

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 582(ND)/2020

IN THE MATTER OF:

SPARTA GLOBAL PROJECTS PVT. LTD.

B -6, SECTOR 44

NOIDA

GAUTAM BUDDHA NAGAR

UTTAR PRADESH - 201301

...OPERATIONAL CREDITOR

VERSUS

KUGD SERVICES PRIVATE LIMITED

7, KHULLAR FARMS

MANDI ROAD

MEHRAULI

NEW DELHI - 110030

.....CORPORATE DEBTOR

SECTION: U/S 9 OF IBC, 2016

Order Delivered on: 21.02.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Applicant/Operational Creditor: Adv. Rajiv Virmani, Adv. Karan Valecha, Adv. Anuj Malhotra

For the Respondent/Corporate Debtor: None Present



ORDER

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

The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows: -

- i. That the Operational Creditor was approached by the Corporate Debtor for availing services related to manpower supply. Pursuant to the same, the parties entered into a service agreement on 24.11.2016.
- ii. That as per the service agreement, the Operational Creditor would provide the service and accordingly, raise the invoices to the Corporate Debtor. Furthermore, Annexure E ("Schedule of Fee") of the Service Agreement stated that payment has to be provided within 30 days from the date of invoice and in case of a delay beyond 30 days from the date of the invoice, the Corporate Debtor would be liable to pay an interest amount calculated at 18% per annum.
- iii. That the Operational Creditor provided services between the months of January, 2017 to January, 2018 and raised 13 invoices for a total amount of Rs. 96,78,791/-. From May, 2017, the Corporate Debtor defaulted in making payments.
- iv. That, till date, only has made part payment of Rs. 75,61,704/- out of Rs. 96,78,791/- and last payment was being made on 19.07.2018. Accordingly, an amount of Rs. 21,17,087/- along with an accrued interest of Rs. 7,02,894/- (till 31.07.2019) remains unpaid.
- v. The Operational Debt fell due on 07.06.2017, 09.07.2017, 06.08.2017, 07.12.2017, 11.01.2018, & 11.02.2018 considering



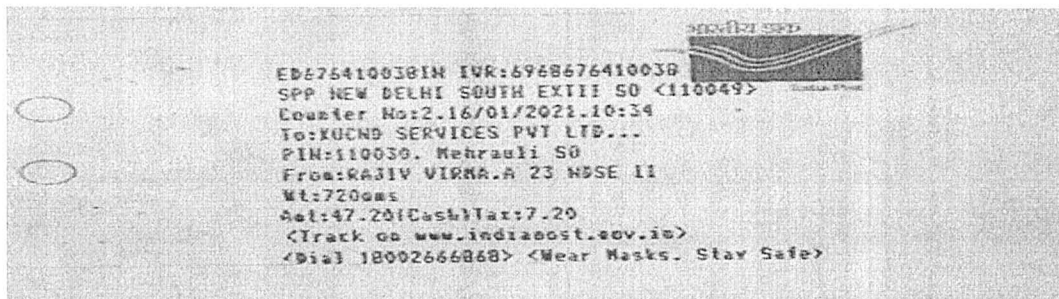
payment time of maximum 30 days as per the invoices issued by the Operational Creditor.

- vi. That a Demand Notice dt. 07.08.2019 u/s 8 of the Code was issued to the Corporate Debtor through speed post on 08.08.2019 and through speed post and email on 26.12.2019. No reply has been given disputing the unpaid debt.

3. That, vide order dt. 24.12.2021, the matter was proceeded ex-parte.

4. We have heard the Ld. Counsel appearing for the Applicant and perused the averments made in the application. We notice that vide order dated 24.12.2021, the CD was proceeded for ex-parte. We further notice that by filing the affidavit of service, the applicant submitted that the notice sent through the post has been returned back un-served. But the notice sent on the two mails one of them was delivered and one was bounced back, therefore, vide order dated 16.02.2021, a direction was given to the Registry to issue fresh notice. We further notice that vide order dated 01.11.2021, the petitioner was directed to take steps for substituted service by publishing the notice in two newspapers. Accordingly, notice was duly published in two newspapers one in "The Hindu" and the other in "Rashtriya Sahara" on 17.11.2021. The affidavit of service was filed on 22.11.2021.

