IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No.4481/MB/2019

[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. KNOWELL CORPORATION

Office Address: 9/2 104, Bharat House

Mumbai Samachar Marg, Fort

Mumbai-400023.

Maharashtra

…Operational Creditor

VERSUS

M/S. CARD PRO SOLUTIONS PRIVATE LIMITED

[CIN: U22219MH1988PTC049003]

Registered Office: Unit No. 135, 1st floor

A to Z Industrial Estate, G K Marg

Lower Parel,Mumbai

Maharashtra- 400013.

...Corporate Debtor

Pronounced: 16.02.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances : Hybrid

Operational Creditor: Adv. Suveena Shetty i/b Adv. Pratibha Rupnawar

Corporate Debtor: None

ORDER

[Per*: *SANJIV DUTT, MEMBER (TECHNICAL)]

1. Background

1.1 This Application bearing C.P.(IB) No.4481/MB/2019 was filed by Knowell Corporation, the Operational Creditor on 02.12.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Card Pro Solutions Private Limited, the Corporate Debtor.

1.2 The Operational Creditor is a distributor of raw materials used in making of Identity Card, adhesive tapes and label stocks. The Corporate Debtor is engaged in the business of manufacturing and sale of cards.

1.3 The Corporate Debtor approached the Operational Creditor during Financial Year 2016-17 for the purchase of goods. Consequently, the Operational Creditor agreed to provide goods to the Corporate Debtor on terms and conditions mutually agreed upon by both parties. The Operational Creditor issued ten invoices during the period from February, 2017 to November, 2017 for the goods sold totalling Rs.22,12,069.19/- (Twenty-Two Lakhs Twelve Thousand Sixty-Nine Rupees and Nineteen Paise) which remained unpaid. Despite repeated reminders, the Corporate Debtor failed to pay the said amount of operational debt.

1.4 Subsequently, on 11.03.2019, the Operational Creditor issued Demand Notice to the Corporate Debtor, as required under Section 8 of the Code. Pursuant to the said notice, the Corporate Debtor made part payment of Rs.10,000/- on 31.07.2019 to the Operational Creditor and promised to clear the outstanding dues at the earliest. But it did not send any reply to the notice and also did not make any further payments. As the Corporate Debtor failed to make the payment of the aforementioned operational debt due and payable to the Operational Creditor, the latter filed the present Application seeking the commencement of CIRP in respect of the Corporate Debtor.

2. **Averments of the Operational Creditor**

2.1 The Operational Creditor submits that it had supplied goods to the Corporate Debtor during the period from 20.06.2016 to 24.11.2017.

2.2 The Operational Creditor submits that the goods were accepted by the Corporate Debtor without any complaints and both parties agreed to abide by all the terms and conditions as agreed. The Operational Creditor always endeavored to provide the best quality goods and services diligently and appropriately and fulfilled all the terms and obligations on its part. The Corporate Debtor never disputed the invoiced amounts upon receiving them and all invoices were duly approved.

2.3 The Operational Creditor submits that despite accepting the goods supplied, the Corporate Debtor failed to make payment of ten invoices raised by it between 17.02.2017 and 24.11.2017 aggregating to Rs.22,12,069.19/- including GST and VAT.

2.4 Despite regular personal and telephonic follow-up, the Corporate Debtor chose to disregard the claim of the Operational Creditor to clear the outstanding dues. Consequently, a Demand Notice was issued by the Operational Creditor under Section 8 of the Code on 11.03.2019 calling upon the Corporate Debtor to settle the outstanding dues.

2.5 The Operational Creditor states that after receiving the notice, the Corporate Debtor paid Rs.10,000/- on 31.07.2019 which further indicates its admission of liability to pay. Thus, the present application filed on 02.12.2019 is a suitable case for the initiation of CIRP against the Corporate Debtor under Section 9 of the Code.

3. <u>Contentions of Corporate Debtor</u>

3.1 It is evident from the record that the Operational Creditor diligently served notices of hearings to the Corporate Debtor by speed post/ registered post on multiple occasions, specifically on 04.12.2019, 14.01.2020, 17.02.2020, and 15.03.2021. Despite these notices being properly served, the Corporate Debtor failed to attend.

3.2 The Corporate Debtor did not provide any written reply during the ongoing proceedings and neither appeared personally nor through an authorised representative to present oral or written submissions. The Corporate Debtor did not make any representation even on subsequent occasions. It was noticed from the record that no representation had been made on behalf of the Corporate Debtor since 30.06.2022. In view of the above, the Corporate Debtor was set *ex-parte vide* order dated 04.10.2023.

3.3 With no pleadings or replies available from the Corporate Debtor, the Application is being disposed of based solely on the pleadings of the Operational Creditor.

