

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 2826 (ND)/2019

IN THE MATTER OF:

AEKEVI INDUSTRIES PVT. LTD
THROUGH ITS DIRECTOR
H. NO. 203, FIRST FLOOR
KHASRA NO. 445, NEB SARAI
IGNOU ROAD, NEW DELHI-110062

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

UNIQUE KITCHEN-AIDS PVT. LTD.
THROUGH ITS DIRECTORS,
REGISTERED OFFICE: H-32, GROUND FLOOR
KALKAJI, NEW DELHI-110019

ALSO AT:

F-11, FIRST FLOOR, NEAR ANDHRA BANK
KALKAJI, NEW DELHI- 110019

....RESPONDENT/CORPORATE DEBTOR

SECTION: U/S 9 of IBC, 2016

Order delivered on: 21.12.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

For the Applicant/Operational Creditor: Adv. Lakshay Mangla

(IB) 2826 (ND)/2019



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows:
 - i. That the Operational Creditor is engaged in the business of supplying of kitchen appliances.
 - ii. That the Corporate Debtor has been procuring kitchen appliances from the Operational Creditor vide various purchase orders made by them.
 - iii. That the goods were delivered to the Corporate Debtor within the stipulated time frame alongwith the invoices, which have been duly acknowledged by the Corporate Debtor. The Corporate Debtor never raised any objections regarding quantity, quality and/or the rates of the material supplied by the Operational Creditor.
 - iv. That the Operational Creditor has maintained running ledger account of all the transactions and had made entries to the invoices and have adjusted the payment received partly in the transaction between the parties.
 - v. However, on 26.02.2019, the Corporate Debtor made a part payment of Rs. 1,02,000/- with respect to the outstanding and the total outstanding as on 31.08.2019 is of Rs. 12,16,856/- as due and payable to the Operational Creditor.
 - vi. That the there was no release of outstanding payment by the Corporate Debtor despite the repeated reminders.



vii. That the Operational Creditor had issued a Demand Notice dated 02.09.2019 u/s 8 of the Code. However, the Corporate Debtor disputed the said demand notice vide reply dated 15.09.2019 with respect to the quality of the material supplied to the Corporate Debtor.

3. That the right to file the reply on behalf of the Respondents was closed vide order dt. 13.08.2021.

4. We have heard the Learned Counsel appearing for the Applicant and perused the averments made in the application as well as the reply to the demand notice filed by the Corporate Debtor. The Learned Counsel appearing for the applicant submitted that despite several adjournments, the Corporate Debtor, when did not file the reply then right to file the reply of the respondent was closed vide order dated 13th August, 2021. He further submitted that even by filing the reply to the demand notice, the Corporate Debtor admits his liability. He further submitted that there is no pre-existing disputes, the Respondent / Corporate Debtor has not produced any document to show that there is any pre-existing dispute.

5. Now in the light of submissions, we consider the prayer of the applicant. Admittedly, vide order dated 13th August, 2021, right to file the reply by the respondent was closed vide order dated 25th October, 2021, the Respondent was proceeded ex-parte.

6. At this juncture, we would like to refer to the reply to the demand notice sent by the Corporate Debtor to the Operational Creditor which is at page 31 of the application. The scanned copy of the reply dated 15th September, 2019 to the demand notice dated 2nd September, 2019 is reproduced below:





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**THE LEGAL HEALERS
& ASSOCIATES**
Advocates & Legal Consultants

SPEED POST / EMAIL

Date: 15.09.2019

Mr. Samant Singh,
Advocate,
Office at: K-27, LGF, Jangpura Extension,
New Delhi-110024
e-mail: singhsamant3@gmail.com

Subject: Reply to your demand notice/invoice demanding payment under the Insolvency and Bankruptcy Code, 2016 dated 02.9.2019.

Sir,

We have been authorized by M/s. Unique Kitchen Aids Pvt. Ltd, through its Directors Sh. Inderjeet Singh Baweja and Smt. Monika Sharma your notice placed before us with the direction to reply your notice dated 02.9.2019 which runs as under:

It is further submitted that your above notice have been served upon our client through email only on 04.9.2019, however you have failed to serve upon the hard copy alongwith annexures at our clients registered office as on date.

It is also made clear that the facts of notice which have not been admitted may be treated as denied in its entirety and you will be put to strict proof thereof.

Office: 11/7, Ground Floor, Nehru Enclave (East), Kalkaji, New Delhi-110019.
Email id: legalhealers@yahoo.in


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Further, without prejudice to the rights and contentions of our clients, it is stated that the facts narrated in the notice are entirely illegal, unjustified and unwarranted.

