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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH (RAJASTHAN)

IB No. 762/ND/2018
TA No. 79/2018

CORAM: SHRI R. VARADHANRAJAN, MEMBER (JUDICIAL)

ORDER PRONOUNCED ON: 25.01.2019

IN THE MATTER OF SECTION 9 OF IBC, 2016.

IN THE MATTER OF:

Kanushree Innovations Pvt. Ltd.

5, Nehru Path, Narain Singh Road

Jaipur-302004 (Rajasthan)

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

CKS Medicare Pvt. Ltd.

F-98-A, Road No. 6, V.K.I. Area,

Jaipur-302013 (Rajasthan)

...CORPORATE DEBTOR/RESPONDENT

FOR PETITIONER (S) : SANDEEP TANEJA, ADV.

FOR RESPONDENT(S) : NONE-APPEARED

ORDER

1. Perusal of the record of proceedings of this Tribunal in relation to the above Company Petition discloses that originally the Company Petition was filed before the New Delhi Bench of NCLT and subsequently by virtue of Notification No. S.O. 3145 (E) dated 28.06.2018 came to be transferred from New Delhi Bench to the Jaipur Bench of this Tribunal and hence this Bench, namely, Jaipur Bench is seized of the matter.
2. The above Company Petition has been preferred under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) by the petitioner claiming to be an Operational Creditor as against the respondent named as the Corporate Debtor seeking for initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor. The transactions leading to the filing of the present petition has been detailed in Part-IV of the application prescribed under IBBI (Application to Adjudicating Authority) Rules, 2016 in relation to an Operational Creditor being, Form-5.
3. Perusal of the same discloses that the Operational Creditor had supplied Aluminium Extrusions, Glasses and Fittings for windows to the Corporate Debtor. The supplies which is claimed by the Operational Creditor had been effected during the period 18.04.2016 to 30.01.2017 under 25 sales



invoices aggregating to Rs. 29,05,268/- and in relation to the same it is also averred that a sum of Rs. 19,71,907/- had been paid and the balance amount of Rs. 9,33,361/- is due and has not been paid by the Corporate Debtor and that no payment has been made or received from the Corporate Debtor since 19.09.2016. It is further averred that in view of the non-payment of amounts due, a notice under Section 8 of IBC, 2016 being the notice of demand had been issued on 06.03.2018 to the Corporate Debtor as well as its Directors. However, no payments have been received even consequent to the issue of demand notice from the Corporate Debtor and in the circumstances this petition is being preferred for the initiation of CIRP against the Corporate Debtor. Part III of the prescribed application has also proposed the name of one Mr. Sandeep Kumar Jain having registration No. IBBI/IPA-002/IP-N00174/2017-18/10446 as the Insolvency Resolution Professional (IRP).

4. From the records of the proceedings before the Bench of this Tribunal shows that on 03.08.2018 the registry was directed to send communication in relation to the transfer of proceedings as none-appeared on behalf of the parties. Pursuant to the said notice, appearance was put in on behalf of the Operational Creditor on 23.08.2018 and thereafter. Despite services of notice of demand under Section 8 by the Operational Creditor as well as advance copy of the application being duly served of the proceedings

before this Tribunal to the Corporate Debtor, no appearance was put-up on behalf of the Corporate Debtor. Under the circumstances, on 13.09.2018 this Tribunal was constrained to proceed with the matter in the absence of the Corporate Debtor and the same was posted for enquiry on 11.10.2018 and on subsequent dates on 26.10.2018 the submissions of learned counsel for the petitioner/Operational Creditor was heard in detail as well as the records filed in relation to the claim were also perused as pointed out by learned counsel for the Operational Creditor in relation to the facts narrated in paragraph (Supra) above.

5. Since, the disclosures made by the IRP in Form-2 was not complete in relation to his independence as required to be specified in Clause-VI of Form-2, the petitioner was directed to obtain the said disclosures. The same has been duly complied with vide Diary No. 590/2018 dated 01.11.2018 which is taken on record. It is evident from the records produced before this Tribunal that the goods have been supplied to the Corporate Debtor and that payments to the extent of Rs. 9,33,361/- is due as reflected in the statement of accounts taken together with the invoices which have been filed being un-paid invoices and a calculation of amount due including interest up to 28.02.2018 has also been disclosed.
6. It is seen from the tabulation as provided by the Operational Creditor that in relation to the interest, it aggregates to the extent of Rs. 2,11,485/-

thereby leading to a total claim of Rs. 11,03,108/- the payment of which has been defaulted as evident as despite the issue of Section 8 by the Operational Creditor and receipt of notice by the Corporate Debtor. Under the circumstances, the claim stands established and a prima facie presumption raised that there is default in payment of the amounts due to the Operational Creditor and no dispute is disclosed to be in existence this Tribunal is constrained to initiate the proceedings, namely, Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor as envisaged under the provisions of IBC, 2016. The consequences of initiation of CIRP shall be inter alia, as follows:

(i) The Resolution Professional proposed by the Operational Creditor, namely, Mr. Sandeep Kumar Jain having Registration No. IBBI/IPA-002/IP-N00174/2017-18/10446 is hereby appointed as the Interim Resolution Professional to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016 including issue of publication in widely circulated newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the Creditors of the Corporate Debtor and collating them shall be done..

7. Further, as a consequence of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor

which will be in vague follow during CIRP of the Corporate Debtor. The Interim Resolution Professional (IRP) to carry out the Corporate Insolvency Resolution Process strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016, in relation to the Corporate Debtor.

8. The said IRP shall act strictly in compliance with the provisions of IBC, 2016. With a view to defray his expenses to be incurred and fees on account, the Operational Creditor is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) to the account of the IRP within 3 days from the date of the order. The IRP shall duly file the status report apprising this Tribunal about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Sections 17 and 19 of IBC, 2016 all the personnel of the Corporate Debtor including its promoters and Board of Directors whose powers shall stand suspended will extend all co-operation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
9. In terms of Section 9 of IBC, 2016, a copy of this order shall be duly communicated to the Operational Creditor, Corporate Debtor as well as the Interim Resolution Professional appointed by this Tribunal to carry out the CIRP at the earliest not exceeding one week from today. A copy of this

order shall also be communicated to IBBI for its records. In the circumstances this application stands admitted.

Sd —
25.01.2019

(R. Varadharajan)
Member (Judicial)

Vishwajeet Singh