



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Special Bench)

Item No.-05
(IB)-883(PB)/2022

IN THE MATTER OF:

Supreme Eximp Pvt. Ltd.

Vs.

Jewel Overseas Private Limited

....Applicant

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 23.05.2023

CORAM:

SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. (IB)-883(PB)/2022
stands **admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-V**

Company Petition No.(IB)-883(ND)/2022

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

IN THE MATTER OF:

M/s. Supreme Eximp Pte Ltd.

.... **Applicant/ Operational Creditor**

Vs.

M/s. Jewel Overseas Private Limited

.... **Corporate Debtor**

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 23.05.2023

ORDER

PER: SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

The instant application is filed by M/s. Supreme Eximp Pte Ltd (hereinafter referred as 'Applicant'/ 'Operational Creditor') a company incorporated under the laws of Republic of Singapore having Company No. 201411645E under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Jewel Overseas Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for



defaulting the payment of USD 565,312.50 along with interest @ 18% p.a. from 14.11.2015 which is equivalent to Rs.3,50,49,344/- along with interest @18% p.a. from 14.11.2015.

2. The Respondent Company M/s. Jewel Overseas Private Limited having CIN: U52100DL2010PTC201839 was incorporated under the provisions of the Companies Act, 1956 and is having its registered office situated at C-636, DSIDC Industrial Area, Delhi – 1100040. Since the registered office of the respondent Corporate Debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Succinctly stated, facts of the present case as averred by the applicant are that the Applicant and the Corporate Debtor had entered into a sales understanding in January, 2015 in pursuance of which the Applicant had supplied various material to the Corporate Debtor under various invoices in total amounting to USD 2,078,115.00. It was further stated that with respect to the total invoiced amount, the Corporate Debtor had made a partial payment of USD 1,512,802.50, therefore leaving an outstanding amount of USD 565,312.50.
4. Further, it was stated that the Corporate Debtor despite the receipt of the goods to its full satisfaction had failed to make due payment to the applicant for the said invoices. Moreover, the invoices raised by the Applicant did not provide for any credit period qua their respective payment and rather required 'immediate payment' requiring swift clearance on respective dates and as such, the amounts represented on the outstanding invoices became due immediately.



5. The Applicant stated that the Corporate Debtor kept assuring that the due amounts shall be paid within the due course and on one pretext or other made excuses for its delay in making payment of the due amounts. The Applicant had issued various emails to the Corporate Debtor demanding payment of outstanding dues on 15.12.2015, 16.03.2016, 27.10.2019 and 14.12.2020. Furthermore, the Corporate Debtor had admitted its liability towards the outstanding due amounts vide its emails dated 28.10.2015, 11.01.2017, 28.08.2020 and 07.01.2021 and yet failed to make any due payment to the Applicant after the last payment made on 16.12.2015.

6. It was stated that the applicant was constrained to issue demand notice dated 23.03.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 through email on 23.03.2022 and by hand on 25.03.2022 to the Corporate Debtor. The statutory period under the demand notice was expired on 02.04.2022, however, the Corporate Debtor neither made any payment in respect of its admitted liability to the Applicant nor brought to the notice of the Applicant about the existence of any dispute and any record of the pendency of any suit or arbitration proceedings filed before the receipt of such notice in relation to the any dispute or the record in respect of the repayment of unpaid. Accordingly, admission of the present Application under Section 9 of the Code, 2016 is prayed.

7. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor submits that the Corporate Debtor is engaged in the business of selling/providing polymer and granule based materials in the Indian Market and for that purpose purchases were made from the Applicant. The Corporate Debtor stated that the purchases from the Corporate Debtor are not denied or have never disagreed to pay for the same. The Corporate Debtor stated that Corporate Debtor had intimated the same to



the Applicant from time to time telephonically and through emails about the financial crunch being faced by the Corporate Debtor due to inevitable factors such as Covid-19. However, it was stated that the financial crunch of the Corporate Debtor is now getting better and it attempting to come on its feet and very capable of making and settling the account.

