

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH,
KOLKATA**

C.P (IB) No.684/KB/2019

In the matter of

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

And

In the matter of:

Nandakini Contractors Pvt. Ltd. (CIN U74900WB2012PTC187967), having its registered office at 9,Ezra Street, Kolkata-700001.

... Operational Creditor

Versus

In the matter of:

Chandni Commercials Private Limited , (CIN: U51909WB2003PTC096775), having its Registered office at 9, Ezra Street, 1st Floor, Room No. 23,Kolkata-700001.

...Corporate Debtor

Date of hearing : 22/02/2022

Order Pronounced on :21/03/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms. Jayati Chowdhury , Adv.

] For Operational Creditor

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **Nandakini Contractors Pvt. Ltd.**, having its registered office at 9, Ezra Street, Kolkata-700001, through its Director namely Mr. Sovan Sengupta, authorised vide Board Resolution dated 11/03/2019 (Annexurer-A.1), (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Chandni Commercials Private Limited**, (CIN: U51909WB2003PTC096775), having its Registered office at 9, Ezra Street, 1st Floor, Room No. 23, Kokata-700001 (hereinafter referred as the Corporate Debtor).
3. It is submitted that the Operational Creditor was providing services to the Corporate Debtor as per the terms and conditions of the contract for service agreement executed between the Operational Creditor and the Corporate Debtor dated 26th March, 2018, while providing staff for the managerial works to be done, like One Security Guard, One Sweeper, charges incurred for two computers for supplying office stationery, expenses incurred for travelling and conveyance, expenses incurred towards tea, biscuits, snacks for staffs. Copy of the contract for service agreement between the parties dated 26th March, 2018 is (Annexure-A 4). It is submitted that a sum of Rs.4,93,217/- is due outstanding as per the working computation sheet (Annexure-A 5). It is submitted that this is an unsecured operational debt with no security held by the Operational Creditor.
4. When the Corporate Debtor did not pay the amount in spite of repeated requests and demands, a demand notice under section 8 of the Code was issued on 8th March, 2019. Similar letters had been previously issued by the

Operational Creditor on 10th August, 2018, 28th August, 2018, 15th September, 2018, 2nd November, 2018, 12th December, 2018 and 20th February, 2019. It is submitted that Corporate Debtor also wrote letters dated 6th September, 2018 and 16th March, 2019.

5. It is submitted that default on account of payment of money for rendering services to the Corporate Debtor first occurred as per the contract for service agreement on 30th April, 2018.

6. The Operational Creditor proposed the name of **Mr. Tuhin Kumar Chatterjee**, to act as an IRP having Registration No. **IBBI/IPA-002/IP-N00663/2018-2019/12108**, who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

7. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

8. In the reply affidavit filed on behalf of the Corporate Debtor by one of its Directors namely Pranab Kumar Das, it is submitted that the Corporate Debtor had sought time from the Operational Creditor for making payment of the outstanding amount. It is submitted that the Corporate Debtor is in the business of trading and the Corporate Debtor admitted the service agreement dated 26th March, 2018 between the Corporate Debtor and the Operational Creditor for providing all necessary day today office maintenance services as a consideration, the applicant was supposed to raise invoices on monthly basis and such amount should be within Rs.1,10,000/- per month. It is submitted in the reply that the Corporate Debtor started receiving services from the

Operational Creditor from 1st April, 2018 and all of a sudden, the Company received a termination letter from the Operational Creditor on 10th August, 2018 without any prior notice due to non-payment of the pending bills raised by the Operational Creditor.

9. It is further submitted that the Corporate Debtor requested vide letter dated 6th September, 2018, to the Operational Creditor for providing them some reasonable time to make the payment of the amount as the Corporate Debtor was unable to release the payment owing to the financial crises of the Company. It is stated that the company was going through very bad financial condition due to non cooperation of the Corporate Debtor and as a result of which, it could not arrange due payment of the Operational Creditor despite all its endeavour to arrange the same. The Corporate Debtor has further submitted in the reply that in spite of all the adverse financial position, trying its best to arrange the amount.

