

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court No – II)
KOLKATA**

C.P (IB) No. 744/KB/2020

An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Seemant Nahata, a proprietor of Dhruv Diamond having office at 19 Synagogue Street, City Centre, 4th Floor, Room No. 407, Kolkata – 700 001, West Bengal.

...Operational Creditor

Versus

Divyaswarna (OPC) Private Limited [CIN U74999WB2017OPC220993], a company incorporate under the Companies Act, 2013, having its registered office at 61, Burtolla Street, Ground Floor, Kolkata – 700 007.

...Corporate Debtor

Date of Hearing: 28.07.2022

Date of pronouncing the order: 07.09.2022

Coram:

Shri Rohit Kapoor : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through Video Conferencing/physical hearing)

For the Operational Creditor : Ms. Ankita Baid, Adv.

For the Corporate Debtor : Mr. Pratip Mukherjee, Adv.

: Mr. Abhisek Baran Das, Adv.

: Ms. Srijoni Chongdar,

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Seemant Nahata, a proprietor of Dhruv Diamond (*'Operational Creditor'*) for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Divyaswarna (OPC) Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **18 March, 2020** before this Adjudicating Authority. The total amount claimed in default is Rs.9,83,989/- (Rupees Nine Lakh Eighty Three Thousand Nine Hundred Eighty Nine only) . Debt fell due on the date of generation of the invoice i.e., 31 January, 2019, which is also stated to be date of default.
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.1,00,000/- (Rupees One Lakh only) with subscribed share capital of Rs.1,00,000/- (Rupees One Lakh only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Operational Creditor is engaged in the business of manufacturing and selling jewellery and the Corporate Debtor is engaged in the business of selling jewellery.
 - 5.2 The Operational Creditor, in the ordinary course of business has sold to the Corporate Debtor for a sum of Rs.30,80,921/- (Rupees Thirty Lakh Eighty Thousand Nine Hundred Twenty One only) and raised two invoices.
 - 5.3 The Corporate Debtor has made a part payment of Rs.20,96,932/- (Rupees Twenty Lakh Ninety Six Thousand Nine Hundred Thirty Two only) through RTGS between 23 January, 2019 to 16 August, 2019 [*at Page 06 of the*

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Petition]. However, the Corporate Debtor failed to make the payment for the remaining amount of Rs.9,83,989/- (Rupees Nine Lakh Eighty Three Thousand Nine Hundred Eighty Nine only) .

5.4 After several requests, the Operational Creditor sent a demand notice dated 31 January, 2020 under section 8 of the Code and the same was delivered to the Corporate Debtor on 01 February, 2020 [*at Page 84 of the Petition*].

6. *Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor.*

6.1 The Operational Creditor has no cause of action, this instant application has been filed on frivolous grounds and should be dismissed in limine. The entire documents are forged.

6.2 The Corporate Debtor has not received any demand notice under section 8 of the Code from the Operational Creditor. Further, the Operational Creditor has failed to show that the said demand notice dated 31 January, 2020 has been duly served upon the Corporate Debtor.

6.3 Further, the transaction is question between the parties does not fall within the scope of section 9 of the Code.

Analysis & Findings

7. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the record.

8. Upon perusal of record, it is apparent that invoices were raised against the Corporate Debtor on 31 January, 2019 and subsequently, the part payments were made by the Corporate Debtor [*at pages 44 & 57 of the Petition*]. However, in regard to the Contention of the Corporate Debtor that the entire documents are forged, the Corporate Debtor has failed to substantiate the same and the assertion is a just a surmise.

9. Further, from page 84 of the Petition it is clear that the notice dated 31 January, 2020 under section 8 of the code was delivered to the registered

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address of the Corporate Debtor on 01 February, 2020, but they did not contend the forgery aspect of the documents at that time.

10. In the matter of *Innoventive Industries Ltd. v. ICICI Bank*¹, the Hon'ble Supreme Court has held that;

- i. The operational creditors are those creditors to whom an operational debt is owed.*
- ii. An operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority.*
- iii. That financial debts are those that may be owed to financial creditors.*

11. In the instant case the Operational Debt arises in respect of the goods provided by the Operational Creditor to the Corporate Debtor. Hence, in view of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.

12. It is, accordingly, hereby ordered as follows:-

- a) The application bearing *CP (IB) No. 744/KB/2020* filed by Mr. Seemant Nahata, a proprietor of Dhruv Diamond, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy

¹ (2018) 1 SCC 407

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(Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Divyaswarna (OPC) Private Limited, is **admitted**.

- b) There shall be a moratorium under section 14 of the IBC.
- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Sudipta Ghosh**, registration number **IBBI/IPA-001/IP-P00484/2017-18/10872**, email: **sudipta_ghosh08@yahoo.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - h) The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
 - i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
 - j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 13. CP (IB) No. 744/KB/2020** to come up on **30.11.2022** for filing the periodical report.
- 14.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 07th day of September, 2022

SA [LRA]