8. Furthermore, it was stated that the goods provided by the applicant were not up to mark and thus there had been difficulty in selling them off and the same was communicated telephonically to the Applicant. Also, it was stated that the interest as claimed by the applicant in the application has been excessively charged whereas no agreement for interest has been agreed by the Corporate Debtor.
9. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused. Before examining the said application on merits, it is vital to assess the maintainability of the present application in light of provision of the limitation as the operational debt claimed is outstanding from 14.11.2015 as per Part-IV of the application.
10. Sans irrelevant facts, adverting to the factual matrix of the present case, this Adjudicating Authority observe that a total of six invoices i.e., (i) Invoice dated 30.09.2015 amounting USD 83,935/- (ii) Invoice dated 30.09.2015 amounting USD 83,935/-, (iii) Invoice dated 08.10.2015 amounting USD 74,992/-, (iv) Invoice dated 11.10.2015 amounting USD 67,567/-, (v) Invoice dated 15.10.2015 amounting USD 747,992/-, (vi) Invoice dated 14.11.2015 amounting USD 1,80,090/- and the last part payment towards the goods supplied were received by the applicant on 16.12.2015. From the perusal of the e-mail correspondence between the applicant and the Corporate Debtor demanding the outstanding payment,



we find that the Corporate Debtor in its e-mails dated 05.09.2017, 28.08.2020 and 07.01.2021 had categorically admitted and acknowledged the liability of USD 565,312.50, towards the six (6) outstanding invoices and undertake to pay the money towards the outstanding debt.

11. Furthermore, as per the law laid down by the Hon'ble NCLAT in the case of **"Vivek Jha Vs. Daimler Financial Services India Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 756 of 2018"** wherein it has been observed that "In Law, an 'Acknowledgment' in writing within expiration of prescribed period will mark a new commencement period for limitation to base a claim and the same will not create a new contract. In fact, it only extends the limitation period." Accordingly, This Adjudicating Authority is satisfied that the present applicant is within the period of limitation.

12. From perusal of the records and going through the submissions of the parties, it is apparent that the factum of debt exceeding the pecuniary threshold and default in respect thereof has not been denied by the Corporate Debtor. The sum and substance of the defence put forth by the Corporate Debtor in its reply is that the Corporate Debtor is facing financial crunch and therefore, is not in a position to pay the outstanding invoices. We are of the considered view that the defence put forth is not relevant to consider the present application on merits. It is a settled position of law, that an application under Section 9 of the Code, 2016 has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) of the IBC are satisfied.

13. The Hon'ble Supreme Court judgement in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34,** have categorically laid down what the Adjudicating Authority has to examine in an Application under Section 9, which is as follows:-



“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

14. Moreover, the Corporate Debtor had failed to place on record any document or correspondence to show that there exists a pre-existing dispute as to the quality, quantity or existence of debt between the parties any time prior to the issuance of the statutory Demand Notice dated 23.03.2022 to the Corporate Debtor.
15. Further, on perusal of the Corporate Debtor’s reply to the present application, we observe that in this reply a mere statement was made by the Corporate Debtor that the goods were not upto the mark. However, the Corporate Debtor had neither replied to the statutory demand notice informing the applicant about the existence of dispute nor had placed on record any correspondence or document to substantiate their defence of pre-existing dispute. Therefore, the contention of the pre-existing dispute attempted to be raised by the corporate debtor is a feeble one, unsupported by any evidence, is nothing but a moonshine which cannot be held to be a valid ground of rejection of the instant application.



16. With regard to the corporate debtor's submission of charging of unilateral interest @ 18% on the invoices, it is the submission of the applicant that Corporate Debtor in its e-mail dated 11.01.2017 had undertaken to pay the outstanding amount of USD 565,312.50 with respect to 6 invoices along with some interest. Be that as it may, we observe that the outstanding principal amount as claimed in the Part IV of the application is Rs.3,50,49,344 (USD 565,312.50) which is above the pecuniary threshold limit. Therefore, this Adjudicating Authority is not inclined to go into the question of determining the applicable interest rate.
17. Thus, having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5)(i) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)-883/(ND)/2022) stands admitted and the CIRP is hereby commenced against M/s. Jewel Overseas Private Limited.**
18. The applicant in Part -III of the application has proposed the name of Ms. Veenu Drall as IRP. Accordingly, this Adjudicating Authority appoints Ms. Veenu Drall having registration number IBBI/IPP-02504/2021-2022/13816 and email id – veenuDrall25@gmail.com the Interim Resolution Professional of the Corporate Debtor. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and valid Authorization for Assignment from 12.10.2022 to 11.10.2023 attached with the present application is taken on record.



19. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Veenu Drall to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor

20. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- “(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 the possession of the corporate debtor.*
- (e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

21. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and



the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

22. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
23. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the



order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

25. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **C.P.(IB)/883/PB/2022** stands admitted.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(SH. P.S.N PRASAD)
MEMBER (J)**