5. At this juncture, we would like to refer to the affidavit of service filed on 20.01.2021. The documents filed by the applicant in support of service of notice, in compliance of the order passed by this Adjudicating Authority at Page 3 to 7 of the application and the same are reproduced below:-



K

You are here Home >> Track Consignment

Track Consignment

Quick help

* Indicates a required field.

* Consignment Number

ED676410041IN



Track More

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location
New Delhi South Extnl SO	16/01/2021 10:34:03	110030	47.20	Speed Post Parcel Domestic	Mehrauli SO

Event Details For : ED676410041IN





Current Status : Out for Delivery

Date	Time	Office	Event
20/01/2021	09:48:32	Andrewsganj SO	Out for Delivery
20/01/2021	08:52:35	Andrewsganj SO	Item Received
19/01/2021	23:13:17	NSH Delhi	Item Received
19/01/2021	16:47:16	Mehrauli SO	Item Dispatched
19/01/2021	11:16:24	Mehrauli SO	Item Bagged
18/01/2021	15:59:28	Mehrauli SO	Item Returned INSUFFICIENT ADDRESS
18/01/2021	10:05:11	Mehrauli SO	Out for Delivery
18/01/2021	09:00:08	Mehrauli SO	Item Received
18/01/2021	04:45:37	NSH Delhi	Item Dispatched
18/01/2021	00:00:00	NSH Delhi	Item Bagged
17/01/2021	00:34:40	NSH Delhi	Item Received
16/01/2021	14:26:09	New Delhi South Extnl SO	Item Dispatched
16/01/2021	14:22:10	New Delhi South Extnl SO	Item Bagged
16/01/2021	10:34:03	New Delhi South Extnl SO	Item Booked

 Trackon Couriers Pvt. Limited A-64, Naraina Industrial Area, Phase-4, New Delhi-110028 CIN : U63013DL2005PTC113871		MOE : 044801911 Web : www.trackon.in  1413320853
CONSIGNOR Prasidh Vikram A-23	CONSIGNEE KUNDSEBARKES (P) L-70 MID-110030	DESTINATION BOX / N.O.K WEIGHT AIR / SURFACE COURIER CHARGES RISK SURCHARGE GST TOTAL CASH <input type="checkbox"/> CREDIT <input type="checkbox"/>
RECEIVER'S COPY Received by TCPL 16/1/2021 DATE TIME Signature	I warrant that all details given herein are true and correct. I accept the terms of carriage. Received Place/Person(s) in order & good Condition Name (Please write your name) Signature	Signature CASH <input type="checkbox"/> CREDIT <input type="checkbox"/>

FOR YOUR PERSONAL AND VALUABLE ITEMS, USE OUR EXPRESS SERVICE - PRIME TRACK.

Consignment No: 1413320853

DATE	Transaction Number	Location	imgae	Event
18/01/2021 11:26	ODELVKH2101180019	<u>DELVKH-VASANT</u> <u>KUNJ HUB, DELHI</u>		DELIVERY MANIFEST PREPARED FOR SULTANPUR II
18/01/2021 09:15	BD30819504	<u>DELVKH-VASANT</u> <u>KUNJ HUB, DELHI</u>		ARRIVED AT DESTINATION
16/01/2021 23:24	BD30819504	<u>DELOKH-SOUTH</u> <u>DELHI HUB, DELHI</u>		PROCESSING BAG FOR VASANT KUNJ HUB
16/01/2021 22:24	1413320853	<u>DELOKH-SOUTH</u> <u>DELHI HUB, DELHI</u>		S/MENT BOOKED

6. On perusal of the same we notice that on the basis of these documents, it is seen that the notice sent through post or courier were not served upon the respondent. It is also the contention of the applicant that the notice sent on one of the mail Id has not been served. Therefore, before considering the submissions of the applicant we would like to consider this aspect, whether the demand notice was duly delivered upon the Corporate Debtor or not.

