



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.3

TP 178 of 2019 [CP(IB) 490 of 2019]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Sumit Traders

.....Applicant

V/s

Karan Development Services Pvt Ltd

.....Respondent

Order delivered on 13/11/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

A. Bhadauria

-sd-

**CHITRA RAM HANKARE
MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

TP 178 OF 2019 [CP(IB) 490 OF 2019]

In the Matter of:

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

Sumit Traders

Proprietor Amit Kabra HUF

22/15, Yashwant Niwas Road
Indore

**Operational Creditor/
Applicant**

Versus

**Karan Development Services Private
Limited**

Bhagawati Palace
Pustak Bazar
Bhind-477001

**Corporate Debtor/
Respondent**

Order pronounced on: 13.11.2024

**Coram: Hon'ble Mrs. Chitra Hankare, Member (J)
Hon'ble Kaushalendra Kumar Singh, Member (T)**

Present:

For the Applicant: Ld. Adv. Mr. Manoj Munshi

For the Respondent: Ld. Adv. Mr. Praveen N. Surange

JUDGMENT

1. This petition was filed on 24.04.2019 by M/s Sumit Traders which is a proprietary concern of Amit Kabra HUF (Applicant). The petition is filed by Shri Amit Kabra as Karta of the said HUF under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Karan Development Services Private Limited (Respondent/Corporate Debtor). The default amount stated by the applicant is Rs.1,21,26,242/- [Rs. 38,94,308/- Principal



Amount + Rs. 53,28,170/- Interest Amount as on 07.12.2016 + Rs. 29,03,764/- interest for default in payment of agreed upon dues from 07.12.2016 till 31.12.2018]. The date of default has not been explicitly mentioned rather as stated in Part IV of the petition, the date of default is to be as per terms of the settlement agreement dated 07.12.2016.

2. The applicant is a trader in cement and the respondent is a company engaged in civil construction of buildings and roads. The respondent required the cement to be used in the execution of the construction projects.

3. The averments made by the applicant in its petition and as presented/argued by the learned counsel for the applicant are summarized hereunder:

i. The applicant supplied cement to the respondent during the year 2010 to 2012 for which various invoices amounting to Rs.38,94,308/- were raised by the applicant against the respondent. The applicant was into business transactions with the respondent through its other group concerns also (namely Sumit Trading Agency & Shruti Logistics). The other concern of the applicant also supplied materials to the respondent for which invoices were raised by the respective concerns. However, the respondent failed to make payment of the dues of all the said group concerns of the applicant including the dues of the applicant.

ii. The applicant and the respondent entered into an agreement dated 30.06.2014 wherein the respondent agreed to sale its land against the outstanding dues of



various group concerns (Kabra group) including the dues of the applicant and thereby to adjust the outstanding dues towards the cost of the land. Subsequently, the applicant and the respondent entered into another agreement dated 07.12.2016 whereby in the event of non-execution of said sale agreement dated 30.06.2014, the respondent agreed to pay in all together with interest Rs.1,75,00,000/- towards the outstanding dues of the three concerns of Kabra group including the dues of Rs.92,22,478/- (inclusive of interest) of the applicant. For ready reference a table depicting the amount payable in terms of Agreement dated 07.12.2016 including interest to the three concerns of the Kabra group (including the applicant) is reproduced as under:

Particulars		Sumit Trading Agency	Sumit Traders (applicant herein)	Shruti Logistics	Total
Original Amount of Debt	A	2231228	3894308	1264060	7389596
Agreed up on Interest and Losses as at 07.12.2016	B	3052754	5328170	1729480	10110404
Total agreed amount of dues as at 07.12.2016	C=(A+B)	5283982	9222478	2993540	17500000
Amount Received *	D	1799954	0	1000000	2799954
Unpaid amount of Dues	E=(C-D)	3484028	9222478	1993540	14700046
Interest for Default in payment of agreed upon dues as at 07.02.2016	F	884690	2903764	501204	4289657



till 31.12.2018					
Total	G=(E+F)	4368717	12126242	2494744	18989703

iii. The respondent has acknowledged the debt of the applicant and its group concern in the above said agreements executed in the year 2014 & 2016. Moreover, the respondent has made last payment of Rs.40,600/- on 14.11.2017 to the applicant (against freight charges).

iv. Although the respondent admitted the dues payable to the applicant, the respondent failed to make the complete payment to the applicant. Therefore, the applicant issued demand notice dated 05.09.2018 under section 8 of the Code against which the respondent through its reply dated 26.09.2018 again admitted the debt payable by the respondent to the applicant. Thus the respondent has neither ever denied the amount payable to the applicant nor disputed the same.

v. As far as limitation is concerned the supplies were made during the years 2010-12, subsequent to which the respondent had time and again acknowledged the debt which includes agreements dated 30.06.2014 and 07.12.2016 and therefore, the present application having been filed on 24.04.2019 is well within the limitation period.

