IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-512/(ND)/2020

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:

Mr. DURGESH KUMAR SHARMA
Propreitor M/s Salasar Builders
23, Tirth Nagar, Shyam Nagar,
New Sanaganer Road,
Jaipuri- 302019

...Applicant/Operational Creditor

Versus

M/s NORTH RAJASTHAN BUILDWELL PVT. LTD.
Reg Office at:
Shop No. G-7, Ground floor,
Pankaj Tower-I, Community Centre,
Vikas Puri, New Delhi-1100

...Respondent/Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
DR. V.K. SUBBURAJ, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Chandra Shekhar Yadav, Advocate
Counsel for Respondent: Mr. Varun Sharma, Advocate

ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 18.12.2020

1. This is an application filed by the Applicant Mr. Durgesh Kumar Sharma proprietor of M/s Salasar Builders seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code') of the Respondent M/s North Rajasthan Buildwell Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 1,81,021/- (Rupees One Lakh Eighty-One thousand Twenty One rupees only) towards the material supplied and service provided by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

    i. The Applicant is engaged in the business of supplying various materials and civil works which

include digging of earth, M-sand Truck, Stone, Water tankers, Cement Bags etc.

ii. That the Respondent engaged the Applicant for supply of various materials and Civil Works including digging of earth, M-Sand Truck, Stone, Water Tankers, Cement Bags and Labour to the Corporate Debtor.

iii. The applicant submits that he provided the said materials, labours and carried out Civil Works and raised the Invoice No. 103 dated 21.04.2019 for Rs. 1,60,800/- for supply of various materials and Civil Works including digging of earth, M-Sand Truck, Stone, Water Tankers, Cement Bags and Labour to the Respondent.

iv. The applicant further submitted that he met the representative of Respondent for clearing the unpaid dues.

v. The Applicant issued Demand Notice in the form of Form-3 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated

31.12.2019 calling upon the Respondent to clear the amount of default i.e. Rs. 1,81,021/-. The Respondent upon receipt of the Demand Notice vide E-mail dated 31.12.2019 duly acknowledged the receiving of the Demand Notice.

vi. The applicant submits that in pursuance of the demand notice dated 31.12.2019, the respondent did not submit any reply to the applicant.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Respondent filed its reply Affidavit on behalf of the Respondent stating that:

i. The application has been perused by the Respondent and submitted that the job of digging and supply of construction material was assigned to the applicant. The respondent further submits in the reply that invoice bearing No. 103 dated 21.04.2019 was raised by the applicant in lieu of the materials supplied and the respondent has all the good intentions to make the payment of the aforesaid due amount.

ii. That non-payment of dues of the applicant by respondent are not intentional or deliberate on the part of the Respondent and it has arisen due to lack of requisite finances.

iii. The respondent submits that he is in negotiation with new financers for his project and once the finances are arranged the respondent would make the payment to the applicant.

3. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.

4. On perusal of Application as well as the documents enclosed, the operational Creditor has established the existence of debt and default on the part of the Corporate Debtor and the Corporate Debtor while availing the opportunity provided by this Tribunal has furnished its reply clearly stating about the financial stress due to which the outstanding debt of the Operational creditor has not been cleared, and did not raise any dispute against it.

5. The petitioner has filed the present petition before this Hon'ble Tribunal on 12.02.2020 and as such the Notification effected in increasing the threshold limit from Rupees one lakh to Rupees one crore as on and from 24.03.2020 does not apply to the present case. further the date of default as mentioned in Part IV of the application is stated to be 21.04.2019 and since the default has arisen much prior to the 25.03.2020, section 10A of IBC, 2016 will not be enforced in this matter. In view of the above situation, this Adjudicating Authority **admits** this petition and initiates CIRP on the Respondent with immediate effect.

6. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

> "(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
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> (b) Transferring, encumbering, alienating or disposing of by the Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

4. The interim resolution professional ("IRP") proposed by the Applicant is Mr. Shailesh Dayal, Address: 2/6A, LGF, Jungpura- A, New Delhi- 110014. Reg. No: IBBI/IPA-002/IP-N00834/2019-20/12630 and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

-Sd/-

(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd/-

(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

RDS