10. In the rejoinder, the Operational Creditor has submitted that the Corporate Debtor has clearly admitted the liability on their part to pay the outstanding amount to the Operational Creditor and sought time to pay the debt. It is stated in the rejoinder that the intention of the Corporate Debtor is clear in their reply affidavit and the Corporate Debtor does not wish to pay the debt of Rs.4,93,217/- and is seeking time to make the payment again and again, which is the *mala fide* practice of the Corporate Debtor. It is submitted that due to the failure of the Corporate Debtor in making payment, the financial condition of the Operational Creditor is also becoming very bad and it is suffering from huge financial crises. It is prayed by the Operational Creditor that the petition filed by the Operational Creditor might be admitted.

11. We have seen the pleadings of the parties and also the documents.

12. The Operational Creditor has filed affidavit under section 9(3)(b), wherein it is submitted that the Corporate Debtor has not given any notice relating to the dispute of the unpaid operational debt.

13. In the reply to the demand notice dated 8th March, 2019, the Corporate Debtor has clearly admitted their outstanding liability in the following words:-

“ To *Dated 16.03.2019*
The Director
Nandakini Contractors Pvt. Ltd.
9, Ezra Street, Kolkata-700001.
Ref: Demand Notice dated 08.03.2019

Dear Sir,
This has reference to the demand notice issued on 8th March, 2019 against us.
We are surprised to receive the same as we clearly put forth our request to your good office regarding our genuine willingness to repay the outstanding amount.

Therefore, further we request your good office to kindly consider our willingness and give us the opportunity to discuss the same with you and we are ready to further settlement for the repayment of the outstanding amount.

Thanking you,

Yours Faithfully,
For Chandni Commercial Private Limited

Authorised Representative”

14. In the another letter dated 6th September, 2018, the Corporate Debtor has further informed the Operational Creditor as under:-

“ To *Dated 06.09.2018*
The Director
Nandakini Contractors Pvt. Ltd.
9,Ezra Street, Kolkata-700001.

Ref: Your Letter dated 28.08.2018

Dar Sir,
This has reference to your above mentioned letter. We appreciate your patience and understanding however, we regret to inform you that due to huge liquidity issue faced by our Company, the payment of outstanding in terms of the Contract for service agreement, 2018 cannot be repaid at this juncture.

Therefore, you are kindly requested to consider us certain time and we will make payment at the earliest as we are speaking to our contributories to arrange the due amount and repay as per our agreement.

Therefore, we would be highly grateful to you if you could kindly consider the present situation and grant us some time to repay the outstanding amount without taking any action against us.

Thanking you,

*Yours Faithfully,
For Chandni Commercial Private Limited*

Authorised Representative”

15. In view of the correspondence between the Operational Creditor and the Corporate Debtor, the outstanding liability has been clearly admitted by the Corporate Debtor and there is no plausible defence available to the Corporate Debtor. The Corporate Debtor has committed default in making payment of admitted operational debt and in spite of repeated requests and demands for more than 4 years now. They have not been able to clear their liability may be due to financial crises or otherwise, but the fact remains that the default has occurred in repayment of operational debt.

16. The petition is otherwise complete in all respects.

17. In view of the aforesaid pleadings of the parties, we consider it to be a fit case for admission of the petition, we , therefore, pass the following orders:-

O R D E R S

- 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, 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 supply of essential goods or 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.
- 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) **Mr. Tuhin Kumar Chatterjee, IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-002/IP-N00663/2018-2019/12108**, and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby 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.
- x) 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.
- xi) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

18. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

19. List the matter on **12/05/2022** for filing of **Progress Report**.

20. 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)

(Rohit Kapoor)
Member (Judicial)

Order signed on the 21st day of March, 2022

PJ.