

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No.33/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 01.03.2021

Name of the Company:

Super Electricals Through
Its Proprietor Vallabhbai Kantarita.
V/s
Kalon Beauty & Healthcare Services LLP.

Section:

9 of the Insolvency and Bankruptcy Code, 2016

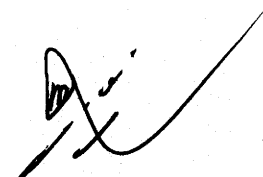
ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 1st day of March, 2021.

47

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.33/9/NCLT/AHM/2019

(Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

M/s Super Electricals
Through Proprietor;
Mr. Vallabhbhai Kantariya
5, Akshardham Complex,
Judge Banglows Road,
Satelite
Ahmedabad- 380015

..Operational Creditor

Versus

M/s. Kalon Beauty and Healthcare Services LL.P.
(CIN NO. AAK-3705)
Having an address at:
3, F.F, Indraprasth Atlantis,
Besides Safal Pag,
Prahaladnagar, Ahmedabad,
Gujarat-

...Corporate Debtor

Order reserved on 08.02.2021

Date of Pronouncement of Order 01.3.2021

Coram: MADAN B. GOSAVI, MEMBER(J)

VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Ld. Counsel Mr. Apurva S Vakil appeared for the operational creditor.

Ld. Counsel Mr. Tirath Nayak appeared for the corporate Debtor.

ORDER
[PerBench]

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IB Code**") by Operational Creditor M/s Super Electronics through its proprietor to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Kalon Beauty & Healthcare Services LL.P for the default amount of Rs. 2,73,882/- including interest.

2. The operational creditor submitted that the operational creditor was engaged for electrical work by the corporate debtor. After finishing the said work, the operational creditor raised 8 invoices on 03.12.2017 for the amount of Rs. 6,73,882/-, out of this total amount, the corporate debtor paid Rs. 4,00,000/- through different cheques viz. Rs. 1,50,000/- vide cheque No. 000019 dated 12.10.2017, Rs. 1,00,000/- vide cheque No. 000044 dated 22.11.2017 and Rs. 1,50,000/- vide cheque No. 000105 dated 12.02.2018, said all the cheques were honored and amounts were credited in the bank account of the operational creditor. Due

to non-payment of the remaining amount of Rs. 2,37,882/- of the total invoice amount by the corporate debtor, operational creditor send a letter cum invoice dated 30.05.2018 informing the corporate debtor for the payment of the said outstanding amount. Thereafter, the operational creditor visited various times in the office of the corporate debtor for the payment of a remaining amount of Rs. 2,37,882/- but, the corporate debtor did not pay the said outstanding amount.

3. The operational creditor issued the demand notice on 31.10.2018 to the corporate debtor in form 4 under section 8 of Insolvency and Bankruptcy Code, 2016 read with rule 5 of IBBI (Application to the Adjudicating Authority) Rules, 2016 to the corporate debtor, same was duly served to the corporate debtor. No reply was made by the corporate debtor of the said demand notice within 10 days from the date of receipt of the said demand notice.

4. Thereafter, the operational creditor filed the present application for initiation of the corporate insolvency resolution process on 30.11.2018. The corporate debtor filed

the reply to the instant application and submitted that the demand notice issued by the operational creditor is not under the prescribed formate i.e. either in form 3 or form 4. The corporate debtor further submitted that this Adjudicating Authority has upheld the identical contention and dismissed the application in CP(IB) 670 of 2019 vide order dated 16.03.2020, the decision of this Authority was also upheld by the Hon'ble NCLAT in CA(AT) No. 588 of 2020.