4. In this context, defence placed by the respondent in its reply dated 07.08.2019 are that the debt claimed by the applicant is barred by limitation as the same is also evident



from the demand notice dated 05.09.2018 wherein it is mentioned that the alleged claim is for the supply of cement for the period between 2010 to 2012; whereas, the applicant has filed the present application in 2019 i.e. after lapse of seven years. Further, the respondent submits that the alleged agreement dated 07.12.2016 executed between the applicant and the respondent was not registered and therefore the respondent had stopped the payment that was agreed upon as per the agreement/consent deed dated 07.12.2016.

5. The respondent has also filed additional objection on 04.08.2021. The submissions of the same are summarised hereunder:

- i. That alleged claim of the applicant is out of an agreement to sale dated 30.06.2014 and consent deed dated 07.12.2016 allegedly executed with respect to sale and purchase of the immovable property situated at Village Bilaura, Khurd, Tehsil Khandwa, District Khandwa, Madhya Pradesh.
- ii. It is apparent from the agreement to sale dated 30.06.2014 & Consent Deed dated 07.12.2016 that the amount of Rs.73,89,596/- (dues of Kabra group concerns) outstanding dues against the purchase of Cement transacted in the year 2008 was to be adjusted against the cost of immovable property (land). Therefore, the alleged claim does not fall within the meaning & definition of operational debt as defined under section 5(21) of the Code. Reliance is placed onto the judgment dated 06.10.2017 of NCLT Delhi bench in IB No. 200/ND/2017 titled as Jindal Steel and Power Limited



Vs DCM International Limited as well as another judgement dated 14.06.2019 in CP(IB) 41/ND/2019 in the matter of Kingtel Travel Agency Private Limited Vs Destiny Forex Private Limited. Reliance is also placed onto the judgment dated 13.07.2017 of NCLAT in the matter of Satish Mittal Vs Ozone Builders and Developers Private Limited in company Appeal (AT) (Ins) No. 75 of 2017.

iii. The present application under Section 9 of the Code is a lame attempt of the applicant to execute the alleged 'agreement to sale' and 'consent deed' wherein the respondent is not a signatory and the same is a civil dispute and this Hon'ble Tribunal is not an appropriate forum for the said purpose. Moreover, the applicant is trying to mislead this Hon'ble Tribunal by filing Application on false and frivolous grounds as the alleged claim made by the applicant is not an operational debt as it is merely a civil dispute.

iv. Further, as per the said agreement the claim relates to the period 2008. However as per the demand notice dated 05.09.2018 the claim relates to the period 2010-12, thus the applicant itself is not clear with respect to the period of claim and in any case the present application is filed in 2019 which is barred by limitation. Reliance is placed onto the judgment of Hon'ble Supreme court order dated 11.10.2018 in the matter of B.K. Educational Services Private Limited Vs Parag Gupta and Associates.

6. In this context, rejoinder placed by the applicant and



submissions made thereon and as presented/argued by the learned counsel for the applicant are summarized as under:

- i. That the respondent has given post-dated cheques to the applicant for an amount of Rs.3,00,000/- & Rs.39,58,651/- dated 29.03.2014 & 20.09.2014 respectively. Further, the respondent has also given balance confirmation certificate dated 01.04.2015 wherein the respondent has acknowledged its liability amounting to Rs.38,94,308/-.
- ii. Moreover, the respondent has through agreement dated 30.06.2014 admitted its liability and agreed to settle the same by transferring its land, however, the respondent failed to transfer the same due to some technical reasons as the respondent could not get the mortgage released. Therefore, the respondent subsequently, acknowledged its debt amounting to Rs.38,94,308/- by a consent deed dated 07.12.2016 and agreed to pay the said amount along with interest/damages and thereafter, the respondent paid a sum of Rs.40,600 on 14.11.2017.
- iii. The objection of the respondent that the claimed amount pertains to agreement to sale and not to supply of goods or the services is incorrect as the application has been filed for the default committed by the respondent in discharge of its liability towards supply of goods (cement) by the applicant for the construction projects of the respondent. Moreover, the respondent has clearly acknowledged its debt in the agreement dated 30.06.2014 & consent deed dated 07.12.2016 and



has also acknowledged the liability in reply dated 26.09.2018 to section 8 demand notice sent by the applicant. The respondent has also acknowledged its debt in the reply dated 07.08.2019 & additional objection dated 27.12.2019 filed in the present application. Therefore, there is no pre-existing dispute.

7. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record. It is the case of the applicant that he had supplied cement to the respondent during the year 2010-2012 and as outstanding dues were not paid, the applicant and the respondent entered into an agreement dated 30.06.2014 whereby the outstanding dues was to be adjusted against the sale of land but since the transfer of land could not be done, the respondent vide consent deed dated 07.12.2016 admitted to pay the sum of Rs.38,94,308/- and interest thereon payable to the applicant against purchase of cement. It is also noted from the ledger account of the respondent in the books of the applicant that the applicant supplied cement to the respondent for construction purposes and the outstanding balance as on 01.04.2010 is recorded at Rs.10,18,731/-. It is also evident from the said ledger account that further supplies were made from 23.05.2010 to 15.04.2011 and in between there is a payment of Rs.3,67,067/- on 23.06.2010. The net outstanding balance as on 15.04.2011 is recorded at Rs.38,94,308/-. The last two invoices are dated 21.03.2011 and 15.04.2011 for Rs. 442000/- and Rs. 5300/- respectively.

8. It is noted that the respondent issued post-dated



cheques dated 29.03.2014 & 20.09.2014 amounting to Rs.3,00,000/- & 39,58,651/- respectively. However, the ledger account reflects that these cheques were presented to the bank but the same were dishonoured. Nevertheless, the issuance of these cheques amounts to acknowledgment of the liability within the period of three years from the default date with respect to the supply made through last two invoices dated 21.03.2011 and 15.04.2011. It is further noted that the invoices contain a clause *“payment strictly within days. In case of delay interest 24%p.a. will be charged extra”*. However, the days within which payment was to be made are left blank. During the course of argument the learned counsel had stated that as per the practice, two weeks were the normal period for payment or else it would be based on demand. We also note that thereafter the respondent had also issued confirmation of accounts dated 01.04.2015 amounting to Rs.38,94,308/- to the applicant.

9. We further note that the agreement to sale dated 30.06.2014 and the consent deed dated 07.12.2016, wherein the respondent agreed to sell its immovable property situated at Village Bilaura, Khurd, Tehsil Khandwa, District Khandwa, Madhya Pradesh to the applicant and the terms of the same were such that the respondent agreed to adjust the dues of the applicant along with dues of its group concern against the sale consideration of the said immovable property.

Though the said agreement to sale is not dated, however we find that the consent deed dated 07.12.2016 contains a reference to the said sale agreement and there the date of the agreement to sale is stated to be 30.06.2014. For ready



reference the relevant content of the sale agreement dated 30.06.2014 as well as consent deed dated 07.12.2016 is given hereunder:

SALE AGREEMENT (dated 30.06.2014)
(Translated)

Messers Karan Development Private
Limited,
Address: Tansen Road, Gwalior
(M.P.)
Through Managing Director,
Shri Karansingh S/o Shri
Uttamsingh ji
Kirar

..... FIRST PARTY
(SELLER PARTY)

1. Amit S/o Shri Hariramji Kabra
2. Sumit S/o Shri Hariramji Kabra
Both residents of 22/ 15, Yashwant
Niwas Road, Indore

..... SECOND PARTY
(PURCHASER PARTY)

.....

2. That, the above-mentioned land of the ownership and possession, the description of which is mentioned in paragraph number 1 herein above, there has been made the transaction of sale of it to you the Second Party-Purchaser at the rate of Rs 16,61,150/- (In words Rupees Sixteen Lakhs Sixty One Thousand One Hundred Fifty only) amounting to a total sum of value of Rs 99,66,980/- (In words Rupees Ninety Nine Lakhs Sixty Six Thousand Nine Hundred Eighty only) and the Seller party received the amount of sale consideration (sale value) from the Purchaser Party as under:

For Rupees 73,89,596/- (in words Rupees Seventy-Three Lakhs Eighty-Nine Thousand Five Hundred Ninety-Six only) the seller party had purchased the Cement etc. for their trade from the purchasers in the years 2008, the payment of which is remaining rest to be paid.

Sumit Trading Agency,
Proprietor Sumit Kabra

Rs. 2231226/-

Sumit Traders,
Proprietor Amit Kabra

Rs. 3894308/-



Shruti Logistics,
Proprietor Amit Kabra

Rs. 1264062/-

Total

Rs. 7389596/-

which would be deposited in the Sale Value Account of this land. Rest balance amount of Rupees 25,77,300/- (In words Rupees Twenty-Five Lacs Seventy Seven Thousand Three Hundred only) on dated 30.09.2014 having to receive from the purchaser party at the time of the registration of the Sale Deed there would be get to be done the registration of the sale deed in the interest of the purchaser party.

