

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH - I  
KOLKATA**

**C.P. (IB) No. 1353/KB/2019**

*Under section 9 of the Insolvency and Bankruptcy Code, 2016.*

***In the matter of:***

**Maharashtra Cargo Movers**, a partnership firm registered on 28 August, 1976, having Registration No.B-113054 and its registered office at 203, Ashirwad, Ahmedabad Street, Masjid, Mumbai – 400009.

*...Operational Creditor*

*-Versus-*

**Khaitan India Limited**(CIN L10000WB1936PLC008775), a Company incorporated under the Companies Act, 1913, having its registered office at 46 C J L, Nehru Road, Kolkata – 700071.

*... Corporate Debtor*

**Date of Hearing: 18.07.2022**

**Date of pronouncing the order: 01.08.2022**

**Coram:**

***Shri Rohit Kapoor, Member (Judicial)***

***Shri Balraj Joshi, Member (Technical)***

**Appearances (via video conferencing/physical hearing):**

***For the Operational Creditor***

Mr. Avirup Mondal, Advocate.

Ms. Sudarshana Dutta, Advocate

***For the Corporate Debtor***

Mr. Anjan Kumar Roy, PCS

Mr. Amit Choraria, PCA

**ORDER**

***Per : Balraj Joshi, Member (Technical):***

1. This Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“*the Code*”) by Mr. Sanjay Rajkumar Bansal, partner of Maharashtra Cargo Movers (“*Operational Creditor*”) duly authorized *vide* letter of authority dated 18 April, 2019<sup>1</sup> seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against Khaitan India Limited (“*Corporate Debtor*”).
3. The present petition was filed **on 23 August, 2019** before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of Rs.23,54,093/- (Rupees Twenty Three Lakh Fifty Four Thousand Ninety Threeonly)[*Principal – Rs.19,00,235/- and Interest – Rs.4,53,858/- @ 18%*].
4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.25,00,00,000/- (Rupees Twenty Five Crore only) with paid up Capital as Rs.4,75,00,000/- (Rupees Four CroreSeventy Five Lakh only). The date of default is stated to be on **29 January, 2018**.

***Submission of the learned Counsel for the Operational Creditor***

5. The Operational Creditor is a partnership firm engaged in the business of providing logistic services. The Corporate Debtor approached the Operational Creditor to avail the service of transportation for consignment.
6. From time to time the Operational Creditor used to render transportation services to the Corporate Debtor and raised invoices. Total invoice amount was Rs.72,47,285/- (Rupees Seventy-Two Lakh Forty-Seven Thousand Two Hundred Eighty-Five only) out of which the Corporate Debtor has made a payment of Rs.53,47,050/- (Rupees Fifty-Three Lakh Forty-Seven Thousand Fifty only).

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<sup>1</sup>Page 134 of the Petition.

7. However, after a continuous follow up, the Corporate Debtor neither acknowledged the invoices nor did they made any payments for the outstanding amount of Rs.19,00,235/- (Rupees Nine Lakh Two Hundred Thirty Five only). No disputes were ever raised by the Corporate Debtor with respect to the services provided by the Operational Creditor.
8. The Operational Creditor issued a demand notice dated 14 October, 2019 under section 8 of the Code and the same was received by the Corporate Debtor.<sup>2</sup> It is also pertinent to mention that no reply was given by the Corporate Debtor with respect to the said demand notice of the Operational Creditor.

***Submission of the learned Counsel for the Corporate Debtor***

9. The Operational Creditor has mentioned in Paragraph no. 3 of part IV of the Application form no.5, (Page 9) that they have raised invoices both in the name of M/s. Khaitan Electricals Limited and M/s. Khaitan (India) Limited. However, Khaitan (India) Limited and Khaitan Electricals Limited are two separate companies which have no connection between them and they are neither holding nor subsidiary of each other. It is pertinent to note here that Khaitan Electicals Limited (CIN: L31909TG1975PLC001949) and Khaitan (India) Limited (CIN: L10000WB1936PLC008775) are separate legal entities. Khaitan Electricals Limited has Registered Office in Hyderabad and Khaitan (India) Limited has registered office in Kolkata.
10. The alleged operational debt is neither owed by the Corporate Debtor nor has been legally transferred or assigned to the corporate debtor. As such the alleged operational debt is not an “Operation Debt” as per the definition of the term in Section 5 (20) of IBC, 2016
11. There is nothing on record which proves that the operational debt of Khaitan Electricals Limited was legally transferred or assigned to the Corporate Debtor. The board of directors of the Corporate Debtor has never passed any

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<sup>2</sup>Annexure – D of the Petition.

resolution, or have executed any agreement for transfer of debt from Khaitan Electricals Limited to the Corporate Debtor.

