

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**MUMBAI BENCH, COURT-II**

**CP(IB) 352 MB 2021**

Under section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 6 of  
the Insolvency and Bankruptcy Rules, 2016;

**IN THE MATTER OF**

**M/s Memoir**

148/2 Netaji Subhash Chandra Bose Road,  
Ranikunthi, Kolkata - 700040.

**Mr. Sudip Roy Chaudhury**

(Son of Late Nalini Roy Choudhury)

148/2 Netaji Subhash Chandra Bose Road,  
Ranikunthi, Kolkata - 700040.

**Mrs. Soma Roy Choudhury**

(Wife of Sudip Roy Chaudhury)

148/2 Netaji Subhash Chandra Bose Road,  
Ranikunthi, Kolkata - 700040.

**... Operational Creditor**

V/s.

**M/s Eagle Home Appliances Pvt. Ltd.**

4<sup>th</sup> Floor, Rarmer Gallery, 77, Shivarkar  
Road, Wanawadi, Pune - 411040.

**... Corporate Debtor**

**Order delivered on :- 28.03.2024**

**Coram:**

**Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)**

**Hon'ble Shri Anil Raj Chellan, Member (Technical)**

***Appearances:***

For the Operational Creditor : Adv. Rajendra R Mishra  
For the Corporate Debtor : Adv. Rahul D Oak

**ORDER**

***Per: - Kuldip Kumar Kareer, Member (Judicial)***

1. This Company petition is filed by M/s Memoir and Others (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Eagle Home Appliances Pvt. Ltd. (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code, 2016 (hereinafter called “**Code**”) on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 3,48,83,709/-.

**The submissions by the Operational Creditor: -**

2. The Corporate Debtor appointed the Operational Creditor as its institutional Distributor on 03rd October, 2016 and thereby also an Agreement, dated 03rd October, 2016 was executed by and between them.
3. As per the said Agreement dated 03rd October, 2016, the Operational Creditor paid a total Security Deposit of Rs. 1,30,00,000/- to the Corporate Debtor (Rs.75,00,000/- on 06th October, 2016 and Rs.55,00,000/- on 19th November, 2016) and as against such payment of security deposits, the Corporate Debtor also issued receipts to the Operational Creditor.

4. It was also settled in the said Agreement dated 03rd October, 2016 that the Corporate Debtor would pay Rs.3,15,250/- as interests to the Operational Creditor as against the said Security Deposit of Rs, 1,30,00,000/-. It is pertinent to mention here that the Corporate Debtor paid the said interest amount till March, 2020 but failed to pay the monthly interest thereafter. The Corporate Debtor is, therefore, liable to pay the Security Deposit of Rs. 1,30,00,000/- along with such interests to the Operational Creditor after the agreed time for holding the said security deposit is over as per the said Agreement dated 03rd October, 2016.
5. The Operational Creditor, as per the said Agreement dated 3rd October, 2016, has also made supply of materials worth Rs. 1,15,34,614/- and such invoices has been left unpaid by the Corporate Debtor since 14th July, 2018. It is pertinent to mention that the Corporate Debtor is also liable to pay the abovementioned sum along with interest at the rate of 1.5 percentile on a monthly basis.
6. The Operational Creditor has made innumerable intimations to the Corporate Debtor for making payment of the said abovementioned amount. However, the Corporate Debtor failed and ignored to make such payments as per the agreement dated 03rd October, 2016. Thereafter, having no other alternatives, the Operational Creditor issued a Demand Notice as per Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Hence the present Company Petition.

**Reply filed by the Corporate Debtor:-**

7. At the outset, all the claims, contentions and allegations made by the Operational Creditor in the Company Petition are denied in its

entirety and nothing therein should be deemed to be admitted by the Corporate Debtor for want of specific denial unless the same has been specifically admitted herein.

8. The Corporate Debtor has submitted that the Company Petition filed by the Operational Creditor is legally untenable. Under the provisions of the Code, it is necessary for the person representing as 'Operational Creditor' to demonstrate that, first, such amount falls within the definition of 'claim' as defined under section 3(6) of the Code; second, such a claim should be capable of being treated as a debt as defined under section 3(11) of the Code and; third, the debt should fall within the confines of section 5(21) of the Code, i.e. it should be capable of being treated as an 'Operational Debt' and such 'Operational Debt' must be owed by the Corporate Debtor to a creditor who can be considered as an Operational Creditor as defined under section 5(20) of the Code. The claim of the Operational Creditor does not fall within the definition of an Operational Debt as defined under the Code.
9. The Corporate Debtor is a company registered under the Companies Act, 1956 engaged in the business of manufacturing and exporting of thermaware, cookware, vacuumware and such other products and services. For the purpose of re-distribution, handling of its products, product promotion and/or sales business development, the Corporate Debtor had entered into an Agreement for appointment of Consignee Agent/C & F Agent/ Distribution dated 3<sup>rd</sup> October 2016 with the Operational Debtor ("Agreement").
10. As per the Agreement, the Operational Creditor had deposited under the head of security deposit of the extent of INR 1,30,00,000/- to the Corporate Debtor ("Security Deposit"). The purpose of the said

Security Deposit was to debit the Operational Creditor in case of defective goods or other unsatisfactory performance not meeting the standards of the Corporate Debtor and in particular any activity that may negatively affect the valuable brand name “Eagle” that had been built up by strenuous efforts over more than a sixty-year period. Further, under the Agreement, the role of the Consignee / C & F Agent / Distributor, i.e., the Operational Creditor herein, was limited to employment of workers in its godown and for discharging all its obligations to or in connection with such employees and statutory duties and taxes.

