

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP(IB) NO.301/KB/2018

In the matter of:

An application by Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, Rules, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

AND

In the matter of:

Bijoy Kumar Sarma, son of Late Sundar Lal Sarma, carrying on business in the name and style of **M/s. Enterprise International**, with its address for correspondence being 61, Jatindra Mohan Avenue, Kolkata- 700005, West Bengal;

Applicant/Operational Creditor.....

VERSUS

In the matter of:

Narshing Vinimay Private Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 125, Mahatma Gandhi Road, 1st Floor, Kolkata – 700007, West Bengal;

Respondent/Corporate Debtor....

Coram: Jinan K.R., Hon'ble Member (Judicial)
Harish Chander Suri, Hon'ble Member (Technical)

For Operational Creditor :





1. Mr. Pankaj Agarwal, Advocate
2. Avirup Mondal, Advocate
3. Paromita Maity, Advocate

Date of Pronouncement of Order: 2nd December, 2019

ORDER

Per Shri Jinan K.R, Hon'ble Member (J):

1. Bijoy Kumar Sarda/Operational Creditor, sole proprietor of a proprietary Company, namely, M/s. Enterprise International, filed this application, under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating Corporate Insolvency Resolution Process as against M/s. Narsingh Vinimay Private Limited/Corporate Debtor, alleging that Corporate Debtor committed default in payment of Rs. 3,34,137/- (Three Lakh, Thirty Four Thousand, One Hundred Thirty Seven only), as the balance outstanding operational debt due to the Operational Creditor out of delivery of goods delivered to the Corporate Debtor.
2. Brief contentions for the consideration of this application are the following.
 - a. In the month of September 2014, the Corporate Debtor placed orders upon the Operational Creditor for purchase of diverse quantities of Knitted Hosiery Fabrics.
 - b. In terms of the said order placed by the Corporate Debtor, the Operational Creditor sold, supplied and delivered to the Corporate Debtor the said goods quoted by the Corporate Debtor as per the specifications for the Corporate Debtor.
 - c. The Corporate Debtor received the said goods without raising any objection and/or demur either with regard to the quantity or the quality thereof.

- d. The Corporate Debtor shall make payment in respect of the said goods within a period of 90 days from the date of receipt thereof. Consequent upon the supply of goods, the Operational Creditor raised three invoices dated 22.09.2014 and 15.10.2014, for an aggregate sum of Rs. 12,12,522/-(Rupees Twelve Lakh, Twelve Thousand, Five Hundred Twenty Two Only).
- e. The Corporate Debtor failed to make the full payment within the agreed time. However, paid the sum of Rs. 8,78,385/-(Rupees Eight Lakh, Seventy Eight Thousand, Three Hundred Eighty Five Only), by way of several cheques out of which some had been dishonoured and the balance amount due is Rs. 3,34,137/-(Rupees Three Lakh, Thirty Four Thousand, One Hundred Thirty Seven Only). Operational Creditor is also entitled to claim interest @ 18 % per annum for the unpaid amount from 23rd September, 2014, onwards aggregating to a sum of Rs. 2,55,516.34 (Rupees Two Lakh, Fifty Five Thousand, Five Hundred Sixteen and Thirty Four Paisa Only) . Therefore, filed this application claiming the total amount of Rs. 6,03,330/-(Six Lakh, Three Thousand, Three Hundred Thirty only). The aforesaid amount was demanded repeatedly from the Corporate Debtor. The Corporate Debtor failed to discharge the debt due to the Operational Creditor and ultimately issued Section 8 demand notice to the Corporate Debtor on 17.08.2017. Notice was delivered to Corporate Debtor 18.08.2017. The Corporate Debtor not choosing to send a reply not raised any dispute and therefore, filed this application for initiating CIRP Process as against the Corporate Debtor under Section 9 of the Code.
3. The Corporate Debtor though entered appearance by engaging a counsel neither chosen to contest this application nor filed reply affidavit denying the claim of the Operational Creditor. Nobody appeared on the side of the Corporate Debtor when the case was finally taken up for hearing. Accordingly, the learned Counsel appearing for the Operational Creditor was heard and perused the records.

