(12)

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 9.4.2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL

APPLICATION NUMBER	:	
PETITION NUMBER	:	**CP/33/(IB)/2018**
NAME OF THE PETITIONER(S)	:	**SAWHNEY TRADING COMPANY PVT LTD**
NAME OF THE RESPONDENT(S)	:	**K.A EARTHMOVERS PVT LTD**
UNDER SECTION	:	**9 RULE 6**

S.No.	**NAME (IN CAPITAL)**	**DESIGNATION / REPRESENTATION BY WHOM**	**SIGNATURE**
1)	K. Moorthy (K. MOORTHY)	Counsel for Respondent	
2)	SACHIN SAWHNEY Sachin Sawhney SACHIN SAWHNEY 9840031544 SAWHNEY TRADING COMPANY PRIVATE LIMITED	Petitioner DIRECTOR	

V

IN THE NATIONAL COMPANY LAW TRIBUNAL, SIGNLE BENCH, CHENNAI

CP/33/(IB)/CB/2018

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

In the matter of

M/s. Sawhney Trading Company Private Limited
... Operational Creditor

Vs.

M/s. K. A. Earthmovers Private Limited
... Corporate Debtor

Order delivered on 9th of April, 2018

CORAM :

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Operational Creditor : *Mr. Sachin Sawhney, Director*
For Corporate Debtor : *Mr. K. Moorthy, Counsel*

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is CP/33/(IB)/CB/2018 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating

Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Director of the Operational Creditor and Counsel for the Corporate Debtor and perused the record.

3. The Operational Creditor has claimed an outstanding debt to the tune of Rs.10,31,059/- including interest from the Corporate Debtor, the detail of which is given in the tabular sheet placed at page No.6 of the typed set filed with the Application.

4. The brief facts of the case are that the Operational Creditor has supplied the spare parts to the Corporate Debtor. In support of the claim, the Operational Creditor has filed the delivery Challans and Invoices

which are placed at pages 20 to 89 of the typed set filed with the Application.

5. The understanding between the Operational Creditor and Corporate Debtor was that, after the delivery of the items, the payments were to be made by the Corporate Debtor within 30 days failing which interest @ 18% p.a., was to be changed on delayed payments. The said condition is provided in the Invoices raised by the Operational Creditor.

6. The Representative of the Operational Creditor has submitted that part payments have been made by the Corporate Debtor towards the Invoices raised by the Operational Creditor through cheques drawn on South Indian Bank, which reflects from the statement of accounts placed at pages 14 to 19 of the typed set filed with the Application. But, the rest of the amount has not been paid by the Corporate Debtor.

7. The Operational Creditor has sent Notice dated 14.11.2017 under Section 8 of the I&B Code, 2016 to the Corporate Debtor at two addresses, one at registered office of the Corporate Debtor and the other at operational office of the Corporate Debtor, which was delivered on 17.11.2018, the proofs of delivery are placed at pages 174 and 175 of the typed set filed with the Application, to which the Corporate Debtor has not given any reply.

8. The Operational Creditor has complied with Section 9(3)(b) & (c) of the I&B Code, 2016, by filing Affidavit wherein under para 2 it has been deposed that the Corporate Debtor has not given any notice relating to a dispute of the unpaid operational debt, the copy of which is placed at pages 90 and 91 of the typed set filed with the Application. The statement of accounts has been filed, which is available at pages 7 to 13 of the typed set filed with the Application. The same has been attested by the South Indian Bank.

9. The Counsel for the Corporate Debtor has filed counter on 13.02.2018 wherein three objections have been raised by the Corporate Debtor. The 1st objection raised is that the Corporate Debtor has not received any materials from the Operational Creditor; the Invoices raised in the name of the Corporate Debtor are for the year 2010 and the delivery Challans are fabricated and forged in the name of the Corporate Debtor. The 2nd objection raised by the Corporate Debtor is that even if it is assumed without admitting that the materials have been supplied to the Corporate Debtor, there arises doubt as to why the Operational Creditor was silent for the past seven years and has not made any demand for payments with regard to such Invoices until recently. The 3rd objection raised by the Corporate Debtor is that the claim made by the Operational Creditor is time barred.

10. In relation to the 1st objection raised by the Counsel for the Corporate Debtor, the representative of the Operational Creditor has submitted that the supply

of spare parts made by the Operational Creditor were continuing till 09.11.2010 and the statement to that effect is placed at pages 14 to 18 of the typed set filed with the Application and the Invoices have also been raised in the name of the Corporate Debtor. But, the Corporate Debtor, after making part payments, failed to make the balance amount as has been claimed. In relation to the 2nd objection raised by the Counsel for the Corporate Debtor, the representative of the Operational Creditor has made a reference to page 17 of the typed set filed with the Application, which goes to show that on 09.04.2010, the Corporate Debtor has paid Rs.7,35,654/- to the Operational Creditor through South Indian Bank by way of Cheque No. 50120. It has been submitted that the Corporate Debtor has been continuing to purchase the materials from the Operational Creditor and the payments of Rs.4,00,900/- were made on 13.09.2010 through South Indian Bank by way of Cheque Nos.50638 and 50639. In relation to the 3rd objection raised by the Corporate Debtor, the representative of the Operational

Creditor has submitted that the Limitation Act is not applicable to the provisions of the I&B Code, 2016 as has been held by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.76/2017 titled **Parag Gupta &Associates Vs. BK Educational Services Pvt. Ltd.,** dated 07.11.2017. However, an Appeal is pending before Hon'ble Apex Court. Therefore, as on date, the legal position is that the provisions of the Limitation Act are not applicable to the provisions of the I&B Code, 2016.

11. The representative of the Operational Creditor has also submitted that in case the Corporate Debtor has not been purchasing the materials from the Operational Creditor, then, why these payments have been made. In short, the objections raised by the Counsel for the Corporate Debtor have been controverted by the representative of the Operational Creditor through documentary evidence to the effect that the Operational Creditor has been supplying the material to the Corporate Debtor and had received the part payments as has been mentioned in the preceding paragraphs.

12. During the course of arguments, it has been submitted by the Counsel for the Corporate Debtor that the payments which are shown to have been made by the Corporate Debtor are relating to the supply of the materials prior to 2009, and thereafter, the Corporate Debtor has not received any supply of spare parts from the Operational Creditor, and the earlier accounts have been settled and also reiterated that the delivery Challans and Invoices raised are fabricated and forged by the Operational Creditor. But, the Counsel for the Corporate Debtor did not place any documentary evidence on record to substantiate his arguments. Therefore, all the objections raised by him stand rejected.

13. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Authority is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt as claimed by the Operational Creditor. Therefore, CP/33/(IB)/CB/2018 is admitted

and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

14. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

15. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

16. The Operational Creditor has not proposed the name of IRP, therefore, Mr. Avva Jaganadham Athidranath is appointed as IRP, whose name appears in the Panel of Insolvency Professionals recommended by the IBBI. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP

is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed.

17. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 for the purpose of discharging his functions under Section 20 of the I&B Code, 2016.

18. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

19. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor. The e-mail and other details of the IRP are as follows: -

Mr. Avva Jaganadham Athindranath,
Reg. No: IBBI/IPA-001/IP-P00412/2017-18/10735
Email: athindranath@gmail.com
Mobile No: 9677145760

20. Order is dictated and pronounced in open court in the presence of the Director of the Operational Creditor and the Counsel for the Corporate Debtor.

[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)

P. ATHISTAMANI