

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No. 84/ALD/2019
*(Under Section 9 of the IBC read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2018)*

IN THE MATTER OF:

Insight Collaborative Logistics Private Limited
.....Operational Creditor/ Applicant

VS

Ansh Energy Solutions Private Limited
.....Corporate Debtor/Respondent

ORDER DELIVERED ON: 21.01.2021

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Sh. Rakesh Taneja, Adv.
Along with Suhail Ahmad Ansari, Adv.
For the Respondent/ Corporate Debtor: Sh. Rohan Gupta, Adv.

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

ORDER

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. **"Insight Collaborative Logistics Private Limited"** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"Ansh Energy Solutions Private Limited"**.

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2. As per averments made in the petition , the Respondent issued a Purchase Order No. AESPL/18-19/AGI/03 for a trial supply of-70 MT of Indonesian Coal-GAR 5000 with GCV 5000 kcal.kg ARB, Total Moisture- 27%, 0-50 mm. Another Purchase Order No. AESPL/18-19/AGI/04 for supply of 600 MT Indonesian Coal-GAR 5000 with GCV 5000 kcal/kg ARB, Total Moisture- 27%, 0-50 mm was issued by the Respondent.
3. Pursuant to the above, the Respondent owed an amount of Rs 51,71,8887/- for the supplies made against both the Purchase Orders, out of which, payments to the tune of Rs. 7,00,000/- were made as on 17.10.2018 and an amount of Rs. 44,71,887/- was yet to be paid.
4. It is stated that that Respondent accepted the Purchase Order goods, sold and supplied by the Petitioner without any complaint and received the invoices raised by the Petitioner. However, despite of repeated requests did not make payment of the due amount. Further, the notice u/s 8 of Insolvency and Bankruptcy Code, 2016 was also sent through speed post.
5. Later, a letter dated 22.12.2018 was despatched to the Petitioner's office stating a doubt raised during the preliminary enquiry of service that some suppliers have sent only bills and trucks have not reached physically. Also, a request was made to share the stamped receiving from the destination site at the earliest, as to get sure of the validity of bills.
6. It is reiterated by the Petitioner that the Petitioner has already submitted invoices supported with delievery receipts to the the Respondent at the relevant time. It has been clarified that the person who causes transport of goods generates the e-way bill specifying the details of other person as a recipient of

goods which can be seen by the other party in the common portal. As the other party, one can communicate the acceptance or rejection of such consignment specified in the e-way bill. If the acceptance or rejection is not communicated within 72 hours from the time of generation of e-way bill or the time of delivery of goods whichever is earlier, it will be deemed that he has accepted the details and thus the supply. Copies of e-way bills corresponding to the invoices of the Petitioner pertaining to the transactions with the Respondent have been annexed as *Annexure V*.

7. It is noted that despite grant of several opportunities, the Respondent had not filed reply, consequently, the Respondent was de-barred from filing reply. To that, the respondent filed a recall application as CA No. 302/2019 dated 11.09.2019 which was dismissed vide a detailed order dated 10.02.2020 and thus the matter was heard ex-parte.
8. I have heard the arguments raised by the Ld. Counsel for the Operational Creditor and perused the application and the documents annexed there in.
9. Before considering the submissions raised on behalf of the petitioner, I would like to refer Section 9 (5) of the IB Code and the same is quoted below:

Sec 9: Application for initiation of corporate insolvency resolution process by operational creditor

"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, --

(a) the application made under sub-section (2) is complete;

(b) there is no ³ [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

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(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
 (e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if--

(a) the application made under sub-section (2) is incomplete;
 (b) there has been ³[payment] of the unpaid operational debt;
 (c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
 (d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
 (e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority."

10. Plain reading of the provision shows that when demand notice Under Section 8 of the IB Code is delivered for initiation of proceeding Under Section 9 of the IB Code and if no dispute has been raised by the Corporate Debtor pursuant to the demand notice issued by the Operational Creditor then requirement is to be considered for triggering the insolvency process. In the present case the Respondent had the opportunity of trying to raise a specific objection within 10 days after receipt of the notice u/s 8, which the Respondent had failed to use.

11. Therefore, in light of the aforesaid provisions, I would like to consider the present application and this Adjudicating Authority is of the considered view that the total amount claimed in default is of Rs. 44,71,887/- which is more

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than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.

12. It is matter of record that Petitioner filed a copy of invoices for the purchase orders dated between 20.09.2018 and 20.11.2018 along with the present petition and the present petition is filed under section 9 of IB code on 11.03.2019. A perusal of the same goes to show that invoices of this period are found well within the limitation (*As per section 238 A of IB Code*) to trigger the CIRP in respect of Respondent.

13. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards supply of goods as per its purchase order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.

14. The Petitioner, in the present IB petition, has complied with the provisions of Section 9 (3) (b) and 9(3) (c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code, the present application is found complete and the default of debts is established. Hence, the present petition deserves admission.

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15. Accordingly, this Adjudicating Authority hereby admit the application of the Operational Creditor and declare a Moratorium in respect of Corporate Debtor for purpose referred to in section 14 of the Code with the following directions:

A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating: -

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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 (54 of 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

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(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

16. Since, in the present matter the Applicant did not propose the name of Interim Resolution Professional (IRP). Hence this Adjudicating Authority hereby appoints **Mr. Vimal Kumar, Registration Number IBBI/TPA-002/IP-N00995/2020-2021/13236; Email- maidvimal1@rediff.com** as an Interim Resolution Professional (IRP). He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15, 17 and 18 of the Code and file her report.

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17. The Registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

18. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

Progress report to be filed before the registry of this bench.

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JUSTICE RAJESH DAYAL KHARE
MEMBER (JUDICIAL)

Dated: 21.01.2021

Shefali Vats
(LRA)