

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 223/Chd/HP/2020

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

**Smt. Kanika Dandona through
her Attorney Holder**

Sh. Jatin Dandona

Lakshmi Plastic Centre Co.,

Having office at:

1058, Bahadurgarh Road, Near Sadar Bazar,
Delhi-110006.

...Petitioner-Operational Creditor

Vs.

AG Appliances Private Limited

having its registered office at

Second Floor, Block No.40, B-3,

Sector-6,

Parwanoo, Solan, HP-173220.

...Respondent-Corporate Debtor

Judgement delivered on: 18.06.2021

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

For the Operational Creditor: Mr. Vishav Bharti Gupta, Advocate

For the Corporate Debtor : Mr. Anish Rana, Advocate for
Mr. Mukul Goyal, Advocate.

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, (**for brevity 'IBC' / 'Code'**), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Smt. Kanika Dandona, through her attorney holder Mr. Jatin Dandona (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Process against AG Appliances Private Limited (**for brevity 'Corporate Debtor'**). Smt. Kanika Dandona (Petitioner/Operational Creditor) has executed a special power of attorney dated 13.11.2019 authorising Mr. Jatin Dandona to sign, and verify and to do all acts related to filing of present petition. There is an affidavit of Mr. Jatin Dandona in support of the contents of the application at page Nos.17 to 19 of the petition.

2. The Corporate Debtor namely, AG Appliances Private Limited, is a Company incorporated on 16.03.2004 under the provisions of Companies Act, 1956 with CIN No. U31909HP2004PTC000620 having its registered office at Second Floor, Block No. 40, B-3, Sector-6, Parwanoo, Solan, HP-173220 which falls within the State of Himachal Pradesh. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹10,00,000/- and Paid-Up Share Capital of the Company is ₹1,00,000/-. Copy of Master Data of corporate debtor is found at page No.46 of petition.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor deals in the business of trading of plastic granules.

Operational creditor supplied goods and material to the corporate debtor during the year 2019 and issued various invoices against the supply of materials to corporate debtor. Copy of invoices are attached as Annexure-II to Annexure-IV. It is stated that the Corporate debtor has made part payment of ₹13,275/- through NEFT on 26.03.2019 but failed to make payment against outstanding dues. As per Part-IV of Form 5, the total amount claimed to be in default is ₹3,96,212/- (inclusive of ₹3,66,863/- as principal amount and ₹29,349/- as interest @ 24% per annum till 02.11.2019).

4. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as it failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Form 3 dated 02.11.2019 (Annexure-VI) is stated to be served upon the corporate debtor by speed post. The demand notice was accompanied by copy of invoices dated 09.03.2019, 29.05.2019 and 25.06.2019 and copy of ledger account maintained by the operational creditor. The corporate debtor vide demand notice dated 02.11.2019 was called upon to repay the total unpaid operational debt of ₹3,96,212/- (₹3,66,863/- as principal amount and interest of ₹29,349/- @ 24% p.a. till 02.11.2019) within 10 days.

6. It is deposed by the petitioner that the demand notice was issued to the corporate debtor vide speed post and no notice of dispute has been given by the corporate debtor related to the unpaid operational debt. The affidavit is appended with the petition at Page Nos. 37 to 39.

7. Notice of this petition was issued to the corporate debtor on 10.12.2020 to show cause as to why this petition be not admitted.

8. Respondent-corporate debtor filed reply vide Diary No. 02230/01 dated 12.03.2021, in which it has been stated that corporate debtor could not make payment of outstanding dues of the petitioner due to severe financial crisis.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 02.11.2019 was properly served. The demand notice was sent to the registered address of the corporate debtor as per the master data at Page No. 46 of the petition in which registered office is shown as Second Floor, Block No. 40, B-3, Sector-6, Parwanoo, Solan, HP-173220. Copy of postal receipt and tracking report showing duly service of notice are part of Annexure –VI(Colly) at Page Nos. 34 to 36.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent-corporate debtor has filed reply and admitted the occurrence of default towards operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

12. The other issue for consideration is whether the C.P. is filed within limitation. All the invoices (Annexures-II to IV) are pertaining to the year 2019 and since the C.P. is filed in the year 2020, the C.P. is well within the period of limitation.

13. We have gone through the contents of the application filed in the Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹3,96,212/- (inclusive of

₹3,66,863/- as principal amount and interest amount of ₹29,349/- as on 02.11.2019). Copy of various invoices raised by operational creditor are appended with the petition and the same are found as Annexures – II to IV. Moreover, demand notice in Form 3 dated 02.11.2019 was also sent on 05.11.2019 stating that the amount due as on 02.11.2019 is ₹3,96,212/-. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 18.11.2019 (Page Nos. 37 to 39) has been placed by the operational creditor stating that despite the service of notice dated 02.11.2019, corporate debtor did not raise any dispute qua the outstanding payment. The bank statement for the period from 01.04.2018 to 31.10.2019 has been annexed as Annexure-V of the petition. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lakh by the respondent-corporate debtor.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.
- (e) It is further directed that 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.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- (g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.”

15. The Operational Creditor has not recommended any person as IRP. In this regard a letter bearing File No.25/02/2021-NCLT dated 01.01.2021 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No.IP-12011/1/2020-IBBI/978/1290 dated 31.12.2020 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months for January-June 2021. We select Mr. Mukesh Kumar Gupta appearing at Serial No.9 of the panel to be appointed as Interim Resolution Professional.

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mukesh Kumar Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Mukesh Kumar Gupta, Registration No.IBBI/IPA-001/IP-P00732/2017-2018/11209, E-mail: mkgcacs@gmail.com Mobile No.9810691748, as the Interim Resolution Professional subject to the condition that he shall file Form 2 within a period of one week from the date of this order. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the

financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

June 18th, 2021
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