5. The contention raised by the corporate debtor in respect that the demand notice dated 31.10.2018 was not issued by the corporate debtor at the registered address of the corporate debtor. The registered address of the corporate debtor is 3, F.F Indraprasth Corporate, Opp, Venus Atlantis, Besides Safal Pag. Prahaladnagar, Ahmedabad- 380015, however, the notice was sent by the operational creditor on 2, Sidarshan Bunglows, Near Manek Baug Road, Vastrapur, Ahmedabad, therefore, the corporate debtor prayed to this Authority to dismiss this application on this ground. The corporate debtor further contended that the signature on the demand notice is

not same as the signature made by the proprietor on the invoices.

6. The corporate debtor stated that the corporate debtor assigned the work of renovation of its registered office to Mr. Davesh Amin and he further availed the certain services from the operational creditor, and there is no privity of a contract between the corporate debtor and operational creditor.
7. Heard both counsels, operational creditor as well as financial creditor and gone through the record. It appears that the contention raised by the corporate debtor that the demand notice dated 31.10.2018 was not served to the registered address of the corporate debtor as well as not in the properly prescribed format as given either in form 3 or form 4 is baseless. On perusal of demand notice and receipt of speed post annexed with the application, it appears that demand notice was served to the corporate debtor at its registered address in form 4 along with invoices raised by the operational creditor.

8. The contention raised by the corporate debtor that the operational creditor was not a party to the contract that Mr. Davesh Amim was engaged by the corporate debtor for work on its registered address and he engaged the operational creditor for the work, hence, the operator creditor is not entitled to initiate the proceedings of remaining unpaid amount against the corporate debtor is baseless. The payment to the tune of Rs. 4,00,000/- through different cheques viz. Rs. 1,50,000/- vide cheque No. 000019 dated 12.10.2017, Rs. 1,00,000/- vide cheque No. 000044 dated 22.11.2017 and Rs. 1,50,000/- vide cheque No. 000105 dated 12.02.2018 made by the corporate debtor to the operational creditor negates this contention of the corporate debtor, as if there was no privity of the contract, then in that case, the said part payment should not have been made by the corporate debtor directly to the operational creditor. The contention of the corporate debtor that the signature on the invoice and demand notice is not matching has no relevance as the corporate debtor has not denied that work was not done by the operational creditor in the premises of the corporate debtor. It is also noted that there is no pre-existing

dispute in respect to the amount in question as per section 9 (2) (b) of the IB code. The debt is due and payable from the invoices dated 03.12.2017, all the invoices are on the same day i.e. 03.12.2017 is well within the limitation period for filing the present application. The present application is defect-free and complies with the relevant provisions of the IB Code and Rules formed thereunder. The name of Resolution Professional is not mandatorily to be recommended by the operational creditor in the instant application, and the operational creditor has also not recommended the Resolution Professional to appoint as an IRP. In view of the above observations, we allow the present applications with the following directions;

ORDER

- I. The instant application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(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 Securitisation 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.*

II. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

III. The operational creditor has not recommended any Resolution Professional to appoint as an IRP, hence, we hereby **appoint Mr. Lokesh Khadaria having registration No. IBBI/IPA-001/IP-P02070/2020-2021/13228, having an address at 607 AJANTA SHOPPING CENTER, RING ROAD, OPP FIRE STATION, Surat,**

Gujarat, 395002 and email Id, khadaria@gmail.com **to** act as an IRP under Section 13(1) (c) of the Code.

IV. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under Section 19 of the IB Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

V. This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

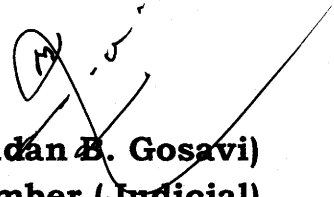
- VI. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- VII. The IRP shall be under duty-bound to protect and preserve the value of the property of the Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- VIII. The Operational Creditor is directed to pay an advance of Rs. 25,000/- (Rupees Twenty five thousand Only/-) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.
- IX. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned

Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

- X. Accordingly, CP(IB) No. 33/9/NCLT/AHM/2019 is allowed.
- XI. The matter to be listed on 05.04.2021 for further consideration.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

RB