4. Analysis and Findings

Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor, our findings in the matter are as under:-

4.1 Although the Corporate Debtor was represented by its Counsel Mr. Pankaj Uttaradi on 26.07.2021 who requested for time to file Vakalatnama, despite multiple opportunities provided by this Adjudicating Authority, it has failed to take any steps to furnish any reply or present its defence. Consequently, the Corporate Debtor was set *ex-parte* on 17.10.2023 and the matter was heard based on the pleadings in the Application and arguments advanced by the Ld. Counsel for the Operational Creditor.

4.2 The Operational Creditor has placed on record copies of relevant tax invoices along with statement of running account/ ledger of the Corporate Debtor for the period from 01.01.2016 to 31.03.2019 showing outstanding amount of Rs.22,12,069.19 due from the Corporate Debtor as on 19.09.2018. After considering part payment of Rs.10,000/- made by the Corporate Debtor on 31.07.2019, the balance amount of unpaid operational debt stands at Rs.22,02,069.19. Thus, we find that the Operational Creditor has been able to establish the existence of an operational debt due and payable by the Corporate Debtor. The debt of Rs.22,02,069.19 owed by the Corporate Debtor to the

Operational Creditor against the supply of goods falls within the definition of "operational debt" under Section 5(21) of the Code.

4.3 The Operational Creditor issued a Demand Notice dated 11.03.2019 to the Corporate Debtor under Section 8(1) of the Code in the prescribed form demanding payment of the outstanding amount of Rs.22,12,069.19. It is observed that the Corporate Debtor did not respond to the aforesaid Demand Notice. However, a part payment of Rs.10,000/- only was received from the Corporate Debtor on 31.07.2019. Hence, we find that the Corporate Debtor defaulted in payment of the balance operational debt owed to the Operational Creditor.

4.4 On perusal of the materials available on record, we find that there is nothing to show that any dispute existed between the parties before the issuance of the Demand Notice. The Operational Creditor has filed an Affidavit under Section 9(3)(b) of the Code, *inter alia,* affirming that the Corporate Debtor had failed to bring to the notice of the Operational Creditor existence of any dispute or any pendency of a suit or arbitration proceedings filed in connection with the unpaid operational debt of the Operational Creditor as defined under Section 5(6) read with Section 9(3)(b) of the code. It is also affirmed that the Operational Creditor has not received any notice of dispute regarding the pending amount from the Corporate Debtor. Hence, it clearly emerges that there is no pre-existing dispute between the parties regarding the amount of operational debt in default.

4.5 It is observed from the record that the date of default is neither explicitly stated in Part-IV of the Application nor in the Demand Notice dated 11.03.2019. The total amount of debt due as well as the amount claimed to be in default are shown "as on 02.12.2019" in Part-IV of the Application. However, it is not clarified as to how the Operational Creditor has claimed the date of default to be 02.12.2019. The Operational Creditor submits that the date of default for various invoices would be the date of the respective invoices. It is also observed that the Operational Creditor has maintained a running account of the Corporate Debtor in its books of account. Therefore, after considering the pleading of the Operational Creditor and the details of the invoices annexed to the Application, the date of default is determined as 24.11.2017 which is the date of the last invoice remaining unpaid. The present Application is filed by the Operational Creditor on 02.12.2019 and thus, falls within the period of limitation as prescribed under Section 238A of the Code read with Article 137 of the Limitation Act, 1963. Therefore, we find that the Operational Creditor has established a case for admission of the present Application.

4.6 From the above discussions, it is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt to the Operational Creditor exceeding Rs.1,00,000/- (One Lakh Rupees), being the threshold monetary limit under Section 4 of the Code prevailing on the date of filing of the present Application. Thus, this Application under Section 9 of the Code preferred by the Operational Creditor is found to be maintainable. The Application is complete and has been filed in the prescribed form. There is no payment of the unpaid operational debt till date. No notice of pre-existing dispute has been received by the Operational Creditor in response to the Demand Notice. In view of the above, we find that all requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

ORDER

This Application bearing C.P.(IB) No.3968/MB/2019 filed under Section 9 of the Code by Knowell Corporation, the Operational Creditor, for initiating CIRP in respect of Card Pro Solutions Private Limited, the Corporate Debtor is **admitted.** We further declare moratorium under Section 14 of Code with consequential directions as follows:

I. We prohibit-

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 of 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 Securitisation 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.

II. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for the liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.

IV. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Prabhjit Singh Soni,** a registered Insolvency Professional having Registration Number **IBBI/IPA-003/IP-N00377-C01/2017-18/10143** and Email ID psgurleensoni@gmail.com having valid Authorization for Assignment as the Interim Resolution Professional (IRP), as proposed by the Operational Creditor, in order to carry out the functions under the Code. The fee payable to IRP/ RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. 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 Sections 17 and 25 of the Code. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the Committee of Creditors

(CoC) becoming available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the CoC.

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the IRP including by way of email and WhatsApp.

X. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.

XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER(JUDICIAL)

Deepa/JNK