

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Company Petition (IB)No.2068/ND/2019

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

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

AND

In the matter of:

Century Road Transport Pvt. Ltd.

Having Registered Office at:

C-103, Twin Arcade, Military Road, Marol,
Andheri East, Mumbai - 400059

.....Operational Creditor

VERSUS

Tyson Retail Services Pvt. Ltd.

Having Registered Office At:

D-9, 1st Floor, Sector-8,

Dwarka, New Delhi

South West Delhi-110077

.....Corporate Debtor

ORDER DELIVERED ON: 04.06.2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Adv. Ashwani, Adv. Peeha, Adv. Puneet,

For the Respondent/ Corporate Debtor: None.

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. The present application is filed on behalf of the Operational Creditor under Section 9 of the IB Code for initiation of the CIRP of Corporate Debtor. The facts of the case in brief are that: Century Road Transport Pvt. Ltd. is engaged in the business of Transportation of Goods from one place to another for consideration.
2. The Operational Creditor has provided the transport services to the operational debtor and after providing the services to their satisfaction raised the invoices upon Corporate Debtor on 17.02.2018, 17.02.2018, 28.02.2018, 28.02.2018 & 28.02.2018 towards the dues against the transportation services. Since there was a regular business with the Corporate Debtor, a running account was maintained and the payment made by the Corporate Debtor used to be adjusted against the invoices. The Corporate Debtor vide letter dated 19.04.2018, has undisputedly confirmed payment of Rs. 12,78,729/- as due and payable to the Operational Creditor.
3. As on 31.05.2019, principal amount of Rs. 12,78,729/- and an interest of Rs. 2,88,397/- @ 21 % on outstanding is due and payable by the Corporate Debtor to Operational Creditor.
4. Further, in response to the demand notice issued on 27.05.2019 and as per tracking report annexed at page 35 of Paper Book it was dully delivered on 35.05.2019 but no reply was received by the Operational Creditor from the Corporate Debtor.



5. In response of notice, when no one appear on behalf of the Corporate Debtor then vide order dated 02.12.2019 the proceeding was fixed for ex-parte hearing against Corporate Debtor.
6. We have heard the Ld. Counsel appearing for the applicant and perused the averment made in the application. Ld. Counsel appearing for the applicant in course of the argument submitted that the Operational Creditor has provided the Transport Services and raised the invoices ,which are from page 18 to 25 but the full amount was not paid by the Corporate Debtor and there is acknowledgement and confirmation of the 12,78,729/- apart from the interest, which is of Rs. 2,88,397/- @21 % per annum. He further submitted that no reply to the demand notice was sent by the Corporate Debtor nor Corporate Debtor file any reply in response to the notice issued after the filing of the application therefore, the proceeding was posted for exparte hearing. He further submitted that in course of hearing Corporate Debtor appeared and submitted the settlement is going on but the amount has not paid.
7. In the light of submissions raised on behalf of the applicant, when we have gone through the averment made in the application as well as document enclosed with the application then we find, the Operational Creditor has sent a demand notice of Rs. 12,78,779, apart from the interest amount, which was dully delivered upon the Corporate Debtor on 30.05.2019 but no reply was sent by the Corporate Debtor as required under Section 8 (2) of the IB Code nor any document is produced on behalf of the Corporate Debtor to show that payment of the unpaid Operational Debt has been made by the Corporate Debtor to the Operation Creditor. We further find that even after the filing of the application, when notice was served upon the Corporate Debtor even then no one appear on behalf of the Corporate Debtor, therefore,vide order dt. 02/12/2019,the proceeding against the Corporate Debtor was fixed for exparte hearing, of course, during the course of hearing, Mr.



Rajesh Sharma Corporate Debtor appeared and seeks time to engage the Counsel and the matter was adjourned on 05.02.2020, 25.02.2020 and even on 11.03.2020 but none appeared on behalf of the Corporate Debtor. Therefore, no reply filed on behalf of the Corporate Debtor on the record.

8. In view of Section 8, after the receiving of the demand notice delivered under Section 8 (1) of the IB Code the Corporate Debtor is required to send the reply to demand notice or raised the pre-existing dispute or show the documents regarding the payment of the unpaid debt but here as we noticed that the Corporate Debtor has neither raised the pre-existing dispute nor filed any document to show that the amount has been paid by the Corporate Debtor to the Operational Creditor. Therefore, at this juncture, we would like to refer section 9 (5) (1) of the IB code and same is quoted below:

“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 3[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 4[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 pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (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. If we shall consider the case in hand in the light of aforesaid provision then we find that herein the case in hand neither pre-existing dispute is raised nor payment of the unpaid Operation Debt is made, the application is complete and the defaulted amount is more than Rs. 1,00,000/- therefore, this adjudicating Authority have no option to admit the application.

10. Therefore, in view of Section 9(5)(1) of IBC, we inclined to admit this application. Accordingly, this petition is ADMITTED. 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 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;

(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. Since, name of IPR is not proposed, hence we appoint, Mr. Anil Matta, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00223/2017-2018/10422 email- mattaassociates@gmail.com 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. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. 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 and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.



13. Registry is directed to communicate the order with the IRP as well both the parties.

SD/-

K. K. Vohra

Member (Technical)

SD/-

Abni Ranjan Kumar Sinha

Member (Judicial)