11. In addition to the said services, the Operational Creditor was also supplying Steel Vacuum Flasks, steel Vacuum Bottles along with pouch etc., to the Corporate Debtor. However, the goods supplied by the Operational Creditor were not in line with the required quality and were faulty and defective. The Corporate Debtor had communicated about the materials being defective several times to the Operational Creditor. However, the Operational Creditor did not take any remedial action in this regard. Moreover, the materials being defective were scrapped in the retail market or returned by the Corporate Debtor but despite that, the Operational Creditor wrongly raised outstanding invoices.
12. The alleged claim of the Operational Creditor in the Company Petition is for refund of Security Deposit which falls beyond the scope of Section 9 of the Code. Further, the purported invoices raised by the Operational Creditor are neither due nor payable.
13. The material supplied by the Operational Creditor were never utilized by the Corporate Debtor and were scrapped in the retail market or returned back to the Operational Creditor, the invoices raised by the

Operational Creditor are false and bogus. The said invoices are neither due nor payable by the Corporate Debtor.

14. The Operational Creditor has wrongly stated that the Operational Creditor is entitled to levy and charge interest for non-payment or delayed payment of any invoices at the rate of 18% per annum from the respective due dates of the invoices.
15. Accordingly, without prejudice to the foregoing, the Applicants are disentitled from any relief and the Petition deserves to be dismissed with exemplary costs.
16. Counsel appearing for the Applicant filed a rejoinder, denying each and every fact given by the Respondent in reply and reiterating those made in the Petition.

**Findings:-**

17. We have heard the Counsel for the parties and have gone through the record.
18. It has been argued by the Counsel for the Corporate Debtor that the claim with regard to refund of security deposit of Rs. 1.30 crore does not fall within the ambit of operational debt and, therefore, the Petition is liable to be dismissed on this ground alone. The Counsel for the Operational Creditor has further argued that even otherwise no termination of the agreement dated 03.10.2016 ever took place and, therefore, the security deposit of Rs. 1.30 crore has not fallen due as yet.
19. The Counsel for the Corporate Debtor has further argued that so far as the claim with regard to the supply of goods is concerned, the same is also not tenable as the goods supplied by the Operational

Creditor were defective in nature and, therefore, the claim on account of supply of goods is also not sustainable.

20. Having thoughtfully considered the contentions raised on behalf of the Corporate Debtor, we are of the considered view that vide agreement dated 03.10.2016, the Operational Creditor was appointed as consignee agent by the Corporate Debtor and as per the terms and conditions of the said agreement, the Operational Creditor was appointed as consignee/C & F agent/ Distributor for the purpose of re-distribution/handling of products/product promotion/sales and business development. As per terms and conditions of the said agreement, the Operational Creditor deposited a refundable security of Rs. 1.30 crore on which interest at the rate of 1.5 percent per month for the period from 31.10.2016 to 31.12.2016 and thereafter, at the rate of 0.75 percent was payable by the Corporate Debtor. From a perusal of the terms and condition of the agreement, it is evident that the Operational Creditor was to carry out the work of distribution and promotion of the products of the Corporate Debtor. Therefore, it can be safely inferred that under the said agreement, the Operational Creditor was to render certain services to the Corporate Debtor. That being the case, it cannot be successfully argued on behalf of the Corporate Debtor that the claim with regard to the refund of security deposit of Rs. 1.30 crore cannot be treated as operational debt when it is writ large that the said amount was paid under an agreement which was for rendering certain services to the Corporate Debtor.
21. As regards the contention that the agreement dated 03.10.2016 was not terminated by the Operational Creditor is concerned, it would be suffice to say that as per the terms and conditions of the agreement, more particularly clause 6 of the agreement, the right to terminate the agreement is with the Corporate Debtor only in certain events.

Therefore, the Corporate debtor cannot eschew its liability on the ground that the agreement was not formally terminated by the Operational Creditor or by either of the parties.

22. It has also been pointed out on behalf of the Corporate Debtor that the goods supplied by the Operational Creditor were defective in nature. However, in this regard, no concrete evidence has been placed on record nor this part of the dispute was raised by the Corporate Debtor any time prior to the issuance of the demand notice or even filing of the present Petition. The Corporate Debtor has claimed in the reply that it communicated to the Operational Creditor many times that material/goods supplied were defective in nature and further that those goods were never utilized by the Corporate Debtor and were scrapped in the retail market or returned to the Operational Creditor. However, to substantiate these facts, no material has been brought on record by the Corporate Debtor. In the absence of any such evidence with regard to supply of defective goods or any communication exchanged between the parties whereby the Corporate Debtor might have lodged a protest with the Operational Creditor regarding the defective nature of goods or return of the goods, it cannot be said that some dispute exists between the parties with regard to the quality of the goods. Therefore, even this contention raised on behalf of the Corporate Debtor is not tenable.
23. No other points have been raised on behalf of the Corporate Debtor. Even otherwise from a perusal of the pleadings and documents on record, it is evident that the Operational Creditor has been able to establish the existence of the financial debt and its default committed by the Corporate Debtor.

24. As a result of the above discussion, we are of the considered view that the instant Petition u/s 9 of the Code, 2016 deserves to be admitted. It is ordered accordingly in the following terms:

**ORDER**

- a. **The above Company Petition No. (IB) -352 (MB)/2021 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Eagle Home Appliances Pvt. Ltd.**
- b. This Bench hereby appoints Ms. Rajas Shreeram Bodas, Registration No: IBBI/IPA002/IPNO1200/2021- 2022/14010 as the Interim Resolution Professional email :- [rajasbodas1@gmail.com](mailto:rajasbodas1@gmail.com), to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANIL RAJ CHELLAN**  
**Member (Technical)**

**Sd/-**

**KULDIP KUMAR KAREER**  
**Member (Judicial)**