

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
Company Petition (IB)No.334/ALD/2019

In the matter of:
The Insolvency and Bankruptcy Code,2016

AND

In the matter of:
Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND

In the matter of :

Peer Aar Automotive Private Limited

.....Operational Creditor/ Applicant.

VERSUS

Leel Electricals Limited

.....Corporate Debtor/Respondent.

ORDER RESERVED ON : 03.12.2019
ORDER DELIVERED ON : 09.12.2019

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Sh. Rajiv Gaur, Advocate
For the Respondent/ Corporate Debtor:

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

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. "**Peer Aar Automotive Private Limited**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company i.e "**Leel electricals Limited**".
2. As per averments made in the petition , the Corporate Debtor agreed to purchase Air conditioning parts from the operational creditor and in pursuance to the same, the operational creditor supplied the products to the corporate debtor which were also approved and confirmed by the Corporate Debtor.

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3. Subsequently, operational creditor raised invoices of Rs.40,76,565 which is contended as amount in default and issued demand notice Under Section 8 of the IBC,2016 dated 14.03.2019 demanding a total sum of Rs. 37,52,096/-which was duly received by the respondent ***(The Copy of demand notice along with the delivery report is annexed as Annexure A1 of the application)*** and despite demand notice being delivered to the Corporate debtor, no payment of the due amount has been made till the date of application. The respondent has therefore filed this petition as an operational creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.
4. The corporate Debtor has been duly served by speed post as well as by e-mail vide order dated 26.08.2018. Pursuant to the court notice issued to the Corporate Debtor which has been delivered and tracking report is also on record which shows that the respondent has been served the notice. However, no one appeared on behalf of the respondent.
5. It is a matter of record that although several opportunities were granted but the Corporate Debtor has chosen not to contest the case, hence vide order dated 18.09.2019, the case is fixed for ex parte hearing and on the date of hearing also the respondent opted not to appear.
6. I have heard the arguments raised by the Ld. Counsel for the Operational Creditor and perused the application and the documents annexed there in.
7. Now, before considering the submissions raised on behalf of the petitioner, I would like to refer Section 9 (5) of the IB Code and the same is quoted below:

Sec 9: Application for initiation of corporate insolvency resolution process by operation creditor"

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(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, --

(a) the application made under sub-section (2) is complete;

(b) there is no ³ [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if--

(a) the application made under sub-section (2) is incomplete;

(b) there has been ³[payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

8. Mere plain reading of the provision shows that when demand notice Under Section 8 of the IB Code is delivered for initiation of proceeding Under Section 9 of the IB Code and if no dispute has been raised by the Corporate Debtor in pursuant of the demand notice issued by the Operational Creditor then requirement is to be considered before triggering the insolvency process.

9. Therefore, in light of the aforesaid provisions, I would like to consider the present application and this adjudicating Authority is of the considered view

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that the total amount claimed in default is of Rs. 40,76,565/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.

10. It is matter of record that applicant filed a copy of invoices dated 29.08.2018 to 16.01.2019 along with the present petition and the present petition is filed under section 9 of IB code on 08.07.2019. A perusal of the same goes to show that invoices of this period are found well within the limitation **(As per section 238 A of IB Code)** to triggered the CIRP in respect of corporate debtor.
11. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards supply of goods to corporate debtor as per its purchase order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.
12. Thus the Petitioner, in the present IB petition, has complied with Section 9 (3) (b) and 9(3) (c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code, the present application is found complete and the default of debts is established. Hence, the present petition deserves admission.
13. Accordingly, this Adjudicating Authority hereby admit the application of the Operational Creditor and declare a moratorium in respect of corporate Debtor company for purpose referred to in section 14 of the Code with the following directions:

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- (i) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting all of 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.
- (ii) 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.
- (iii) 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.
- (iv) The order of moratorium shall with immediate effect i.e. from 09.12.2019 till the completion of the corporate insolvency resolution process as prescribed Under section 12 of the code.

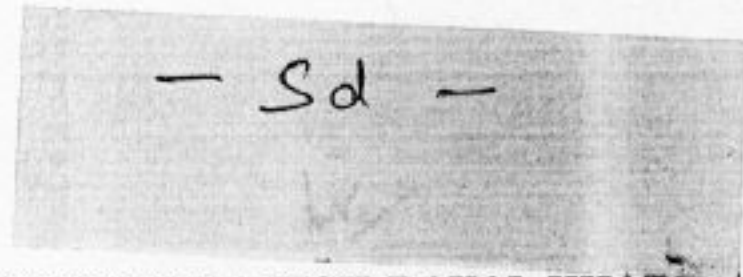
14. The Operational Creditor has proposed the name of **Mr Anil Rustgi**, **Registration Number IBBI/IPA-002/IP-N00683/2017-18/12382** for appointment as Interim Resolution Professional(IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other

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and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

15. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.
16. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.
17. Further in view of this order, this Adjudicating Authority is of the considered view that since CP (IB) No. 334/ALD/2019 has already been admitted and moratorium has been granted. Therefore, any other IB petitions filed before this Adjudicating Authority against the same corporate debtor becomes infructuous and petitioners are at liberty, to raise their claim before IRP/RP during the CIRP process.
18. List on 02.01.2020 for the filing of the progress report.

Date: 09.12.2019



JUSTICE RAJESH DAYAL KHARE

MEMBER (J)