding Rs. 3,48,750/-.

5. On 31.01.2020, Demand Notice was sent to Corporate Debtor's group company, along with the necessary annexures demanding payment under the provisions of Section 8 of the IBC for a sum of Rs. 5,61,314/- (Annexure P-20). Further, Demand Notice to Corporate Debtor, along with the necessary annexures demanding payment under the provisions of Section 8 of the IBC for a sum of Rs. 3,48,750/-(Annexure P-21).

6. However, Corporate Debtor failed to make payment of the total amount outstanding and in default. Till date, the Corporate Debtor has failed to make any payments and remains in default of Rs. 3,52,878/- along with interest accrued thereon. There are no disputes inter se the parties. The Corporate Debtor has failed to abide by the terms of the Settlement Agreement dated 27.12.2019.

7. We have heard the learned counsel appearing for the Petitioner and perused the averments made in the application and the documents enclosed with the same. In course of hearing, we find that the claim of the applicant is based on settlement agreement and on the basis of that the



petitioner claimed that since the respondent violated the terms and conditions of settlement and there is default in payment of the settlement amount, therefore, the petitioner filed the present application for initiation of CIRP for default in payment of operational debt. Therefore, we would like to consider at first whether the terms and condition of settlement agreement comes under the definition of Operational Debt.

8. Ld. Counsel for the Petitioner submitted that earlier the petitioner had rendered service and in lieu of that the Petitioner was entitled to get the defaulted amount but in the meantime there was a settlement between the parties and a settlement agreement dated 27.12.2019 was executed between the parties. He further submitted that he has attached the same at page no. 94 of the paper book. He further submitted that as per the settlement agreement cheques were given to the Petitioner which is mentioned at page nos. 96 & 97 of the paper book and when the petitioner presented the cheque, the two cheques were dishonoured. Thereafter, the petitioner sent a demand notice under Section 8 (1) of IBC and then filed this application.

9. In the light of that submissions, we have gone through the averments made in the application and the documents enclosed with the same and since the Petitioner's claim is based on a settlement agreement therefore, we would like to refer definition of operational debt as well as default and the same is quoted below:-

Section 5 (21) of IBC

“operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of



the ⁶[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

Section 3 (12) of IBC

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;

10. Mere plain reading of the above provisions shows that a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force is an operational debt and only default in respect of that operational debt a person can initiate CIRP under Section 9 of the IBC.

11. In the light of that facts when we shall consider the case in hand then we find that the settlement agreement on the basis of which the present application is filed by the applicant does not come under the definition of operational debt. At this juncture we would also like to refer a decision of NCLT Allahabad Bench in **“Company Petition (IB) No. 343/ALD/2018 in the matter of M/s Delhi Control Devices (P) Limited Vs. M/s Fedders Electric and Engineering Ltd.”** decided on 14.05.2019, in which the NCLT Allahabad bench held that *“unpaid instalment as per the settlement agreement cannot be treated as operational debt as per Section 5 (21) of IBC. The failure or breach of settlement agreement can’t be a ground to trigger CIRP against Corporate Debtor under the provision of IBC 2016 and remedy may lie elsewhere not necessarily before the Adjudicating Authority”.*



12. In the light of that decision and provision which we have referred in the aforementioned para, when we shall consider the case in hand then we are of the considered view that the case of the applicant is covered with the aforesaid decision, therefore, we are of the considered view that default of instalment of settlement agreement does not come within the definition of operational debt, hence, we are not inclined to issue notice rather we are of the view the present application is liable to be rejected. Accordingly, it is therefore ordered that the prayer of the applicant is hereby reject and the applicant stands **DISMISSED**.

sd/-

K. K. VOHRA

Member (T)

sd/-
25.06.2020

ABNI RANJAN KUMAR SINHA

Member (J)