

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-587/ND/2019**

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

IN THE MATTER OF:**APAVARGA TRADING COMPANY**

Partnership Firm Through Its Partner Sh. Moti Kumar

...Applicant/Operational Creditor**VERSUS****CAARA INDIA PRIVATE LIMITED****...Respondent/ Corporate Debtor****Judgment Pronounced on:28.07.2020****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)***IB-587/ND/2019**Apavarga Trading Company Vs Caara India Private Limited*

MEMO OF PARTIES**APAVARGA TRADING COMPANY**

Partnership Firm Through Its Partner Sh. Moti Kumar

Registered office at Khasra No. 52/21, Gf Street No. 2

Block A, Pardhan Enclave Village

Burari, Delhi-110084

...Applicant/Operational Creditor

VERSUS**CAARA INDIA PRIVATE LIMITED**

Registered office At 14, LSC, Sector-B-1

Vasant Kunj, New Delhi-110070

...Respondent/ Corporate Debtor

For the Applicant: Mr. Shailender Kumar, Adv.

For the Respondent: Mr. Santhosh Krishnan Ms. Sonam Anand Ms. Deeshika,

Adv.

IB-587/ND/2019

Apavarga Trading Company Vs Caara India Private Limited

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Apavarga Trading Company, a partnership firm through its partner Sh. Moti Kumar (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Caara India Pvt Ltd. (for brevity 'Corporate Debtor').
2. The Applicant is a partnership firm duly registered under the Partnership Act, 1932, registrar of firms having registration no. as 1783 dated 24.08.2018 which has been duly annexed and the firm is engaged in the business of trading and import of kiriyana goods etc. and other eatables items on institutional supplier, wholesalers and retail basis and marketing of the same throughout India. The applicant is having its place of business at Khasra No. 52/21, GF Street No. 2, Block A, Pardhan Enclave Village, Burari, Delhi-110084.
3. The Corporate Debtor is a private limited company duly registered and incorporated on 08.12.2014 under the Companies Act, 1956 having

CIN U55101DL2014PTC273893. The corporate debtor is engaged in the business of retail business of groceries, catering, food, café, culinary art and research academy etc. running under the name and style of 'Caara' from its registered office. The corporate debtor is having its registered office at 14, LSC, Sector-B-1 Vasant Kunj, New Delhi-110070.

4. The Applicant has stated that the corporate debtor had business dealings with the applicant since February, 2016 for supplying of goods/groceries and other food items. It is submitted that the applicant had raised various bills to the tune of Rs 7,64,794.20/- from the period 15.02.2016 to 08.01.2017 consisting of cost and various taxes as applicable to the class of goods. As per the terms of invoices payment was to be made within 15 days from receipt of goods. It is submitted that corporate debtor had accepted the goods without any demur or objections utilized them and reaped its benefits.
5. It is submitted by the applicant that repeated calls, follow ups were made to the corporate debtor who had made some part payment which was duly accounted for in the statement of account made on 25.01.2017 leaving balance outstanding. After receiving of part payment, the applicant asked for remaining amount which is still subsisting and for

that purpose the applicant repeatedly followed ups and wrote emails but all in vain and the corporate debtor didn't respond to the email.

6. It is submitted that the applicant had been approaching the corporate debtor time and again to clear the off the remaining outstanding of Rs 7,64,794/- (Rupees Seven Lakh Sixty-Four Thousand Seven Hundred Ninety-Four Only) via various invoices pending from 15.02.2016 till 25.01.2017.
7. The Applicant issued the demand notice dated 11.09.2018 under section 8 of I & B code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the corporate debtor calling upon to pay the outstanding balance of Rs 7,64,794.20/- (Rupees Seven Lacs Sixty, Four Thousand Seven Hundred and Ninety Four and twenty paise) with interest @18% p.a.
8. The Corporate Debtor has replied to the demand notice and has denied its liability of Rs 7,64,794.20/- as claimed by the applicant and further contended that the corporate debtor has done business with the applicant since February,2016 and the corporate debtor has duly paid an amount of Rs.3.93 lakhs to it against validly received goods and invoices. Further, none of the invoices/bills attached by the applicant, bear any stamp of the corporate debtor nor have any other receiving on

them from any employee or representative of the corporate debtor. It is submitted that none of the invoices, claimed by the applicant are outstanding and the same are not admitted or accepted by the corporate debtor. It is stated and clarified that in response to the applicants email dated 15 December, 2016, the corporate debtor sent an email dated 16 December, 2016 wherein it was clearly stated that it accepts and admits liability only amounting to Rs.2,44,793/- as goods against those invoices were validly received and acknowledged by its employees. However, the remaining bills of Rs 5,19,909/- were neither received by one in the company nor were having the company stamp or signature of any authorized person and were therefore never accepted by corporate debtor.

9. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.
10. The Corporate Debtor had replied to the application and has asserted that the dealings of the corporate debtor with the applicant was only till January, 2017 and thereafter no dealings took place between the parties. The corporate debtor contends that there was a pre-existing dispute between the parties which was raised vide email dated 16.12.2016

much prior to the issuance of section 8 demand notice with respect to the amount claimed by the applicant of Rs 7,64,794/-. Though the corporate debtor vide its email dated 16.12.2016 accepted and admitted its liability amounting to Rs.2,44,793/- as goods against nine invoices which were validly received and acknowledged by the corporate debtor and has further cleared/paid a sum of Rs 3,92,983/- on 25.01.2017 as goods against eighteen invoices towards the applicant till January, 2017 and no balance outstanding is payable by the corporate debtor to the applicant.

11. The Applicant in its rejoinder has averred that transaction were started with corporate debtor in February 2016 and the corporate debtor used to make payment in running account manner. All the invoices were sent on emails as attachments, given by the corporate debtor and none of the emails were objected or replied by the corporate debtor rather payment had been made. It is also submitted that on one hand the corporate debtor saying that none of the invoices were signed by their employee, and on other hand the corporate debtor was making payment in running account manner to invoices sent through emails.

12. On perusal of documents on record and submissions, it is clearly established that the default in payment of the Operational debt has

occurred by the corporate debtor as the total amount claimed by the applicant is Rs 7,64,794/- out of which Rs 3,92,983/- has been paid by the corporate debtor on 25.01.2017 and an outstanding balance of Rs 3,71,811/- is still payable by the corporate debtor to the applicant. The account statement filed by the applicant shows the payment of balance amount due which the corporate debtor has not been able to contest or prove to have been paid. Hence, debt which is due is payable and the default has occurred. We are supported by the observations of The Hon'ble Supreme Court in "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**" observed and held as follows:-

"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the

corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

13. Therefore, in the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. The Applicant has filed its bank statement from the period 04.04.2018 to 22.11.2019 stating that the amount claimed or any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I &B Code.
15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

16. The default occurred from 25.01.2017, hence the debt is not time barred and the application is filed within the period of limitation.
17. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Navdeep Gupta, with registration number IBBI/IPA-001/IP-P01791/2019-20/12814 (email –ngaoffice@gmail.com, is appointed by this Hon'ble Tribunal as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
18. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Navdeep Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the

date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
20. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-
DR. DEEPTI MUKESH
MEMBER (J)