PARAWISE REPLY

- 1) In response to the para no.1 of your notice, you are call upon to establish an authority given to you to issue this present notice on behalf of your client and your client is also directed to establish his / her authority to direct you to issue the present notice under reply M/s. Aekevi Industries Pvt. Ltd. Through it's Director Abhay Pratap Singh., to serve this statutory demand notice to you under Section 8 of IBC, 2016 to issue this notice dated 02.9.2019 failing which adverse inference shall be drawn u/s. 114-G of the Indian Evidence Act that you are not correctly and legally authorised to give this notice.
- 2) That, the contents of Para 2 of your notice under reply are denied as such, it is specifically submitted that your client is required to establish the contents of the para under reply in the court of law and will be put to strict proof thereof. Rest is denied for want of knowledge.
- 3) That, the contents of Paras 3, 4, 5 and 6 of your notice under reply are denied as such. It is not denied that our clients have business dealings with your client. However, it is denied specifically that any amount moreover so an amount of **Rs.12,16,856/- (Twelve Lakh Sixteen Thousand Eight Hundred and Fifty Six only)** is due towards unpaid price of

Office: 11/7, Ground Floor, Nehru Enclave (East), Kalkaji, New Delhi-110019.
 Email id: legalhealers@yahoo.in

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materials as alleged in the present notice. Rest is denied as wrong and false.

- 4) That, the contents of Paras 7, 8, 9 and 10 of your notice under reply are denied as such. It is specifically submitted that the quality of the materials as supplied by your client is not proper and as per the terms and conditions of the purchase orders raised by our client, therefore no such debts is due and payable to your client as claimed as on date. Rest is denied as wrong and false.
- 5) That, the contents of Paras 11 and 12 of your notice under reply are denied as such. However, it is admitted to the extent that our Clients are not in a position to pay entire the debt as claimed however, if your client still wants to settle the matter amicably and adjust the cost of defective materials to the tune of **Rs.2,50,750/- (Rupees Two Lacs Fifty Thousands and Seven Hundred Fifty Only)** and allow our Client a time period of 12 months to clear the balance dues.

In view of the above, we hereby call upon you to withdraw the notice under reply hence forth and if any action is taken the same shall be defended entirely at your risks, costs and consequences.

A copy of this reply has been kept for future necessary action, if required.

For, Legal Healers & Associates

(P.Bhattacharya)

ADVOCATE

Mobile Nos. 9718075818 / 9818445491

Office: 11/7, Ground Floor, Nehru Enclave (East), Kalkaji, New Delhi-110019.
Email Id: legalhealers@yahoo.in

ABSN
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7. On perusal of the reply to the demand notice, it is seen that in para-5, the Corporate Debtor admits the default, therefore, in our considered view, the default in payment of debt is admitted by the Corporate Debtor, of course, the Corporate Debtor by sending the reply to the demand notice has prayed to adjust Rs. 2,50,750/- towards the defective material but so far the remaining amount is concerned the Corporate Debtor has admitted the debt.

8. In order to admit an application under Section 9, the Adjudicating Authority is required to consider the conditions referred to in **Section 9 (5) (i) & (ii)** and the relevant provision of Section 9 (5) is reproduced below:

Section 9: Application for initiation of corporate insolvency resolution process by operational creditor

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;



(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility;
or

(e) any disciplinary proceeding is pending⁴ against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

9. When we consider the prayer of the applicant in terms of Section 9 (5)(i) of IBC, then it is seen that the application filed by the applicant is complete, there is no payment of unpaid operational debt or the invoices, notice for payment to the Corporate Debtor has been duly delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor or there is no record of dispute. So far the 5th condition is concerned; the applicant has proposed the name of the IRP and who has also given his consent. Therefore, we are of the considered view the applicant has fulfilled all the criteria as required under Section 9 (5) (i) of the IBC. Hence, we have no option but to admit the application.

10. **Accordingly, we hereby ADMIT the petition.** A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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;

(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.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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 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."

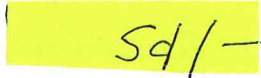
12. We notice the applicant has also proposed the name of Mr. Mukesh Grover, as IRP in Part-III of the application , who has also given his written consent in Form-2, at page 81 of the application and there is no disciplinary proceedings pending against the Insolvency Professional Therefore, we appoint, **Mr. Mukesh Grover**, an Insolvency Professional, Registration No. **IBBI/IPA-**




001/IP-P00383/2017-18/10640, email id:- **mukesh@mjra.co.in** duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

13. The Operational Creditor is directed to deposit a sum of Rupees One lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

14. Copies of the order be sent to both the parties as well as to the IRP.
In sequel to the above, we admit the application.

 Sd/- *21/12/2021*
(AVINASH K. SRIVASTAVA)
Member (T)

 Sd/- *21-12-2021*
(ABNI RANJAN KUMAR SINHA)
Member (J)