4. Mr. Bijoy Kumar Sarma, sole proprietor of proprietary Company, M/s. Enterprises International, has filed this application for initiating Corporate Insolvency Resolution Process as against the Narshing Vinimay Private Limited/ Corporate Debtor, under Section 9 alleging default in payment of Rs. 3,34,137/- (Three Lakh, Thirty Four Thousand One Hundred Thirty Seven Only) as the outstanding amount due to the Operational Creditor.
5. To prove that the above said amount is due to the Operational Creditor, Operational Creditor has produced the invoices. The Ld. counsel for Operational Creditor submit that the Corporate Debtor used to pay adhoc amount and the last payment was 31.01.2017. To strengthen the said contention the statement of Bank Account **Annexure- E**. It add strength to the submission that Rs.25.000/- (Rupees Twenty Five Thousand) was paid by the Corporate Debtor on 31.01.2017. The invoices generated by the Operational Creditor though were generated in the year 2014 the evidence led on the side of the Operational Creditor prove that the Operational Creditor is maintaining the running account and and the last payment towards the debt found due to the Operational Creditor being on 31.01.2017 filing of this application on 14.02.2018 is perfectly, within the period of limitation.
6. The Ld. Counsel for the Operational Creditor, however, failed to prove that the Corporate Debtor is liable to pay interest @ 18 % per annum from the Corporate Debtor. Though the business transaction between the parties is on the strength of purchase orders no copies of the purchase orders seen produced so as to prove that there is an agreement to pay interest on the failure of payment of a value of goods as alleged on said of the Operational Creditor. So also, the invoices generated by the Operational Creditor does not include any terms fixing liability on the side of the Corporate Debtor to pay interest on its failure to pay the amount within the 90 days of the receipt of delivery of goods by the Corporate Debtor. Therefore, we are unable

to hold that the Operational Creditor can claim interest in the nature of this case. However, the Operational Creditor being successful in proving that an amount of Rs. 3,34,137/- (Three Lakh Thirty Four Thousand One Hundred Thirty Seven Only) is due and payable by the Corporate Debtor and despite demand failed to pay this application is liable to be allowed.

7. The Operational Creditor also succeeds in proving that all the requirements to be meted out under Section 9(3) of the Code have been complied. An affidavit in conformity under Section 9(3)(b) that there is no notice given by the Corporate Debtor relating to dispute of the unpaid operational debt and a statement of bank account issued from its bank also produced to prove that there is no payment of an unpaid Operational Debt by the Corporate Debtor, in conformity with Section 9(3)(c). Mr. Ajay Gaggar's name has been proposed on the side of the Operational Creditor as Interim Resolution Professional and Form 2 along with written communication (**Annexure II**) also seen produced on side of the Corporate Debtor to prove that there were no disciplinary proceedings pending against the proposed Resolution Professional. Being satisfied all the requirements to be meted out under Section 9(3) have been complied on the side of the Operational Creditor, this application is fit for admission and accordingly admitted upon the following terms and conditions.

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Narshing Vinimay Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.





- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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.
- v) The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) 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.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

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- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x) **Mr. Ajay Gaggar** of 6, Old Post Office Street, "Temple Chambers" (3rd Floor) Kolkata 700001, having Registration No. IBBI/IPA-001/IP-P00030/2016-17/10066, E-mail ID: AJAY.GAGGAR@GMAIL.COM, Mobile No. 9831010767 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit Rs. 1,00,000/- (One Lakh Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional within one week of the date of this order.
- xiii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.
- xiv) List the matter on 10.01.2020 for the filing of the progress report.

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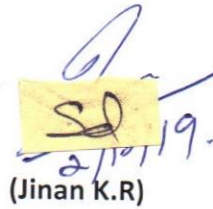
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- xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)

Member (Technical)



(Jinan K.R)

Member (Judicial)

Signed on this the day of 2nd December, 2019.

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