

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT – III, NEW DELHI

IB-1148/ND/2019

In the matter of:

Fairway Trading Co. (P) Limited

...Petitioner

Vs.

Chemlinker Tradex (P) Ltd.

...Respondent

Section:

Under Section 9 of IBC, 2016

Order delivered on: 23.09.2019

Coram:

Sh.R. Varadharajan
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble Member (Technical)

For the Petitioner: Mr. Anshul Rawal, Mr.R. Rajan, Mr. Inshar Bakshi,
Advocates.

For the Respondent: Mr.Mukesh Kumar, Mr. Sameer Rastogi, Advocates

Handwritten signature and date: 25/9/18

ORDER

An application filed under Section 9 of Insolvency and Bankruptcy Code (IBC) 2016 by an Operational Creditor (OC) against the Corporate Debtor (CD) seeking to invoke the Corporate Insolvency Process (CRP) in view of the default committed by the CD in the payment of an Operational Debit.

Part I of the application discloses that the applicant is a Company.

Part II of the application states that the CD was incorporated on 10.6.2013. The Nominal and Paid-Up Share Capital of the CD is disclosed as Rs.15,00,000/-. The Registered office of the CD is stated to be situated at:

Shop NOG-3, Ground floor, Vardhman Bhanof Plaza, Plot No.06, Pocket-7, Sector-12 Dwarka, New Delhi-110075.

Part III is left blank by the applicant without any proposal in relation to the Interim Resolution Professional (IRP).

Part IV discloses the Operational debt which is in default is to an extent of Rs.25,07,215.00.

Part V Clause 8 of part V of the application, the list of documents based on which the Operational Creditor (OC) seeks to establish its claim is disclosed.

Demand Notice which has been annexed at Page-77 of the type set is dated 25.2.2019 claiming the amount in default and affording an opportunity to the CD to pay the said amount in default within a period of 10 days from its receipt or to bring to the notice about any dispute in relation to the amount claimed in default. The above demand notice seems to have been elicited a reply from the CD disputing the claim as made by the OC, vide a demand notice sent on dated 20.5.2019. Since the amount has not been paid this petition has been preferred by the Petitioner.



From the record of proceedings, it is seen that the CD was duly served in relation to proceedings before this Tribunal as the CD had entered appearance through its counsel and an opportunity of 10 days was granted to the CD to file its reply. Subsequently, when the matter was listed before this Tribunal on 20.8.2019, it is seen therefrom that no reply was filed by the CD and in the circumstances the right to file reply of the CD stood closed and the parties were heard on the said date ad Orders Reserved. From the oral submissions as made by the parties through their Ld. Counsels, it is evident that goods have been supplied to the CD under invoices which has been annexed as Annexure-I to the type set commencing from Page 92 till page 101 between the dates 19.9.2017 till 20.9.2017. The total value of goods supplied as disclosed in the Ledger account is to the extent of Rs.51,57,215/- and the ledger extracts have been produced before this Tribunal at page 102 that as against the Invoices raised, a sum of Rs.26,50,000/- had been received through bank and the closing Balance as on 31.3.2018 is disclosed that a sum of Rs.25,07,250/- being the amount which is claimed in this Petition as the Operational Debt in default. Even though a reply to the Company Petition has not been filed which has led this Tribunal to close the right to file. However, referring to the reply as signed by the CD to the Demand Notice on 7.3.2019 seeks to dispute the Operational debt being in default on the basis that certain Trade transactions has been made with Sister concern of the Operational Creditor under the name and style of Mashreq International L.L.C Dubai and in view of the counter claim to the extent of **US \$ 40492** being pending against the Operational Creditor as well as its sister /Associate concern, the amount is not payable as claimed in the Petition as the amount in default. However, from the reply, even though the amount in default is disputed in the reply to the Demand Notice. However, no proof has been furnished and the dispute as raised by the CD seems to be



sham or illusive. It is also required to know that despite affording an opportunity to the CD to file its reply to the Company petition, the said opportunity had not been availed by the CD which led to close by this Tribunal of the right to file reply as more than a month had expired when the said opportunity was given. Taking into consideration the invoices as produced before this Tribunal by the OC evidencing the supply of goods to the CD as well as the payment subsequently made in part in relation to the said invoices by the CD as evident from the Ledger statements produced by the OC. We are of the view about the existence of OD owned by the CD to the Operational Creditor under which there is default as defined u/s. 3(12) of IBC, 2016. This Tribunal is constrained to initiate the CIRP as against the CD. In view of the absence of any proposal, in relation to IRP as made in the Petition Mr. Vikas Garg having Regn. No. IBBI/IPA-001/IP-P01050/2017-2018/11733; Email ID vikas@vamindia.in; Mobile No.9910024380; is appointed as Interim Resolution Professional from the list as made available by IBBI. A sum of Rs.2,00,000/- shall be remitted to the Account of IRP by the OC at the earliest not exceeding period of 3 days from the date of this order. A moratorium in terms of Section-14 of IBC, 2016 in view of the Order of admission is also invoked and made applicable during the period of CRP of the CD. The IRP appointed by this Tribunal shall strictly act in accordance with the provisions of IBC, 2016 and as enjoined under the Attendant Regulations governing his conduct.

6. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the OC as well as to the CD above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named who is figuring in the list of Resolution Professionals

forwarded by IBBI, be also furnished with copy of this order forthwith by the Registry, who in turn shall communicate with the Registrar of Companies, NCT of Delhi & Haryana with a view to enable the said authority to update its record as well as the Master Data maintained in MCA website.

- Sol -

(KK VOHRA)
MEMBER (TECHNICAL)

n - Sol - 23/09/2019

(R. VARDHARAJAN)
MEMBER (JUDICIAL)

Sinh 25/9/19

सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003