



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.505
IB/111/ND/2023

IN THE MATTER OF:

C B M Industries Private Limited	...	Applicant
Versus		
Rambo Enterprises Private Limited	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 16.10.2023

Coram:

Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

C.P. (IB)/111/ND/2023 stands admitted.

Sd/-

DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-

P.S.N. PRASAD,
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No.(IB)-111 (ND)/2023

**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:

M/s. CBM Industries Private Limited

.... Applicant

Vs.

M/s. Rambo Enterprise Private Limited

.... Corporate Debtor

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 16.10.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The instant application is filed by M/s. CBM Industries Private Limited (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. Rambo Enterprise Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.1,23,69,318/-



(Rupees Four Crores Seven Lakhs Seventy Thousands One Hundred Fifty Three Rupees and Fifty Paise Only).

2. The Respondent Company M/s. Rambo Enterprises Private Limited having CIN: U74899DL1994PTC061665 incorporated under the provisions of the Companies Act, 1956 is having its registered office situated at X-1, Loha Mandi, Naraina, New Delhi South West-110028. 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 during the year 2005, the Corporate Debtor had approached the applicant for the purchase of anchor bolts, mould shank RPM, reflective tapes, DG sheets, HIP Sheets, and ECF sheets. The corporate debtor after negotiating the terms of purchase and after being satisfied with the price and quality of the goods, the corporate debtor had agreed to purchase the goods from applicant. The corporate debtor and the applicant have been transacting with each other on running account basis, whereby the payment was not made as per the invoice but the interim payments were made on lump sum basis by the Corporate Debtor. The principal amount of Rs.1,23,69,318/- (Rupees One Crore Twenty Three Lakhs Sixty-Nine Thousand Three Hundred and Eighteen only) is due and payable by the Corporate Debtor against the supplied goods.
4. The applicant submitted that upon receipt of the goods supplied under the issued invoices, the corporate debtor had not raised any dispute/objection with regard to the quality and specifications as ordered and also with regard to the quality of the supplied goods and has used the



same for their business purposes. The applicant on numerous occasions had requested the corporate debtor to clear the outstanding debts, however the corporate debtor without paying any heed to the request had failed to make the payment of the outstanding principal amount.

5. The Applicant had issued statutory demand notice dated 09.01.2023 in Form 3 in terms of Section 8(1) of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor at its registered office through speed post, courier and email, demanding a sum of Rs.1,23,69,318/- (Rupees One Crore Twenty-Three Lakhs Sixty-Nine Thousand Three Hundred and Eighteen only) at interest of 24% per annum and the same was duly received by the Corporate Debtor at its registered office. The Corporate Debtor in response to the aforesaid statutory demand notice, had issued a reply dated 21.01.2023 through email admitting the liabilities of the unpaid operational debt amounting to Rs. 1,23,69,318/- (Rupees One Crore Twenty-Three Lakhs Sixty-Nine Thousand Three Hundred and Eighteen only) and sought time to pay the outstanding debt due to the Applicant. However the admitted debt is still due and payable.
6. The Corporate Debtor in its reply had submitted that no proper demand notice was served to the Corporate Debtor as required under Section 8 of the Code, 2016 as the Demand Notice dated 09.01.2023 was signed by the Advocate on behalf of the Applicant without the vakalatnama being annexed with the Demand Notice.
7. The Corporate Debtor further submitted that no debt is due and payable as the invoices on which the claim of the applicant is based are not admitted by the Corporate Debtor and the same do not bear any seal/signature of the Corporate Debtor. Moreover, it was submitted that the amount due and payable as reflected in the ledger account is disputed by the Corporate Debtor.



