

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -II**

C.P. (IB) 3621/MB/2019

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy

In the matter of
WPIL Limited

Having registered office at :- “TRINITY PLAZA”, 84/1 A, Topsia Road (South), Kolkata: 700046

And also having its office at :- 10& 11, Bhagtani Enclave Sonapur Lane, Off. L.B.S Marg, Bhandup (West), Mumbai- 400078

..... Applicant/ Operational Creditor

Versus

Gammon India Limited

Having registered office at: - Floor 3rd, Plot No- 3/8, Hamilton House, J. N. Heredia Marg, Ballard Estate, Mumbai- 400038

And also having its office at: ‘Gammon House’, Veer Savarkar Marg, Prabhadevi, Mumbai- 400025

..... Corporate Debtor

Order Delivered on :- 31.10.2023

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Akshay Doctor a/w Counsel, Sunil
A. Vyas and Deep Morabia

For the Corporate Debtor : Adv. P. G. Sabnis

ORDER

Per: - Shri. Kuldip Kumar Kareer (Judicial Member).

1. The present Petition is being prosecuted under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. **WPIL Limited** (hereinafter called as "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **Gammon India Limited** (hereinafter called "Corporate Debtor") for resolution of an unresolved Operational Debt of Rs. 77,20,941/- (Rupees Seventy-Seven Lakhs Twenty Thousand Nine Hundred and Forty-Seven Only) as on 25.08.2018.

2. The Corporate Debtor is a company registered with the Registrar of Companies, Mumbai and having its CINL74999MH1922PLC000997. The Operational Creditor is also a company registered with the Registrar of Companies, Kolkata and having its CINL36900WB1952PLC020274.
3. The Corporate Debtor and Operational Creditor on 19 January 2010 entered into two Letters of Intent ("LOI"), wherein the Corporate Debtor appointed the Operational Creditor as Sub-Contractor for one of the works under the main contract entered between VISA Steel Limited and the Corporate Debtor.
4. Pursuant to the LOIs and amendment thereto, the Operational Creditor agreed to provide certain materials along with the necessary services to the Corporate Debtor.
5. The Operational Creditor and Corporate Debtor were performing their obligations as per the terms and conditions mentioned in the above LOIs. The Operational Creditor also time to time issued running invoices, however, only part payment was made. The Operational Creditor reconciled the accounts of the Corporate Debtor and a sum of Rs. 50, 13,602 was due and payable by the Corporate Debtor to the Operational Creditor.
6. The representative of the Corporate Debtor agreed to pay the aforesaid amount and asked the officials of the Operational Creditor to furnish No-Dues Certificate. However, the same has been withheld by the Operational Creditor as the dues were unpaid.

7. The Operational Creditor repeatedly reminded the representatives of the Corporate Debtor to clear the outstanding amount as per the reconciled statement vide various emails, however, after repeated reminders, the Corporate Debtor failed to make payment of the outstanding amount.
8. The Operational Creditor also addressed a notice dated 7th August 2018 to the Corporate Debtor and demanded the outstanding amount along with interest @ 18% p.a. However, till date no payment has been made.
9. Since no payment was forthcoming the Operational Creditor through their Advocates issued notice under Section 8 of Insolvency and Bankruptcy Code, to the Corporate Debtor. Till date no reply and/ or payment has been received by the Operational Creditor or the Advocates for the Operational Creditor.

ANALYSIS AND FINDINGS

10. We have heard the counsel for the parties and have gone through the records.
11. During the course of arguments, it has been pointed out by the Counsel for the Petitioner in this case, the factum of existence of operational debt and default committed by the Corporate Debtor has been established on record and further that the Corporate Debtor has failed to make payment of the operational debt despite a demand notice having been served upon it. Therefore, the Petition under Section 9 of the Code deserved to be admitted.

12. On the other hand, the Counsel for the Corporate Debtor has argued that the Petition is palpably barred by time and deserves to be dismissed on this ground alone. In this regard, the Counsel for the Corporate Debtor has pointed out that the last invoice issued by the Operational Creditor is dated 30.11.2012. The Counsel for the Corporate Debtor has further pointed out the present Company Petition was filed on 09.10.2019 which is barred by time even if email dated 07.10.2016 is taken into consideration.
13. The Counsel for the Corporate Debtor has further argued that the email exchange between the parties cannot be treated as acknowledgments on the part of the Corporate Debtor. In this regard, the Counsel for the Corporate Debtor has relied upon *M/s G.L. Shoes Vs. M/s Action Udhyog Private Limited in Company Appeal (AT) (Insolvency) No. 846 of 2022 decided on 24.05.2023* whereby the Hon'ble NCLAT held that Section 18 of the Limitation Act specifies that the acknowledgment should be in writing and signed by the party against whom such right is claimed though of course the word 'sign' or 'signed' has not been defined in the said Section. It has further been held that the said requirement is required to be met irrespective of whether it is in electronic or in physical form and further that merely because a document is sent via e-mail, the mandatory requirements of Section 18 cannot be exempted. The Counsel for the Corporate Debtor has, thus, prayed for the dismissal of the application of the Petition.
14. The Counsel for the Operational Creditor has relied upon certain emails exchanged between the parties whereby the Corporate Debtor has acknowledged the debt. Here, a reference has made to email annexure (c) dated 07.10.2016 whereby the Corporate Debtor has acknowledged the outstanding payment of Rs. 50.12 Lakhs which, according to the Counsel for

the Operational Creditor amounts to acknowledgment. The Operational Creditor has further placed reliance upon email dated 04.11.2015, whereby the Corporate Debtor has stated that the project team has been informed and they would make the payment at the earliest. In other email dated 23.11.2015, the Corporate Debtor had demanded no claim certificate and in response the Operational Creditor stated in its email that no claim certificate can be issued only upon confirmation of the exact date of paying the outstanding amount of Rs. 50.13 lakhs.

15. Having perused the record, we are of the considered view that admittedly the last invoice was issued on 31.11.2012. Even if the email dated 07.10.2016 is taken into consideration the present Petition cannot be said to have been filed within the period of limitation. The present Petition was filed on 09.10.2019 which is beyond period of three years even from the so-called acknowledgment through email dated 07.10.2016.
16. In this context, the Counsel for the Operational Creditor has argued that the demand notice period of 10 days is liable to be excluded from the period of limitation in support of this contention. In support of his contentions, the Counsel for the Operational Creditor has relied upon the judgment of the Hon'ble Supreme Court in the matter of *Disha Constructions and Ors. Vs. State of Goa and Ors. MANU/SC/1489/2011*, whereby it was held that the notice period under Section 80 CPC is liable to be discounted from the period of limitation, if the said notice was served within the period of limitation. However, we are of the considered view that the law laid down in the cited cases cannot be applied to the facts and circumstances of the instant case. It is well settled that the IB Code of 2016 is a complete code in itself, there is no

provision in the Code that the period of demand notice is liable to be excluded while reckoning the period of limitation for filing the Petition under Section 9 of the Code.

17. As a result of the above discussions, we are of the considered view that the Petition is barred by limitation, and, therefore, the same is hereby dismissed. File be closed and consigned to records.

Sd/-
MR. ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)