

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 189 of 2020

[Arising out of Impugned Order dated 11th December 2019 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench, in CP (IB) No. 1581/ND/2019]

IN THE MATTER OF:

Anil Duggal

Director

Representing the suspended management of

Duggal Associates Private Ltd.

Having its registered office at:

F-38/2, Near Maruti Service Station

Okhla Industries Area, Phase – II

New Delhi

...Appellant

Versus

Roofs & Ceilings Pvt. Ltd.

2nd Floor, Gandhi Chhaya

Opp. Sarvoday Hospital

LBS Marg, Ghatkopar (W)

Mumbai – 400086

...Respondent

Present:

For Appellant : Mr Rahul Sharma, Advocate

For Respondent : Mr Jasdeep Singh Dhillon

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This Appeal emanates from the order passed by the Adjudicating Authority/National Company Law Tribunal, New Delhi against the Impugned Order dated 11th December 2019, passed in CP/(IB)1581/ND/2019 under Section 9 of the Insolvency in Bankruptcy Code 2016, whereby the petition was admitted in respect of the Corporate

Debtor, M/s Duggal Associates Private limited. Parties are represented by their original status of the petition for the sake of convenience.

2. The brief facts as stated in the petition are as follows;

The Applicant contends that the Corporate Debtor approached the operational creditor for the supply of material for roofing etc., carpet export mart, BIDA Carpet City, Bhadohi, UP, and accordingly issued the purchase order No. 37 dated 18th October 2016. Under the said purchase order, the Applicant supplied the materials at the said site as per terms of the purchase order, and further invoices were raised by the Applicant/operational creditor.

3. The Applicant further contends that after the work, various invoices totalling to ₹ 1,66,57,721.95 were raised and delivered to the corporate debtor, which were duly received without any complaint or dispute concerning the goods. The corporate debtor had issued a certificate to that effect confirming the execution of job for an amount of ₹ 1,66,57,000; part payment was also made and leaving a balance of ₹ 2,826,817. 95 only.

4. The Operational Creditor, on several occasions, requested the corporate debtor to make the payment of the outstanding amount of ₹28,26,817.95 only towards the principal amount, along with interest to the operational creditor.

5. The corporate debtor vide email dated 27th February 2018 has admitted the delay and default in making payments and had stated that they shall be clearing the dues at the earliest. However, despite the same the

corporate debtor failed, neglected and defaulted to make the payment of the said outstanding amount along with interest.

6. The operational creditor issued a demand notice under Section 8(1) the Insolvency and Bankruptcy Code against the corporate debtor, calling upon the corporate data to pay an amount of ₹ 28,26,817.95 as principal amount and ₹ 14,03,853.95 towards interest, aggregating to ₹ 42,30,671.90 within ten days from the date of receipt of the said demand notice.

7. The demand notice was sent at the registered address, but it was returned with the postal remark 'not found'. But the envelope served at site address at Bhadohi; UP was duly delivered. The corporate debtor was also served with the demand notice u/s 8 on its email address as specified on the MCA portal.

8. The Corporate Debtor despite the service of the demand notices neither submitted reply to the demand notice nor has made any payment of the said outstanding amount of ₹ 42,30,671.90 to the Operational Creditor.

9. The Operational Creditor filed an affidavit in compliance of section 9(3)(b) the 'Code', stating that no notice of the dispute was raised by the Corporate Debtor. The Applicant also submitted the copy of the statement in compliance with the requirements of Section 9(3)(c) of the Insolvency and Bankruptcy Code, 2016.

10. The Adjudicating Authority observed that "the Application is complete and the Applicant is entitled to claim its dues, establishing the default in

payment of the operational debt beyond doubt, and fulfilment of the requirement under Section 9(5) of the Code. Hence, the present Application is admitted”.

(quoted verbatim)

11. The Appellant has assailed the impugned order mainly on the ground that the impugned order is an ex parte order and was communicated to the Appellant on 09th January 2020 by the Insolvency Resolution Professional.

12. The Appellant contends that after getting information from the Insolvency Professional, on inspection of the court records it revealed that the court notice was received on 17th August 2019 by Mr Ashish Gupta, an ex-employee of the company, who was then working with the company but abandoned the employment on 03rd October 2019. The said Ashish Gupta never communicated or informed the company or the management of the said court notice. The company and its management were unaware of the insolvency proceedings against the company.