8. We have heard Ld. Counsels for both the parties and perused the averments made in the application and reply filed by the parties. The relevant documents annexed with the respective submissions have been examined.
9. As regards the Corporate Debtor's contention that the statutory Demand Notice is invalid on the ground that same was issued by the Advocate without vakalatnama being annexed, from a perusal of Forms 3 and 5 as prescribed in the Code and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, it is evidently clear that the signature of the person "authorized to act" on behalf of the operational creditor must be appended to both the demand notice as well as the application under Section 9 of the Code. It is clear, therefore, that both the expression "authorized to act" and "position in relation to the operational creditor" go to show that an authorized agent or an advocate acting on behalf of his client is included within the aforesaid expression.
10. The Hon'ble Supreme Court in case of **Macquarie Bank Limited v. Shilpi Cable Technologies Limited: (2018) 2 SCC 674**, while answering to the issue as to Whether a demand notice of an unpaid operational debt can be issued by a lawyer on behalf of the operational creditor?, had held that a notice on behalf of the operational creditor by a lawyer would be in order.
11. We observe that the Applicant in pt.7 of Part-II of Form-5 had authorised Mr. Karan Sarin, Advocate. The Demand Notice under Section 8(1) of the Code, 2016 as well as the present application filed under Section 9 of the Code, 2016 in Form-5 is signed by Mr. Karan Sarin, Advocate authorised by the Operational Creditor. Further, the claim of operational debt amounting Rs.1,23,69,318/- as demanded in the statutory demand notice dated 09.01.2023 is supported by the 13 invoices dated 01.04.2022 to



30.10.2022. Accordingly, the contention of the Corporate Debtor that Demand Notice is invalid cannot sustain.

12. Further, the contention of the Corporate Debtor that no debt is due and payable as the invoices on which the claim of the applicant is based are not admitted by the Corporate Debtor and is therefore, disputed, this Adjudicating Authority observe that, the Corporate Debtor in response of the receipt of the Statutory Demand Notice dated 09.01.2023 for the outstanding payment of Rs.1,23,69,318/- had vide e-mail dated 21.01.2023 acknowledged the receipt of the Demand Notice and further requested the applicant for the grant of time for payment for the goods. The relevant email dated 21.01.2023 is extracted below for ready reference:-

Re: DEMAND NOTICE/INVOICE DEMANDING PAYMENT IN RESPECT OF UNPAID OPERATIONAL DEBT DUE FROM RAMBO ENTERPRISES PRIVATE LIMITED TO C B M INDUSTRIE PRIVATE LIMITED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

1 message

RAMBO <rambotools@rediffmail.com>
To: Kartik Sarin <kartiksarin.adv@gmail.com>

Sat, Jan 21, 2023 at 11:16 AM

Dear Sir,

We have received your notice dated 09.01.2023. I would like to request CBM to grant us some time for payment of the good as we are trying to arrange the money.

Thanks and Regards,
Rambo Enterprises

Rambo Enterprises Pvt Ltd
HEAD OFFICE #

13. Therefore, in view of the Corporate Debtor's e-mail dated 21.01.2023 wherein the Corporate Debtor had admitted the liability towards the outstanding payment of goods supplied by the operational creditor, the contention of the pre-existing dispute attempted to be raised by the corporate debtor is a feeble one, unsupported by any evidence, and



cannot be held to be a valid ground for rejection of the instant application.

14. Thus, having regard to the conspectus of facts of the present case and the judgement cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5)(i) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)-111/(ND)/2023) stands admitted and the CIRP is hereby commenced against M/s. Rambo Enterprises Private Limited.**
15. The applicant in Part -III of the application has proposed the name of Mr. Raj Kumar Soni as IRP. Accordingly, this bench appoints Mr. Raj Kumar Soni having registration number IBBI/IPA-002/IP-N01219/2022-2023/14136 and email id – rksoni.ip@gmail.com as the Insolvency Resolution Professional of the corporate debtor. The IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and valid AFA to be placed on record by the IRP within 5(Five) days of pronouncement of this order.
16. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Raj Kumar Soni 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, is subject to adjustment



by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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 Securitization 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.

(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as



may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

19. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
20. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
21. 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 is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing C.P.(IB)/111/2023 stands admitted.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)