

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 4377 /MB/C-I/2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Suresh Tarachand Gundecha

Shri Arihant Vastu Nirman, S.V. Road, Hindu Colony,
Maruti Mandir, Ratnagiri-415612.

... Operational Creditor/ Applicant

Versus

My Own Eco Energy Private Limited

[CIN: U40106MH2011PTC313276]

No.1, Madhu Hans Building, 263, Dr. Annie Besant
Road, Behind Union Bank of India, Mumbai – 400025.

...Corporate Debtor/Respondent

Order Delivered on 21.10.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Operational Creditor : Mr. J. M. Bhalgat, Advocate.

For the Corporate Debtor : Mr. Prasad Sarvankar, Advocate.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (IB) No. 4377/MB/2019

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by ("**the Operational Creditor hereafter referred to as Petitioner**"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **My Own Eco Energy Private Limited ("the Corporate Debtor hereafter referred to as Respondent")**.
2. The Respondent was incorporated on 12.10.2011 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U40106MH2011PTC313276. Its registered office is at No.1, Madhu Hans Building, 263, Dr. Annie Besant Road, Behind Union Bank of India, Mumbai – 400025. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Brief Facts of the case:

3. The Respondent had taken a refundable security deposit of Rs.15,00,000/- (Rupees Fifteen Lakh Only) for providing Dealership of Retail Outlet at land situated at NH-14 Village Bagawas, Sojat Dist-Pali, Rajasthan. The Petitioner paid to the Respondent fully refundable security deposit of Rs. 15,00,000/- vide Demand Draft No. 751011 on SBBJ dated 23.09.2016 for obtaining dealership of the Company. The same was received and acknowledged by the Corporate Debtor vide receipt no. 162. The receipt is placed as "Exhibit-C" at page 20.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (IB) No. 4377/MB/2019

4. The Petitioner submits that, the Respondent had confirmed that the outlet will be operational within 90 days from 24.09.2016 i.e. date of issuance of letter of intent. Further, it is the contention of the Petitioner that the Respondent has categorically mentioned that the said letter was merely a letter of intent and not construed as firm offer of dealership of service station. The Letter dated 24.09.2016 is placed as “Exhibit -B” to the Petition.
5. Subsequently, the Corporate Debtor has issued a No Objection Certificate in favour of the Petitioner in order to obtain approvals from various authorities relating to the land.
6. Thereafter, the Corporate Debtor did not issue an appointment letter nor entered into any Dealership Agreement with the Petitioner. Since, no dealership took place, the Petitioner vide letters dated 14.06.2019 and 20.07.2019 demanded the refund of the Security Deposit within 15 days from the date of issuance of letter dated 20.07.2019.
7. The date of default stated to be in Part- IV of the Petition is 05.08.2019 computed fifteen days after issuance of letter dated 20.07.2019.
8. In view of the aforesaid circumstances, the Petitioner issued a Demand Notice dated 13.08.2019 under Section 8 of the Code. The Corporate Debtor has not replied to the demand notice.

Findings

9. We have heard the submissions of Petitioner and perused the records. No reply has been filed by the Respondent. On numerous occasions

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (IB) No. 4377/MB/2019

there was no representation from the side of Respondent, due to which notice was served on the Respondent vide paper publication. The Petitioner has placed on record Affidavit of service dated 10.03.2022. Despite of the service of notice by way of paper publication none appeared for the Respondent. In view of the above circumstances, the Respondent was set ex-parte vide Order dated 10.05.2022. Thereafter, when the matter was listed for hearing on 03.08.2022 the Ld. Counsel appearing for the Respondent sought time to take out an Interlocutory Application for setting aside the ex-parte Order.

10. On 05.09.2022 when the matter was listed, the Ld. Counsel appearing for the Respondent sought further time to get the Interlocutory Application for setting aside the ex-parte Order listed, which was admittedly not on board. In the above circumstances, we hold that these are nothing but tactics to delay the time bound proceedings under the Code.
11. In the above backdrop, we are proceeding with the matter.
12. At the outset, we refer to decision of the Hon'ble NCLAT in the matter of ***Company Appeal (AT) (Insolvency) No. 80 of 2022 Vibrus Homes Pvt. Ltd. vs Ashimara Housing Pvt. Ltd. & Anr.*** wherein it is clarified that the security deposit is to be treated as an Operational Debt. The relevant paragraph is reproduced below:

“The payment of Rs.32,43,000/- is contemplated to be payment of interest free deposit towards advance license fee although it was contemplated to be retained as security deposit till the end of the lease

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (IB) No. 4377/MB/2019

period. Present is a case where although Agreement took place between the parties but the project could not take off and it was abandoned. Learned counsel for the Appellant disputes the fact that the project was abandoned. He says that it is matter of dispute. Be it as it may. It is for the Appellant to take remedies out of the Agreement and it is open for the parties to take legal proceedings as permitted in law. In view of the fact that the payment made was initially towards the advance license fee it was an operational debt, the Adjudicating Authority has rightly admitted the application under Section 9.”

13. Upon perusal of the records, it is evident that the amount was disbursed to the Corporate Debtor. The Corporate Debtor has admitted in paragraph 13 of letter dated 24.09.2016 the fact that he has received an amount of Rs.15,00,000/- (Rupees Fifteen Lakh Only) vide DD No. 751011 drawn on SBBJ Bank. This indicates that the fact that there was a valid disbursement.
14. The Respondent was under an obligation to enter into an Appointment Letter by signing the Retailership Agreement post receipt of security deposit. Further, Clause 3 of letter dated 24.09.2016 stipulates that the security deposit shall be refunded at the end of 7th year. We hold that since the Respondent has neither entered into an agreement nor refunded the deposit, there is a clear default.
15. This application was filed on 05.12.2019 and as submitted by Petitioner the date of default is 05.08.2019. Hence, the application falls within the limitation period of three years.

16. In the backdrop of above facts and circumstances, we are of the view that the Respondent has defaulted in the payment of the outstanding debt.
17. The application made by the Petitioner is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
18. The Petition bearing CP (IB) 4377/MB/C-I/2019 filed by **Suresh Gundecha**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **My Own Eco Energy Private Limited [CIN: U40106MH2011PTC313276]**, the Corporate Debtor, is admitted.
19. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (IB) No. 4377/MB/2019

- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
20. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
21. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
22. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the

Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. Ms. Deepa Kabra Rathi, Registration No. IBBI/IPA-001/IP-P00629/2017-2018/111114, Email Id: Deepa@rkabra.net, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
24. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
25. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
26. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

C.P. (IB) No. 4377/MB/2019

27. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.
28. Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

21.10.2022

Priyal

Sd/-

JUSTICE P. N. DESHMUKH

Member (Judicial)