13. It is stated that the company is not insolvent, and it was only on account of the temporary cash crunch, and due to cash flow problems, the dues of the Respondent could not be settled.

14. The Appellant has admitted that the Respondents raised various invoices totalling to ₹ 1,66,57,000/- against the company and has admittedly paid to the Respondent an amount of ₹ 1,38,30,182/-. As regard to the remaining balance of ₹ 28,26,817.95, there were quality issues regarding the materials and the Respondent was aware of the same. The

company had issued a debit note of the ₹ 10,94,204/- on the Respondent on account of the quality issue. The parties have been in extensive correspondence regarding the quality issue. But the payment remains outstanding due to the temporary cash crunch.

15. The Appellant further contends that the Corporate Debtor has always been ready to settle the debt and not shying away from the liability of the company and has already paid an amount of ₹ 1,38,30,182/- to the Respondent.

16. We have heard the arguments of the learned counsel for the parties and perused the records.

17. The Appellant admits that the court notices were received by its employee Ashish Gupta on 17th August 2019, and said that employee left the organisation on of 3rd October 2019. Therefore, the said employee was in active employment of the Appellant when he received the Court notice. Therefore, it is apparent that the order to proceed the case ex-parte against the Corporate Debtor was legally justified. It is also apparent that the Corporate Debtor intentionally avoided presenting in Court despite service of Court notice.

18. That apart from the service of the notice issued by the National Company Law Tribunal, the Appellant has admitted that he has defaulted in payment of the outstanding amount due to cash crunch and was willing to pay the same. The Appellant has not disputed the completion certificate

dated 05th January 2018. Scanned copy of the certificate regarding completion of job work is as under:

(on Letterhead of Dugal Associates)

Date: 5th Jan 2018.

TO WHOMSOEVER IT MAY CONCERN


This is to certify that M/s. ROOFS & CEILINGS (I) PVT. LTD. located at Gandhi Chitaya, OPP. Sarvodaya Hospital, L.B.S. Marg, Ghatkopar (W), Mumbai - 400086; have done Supply of Kalzip Roofing system & Polycarbonate sheets for DUGAL ASSOCIATES PRIVATE LIMITED, Carpet Expo Mart, B.I.D.A Carpet City, Bhadoli, LP

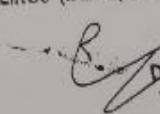
Order No: 37/DAPL/Bhadoli/2016-17 Dated: 18/10/2016 & 003/DAPL/Bhadoli/2017-18 Dated: 7/4/2017

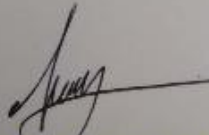
The total area of Roofing	2424.84
	Kalzip Roofing :- 2420 Sqm Polycarbonate Roofing :- 1020 Sqm
Job value	Rs. 166.57 Lakhs (Rs. One Crore Sixty Six Lakhs Fifty Seven Thousand Only)
Execution Period	Oct 2016 to July 2017

The said job was successfully executed with good Quality and Safe work Practices.

