

In the National Company Law Tribunal  
Mumbai Bench.

C.P.(IB)-10/(MB)/2018

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Novateur Electrical & Digital System Pvt. Ltd. : Petitioner/ Operational Creditor  
V/s

Krishnai Hospital Pvt. Ltd. : Respondent/ Corporate Debtor

Heard on : 11.02.2019  
Order delivered on: 12.02.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s) : 1. Mr. D.B. Pereira, Advocate;  
2. Ms. Rinika Jain, Advocate.

For the Respondent(s) : 1. Mr. Vishal S. Shriyan.

*Per M.K. Shrawat, Member (Judicial).*

**ORDER**

1. A Petition has been filed in Form No.5 on 03.01.2018 by M/s. Novateur Electrical & Digital System Pvt. Ltd. in the capacity of Operational Creditor by invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor M/s. Krishnai Hospital Pvt. Ltd., Vashi, Navi Mumbai, Raigarh-400707, to claim an outstanding Operational Debt of ₹12,00,000/- with interest @ 18% per annum from 6<sup>th</sup> July, 2016 till receipt of payment.

2. **Brief history of the case:-** The Petitioner/ Operational Creditor and the Respondent/ Corporate Debtor are Companies incorporated under the Companies Act, 2013. On 5<sup>th</sup> May, 2016 the Corporate Debtor placed an Order under Purchase Order No. PO/FA/16-17/03 for a UPS system (Numeric UPS HPE 33 100 KVA/0.9 PF/ with inbuilt isolation transformer) valued at ₹12,00,000/-.

3. Accordingly, the Operational Creditor dispatched the product to the Corporate Debtor's Vashi office under their Invoice No.3700005521 dated 17.05.2016. The Operational Creditor completed the installation of the said product which was duly certified by the Corporate Debtor's incharge officer who confirmed the installation and commissioning of the products in good condition and to the complete satisfaction of the Corporate Debtor. The Debt fell due on 06<sup>th</sup> July, 2016 i.e. 30 days from the date of Installation.

4. After repeated follow-ups the Corporate Debtor issued a cheque No.000191 dated 20.08.2016 drawn on RBL Bank Limited, Dombivali for ₹12,00,000/-. It is alleged by the Petitioner that when this cheque was presented for payment, it was dishonoured.

5. Thereafter, the Corporate Debtor requested for some time for payment as committed in email dated 15.11.2016 to make payment @ ₹1 Lakh per month with interest @ 12% p.a. on delayed payment, relevant portion reproduced below:-

*"Dear Sir,*

*..... Regarding your payment we can make a payment monthly Rs. 1,00,000/- (Rs. One Lac only) starting from this month. Also we may pay you interest @ 12% p.a. on delay payment of monthly installment. We can provide you PDC cheques for monthly installment. If you are agree with this and ready to accept the same then kindly inform us. Also till today after the delivery of UPS no one has come for service. Kindly arrange for the same."*

6. Thereafter, a cheque bearing No.000496 dated 01.04.2017 drawn on RBL Bank for ₹1,50,000/- on 01.04.2017 was given as part payment of the Debt. It is alleged that this cheque was bounced when presented for payment citing "Funds Insufficient".

7. Thereafter, the Operational Creditor sent several emails and Letters however, the Corporate Debtor ignored the same and not paid the outstanding Debt amount.

8. The Operational Creditor issued Demand Notice in Form No.3 on 23.11.2017 which was received by the Corporate Debtor on 24.11.2017. This Demand Notice was also emailed to the Director of the Corporate Debtor. Even after receipt of the said demand letter, it is alleged that the Corporate Debtor neither made the payment nor replied to the demand letter.

9. No Dispute or pendency of any Suit or Arbitration proceedings have been raised by the Corporate Debtor.

10. Bank Statement and Certificate from the Bankers of the Operational Creditor for the period 01.09.2016 to 30.09.2016 and 01.04.2017 to 30.04.2017 are on record.

**FINDINGS** :-

11. Considering the totality of the facts and circumstances of the case discussed *supra*, I am of the opinion that the default as defined u/s. 3(12) of The Code is established. Demand Notice has been issued to the Respondent Debtor, however, the Respondent Debtor has not raised any "dispute" of the outstanding claim within the 10 days' time prescribed u/s.8(2) of The Code. This case was first listed on 07.03.2018, and because of the absence of the Corporate Debtor it was adjourned to 05.04.2018. On 05.04.2018 the Respondent Debtor sought time to probe the possibility of Settlement. Thereafter the case was listed on number of occasions such as 08.05.2018, 13.06.2018, 26.07.2018, 24.08.2018, 03.09.2018, 27.09.2018, 10.10.2018, 05.12.2018, and 11.02.2019, however, no final settlement or any payment has been effected from the side of the Corporate Debtor. Cheques issued by the Corporate Debtor on two occasions towards payment of the impugned Debt had been dishonoured due to "Insufficient Funds" as discussed *supra*. The matter was regularly listed on several occasions for hearing and the Representative of the Respondent was also attending the Court. However, no representation has been made from the side of the Respondent to defend his side.

12. As a consequence, keeping the admitted facts in mind that, the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/ Operational Creditor, it is my conscientious view that this Petition deserves "Admission".

13. The Operational Creditor has proposed the name of the Interim Resolution Professional **Mr. Dhanshyam Kantilal Patel**, Registration No. IBBI/IPA-001/IP-01373/2018-19/12155, Address: 322, Zest Business Spaces, M G Road, Ghatkopar East, Mumbai 400 077. The IRP has submitted his consent in Form No.2 and also certified that

no Disciplinary Proceedings are pending against him. The proposed IRP is hereby appointed. Upon Admission of the Application and Declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution professional as defined under section 18 of The Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

14. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of The Code shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium** Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

15. Accordingly, this **CP (IB)-10/(MB)/2018 stood** Admitted.

16. The Corporate Insolvency Resolution Process shall commence from the date of this order.

Sd/-  
**(M.K. SHRAWAT)**  
Member (Judicial)

Date : 12.02.2019.  
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