

NATIONAL COMPANY LAW TRIBUNAL, COURT-V, NEW DELHI
IB-2069/ND/2019

Item 522 of 02.03.21

In the matter of:

Nangalia Bros. Pvt. Ltd.

Operational Creditor

Vs.

Sachin Electricals Private Limited
201, Aggarwal Chambers, O&P Market
LSC Dilshad Garden, Delhi-110095

Corporate Debtor

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on: 06.04.2021

Coram:

ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)
K.K. VOHRA, MEMBER (TECHNICAL)

Present:

For the applicant : Adv Shrivalli Kajaria
For the respondent : Adv Rahul Narang

ORDER

Per: K.K. Vohra, Member (T)

1. This is a petition filed by Nangalia Bros. Pvt. Ltd., Operational Creditor (OC) seeking initiation of Corporate Insolvency Regulation Process (CIRP) against the Corporate Debtor (CD), Sachin Electricals Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016(the Code) for the alleged default on the part of the CD in settling the amount of Rs 60,42,979 as on 28.02.2019 plus interest towards the goods supplied. The details of transactions leading to the filing of this petition as averred by the OC are as follow:



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- The CD issued purchase orders on 14.09.2017 and 21.09.2017 for supply of Wires. As per the agreed term of payment between the parties, OC was to receive '100% through 60 days PDC' (page 24 of petition).

- The OC supplied the required goods and raised three invoices dated 21.09.2017, 24.09.2017 and 13.10.2017 aggregating to Rs 60,42,979 (pg 29, 32 and 37). It is also stated that CD issued three cheques for payment of Operational Debt (OD). However, the cheques got dishonoured for which the OC issued three notices dated 04.06.2018 under Section 138 of N.I. Act, 1881.

- The OC submitted that the CD expressly acknowledged its liability by a reply dated 09.06.2018 to notice issued under Section 138 of N.I. Act (pg 75). The relevant part of reply has been reproduced below:

"A) we will clear all outstanding dues of Rs. 60,42,975 (Sixty Lacs Forty-Two Thousand Nine Hundred and Seventy-Five Only). As per bill in our account statement."

- The OC further submitted that CD via e-mails dated 21.11.2017, 21.05.2018 and 18.06.2018 assured OC about release of outstanding dues (pg 61 to 63).

- The OC issued the Demand Notice u/s 8 of IBC (Form 3) as per Rule 5(1) (a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor on 05.03.2019 (pg 76).

2. In terms of Section 9 (3) (b) of the Code, the applicant has affirmed vide affidavit dated 03.08.2019 that no notice of dispute has been received from CD in reply to demand notice dated 05.03.2019 (pg 21).

3. The CD filed a reply dated 06.01.2020 stating that the claim of OC about interest amount of Rs 13.75 lakh, over debt amount is not maintainable as there was no agreement between the parties (pg 4). The CD in its reply has not raised any dispute over quality or quantity of goods supplied by OC. CD, however, stated that the payment of outstanding dues was payable to OC subject to the availability of funds and presently CD is taking steps for recovery of its debts. It is pertinent to mention here that the CD has not raised objection against the principal amount of OC. Further, CD has not claimed that there is any pre-existing dispute between the parties.

4. The CD in its reply has stated that the purchase orders were placed in the name of "M/s Ashish Electronics", not in the name of OC. In this regard, the OC in its rejoinder submitted that



“Ashish Electronics” is trade name of OC, which is also mentioned in memo of parties of the petition (pg 3 of rejoinder). It is seen that in the reply letter dated 09.06.2018, the CD itself has mentioned the name of OC as proprietor of Ashish Electronics (pg 73) and invoices also show name of petitioner as proprietor of Ashish Electronics (pg 28). Therefore, in view of the invoices and notices, OC is entitled to file the present petition being proprietor of Ashish Electronics.

5. Heard the parties and perused the case records.

6. The provisions pertaining to filing petition for initiation of CIRP by OC is given under Section 9 of the Code. Before filing of Section 9 petition, the OC shall issue demand notice under Section 8 of the Code. Section 8 and Section 9 have been reproduced below:

8. *Insolvency resolution by operational creditor. -*

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt-

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

9. *Application for initiation of corporate insolvency resolution process by operational creditor. –*

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under subsection (2) of

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section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish-

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(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-

(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 subclause (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.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

7. While applying aforementioned provisions over the facts of the present matter, it is seen that the CD has not raised any dispute over quality or quantity of goods supplied by the OC. It is reiterated that the CD vide letter dated 09.06.2018 has acknowledged its liability to pay the outstanding dues of OC. Materials were supplied, invoices were raised and no dispute in respect of material supplied has been raised by CD. The applicant has placed sufficient evidence in support of its claim. Going by the above details, the OC has clearly established the existence of debt and default on the part of the CD. The petition is within limitation period.

8. In view of the above facts, the present application deserves to be admitted. Hence, the present application is **admitted** initiating CIRP on the CD, with immediate effect.

9. The OC has not proposed the name of any IRP. Accordingly, we appoint Mr Vijay Kishore Saxena Registration No. IBBI/IPA-001/IP-P01766/2019-2020/12708 email: vksaxena2159@gmail.com duly empaneled with the IBBI as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days.

10. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the IRP immediately (within 3 days) with regard to admission of this application under Section 7 of the Code.



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11. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow 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 CD 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 CD 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 CD 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 CD.

12. The supply of the essential goods or services to the CD as may be specified, are not to be terminated or suspended or interrupted during the moratorium period [Sec 14(2) of the Code]. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government in consultation with any financial regulator. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the CD in terms of Section 14 (3) (b) of the Code.

13. The IRP shall perform all his functions contemplated, inter-alia, under Sections 17, 18 and 21 of the Code and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations and shall file reports before the Adjudicating Authority. It is further made clear that all the personnel connected with the CD, its promoters or any other persons associated with the Management of the CD are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the CD. The IRP shall be under duty to protect and preserve the value of the property of the CD 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.



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14. The OC is directed to deposit a fee of Rs 2 lakh to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to the OC to be recovered as CIRP cost.

15. The office is directed to communicate a copy of the order to the OC, the CD, the IRP and the Registrar of Companies, New Delhi at the earliest possible but not later than seven days from today.

Sd/-

(K. K. VOHRA)
MEMBER (T)

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(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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