

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) 2829/IBC/MB/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Mayank Arora & Co.

[PAN: AZMPA0855G],

A proprietorship concern represented by
its proprietor, Mr Mayank Arora, and
having its office at –

Office No. 268, 2nd Floor, Udyog
Bhavan, Sonawala Road, Goregaon
(East), Mumbai-400063

...Operational Creditor

Versus

Avani Impex Private Limited

[CIN: U74900MH2007PTC169473]

419B, 4th Floor, Plot No. 21,

Panchratna, Mama Parmanand Marg,

Opera House, Girgaon, Mumbai-400004

... Corporate Debtor

Order Pronounced On: 31.01.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mr. Harsh Kesharia, Advocate

For the Corporate Debtor: Ms. Raina Birla, Advocate

Per: Shri Shyam Babu Gautam, Member

ORDER

1. This Company Petition is filed by Mayank Arora & Co. [PAN: AZMPA0855G] (hereinafter called "Operational Creditor") seeking

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to initiate Corporate Insolvency Resolution Process (CIRP) against Avani Impex Private Limited (hereinafter called “Corporate Debtor”) on the ground that the Corporate Debtor committed default in payment of the dues to the Operational Creditor invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is a proprietorship concern bearing PAN AZMPA0855G, and is represented by its proprietor, Mr. Mayank Arora. It is a firm of company secretaries which provided professional services to the Corporate Debtor. The Corporate Debtor is a company incorporated on 31.03.2007, bearing CIN: U74900MH2007PTC1694 and having authorized share capital Rs. 2,50,00,000/- and paid up share capital of Rs. 13,00,000/-.
3. The Operational Creditor offered to provide Accounting and Advisory Services in terms of letter dated 03.04.2018, which has been placed at pages 28-31 of the Petition. This has also been accepted under the seal of the Corporate Debtor duly signed by its Director, Mr. Sunil Bhandari. The acceptance is placed at p.31 of the Petition.
4. The counsel for the Operational Creditor further mentioned that the services described in all invoices were duly provided to the Corporate Debtor from time to time, yet there was no payment and therefore, the total amount due on the Corporate Debtor is ₹5,96,300/-
5. The counsel appearing on behalf of the Operational Creditor also mentioned that the invoices were also duly delivered to the Corporate Debtor.

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6. The Operational Creditor stated about the reminders sent to the Corporate Debtor to clear the outstanding dues but to no avail. The Operational Creditor also followed up with the Corporate Debtor to release the entire outstanding amount with hopes of arriving at an amicable settlement but in vain.
7. The counsel for the Operational Creditor further stated that a demand notice dated 04/06/2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 was sent to the Corporate Debtor which was duly received on 06/06/2019 wherein a demand was made for payment of the unpaid operational debt due on the Corporate Debtor.
8. There was no reply to this Demand Notice.
9. The Operational Creditor has annexed the following documents in support of the contentions made by them:
 - i. True copy of the Corporate Debtor's Master data as available on the website of the Ministry of Corporate Affairs.
 - ii. Invoices dated 08.08.2017, 30.03.2017, 04.08.2016, 18.04.2018, 27.12.2017 and 20.04.2018.
 - iii. Copy of the Computation of Default in tabular form.
 - iv. Copy of the Demand Notice dated 04.06.2019 along with the tracking report of delivery.
 - v. Copy of reply dated 25.05.2019 of the Respondent to the Applicant.
 - vi. Copies of emails dated 15.05.2019, 31.05.2019 and 03.07.2019 and letters dated 15.04.2019 and 20.05.2019 addressed by the Applicant to the Respondent.
 - vii. Copy of the Bank Account of the Applicant.
 - viii. Copy of the letter dated 03.04.2018 of the Applicant accepted by the Respondent.
 - ix. Copies of Invoices raised by the Applicant on the Respondent.

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10. The Corporate Debtor has filed a reply to the Petition dated 25.11.2019 and filed this Tribunal on 11.12.2019, in which it has been stated that the Corporate Debtor has availed the professional services of the Operational Creditor for Accounting and Advisory services in terms of the letter dated 03.04.2018 for an annual fee of Rs.6,00,000/-. However, there were discrepancies on the part of the Operational Creditor to provide the services to the Respondent. The officials of the Corporate Debtor had approached the Operational Creditor many times with their queries, however, on various occasions the Operational Creditor refused to revert to the queries. This fact was also conveyed by the Corporate Debtor to the Operational Creditor, however, the Operational Creditor failed to appraise the concerns of the Corporate Debtor. The Corporate Debtor has submitted that the said claim is disputed and is covered under section 5(6) of the IBC, and therefore the present petition deserves to be dismissed.
11. Th corporate debtor has further submitted that it is undergoing financial distress at the present moment and has requested the Operational Creditor to amicably settle the disputed claim, but the parties have failed to reach an amicable settlement.

ORDER

12. We have heard both the parties and after perusal of all the documents submitted by them, there remains no doubt that the invoices were raised in favour of the Corporate Debtor. Also, the goods were accordingly delivered.
13. Demand Notice dated 04/06/2019 was also duly served on the Corporate Debtor which was received by them on 06/06/2019. There was no response to the Demand Notice. The Operational

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Creditor has submitted the requisite affidavit of No Dispute in terms of section 9(3)(b) of the IBC.

14. The Corporate Debtor has admitted that the services of the Operational Creditor were engaged for providing Accounting and Advisory Services. The contentions made by the Corporate Debtor to the effect that the claim is disputed, is not borne out by the facts placed on record. Similarly, the contention that officials of the Corporate Debtor had approached the Operational Creditor many times with their queries, however, on various occasions the Operational Creditor refused to revert to the queries is also not borne out by any documents.
15. Therefore, it can be concluded that it is an admitted liability and also that the documents submitted by the Operational Creditor are enough to establish the debt upon the Corporate Debtor and hence the contentions made by them cannot be relied. Also, they defaulted in repaying the debt. Also, the amount of debt is much above the minimum required amount of Rs.1,00,000/- Hence, all the requisite conditions for admission of a petition under Section 9 have been found to be fulfilled and therefore, this petition deserves to be admitted.
16. Therefore, this Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this petition 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 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 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 20.12.2019 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.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Pawan Kumar Ramdhan Agarwal, having his registered office at 42, Gopal Bhavan, 199, S.G. Marg, Marine Lines (E), Near Parsi Dairy, Mumbai-400002 and having Registration No: IBBI/IPA-001/IP-P00414/2017-18/10737 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

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17. Accordingly, this Petition is allowed.
18. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-
SHYAM BABU GAUTAM
Member (Technical)

SD/-
BHASKARA PANTULA MOHAN
Member (Judicial)

PS