For DUGAL ASSOCIATES PRIVATE LIMITED

Authorized Signatory 

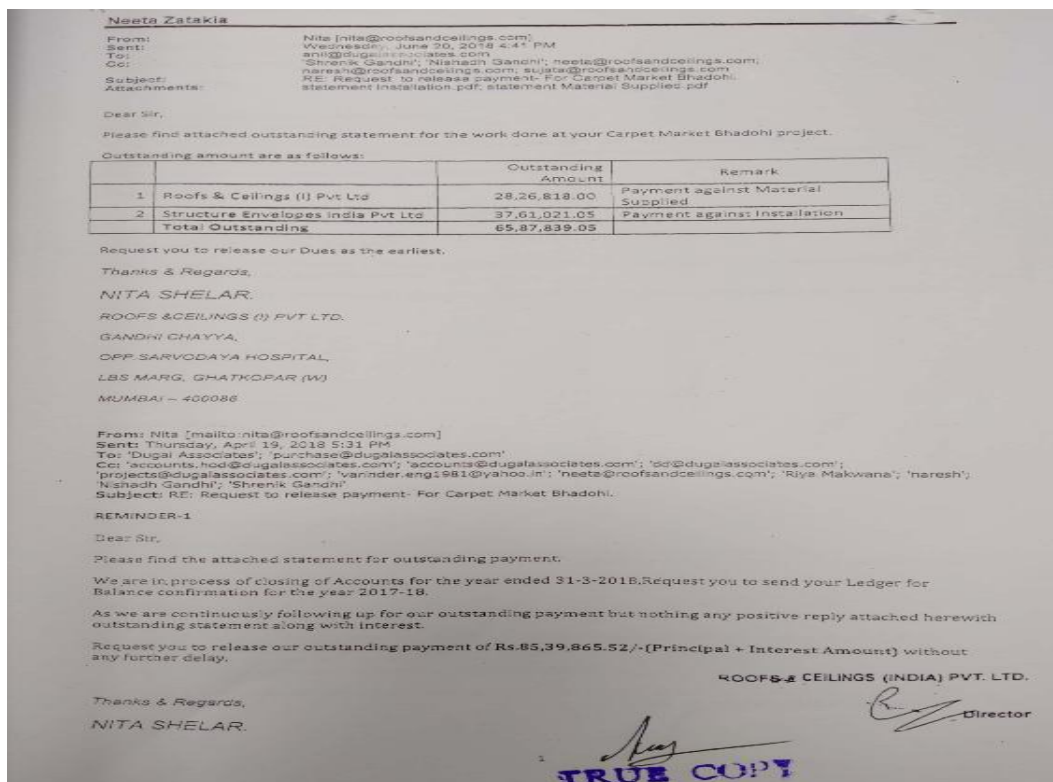
ROOFS & CEILINGS (INDIA) PVT. LTD.
 Director


TRUE COPY

The above document depicts that after successful execution of the job work the Corporate Debtor issued certificate of 'good quality'. Thus, it is

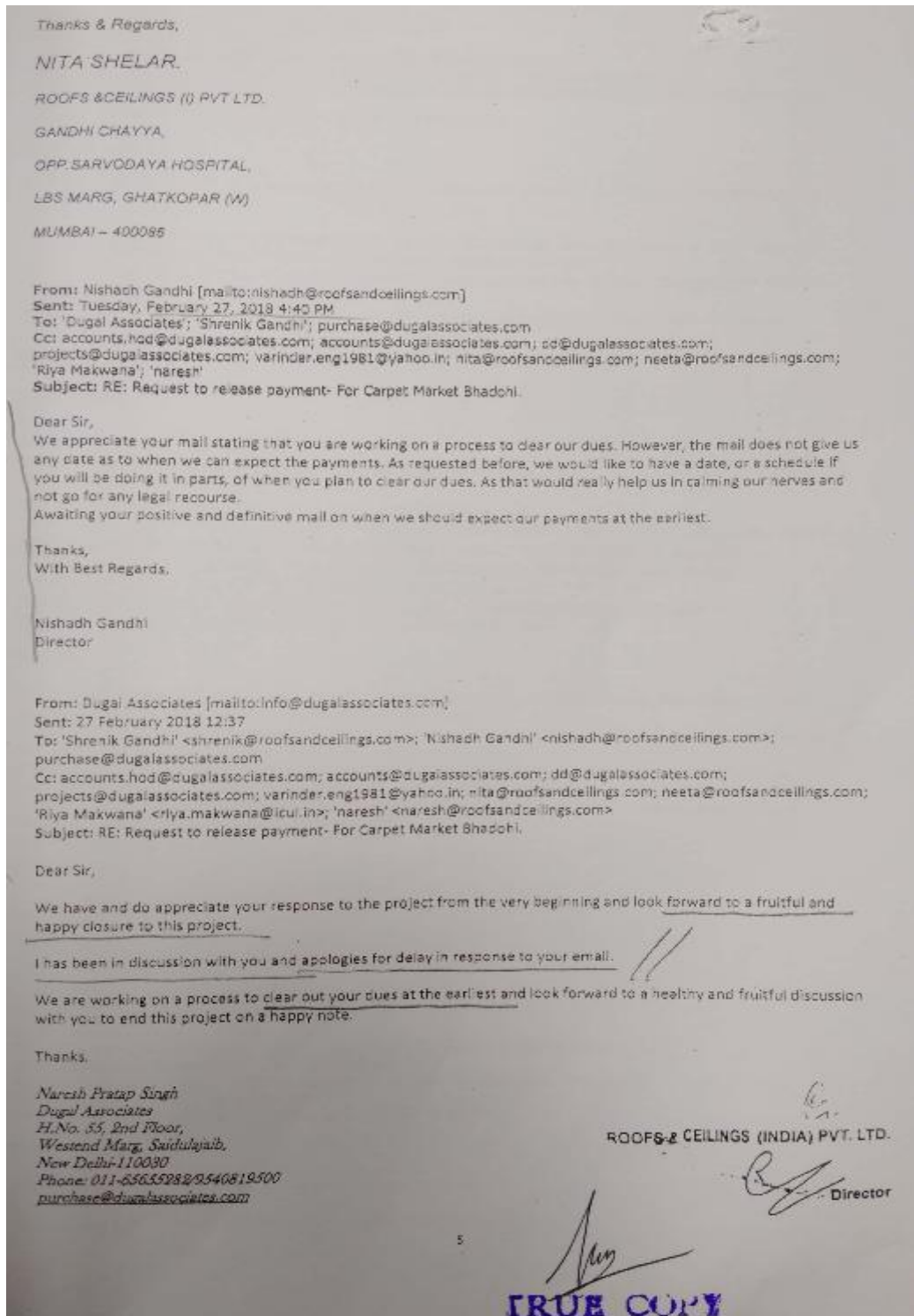
apparent that there was no existing dispute regarding the quality of the job work completed by the Corporate Debtor.