CONSENT DEED (dated 07.12.2016)

(Translated)

1. That, the land mentioned in the Agreement dated 30.06.2014 executed between the parties as since previously remaining kept in mortgage with the State Bank of India Branch Gwalior, as per the condition of Agreement could not be released from the bank due to this reason there could not be performed the execution of the Sale Deed on dated 30.09.2014. Therefore, it is hereby fixed between the parties that, the amount payable in lieu of the Cement etc. by the First party was remaining to be paid jointly to the Second Party as under:

Sumit Trading Agency Indore	– Rupees 22,31,228/-
Sumit Traders Indore	– Rupees 38,94,308/-
Shruti Logistic Indore	– Rupees 12,64,082/-

Total Rupees:	Rupees 73,89,596
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2. That, the aforesaid amount which had been deposited as an advance in the aforesaid Sale Agreement, to which the second party is intending to attain back the aforesaid amount having to be added Rupees 1,01,10,404/- One Crore One Lac Ten Thousand Four Hundred Four Rupees only of the interest and damages along with the aforesaid amount which is totaling to a total sum of Rupees 1,75,00,000/- One Crore Seventy Five Lacs only, which is accepted to be paid by the First Party, and it is also fixed/ settled that, except/ apart from this amount there would not be paid any interest in future.

10. It is further noted that in reply dated 26.09.2018 of the respondent to the demand notice issued under section 8 of



the Code, the respondent stated that (a) it is not disputed that the respondent has entered into an agreement to sale with the applicant in June 2014 to adjust outstanding amount of Rs. 73,89,596/- (of the three concerns of Kabra group including applicant) against the sale consideration of the land worth Rs. 99,66,980/-; (b) it is specifically mentioned in the said agreement that the said property (land) is under mortgage with State Bank of India, Gwalior, however, the said property could not be discharged by the bank due to certain reasons. Therefore, the applicant and respondent entered into another agreement dated 07.12.2016, wherein it was agreed that a total amount of Rs. 1,75,00,000/- (dues of all three group concerns) is to be paid by paying monthly instalment of Rs. 10,00,000/- including compensation and interest against the outstanding dues of three concerns including the applicant; (c) the respondent issued 6 cheques to the applicant and its group concern amounting to Rs. 71,73,239/-; (d) pursuant to the agreement dated 07.12.2016 the respondent made instalment payment aggregating to Rs.28,00,000/- (Rs.10,00,000/-, Rs.10,00,000/- & Rs.8,00,000/-) to the other two group concerns of the applicant on 14.12.2016, 20.03.2017 & 30.12.2017 respectively; (e) that even after several requests, the applicant failed to register the said agreement dated 07.12.2016 under the Registration Act, 1908 and therefore, the respondent stopped making further monthly instalments.

It is also noted that the respondent in the said reply assured that after registering the said agreement under section 17 of the Registration Act, 1908 the unpaid amount can be paid as per the agreement.



11. Considering all the above, we are of the considered view that the debt is admitted by the respondent which is evident through various documents such as the post-dated cheques, agreement to sale dated 30.06.2014 & consent deed dated 07.12.2016, confirmation of accounts dated 01.04.2015 and also from the reply to the demand notice. Thus there is no pre-existing dispute.

12. As regards the limitation period we find that the invoices issued were between 23.05.2010 to 15.04.2011, the post-dated cheques issued were dated 29.03.2014 & 20.09.2014, the agreement to sale was executed on 30.06.2014, the confirmation of accounts was issued on 01.04.2015, the consent deed was executed on 07.12.2016, the demand notice under section 8 of the code was issued on 26.09.2018 and the present application was filed on 24.04.2019. Thus, the present application is filed well within the limitation period. Moreover, the contention of the respondent that the said agreement to sale and the consent deed are not registered would have no bearing onto the debt being acknowledged through these documents. The nature of the debt is operational debt being acknowledged through these documents. The nature of the debt is operational debt being towards the supply of cement.

13. The claim of the applicant stands established and there is a default in payment of the amount due to the applicant without any dispute in existence. The default amount is more than the threshold limit of Rs. 1,00,000/- as per Section 4 of the IB Code, 2016 (prior to the amendment under section 4 of the IB code) and the application is well within the



limitation.

14. In the view of facts, it is clear that respondent has defaulted in the payment of its debts. On the basis of the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

ORDER

(i) The application TP 178 of 2019 [CP(IB) 490 of 2019] is allowed. The Corporate Debtor Karan Development Services Private Limited is admitted in the Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) The Operational Creditor has proposed the name of the IRP through separate IA 445 of 2024, therefore, this Adjudicating Authority hereby appoints from its panel the IRP Mr. Navin Khandelwal having registration No. IBBI/IPA-001/IP-P00703/2017-18/11301 to act as an IRP under Section 13(1) (c) of the IBC, 2016.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as



contemplated, inter-alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Operational Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees one lakh only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.



(x) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

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Kaushalendra Kumar Singh
Member (Technical)

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Chitra Hankare
Member (Judicial)

Swati Khandelwal