IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-1047/(PB)/2020

Section: 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:

Rexsona Tiles Pvt. Ltd.

...Operational Creditor/Applicant

Versus

Waaman Products Pvt. Ltd.

...Corporate Debtor/Respondent

Order Delivered on: 17.08.2022

Coram:
SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL

This is an application filed 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 for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant, carrying on its business/occupation of selling the vitrified tiles across the globe, has filed the present application claiming as the

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operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

   a. The Operational creditor and the Corporate Debtor are engaged in the long term business relationship, wherein the Corporate Debtor used to purchase the vitrified tiles from the Operational Creditor and use to sell it further.

   b. The Operational Creditor submitted that the Corporate Debtor had placed the purchased orders dated 21.01.2016, 04.03.2016, 06.05.2016, 19.05.2016 and 03/06/2016 for the purpose of purchasing the vitrified tiles from the Operational Creditor.

   c. The Operational Creditor further stated that they have supplied the total material to the tune of Rs. 80,57,282/- and the Corporate Debtor had made payment of an amount of Rs. 1,35,500/- on 16.03.2017. No further payments were made by the Corporate Debtor.

   d. The Operational Creditor sent a Demand Notice dated 03.02.2020 demanding payment of an unpaid operational debt of Rs. 6,72,844/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

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4. The Corporate Debtor has filed his reply against the said Application. The main objections raised by the corporate debtor are as follows:

a) The Corporate Debtor stated that they are into the business of manufacturing and selling vitrified flooring tiles.

b) The Corporate Debtor further stated that they had placed several purchase orders to the Operational Creditor on 21.01.2016, 04.03.2016, 06.05.2016, 19.05.2016 and 03.06.2016 for the supply of the vitrified tiles directly to the customers of the Corporate Debtor and the material provided by Operational Creditor was not up to the mark. As the material provided was not in accordance with the specification, colour and quality of the material the same was not accepted by the customers of the Corporate Debtor and the Corporate Debtor had to bear the loss.

c) The Corporate Debtor further stated that after receiving the defective material from the Operational Creditor they made a request to the Operational Creditor to provide them with the inspection report which was prepared by the Operational Creditor before dispatching the material to the customers. However, the said requested report has not been received till date.

d) The Corporate Debtor also stated in its reply that the interest amount of Rs. 2,35,932/- has been wrongly calculated as the Operational Creditor has failed to give any inspection report and quality report to the Corporate Debtor, hence, the

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Operational Creditor is not entitled for any interest on the dues for a sum of Rs. 4,36,912/-.

5. We have heard the arguments and perused the documents which are placed on record. Before going into the merits of the present case, the Adjudicating Authority after considering the averments made by the Applicant in his petition in Part IV of the Form-5 and upon perusing the records submitted by the Applicant, raised a query with respect to the claim being barred by the law of limitation. It is now well settled that the period of limitation for an Application seeking initiation of the CIRP under Section 9 of the Code is governed by Article 137 of the Limitation Act and is, therefore 3 years from the date when the 'Right to Apply' accrues i.e., failure to clear the dues.

6. With respect to the issue of limitation, we find that the present Application filed under Section 9 of the Code, 2016 qualifies the test of limitation in terms of Section 19 of the Limitation Act since the last payment of an amount of Rs. 1,35,500/- against the total amount was made by the Corporate Debtor on 16.03.2017 and the present Application was filed before this Authority on 01.03.2020. As the debt has been duly acknowledged by the Corporate Debtor on 16.03.2017, accordingly, the limitation period will be reckoned from 16.03.2017. Thus the present Application which has been filed within three years from 16.03.2017 as prescribed in Article 137 of the Limitation Act successfully survives the bar of Limitation.

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7. Now, we deal with the merits of the present case. In order to initiate the CIRP against a Corporate Debtor on an Application filed by the Operational Creditor before 24.03.2020, it must primarily qualify the threshold limit of Rs. 1 lakh. It is pertinent to mention here that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affair on 24th March, 2020 and the amount defaulted by the Corporate Debtor and filing of the petition was before that i.e on . 01.03.2020. Since any notification issued by the Government are generally Prospective in nature unless specifically expressed, hence the notification is not applicable to the present case. Therefore, the instant Application satisfies the pecuniary criteria under Section 9 of the Code, 2016.

8. With regard to the contention made by the Corporate Debtor in his reply that the material delivered to their customers by the Operational Creditor were defective, it is observed that though the Corporate Debtor has advanced this contention, however, the Corporate Debtor has failed to corroborate the said contention with any evidence whatsoever. The other contention made by the Corporate Debtor in his reply stating therein that the Operational Creditor has failed to give any inspection/quality certification report at the time of dispatch and therefore the Operational Creditor is not entitled for any interest on the dues for a sum of Rs. 4,36,912/- also does not establish or prove on record that the goods supplied by the Operational Creditor were not of the good quality. Moreover, no such agreement with respect to the same has been shown to

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have been entered into between the parties and accordingly, adverse inference has to be drawn against the respondent. Hence, we are of the considered view that the Corporate Debtor has admitted its liability to the tune of Rs.4,36,912/-. Keeping in view the aforenoted facts and reasons, this Authority is satisfied that there is an outstanding operational debt as well as there is default by the corporate debtor. Considering the facts and circumstances in which this debt has arisen, the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under the Code and there is a "Default" also as defined under section 3 (12) of the Code on the part of the Corporate Debtor.

9. In view of the foregoing discussion, this Authority is of the firm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant. Accordingly, the present application stands ***admitted*** in terms of Section 9(5) of the Code and ***CIRP is hereby ordered to be initiated*** against the respondent Corporate Debtor, forthwith.

10. The operational creditor has not proposed the name of an Interim Resolution Professional. Therefore, this bench appoints Mr. Ramkripal Sharma as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N01126/2021-2022/13669 with email – id: iprksharma@gmail.com who has to submit the acceptance of the appointment as the interim resolution professional and a signed communication in Form 2 in terms of Rule 9(1) of the Insolvency and

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Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration also to be made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures are to be made by IRP above named as per the requirement of the IBBI Regulations.

11. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Ramkripal Sharma 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 will be subject to ratification and adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

12. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, we also declare moratorium in terms of Section 14 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
> *(b)Transfering, 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 Securization 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 possession of the corporate debtor.*

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(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearance or similar grant or 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 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".

13. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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.

14. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact 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'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone

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else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an 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.

15. 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 to be sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(DR. BINOD KUMAR SINHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)