



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

COURT-IV

C.P.(IB)/154/2022

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.]

IN THE MATTER OF:

Ms. Richa Dave

...Operational Creditor/Applicant

Versus

M/s. Purple Thoughts India Private Limited.

...Corporate Debtor/Respondent

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)


DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on:30.11.2023

ORDER


PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

The instant application is filed by Ms. Richa Dave (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Purple Thoughts India Private



Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.4,15,730/- (Rupees Four Lakh Fifteen Thousand Seven Hundred and Thirty One Only) plus interest rate @ 18% p.a. from 25.04.2019 till date of payment.

2. The Respondent Company M/s. Purple Thoughts India Private Limited having CIN: U93000DL2012PTC241751 incorporated under the provisions of the Companies Act, 1956 is having its registered office situated at H. No.-24, 4th Floor, Shahpur Jat, New Delhi. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Succinctly stated facts of the present case as averred by the applicant are that the Applicant and the Corporate Debtor had entered into a Contract(s) dated 25.04.2017 and 05.06.2017, pursuant to which the applicant had rendered services and Corporate Debtor was satisfied with the services. The applicant had terminated the contract with the Corporate Debtor through an e-mail dated 25.04.2019 and informed the Corporate Debtor that Rs.4,15,730/- in lump sum along with interest at the rate of 18% per annum on said amount till realization is outstanding. Also, it was submitted that the amount of Rs.4,15,730/- fell due on 25.04.2019.
4. Further, the Applicant had sent statutory Demand Notice under Section 8(1) of the Code, 2016 on 28.12.2021 seeking the payment of the outstanding operational debt of Rs. 4,15,730/- (Indian Rupees Four Lakh

 Fifteen Thousand Seven Hundred Thirty only) along with interest rate of 18% p.a. till the realization. The Applicant had not received reply from the Corporate Debtor. Hence, the present application.

5. We have the Learned Counsel for the Applicant and perused the documents annexed with the application. In the instant Application before examining the said application on merits, it is necessary to examine whether the said application is maintainable in terms of Section 4 of the IBC, 2016 as the Applicant is claiming Rs.4,15,730/- (Indian Rupees Four Lakh Fifteen Thousand Seven Hundred and Thirty only) due as on 25.04.2019. from the Corporate Debtor as evident in the Part IV of Form 5 and the same has been filed before this Adjudicating Authority on 20.01.2022.
6. It is seen that notification of MCA dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered for filing application under section 7 or 9 will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if the date of default of the debt is of a date earlier than 24.3.2020. Further, the Hon'ble NCLAT in the matter of **Jumbo Paper Products V. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No. 813 of 2021)** held that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute.
7. We further refer to the Judgement of Hon'ble High Court of Kerala passed in the matter of **M/s. Tharakan Web Innovations Pvt. Ltd. Vs. National Company Law Tribunal Kochi Bench and Anr. in WP(C) NO. 27636 of 2020 & 14158 of 2021 dated 01.02.2022** wherein it is held as follow:-.



“24. In Ext.P9 order, the Tribunal has held that the notification dated 24.03.2020 is prospective in nature and it is not retrospective or retro-active in nature. It is further stated by the Tribunal that notification will not apply to pending applications before the concerned Adjudicating Authority under the IBC prior to the issuance of the aforesaid notification. Ext.P9 was an order of the Tribunal at New Delhi and the issue was concerning an application which had been filed and was pending before the Tribunal. The order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Ins) No.813 of 2021 was placed before the Court in which the order Ext.P9 was also considered. The Appellate Tribunal found that on facts, in the case considered in Ext.P9 demand notice under Section 8 was issued on 31.7.2019 and the application under Section 9 was filed on 5.9.2019 which were both before 24.3.2020, on which date the threshold limit was increased to Rs.1 Crore. The Tribunal hence found that the said decision cannot be relied upon to decide whether a petition can be maintained for an amount of less than Rs.1 Crore after 24.3.2020. The Appellate Tribunal went on to hold that the threshold limit will be applicable for applications filed under Section 7 or Section 9 on or after 24.3.2020, even if the debt is on a date earlier than 24.3.2020. The above view of the Tribunal is in consonance with the decision of the Hon'ble Supreme Court in Manish Kumar (supra). 25. Even otherwise, the Tribunal has in my opinion, gone wrong in its interpretation of Section 4 of the Act. Section 4, after amendment on 24.3.2020 clearly says that Part II of the IBC shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of default is Rs.1 Crore. As per Section 3(12) of the IBC, “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. What is to be noted is that Corporate debtors who are in default of less than Rs.1 lakh prior to the amendment and Rs.1 Crore after the amendment, also are defaulters. However, whether a proceeding for insolvency or liquidation of such corporate debtor should be initiated would depend on the



amount in default. It is only if the Corporate debtor has incurred a default of at least the minimum amount stated in Section 4 that a proceeding under the provisions of the IBC under Part II can be initiated. The minimum amount of default is statutorily fixed, with power available to the Government to re-fix, upto a sum of Rs.1 Crore. Once the Government has exercised the said power by issuance of a notification fixing the minimum amount of default as Rs.1 Crore, the Section will have to be read by replacing the words “one lakh rupees” by “rupees one crore”. As such, from the date of amendment, Part II of the IBC can apply only to matters relating to insolvency and liquidation of corporate debtors, where the minimum amount of default is Rs.1 Crore. (emphasis supplied). Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore. By application of Section 10A, even in cases where the default is more than Rs.1 Crore, an application cannot be filed for a period of six months from 24.3.2020. There can be no other understanding of the statutory provisions, as there is no ambiguity in the language. It is well settled that the grammatical and ordinary sense of the words of the Statute should be adhered to, unless that would lead to absurdity, or some repugnance or inconsistency with the rest of the provisions of the statute. In the words of Viscount Simon L.C. “The golden rule is that the words of a statute must prima facie be given their ordinary meaning..... Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the Legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction” (see *Nokes v. Doncaster Amalgamated Collieries Ltd.*, [(1940) AC 1014 (HL)], *Chandvarkar Sita Ratna Rao v. Ashalata S. Guram* [(1986) 4 SCC 447] and *B. Parmanand v. Mohan Koikal* [(2011) 4 SCC 266]). The above



observations are fully supported by the judgment of the Apex Court in Manish Kumar (supra), wherein the Hon'ble Supreme Court categorically held that the litmus test is whether there exists a default as defined in Section 4 of IBC, on the date of the application...”

8. Since the instant application filed under section 9 of the Code which is the subject matter of our consideration was filed on 20.01.2022 and even the statutory demand notice U/s 8 was sent on 28.12.2021, therefore the pecuniary threshold limit of Rs. 1 crore of debt will be applicable in the present case. Hence, for the above-mentioned reasons, the present Application is not maintainable as the debt claimed to be due in the present application below the pecuniary threshold limit.
9. In view of the aforesaid discussion, the instant petition (IB-154(ND)/2022) stands **dismissed** as not maintainable with no order to costs.

Let copy of the order be served to the parties.

Consign the file to the record room.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**