

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. No. 2267/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Daikin Airconditioning India Private Limited,
210, 1st Floor, Okhla Industrial Area, Phase 3,
Delhi- 110020

...Petitioner

V/s.

Kings Electronics Private Limited
Eden Garden Office no. 301-304, 3rd Floor,
Near Sai Baba Mandir, Takka Panvel,
Raigarh- 410206

... Corporate Debtor

Order delivered on: 04.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Ameya Mahajan, Advocate

For the Corporate Debtor: Mr. Prakash, Director of the Corporate Debtor

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by Daikin Airconditioning India Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Kings Electronics Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 82,79,386/- by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner submits that they are in the business of manufacturing and trading of air conditioners of various types, VRV's, Chillers and Air Purifiers, its parts and accessories. The Corporate Debtor is engaged in the business selling of household and electronics goods. The Petitioner supplied goods to the Corporate Debtor and raised invoices to the extent of Rs. 86,76,965/- during April 2018 on the Corporate Debtor. On 02.05.2018, the Corporate Debtor has written to the Petitioner confirming that a sum of Rs. 82,78,345/- is due and legally payable by the Corporate

Debtor to the Petitioner and the said confirmation of balance is enclosed with the petition at page no. 63 of the petition.

3. The Petitioner submits that previously C.P. 4389/2018 was filed for initiation of CIRP by the Petitioner against the Corporate Debtor for this very same claim, entered into consent terms with the Corporate Debtor on 27.03.2019, and the said company petition was dismissed as withdrawn. The said consent terms is enclosed with the petition as annexure 10 at page no. 87 of this Petition.

4. Consequent to the failure of the Corporate Debtor to honor the consent terms arrived between the parties, the Petitioner issued demand notice under section 8 of the Code claiming a sum of Rs. 82,79,386/- along with interest @ 12 % p.a. The Petitioner has filed an affidavit under section 9(3)(b) of the Code stating that the Corporate Debtor has not raised any dispute regarding the unpaid operational debt.

5. Heard the counsel for the Petitioner. The Director of the Corporate Debtor is personally present and submits that they are accepting the liability as well as default.

6. This Bench, on going through the Petition and after hearing the submissions of the Counsel for the Petitioner and the Director of the Corporate Debtor is of the view that the debt and default is proved.

7. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 04.11.2019 till the completion of the CIRP 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.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Ms. Poonam Basak, 23/ D, Palazzio CHS, Powai Vihar, Mumbai-400076 having Registration No. IBBI/IPA-001/IP-P01234/2018-2019/11957 as Interim Resolution Professional to carry the functions as mentioned under the Code.
8. Accordingly, this Petition is admitted.
9. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)