19. It is pertinent to mention that after completion of the work, the Operational Creditor sent an email to the Corporate Debtor requesting to send the balance confirmation for the year 2017-18 and for making the outstanding payment. In reply to the said mail, the Corporate Debtor issued an email dated 20th June 2018, whereby the Corporate Debtor confirmed the outstanding balance of ₹ 28,26,818/- regarding payment against the material supplied by the Operational Creditor Roofs & Ceilings (I) Pvt. Ltd. Scanned copy of the mail dated 19th April 2018 and reply mail dated 20th June 2018 is as under:



It is also on record that the Corporate Debtor sent an email dated 27th February 2018, whereby the Corporate Debtor gave an undertaking that on

the working process to clear out dues at the earliest. Scanned copy of the mail as under:



All these correspondence or before issuance of demand notice dated 28th May 2018 which duly served on the registered office of the Corporate

Debtor by email dated 14th June 2018. It is pertinent to mention that the demand notice sent through registered AD was received by the Corporate Debtor on 02nd June 2018, which is clear from the tracking report filed along with the written submissions of the Operational Creditor.

20. In the circumstances, it is clear that the Corporate Debtor failed to make the payment despite service of the demand notice issued under Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016). The Corporate Debtor neither made the payment nor sent any notice of dispute and the alleged outstanding amount of more than ₹1,00,000/- (Rupees one lac). There is sufficient evidence on record to prove the amount due and payable against the Corporate Debtor in the circumstances.

21. In the circumstances stated above, we are of the considered opinion that the service of the demand notice on the corporate debtor was proper. Despite service of notice under Section 8(1) of the I & B Code, 2016 the Corporate Debtor neither made the payment nor raised any dispute of the outstanding amount. The Appellant has admitted that the Court notice was received by its employee Ashish Gupta on 17th August 2019, but he left the organisation on 03rd October 2019. Since the said employee was in active employment of the Appellant/Corporate Debtor when he received the notice, thus it is clear that the order to proceed the case ex-parte is fully justified.

22. The Appellant has also admitted that he has defaulted in payment of the outstanding amount due to cash crunch and was willing to pay the

same. The Appellant has also not disputed the completion certificate dated 05th January 2018, which clearly shows that the work was completed to its satisfaction. Based on the above discussion, we are of the considered opinion that there is no justification for interference in the impugned order, and the appeal deserves to be dismissed.

23. Thus, in the circumstances as aforesaid, we do not find any justification for the interference with the Impugned Order and Appeal is liable to be dismissed. Accordingly, Appeal dismissed. No order as to costs.

[Justice Venugopal M.]
Member (Judicial)

[V. P. Singh]
Member (Technical)

NEW DELHI
02nd March, 2020

pks/nn