

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

Company Petition (IB)No.191/ALD/2018

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

IN THE MATTER OF:

Butterfly Appliances

*(Having its Registered Office at:
D-10, Shiv Bhole Laghu Udyog
LBS Marg, Vikhroli West, Mumbai.*

.....Operational Creditor/ Applicant

VERSUS

M/s SRK Kitchen Appliances Private Limited.

*(Having its Registered Office at:
Plot No.18, Flat No.UG-3,
Dhiraj Apartments, Shalimar Garden-1,
Sahibabad Ghaziabad (UP) 201005.*

.....Corporate Debtor

JUDGMENT/ORDER DELIVERED ON 01.08.2018

CORAM :

Sh. V.P. Singh, Hon'ble Member (Judicial)
Ms Saroj Rajware, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Shahid Kazmi, Adv.

For the Respondent/ Corporate Debtor:

AS PER: V P SINGH, Member Judicial

Order/Judgment

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. **M/s Butterfly Appliances**. For initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s SRK Kitchen Appliances Pvt.Ltd.**

2. The Respondent/Corporate Debtor “**M/s SRK Kitchen Appliances Pvt.Ltd.**” is a Company Incorporated on 22/08/2013 under the provision of Companies Act,2013, bearing Identification Number U28996UP2013PTC076111. The Authorised Share Capital of corporate debtor company is 50,00,000/- (Fifty Lakh Only), and Paid-up Share Capital is Rs. 50,00,000/- (Rupee Four Crore Eighty-Seven Lakh Seven Thousand Only). It is involved in business of Manufacture of kitchen appliances and other fabricated metal products.

3. Brief facts related to petition are as follows:

- (i) The Petitioners have stated that Mr Mitin Amritlal Jain, *Proprietor of M/s Butterfly Appliances*, has been authorised to apply on behalf of Operational Creditor.
- (ii) The Operational Creditors has stated that the goods/ raw material worth Rs.23,42,032/- were sold and delivered to the Corporate Debtor, against the various invoices/margin bills of different dates. Copies of all purchase invoices/margin bills have been annexed and marked as **Annexure-F** with the application.
- (iii) Applicant further stated that they received a total payment of Rs.7,00,000/- thus leaving an outstanding balance of Rs.16,42,032/- and after that applicant asked the corporate debtor number of times, but corporate debtor failed to clear outstanding dues. Therefore, they issued the Demand Notice dated 20.03.2018 demanding outstanding dues, which was delivered to the corporate debtor company on 23.08.2018, but they have not received reply to demand notice. **(Copy of Demand notice and detail of Courier Tracking report is annexed as Annexure- A, B& C of the application)**

- (iv) As per demand notice total outstanding due to the corporate debtor is ***Rs.30,91,993/- (Rs 16,42,032 Principal Amount+ Rs.11,32,117/- Interest+ GST).***
- (v) The operational creditor in support of their case has annexed the following documents: -
- (a) Demand Notice ***dated 19.03.2018*** along with Invoices which were issued to Corporate Debtor which was received at their registered address, but no notice of dispute has been issued by the corporate debtor. ***(Copy of Demand Notice and invoices is annexed as Exhibit- A & F in the application).***
- (b) Further, in compliance to section 9(3), (b) Operational Creditor has annexed an affidavit stating that they have not received notice of dispute or reply to the demand notice dated 19.03.2018 by Corporate Debtor ***(Affidavit is annexed and marked as Exhibit O.)***
- (c) In compliance of the statutory provision of section 9(3)(c), the operational creditor has filed the bank statement of the account where deposits are made, or credits normally received by the operational creditor, to show that outstanding debt amount mentioned above has not been received by the operational creditor. ***(Copy of Bank Statement is annexed as Annexure No- 3 of the Supplementary Affidavit).***
- (d) Petitioner has also annexed copy of cheque made in favour of the applicant by the respondent along with the cheque return memo, showing non-payment of outstanding debt ***(Copy of Cheque and the cheque return memo is annexed as Annexure H).***

4. Heard the argument of the Ld. Counsel for the Operational Creditor and perused the record available.
5. It is matter of record this Tribunal by the direction of the Hon'ble NCLAT in the matter of *M/s ICICI vs Innoventive Industries Ltd* by its order dated 17.05.2018 notice was issued on the Corporate Debtor. Applicant has filed affidavit of service along with track report which shows that notice was delivered to the Respondent. But in spite of sufficient service of notice, the respondent failed to appear and file the objection/reply. Hence this bench vide its order dated 02.07.2018 proceeded ex-party.
6. The present petition is filed under the Provision of section 9 of IBC, in the required format through the duly authorised person and the total amount due as claimed by the operational creditor is **Rs.30,91,993/-**. The respondent, in this case, did not file the reply to the demand notice.
7. Further, from the perusal of the account statement filed by the applicant, it is quite clear that the cheque issued by the respondent were not credited in the account of the applicant.
8. The corporate debtor did not make payment after receiving the demand notice U/S 8 (1) of I B Code and default on the side of the respondent stand proved in this case. The petitioner is therefore found entitled to initiate corporate insolvency resolution process as against the Respondent.
9. Further, it is also matter of record that Operational Debt owed by Corporate Debtor is of more than One lakh Rupees. The Corporate Debtor failed to file any reply or raise any dispute within ten days from the date of receipt of Demand Notice, as mandated under section 8 (2)(a) of the Code. There is no evidence of existence of dispute between Operational Creditor and Corporate debtor regarding outstanding debt.

10. The Petitioner, in this case, has complied with section 9 (3) (b) and 9(3)(c), and affidavit to the effect that there is no notice given by the corporate debtor relating to dispute has been filed. As the petitioner fulfils the required criterion for invoking CIRP under Section 9 of the Code, thus petition is liable to be admitted.
11. The Operational Creditor had not received the outstanding Debt from the Corporate Debtor, and the requirements as prescribed under I&B Code have been completed by the Petitioner. Thus we are of the view that this Petition deserves 'Admission'.

ORDER

Petition filed by petitioner U/S 9 of the I&B Code is admitted.

The Operational Creditor /Applicant has not proposed name of any Interim Resolution Professional(IRP) in the application. Therefore, **Mr.Rajiv Chopra, Reg.no-IBBI/IPA-001/IP-P00151/2017-18/10315** E-mail-rsccon12@gmail.com is appointed as IRP.

Given the above we declare a moratorium for the purpose referred to in section 14 of the Code with the following direction: -

Subject to provisions of sub-sections (2) and (3) of Section 14(1) of the Code, moratorium order prohibits the following, namely: —

- (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 possession of the corporate debtor.

(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 the moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall come into force with immediate effect till the completion of the corporate insolvency resolution process as prescribed Under section 12 of the code.

12. IRP is directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.

13. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and also to IRP.

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

List on DT 24.08.2018 for the filing of the progress report.

(Ms. Saroj Rajware)
Member (Technical)

(V.P Singh)
Member(Judicial)

Dated-01.08.2018

