

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT - III

IB-722/ND/ 2019

In the matter of:

R.G. Steels

...Petitioner

Vs.

Berrys Auto Ancillaries (P) Ltd.

...Respondents

SECTION:

UNDER SECTION 9 OF IBC, 2016

Order Delivered on: 23.09.2019

Coram:

Sh. R. Varadharajan

Hon'ble Member (Judicial)

Sh. K. K. Kumar Vohra

Hon'ble Member (Technical)



For the Petitioner: Mr. Neeraj Kr. Gupta, Advocate

For the Respondent: Mr. Himanshu Dubey, Mr. Saksham Maheshwari, Advocates

ORDER

Pursuant to the Order dated 6.9.2019 wherein after hearing the submissions of Ld. Counsels for the parties, the Tribunal has dismissed the petition and have also stated that a detailed order will follow. The same is given below.

From the Petition, it is evident that RG Steels (Petitioner) has approached this Tribunal as Operational Creditor (OC) under the provisions of Section 9 of IBC, 2016 seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) in relation to Corporate Debtor (CD) for the amounts allegedly unpaid and in default. M/s. Berrys Auto Ancillaries Private Limited thereafter referred as CD is stated to have been incorporated on 10.9.1975. The Nominal and Paid-up Capital respectively of the CD is stated to be Rs.2,20,00,000/- and Rs.2,18,51,000/-. Registered office of the CD is stated to be situated at 8/14, East Patel Nagar, New Delhi-110005. The OC has also proposed the name of one Mr. Ashok Kumar Jalan as an Interim Resolution Professional (IRP) in Part-III of the prescribed Application. The amount claimed under two invoices bearing respectively Invoice No.385 dated 21.2.2017 of Rs.5,01,131/- and in relation to Invoice No.389 dated 24.2.2017 to the extent of Rs.10,15,622/- in all

aggregating to Rs.15,16,753/- is stated to be the total amount of debt due. In addition to the amount in default an interest amounting to Rs.4, 02,411 @ 18% per annum from the dates of default is also claimed. From the petition it is also evident that in all 30 Invoices were raised by the OC as against the CD and that only two Invoices remained unpaid, the details of which have been given as above. The date of default of the above said invoices is claimed to be 21.2.2017 and 24.2.2017. Clause 8 of Part-5 details the documents in support of the claim as filed by the Petitioner including the ledger account of the CD in the books of OC and the copies of the invoices which remained unpaid. The Demand Notice as evident from the Petition seems to have been issued by OC to CD on 8.9.2018 which seems to have been served and the said Notice of Demand seems, have also elicited a reply from the CD dated 20.9.2018 both of which have been annexed along with the Petition disputing the liability as claimed by the OC. Under the circumstances, this petition has been filed before this Tribunal by the OC against the CD.

Record of proceedings available before this Tribunal shows that upon Notice, the CD had entered appearance through its Counsel who has also filed a reply to the Petition. The petition under the circumstances, in view of the completion of pleadings, was heard on 6.9.2019. Prima facie from the Petition, it is evident that the petition has been preferred by M/s. RG Steels stated to be a Sole Proprietary Concern. However, by virtue of definition as contained in Section 3(23) of IBC, 2016 a person even though includes an individual it does not include within its ambit a Sole Proprietary Concern. It is also required to note that from the

points out to the documents as filed along with the petition by the Petitioner itself namely Annexure P-7 as well as Annexure P-9 and represents that rate as charged by the OC to the CD had been disputed even prior to the issue of a demand Notice by the OC and specific attention is drawn to the communication dated 15.9.2017 wherein it has been clearly stated in the absence of terms and conditions of Purchase orders containing terms of payment, Discounts rate etc. rate difference etc. reconciliation of the accounts is required for clarity and this has also been followed up at the time of sending reply by way of computational chart as given in Page 60 of the petition itself. Thus, we find that there seems to be a pre-existence of dispute as between the OC and CD in relation to rates charged (and total debt) by the OC to CD and the same being a pre-existing dispute as evident from the documents filed by the petitioner itself before this tribunal. Hence, based on the above namely a Sole proprietary concern taking into consideration the definition of a "person" is not entitled to approach this Tribunal on its own and also in view of the pre-existing dispute evident on consideration of the merits of claim made by the OC against CD, this petition stands dismissed, however, without costs.

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K. K. VOHRA

MEMBER (TECHNICAL)

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-Sel-
23/09/2019

K. VARDHARAJAN

MEMBER (JUDICIAL)