12. The petitioner has relied solely on a copy of a ledger of Operational Creditor in the books of Khaitan Electricals Limited, which is attached to the rejoinder in page no. 14. A careful perusal of the aforesaid ledger would indicate that on 16 October, 2017 the opening balance of amount payable to the Operational Creditor by Khaitan Electricals Limited was Rs.3,90,963. It would further show that from 16 October, 2017 to 30 September 2018, Khaitan Electricals Limited has paid to the Operational Creditor a total sum of Rs.27,75,000 in instalments on different dates.
13. Further on page no.12 of the rejoinder the Operational Creditor has attached a copy of an email which indicates that some ledger was mailed by a staff of the Corporate Debtor to Operational Creditor but it nowhere indicates any acceptance or approval of any operational debt.
14. The Operational Creditor had business relation with Corporate Debtor as cargo operation / transporter and that business relation did not include Khaitan Electricals Limited which is already under liquidation in the matter IA No. 460/2019 of CP(IB) No. 326/7/HDB/2018 at Hon'ble NCLT, Hyderabad Bench.
15. The invoices attached to the Application are not in respect of any services provided to the Corporate Debtor and the Corporate Debtor does not owe any liability to pay those **invalid and false** invoices raised by the Operational Creditor.
16. Since the demand notice included the invoices raised on Khaitan Electricals ' also, as is the evident from the statement attached with the said demand notice and was marked as Annexure -B of & the Application and the copy of the said Annexure is also attached with the Affidavit and marked as R-3 and in view thereof the demand notice lost its validity and the corporate debtor decided not to react on the notice.

***Analysis and Findings***

17. We have heard the Ld. Counsel appearing for the parties and perused the records and the concerned documents annexed to the Petition.
18. Upon perusal of the outstanding unpaid Invoices at pages 24 to 118 of the Application, it is apparent that few of the invoices mention the name of Khaitan Electricals but majority of the invoices were raised in the name of the Corporate Debtor. Be that as it may, even if we deduct the amount of the invoices mention the name of Khaitan Electricals then also the amount due from the Corporate Debtor would fall within the threshold limit i.e Rs. 1.0 Lakh as applicable under the Code before the notification dated 24 March, 2020, when it was raised to Rs. 1.0 Crore.
19. Further, from the emails dated 12 April, 2018 and 11 May, 2019 at page 120 and 121 of the Petition, it is clear that **Sunay Krishna Khaitan**, who is one of the Director of the Corporate Debtor, having DIN 07585070, acknowledges the operational debt through his mails. Moreover, he also states that the Corporate Debtor is facing extreme fund crises because of which they are unable to initiate the outstanding payments. Hence, the contention by the Corporate Debtor on the “**invalid and false invoices**” does not hold water. Further considering the fact that the proceeding before this Adjudicating Authority is a Summary Proceeding; we cannot go into the genuineness of the invoices particularly when the contentions are presented in the petition by the Operational Creditor under an oath by way of in the affidavit.
20. Further, the contention by the Corporate Debtor in paragraph 10 & 11 of the Reply, is unclouded enough to support the fact that the Demand Notice under 8 of the Code was received by them, but they chose not to react on the said Demand Notice.
21. It is also pertinent to mention that as per the mail dated 14 November, 2018<sup>3</sup> sent by the Corporate Debtor to the Operational Creditor, the Corporate

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<sup>3</sup>At page 12 of the Rejoinder

Debtor has shared the ledger statement of Khaitan Industries from 01 October, 2017 to 31 March, 2018, wherein it shows that the outstanding dues to the Operational Creditor were transferred from Khaitan Electricals Limited to Khaitan India Limited. The copies of the mail have also been marked to the Director of the Corporate Debtor.

22. Further, the Hon'ble Supreme Court in *Vidharba Industries Private Limited v. Axis Bank Limited*<sup>4</sup> has opined that

*“72. Section 9 prescribes the mode and manner by which an Operational Creditor can make an application for initiation of CIRP. After expiry of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the Corporate Debtor or notice of dispute, the Operational Creditor may file an application before the Adjudicating Authority (NCLT) for initiation of CIRP.*

*73. Sub-section (5) of Section 9 of the IBC reads: 9(5) 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 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--*

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<sup>4</sup> MANU/SC/0874/2022

- a. *the application made Under Sub-section (2) is incomplete;*
- b. *there has been 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 Sub-clause (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.”*

23. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time, and since there is no pre-existing dispute, there is no defence available to the Corporate Debtor in these circumstances. Further, As envisaged under section 9(3)(b) of the Code, an affidavit has been filed by the Operational Creditor.
24. It is, accordingly, hereby ordered as follows:-
  - a. The application bearing **C.P. (IB) No.1353/KB/2019** filed by Maharashtra Cargo Movers, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Khaitan India Limited**, the Corporate Debtor, is **admitted**.
  - b. There shall be a moratorium under section 14 of the IBC.
  - c. 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.

- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Shambhu Prasad Shaw**, registration number **IBBI/IPA-001/IP-P-01624/2019 -2020/12544**, email: **shawsp@rediffmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to these Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- h. The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two 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).
- i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.
25. **C.P. (IB) No.1353/KB/2019** to come up on **15.09.2022** or filing the progress report.
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapur.**  
**Member (Judicial)**

The Order is pronounced on 01 day of August, 2022