

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

C.P. No. IB-1494/(ND)/2019

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

In the matter of:

Amit Industries Pvt. Ltd.

Having its office at:-
7D, Bigjoss Tower,
Netaji Subhash Place,
Pitampura, Delhi-110034

...Applicant

Versus

M/s SVASCA Industries (India) Ltd.

Having its Registered office at:-
240, DDA Quater, New Seema Puri,
Shahdara, Delhi-110095,
India

...Respondent Company

Coram:

DR. P.S.N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Sanyam Jain, Advocate

ORDER

Date:22.10.2019

1. This is a petition filed by M/s Amit Industries Pvt. Ltd., the petitioner/operational creditor seeking to initiate CIRP against the Respondent company /Corporate Debtor M/s SVASCA Industries (Industries) Ltd., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor in settling the amount of Rs. 27,52,286/- towards the supply of CRGO electrical steel sheet in coils and secondary defective CRGO silicon electrical steel sheet in coil. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

- i. On 30.04.2010, the corporate debtor has paid an advance of Rs. 12,00,000/- towards supply of CRGO electrical steel sheet in coils and secondary defective CRGO silicon electrical steel sheet in coil. On 01.01.2011 & 17.02.2011, the operational creditor had supplied the products as per specifications agreed vide invoice bearing no 025 dated 01.01.2011 amounting Rs. 12,00,000/- & 033 dated 17.02.2011 amounting Rs.13,06,414/-. On 30.04.2010 the operational creditor received advance payment of Rs.12,00,000/-. The debt has arisen due to non-payment of the abovementioned invoices

worth Rs. 11,14,110/- by the corporate debtor along with interest of Rs. 16,38,176/-. The operational creditor had sent a notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 asking the corporate debtor for repayment of unpaid amount of Rs. 11,14,110/- to the operational creditor or else may file an application before adjudicating authority to initiate a Corporate Insolvency Resolution Process, under Section 9 of the Code. The notice was sent on 13.04.2019 and delivered to the corporate debtor on 16.04.2019. On 24.04.2019, reply was received from the corporate debtors conforming that the demand notice was received on 16.04.2019 and alleging that the demand notice is not sustainable in the eye of law and it is hopelessly time barred according to Limitation Act. On 03.05.2019, rejoinder notice/reply was sent by operational creditors mentioning confirmation of accounts by Respondent for the period of 01.04.2018 and 08.03.2019 confirmed by the mail dated 18.03.2019 duly stamped by the Respondent acknowledging the debt of Rs. 11,14,110/-.

2. Despite service of notices by the Applicant as well as this Tribunal several times, the corporate debtor has neither appeared before this Tribunal nor filed its reply to the contents of the petition. Hence, the

corporate debtor was set ex parte and the matter was proceeded further by this Tribunal.

3. Learned counsel for the petitioner has cited the decisions by the Hon'ble High Court of Delhi in *State Bank of India vs. Kanhaiya Lal and Ors.* and by the Hon'ble Supreme Court of India in *Hiralal and others vs. Badkull and others* in his favour and argued that the matter is within the period of limitation as the corporate debtor has confirmed the outstanding amounts from 01.04.2018 to 08.03.2019 of the operational creditor by mail dated 18.03.2019.
4. The matter was heard by us and from the details of documents filed by the operational creditor it is clear that the operational creditor has established the existence of debt and default on the part of the corporate debtor. The corporate debtor is absent and has not availed the opportunity to defend the arguments made by the petitioner (operational creditor). In the above circumstances this Tribunal initiates CIRP on the corporate debtor with immediate effect.
5. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central

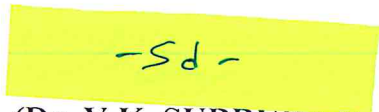
Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

8. The interim resolution professional (“IRP”), named in the list provided by the IBBI, is Mr. Shashi Sharma, email id: shashi@frmca.com, phone number: 9312078117) being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

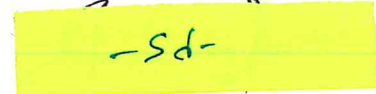
9. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

10. Renotify this case for report of the IRP on 26.11.2019.



(Dr. V.K. SUBBURAJ)

MEMBER (TECHNICAL)



(Dr. P.S.N. PRASAD)

MEMBER (JUDICIAL)

Deepak