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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB)-1287(ND)2019

In the matter of

MR. RAKESH SAXENA
PROPRIETOR OF M/S CLASSIC CONSULTANCY & SERVICES
G-10/5, Basement Malviya Nagar,
New Delhi - 110017

.....Operational Creditor

V/s

ROHIT BAL DESIGNS PVT. LTD.
HAVING ITS REGISTERED OFFICE AT:
C-328, First Floor, Defence Colony,
New Delhi -110024

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 16.10.2019

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Ms. Asmita Chaudhary and Mr. Upmanyu Kumar for the
Petitioner

Ms. Bhawna Piplani, Mr. Abhishek Kaushik and Mr. Ashwani
Kumar Gupta for the Respondent

ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.



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2. The petitioner supplied goods pertaining to Heat Ventilation Air Conditioning System to the Corporate Debtor for his studio's at Noida and Defence Colony, through M/S. Build Kraft India and raised invoices from time to time in lieu of goods supplied to the Corporate Debtor. Out of all invoices raised, an amount of Rs. 1,29,703/- as on 19.03.2019 is outstanding to be paid on behalf of the Corporate Debtor against few invoices raised by the Petitioner. He has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate here claim of Rs. 1,29,703/-.
3. As per averment the Operational Creditor provided necessary goods to the Corporate Debtor as ordered by the Corporate Debtor. Owing to the goods supplied, the Operational Creditor raised invoices from time to time and the Corporate Debtor used to make the payments on time. However, at later stages, the Corporate Debtor failed to honor the payments on time in lieu of the goods supplied to the Corporate Debtor. The Operational Creditor vide mail dated 27.10.2016 and 09.02.2017 requested the Corporate Debtor to clear the outstanding amount of Rs. 4,79,703/- due on part of the Corporate Debtor. Pursuant to the requests made by the Operational Creditor the Corporate Debtor made the payment of Rs. 3,50,000/- against the invoices. Thereafter the Operational Creditor made multiple requests to the Corporate Debtor to pay the balance amount of Rs. 1,29,703/-.



4. The Operational Creditor has claimed as detailed as under: -

Particulars	Outstanding Amount as on 19.03.2019 (Rs.)
Invoice of Rs. 3,25,945/- due on 05.10.2016	1,07,140/-
Invoice of Rs. 82,963/- due on 05.10.2016	22,563/-
Total	1,29,703/-

5. The Operational Creditor issued the demand notice dated 22.02.2019 as required under Section 8 of the Code was issued, demanding a total sum of Rs. 1,29,703/-.

6. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.

7. It was submitted by the Operational Creditor that he Corporate Debtor has accepted and admitted the default of debt on its part by offering to settle the matter vide its mail dated 08.07.2019; thus in view of the deemed admission & acceptance of the default, the application of the Operational Creditor should be allowed and CIRP process should be initiated against the Corporate Debtor.

8. Pursuant to the Court notice issued to the Corporate Debtor, reply was filed and it was submitted by Corporate Debtor that:



- a. There was no privity of contract between the Operational Creditor and Corporate Debtor. The Operational Creditor worked for M/S Buildcraft India at the worksite of M/S RBDL. There is neither any offer nor any acceptance of rates or other terms and conditions between applicant and respondent. In the absence of any communication or agreement between the third parties and employer for acceptance of any third party liability, no liability of any kind for any claim of the third party can be fastened on the employer. It is only the acceptance of third party liability by the employer which is of essence and without such express acceptance by the employer, no liability for any claim can be fastened by the employer. Thus, we can conclude that there is no debt due to the applicant in the given case and therefore there is no default.
- b. The application U/S 9 for CIRP was not filed in the manner and form prescribed and is not complete.
- c. There was no unpaid operational debt as there was no record of an undisputed bill duly acknowledged by the Corporate Debtor as outstanding debt or due to Operational Creditor.
- d. The demand notice was not delivered by the Operational Creditor in the manner prescribed.



9. Oral arguments were also heard and order was reserved. As directed both the parties have also filled written submissions. We have gone through the documents filed by both the parties and heard the arguments and perused written submissions made by both the counsels. The Tribunal observed that:

- a. The Operational Creditor has provided all the necessary documents required for proving that the debt has been defaulted. While going through the Retail Invoices, Ledger Account and the Bank Account Statement of the Operational Creditor, it was observed by the Tribunal that it was an admitted fact that there was a work relation between the Operational Creditor and the Corporate Debtor whereby the Operational Creditor provided goods to the Corporate Debtor and payments were remitted to the Operational Creditor for the same. The Corporate Debtor had not disputed or denied the fact that there was a work relation between the parties.
- b. Further, the default of the debt has been admitted by the Corporate Debtor vide email dated 08.07.2019 wherein settlement was offered to the Operational Creditor. The proposal of settlement shows that the Corporate Debtor has accepted the fact that there has been debt due by him which he wants to settle with the Operational Creditor. It is settled proposition of law that express admission of a party to the suit



or admission implied from his conduct are strong evidence against him.

10. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 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."

11. The Operational Creditor has proposed the name of IRP. Accordingly, we appoint Mr. Amarपाल, an Insolvency Professional, registration no. IBBI/IPA-001/IP/P-01584/2018-2019/12411 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.
12. The Operational Creditor is directed to deposit a sum of Rs. 2 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.
13. Copy of the order be sent to both the parties as well as to the IRP.



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14. To come up on for further consideration.


Sd/-

Sumita Purkayastha
Member (T)



Sd/-

Ina Malhotra
Member (J)

 21.10.19
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

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