7. At this juncture, we would like to refer to the averments made at Para 12 of the application and the same is reproduced below:-

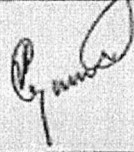


A Demand Notice dated 07.08.2019 showing Operational Debt of Rs. 21,17,087/- was sent by speed-post on 08.08.2019 vide receipt No. EH555364560IN and was again re-served through speed-post on 26.12.2019 vide receipt No. ED763766954IN as well as e-mail on 26.12.2019 to KUGD Services Pvt. Ltd. / Corporate Debtor. The Speed Post package on both occasion was returned undelivered with the comment 'left' however the same was delivered on 26.12.2019 through e-mail. It is pertinent to mentioned here that the Corporate Debtor was served on the registered address as mentioned in the Company Master data available on the website of Ministry of Corporate Affairs.

Ten (10) days post the delivery Demand Notice expired on 06.01.2020, pursuant to which the Operational Creditor has neither received any reply nor any payment towards the Operational Debt of Rs. 28,19,981/- (including interest) and further interest accruing. Therefore, the Operational Creditor is entitled to initiate the Corporate Insolvency Resolution Process of KUGD Services Private Limited.

Sparta Global Projects Pvt. Ltd./Operational Creditor has paid the requisite fee for this Application by way of a Demand Draft

Yours sincerely,

Signature of the person authorised to act on behalf of the Financial Creditor	
Name in block letters	ARJUN AGARWAL
Position with or in relation to the Financial Creditor	ADVOCATE
Address of person signing	A-23, LGF SOUTH EX. II NEW DELHI 110049

8. On perusal of the averments made in the application, we observe that the demand notice sent through post was returned undelivered with a note that "addressee left". The contention of the applicant is that the demand notice sent through E-mail registered in the master data, available on the website of the Ministry of Corporate Affairs was delivered on 26.12.2019, therefore, at this juncture, we would like to refer Rule 5 of the Adjudicating Authority Rules and the same is quoted below:-



Demand notice by operational creditor.—

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.-

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.

9. A bare perusal of the Rule shows that Rule 5 (2) (3) referred to the provision for service of Demand Notice, by electronic mail and it is specifically mentioned that the E-mail must be delivered either to a Whole Time Director or Designated Partner or Key Managerial Person of the Corporate Debtor. Here in case in hand, the applicant has failed to convince the Bench that the E-mail which was sent is of the E-mail ID of either of three persons named in Rule 5(2)(3) of the Adjudicating Rules. We further notice that even the applicant has not placed on record the master data of the Corporate Debtor to establish this fact. So, under such circumstances, we are of the considered view that the applicant has failed to establish this fact that the demand notice was duly delivered upon the Corporate Debtor before filing an application under Section 9 of IBC.

10. It is pertinent to mention this fact that it is a peculiar case, in which neither the demand notice through the post was served nor the notice sent by the order of this Adjudicating Authority was served through post and that is



the reason, this Adjudicating Authority directed to publish the notice in the newspaper.

11. For the reasons discussed above, we are of the considered view that the applicant has failed to establish this fact that the demand notice was duly delivered upon the respondent before filing the application under Section 9 IBC, 2016.

12. In sequel to the above, in our considered view, the delivery of demand notice is a condition precedent for filing an application under Section 9 of IBC, 2016. Since the applicant has failed to comply this condition, therefore, we are of the considered view that the present application is not maintainable under the provision of law, therefore, the same is liable to be dismissed.

13. **Accordingly, the present application is dismissed being not maintainable. However, the applicant is at liberty to file a proper application after delivering the demand notice in accordance with the provision of law.**

Sd/-

21/2/2022

(AVINASH K. SRIVASTAVA)
Member (T)

Sd/-

21/02/2022

(ABNI RANJAN KUMAR SINHA)
Member (J)