IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No: 353/ALD/2019

(Under Section 9 of Insolvency and Bankruptcy Code,2016 read with Rule 6 of I & B of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016)

IN THE MATTER OF

M/S ASHISH ISPAT PRIVATE LIMITED

..... ***Applicant/Operational Creditor***

VERSUS

PRIMUSS PIPES AND TUBES LIMITED

..... ***Respondent/Corporate Debtor***

ORDER DELIVERED ON: 04.08.2021

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

For the Applicant/ Operational Creditor: Mr. Anil Kumar, PCS
For the Respondent/ Corporate Debtor: Mr. Adesh Tandon, PCS

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. **"ASHISH ISPAT PRIVATE LIMITED"** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"PRIMUSS PIPES AND TUBES LIMITED".**

2. As per averments made in the petition, the Corporate Debtor had approached the operational creditor for the supply of H. R. coils which was supplied by the operational creditor and the invoices were issued to the Corporate Debtor from time to time.

3. It is submitted that the said invoices fell due for payment based on the terms and conditions specified in the invoices raised by the operational creditor and stated that the last invoice was issued to Corporate Debtor on 28.05.2019 ,thus the

amount fell due after 12 days of issuance of the invoice , but the corporate debtor failed to clear the outstanding amount despite various reminders and letters issued by the operational creditor.

4. Further the opeartional creditor issued demand notice Under Section 8 of the IBC,2016 dated 20.07.2019 demanding a total sum of Rs. 1,05,88,978/-along with interst; which was duly recevied by the respondent ***(The Copy of demand notice along with the delivery report is annexed as Annexure A-7 of the application)*** and despite demand notice being delivered to the Corporate debtor, neither any reply nor any payment of the due amount has been made till the date of application. The respondent has therefore filed this petition as an operational creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.

5. The corporate Debtor has been duly served by speed post and email for which the tracking report in on record. Pursuant to the court notice issued to the Corporate Debtor, Mr. Adesh Tandon, PCS appeared on behalf of corporate debtor and stated that settlement is under process and on the next date i. e on 02.01.2020 the learned PCS for the respondent affirmed that settlement is being worked out and an upfront payment of Rs. 10,00,000 will be paid, which has been paid by the respondents to show theoir bonafides.

6. Further the Ld. PCS for the petitioner states that Rs. 10 Lakhs were paid pursuant to the alleged settlement agreement entered into between the parties but no further amount has been disbursed and nor any post dated cheques have been handed over to the petitioner.

7. It is the matter of record that the Ld. Counsel for the respondent has not appeared on various occasions, which is apparent from the perusal of the orders dated

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07.01.2020, 07.02.2020, 19.02.2020, 12.03.2020 and 25.02.2021, hence vide order dated 23.03.2021, the case was fixed for exparte hearing on 23.03.2021 and thereafter on 26.07.2021 the matter was heard but on date of hearing also the respondent opted not to appear.

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. Now, 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 operation 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;

(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

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(e) any disciplinary proceeding is pending against any proposed resolution professional:

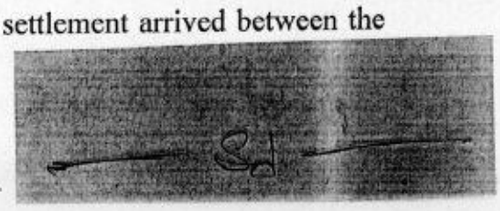
Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

10. Mere 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 in pursuance of the demand notice issued by the Operational Creditor then requirement is to be considered before triggering the insolvency process.

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. 1,05,88,978/- which is more than the threshold amount required to trigger the Corporate Insolvency Resolution Process against the Corpoarte Debtor.

12. Further, it is matter of record that applicant filed a copy of invoices in which last invoice is dated 28.05.2019 along with the present petition and the present petition is filed under section 9 of IB code on 28.08.2019. 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 triggered the CIRP in respect of corporate debtor.

13. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards supply of goods to corporate debtor 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 and has neither adhere to the settlement arrived between the



parties . 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. Thus the Petitioner, in the present IB petition, has complied with 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.

15. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted.A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

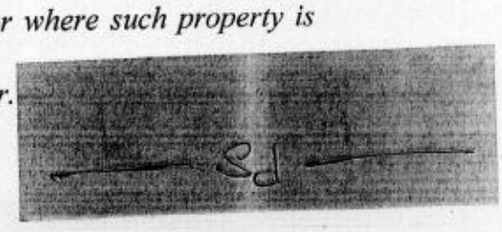
(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(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.

(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. The Operational Creditor has proposed the name of ***Mr. Nitin Jain, Registration Number IBBI/IPA-001/IP-P-01562/2019-2020/12462*** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statue.

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.

19. List on 06.09.2021 for filing of the Progress Report before this Bench.

JUSTICE RAJESH DAYAL KHARE

MEMBER (J)

Date: 04.08.2021

Swati Gupta
(LRA)