



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH,
PRAYAGRAJ**

CP (IB) No.357/ALD/2019

An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

ELAN PROFESSIONAL APPLIANCES PVT. LTD.

CIN No. U52310HR2009PTC039104

Registered Office: 1/3, Hamelia Street Vatika City,
Sohna Road, Gurugram HR 122018

...Applicant/Operational Creditor

Versus

HIMALAYAN EQUIPMENT MANUFACTURING CO. PRIVATE LTD.

CIN: U29253UP2010PTC041227

Registered Office: Plot No. G-5, UPSIDC
Sarojini Nagar Lucknow, UP-226009

...Respondent/Corporate Debtor

Order pronounced on : 06.10.2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

PRESENT-

Ms. Babita Jain, Adv. : For the Operational Creditor

Sh. Udai Chandani, Adv. : For the Corporate Debtor



ORDER

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC,2016' / 'Code'**), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "**the Rules**") by **M/s Elan Professionals Appliances Pvt. Ltd** (hereinafter referred as "**Applicant/Operational Creditor**") for initiating Corporate Insolvency Resolution Process (hereinafter referred as "**CIRP**") against Himalayan Equipment Manufacturing Co. Pvt. Ltd.(hereinafter referred as "**Respondent/Operational Creditor**").
2. The Operational Creditor i.e M/s Elan Professionals Appliances Pvt. Ltd. was constituted under the provisions of Companies Act, 1956 having CIN. U52310HR2009PTC039104 and registered office of the Operational Creditor is located at 1/3, Hamelia Street Vatika City, Sohna Road, Gurugram Haryana 122018.
3. The Operational Creditor has authorized its Director, Mr. Sanjay Jain having DIN 00112119 to be authorized



representative on behalf of the Operational Creditor vide board resolution dated 02.07.2019, authorising him to file application u/s 9 of the Code. Copy of Board Resolution dated 02.07.2019 has been annexed at Pg no.24 of the application.

- 4.** Corporate Debtor is a company incorporated on 02.07.2010 as per the provisions of the Companies Act, 1956 with registered office located at Plot No.G-5, UPSIDC Sarojini Nagar, Lucknow-UP-226009. Corporate Debtor is carrying on the business of manufacturing and trading of kitchen equipments and appliances.
- 5.** It is stated in the application that Operational Creditor supplied kitchen appliances to the Corporate Debtor during November-December 2018.
- 6.** It is stated by the Applicant that the Operational Creditor supplied kitchen appliances to the Corporate Debtor and in lieu of supply of material so made, it raised the invoices of these transactions for making payments against the materials supplied by the Operational Creditor to the Corporate Debtor within 15 days of the receipt of the



materials. Details of Tax Invoices raised by the Operational Creditor have also been annexed at Page no. 33 -36 of the application. Details of invoices raised by the Operational Creditor are mentioned in a table as below:-

S. No.	Tax invoice No.	Mode of Payment	Invoice Date	Amount (in Rs.)
1.	HR/TI/18/1451	15 Days		7,53,878
2.	HR/TI/18/1922	15 Days	30.11.2018	9,65,609
3.	HR/TI/18/1703	15 days	31.12.2018	8,18,232
4.	HR/TI/18/1707	15 Days	31.12.2018	4,86,667
TOTAL				30,24,386

7. It is stated by the Applicant that entries in respect of the invoices raised for the goods supplied have been made in ledger account of FY 01.04.2018 to 31.03.2019 of the corporate debtor, which also shows the amount of the operational debt due from the Corporate Debtor. Copy of Account Statement of FYs 01.04.2018 to 31.03.2019 has been annexed at Page no.31-32 of the application. As per this ledger account, a total payment of Rs. 11,00,000/- was made against the above mentioned four invoices totalling to Rs. 30,24,386/- and accordingly, Rs.19,24,386/- remained outstanding.

8. The Operational Creditor contends that despite sending reminders, the Corporate Debtor has failed to make the



payment for the invoices raised against the supply of goods amounting to Rs.19,24,386 (Rupees Nineteen Lakhs Twenty Four Thousand Three Hundred and Eighty Six Only). Failure to make the payment of the operational debt, the Operational Creditor issued demand notice dated 01.06.2019 to the Corporate Debtor for sum of Rs.19,24,386 as per Section 8(1) of the Code, 2016. The date of default mentioned in the application is 28.02.2019. Demand notice was served to the corporate debtor on 06.06.2019 asking for making payment of the operational debt within 10 days from the date of receipt of the said notice. Copy of demand notice has been annexed at page no.17 to 23 of the application.

9. Despite receiving the demand notice, the Corporate Debtor failed to make payment of the operational debt. Therefore, the Operational Creditor filed this application under section 9 of the Code, 2016 before this tribunal.

COUNTER AFFIDAVIT/REPLY ON BEHALF OF THE CORPORATE DEBTOR

10. The Corporate Debtor has denied all the allegation/averments made in the application filed by the



Operational Creditor and has made the followings submissions:-

- i.** It is contended by the Corporate Debtor that trading or commercial transaction between the Applicant and the Respondent was initiated in the year 2017 by placing an order for supply of kitchen appliances of Rs. 1.30 crores. The payment of the said order was timely made as per the invoices raised by the Operational Creditor, which is evident from the ledge account of FY 01.04.2017-15.03.2018 and 01.04.2018-31.03.2019 annexed as **Annexure No.1** with the Reply. It is pointed out by the Corporate Debtor that the dispute between the parties arose from the last invoice raised by the Operational Creditor.
- ii.** It is also contended by the Respondent/Corporate Debtor that the Operational Creditor supplied defective and poor quality of goods which didn't pertain to the description of the goods as agreed



between parties prior to execution of sale. Due to defective quality of goods supplied, the Corporate Debtor received many complaints regarding the equipments and appliances and accordingly, sought technical assistance from the Operational Creditor which was not provided which is evident from the email dated 22.05.2019. Copy of Email dated 22.05.2019 has been annexed as **Annexure No.2** with the Counter Reply.

- iii.** Failure to redress the complaint regarding the defective quality of good can also be seen from the email dated 28.305.2019 wherein the Respondent raised the complaint regarding ICE CUBE MACHINE (Elanpro EIM61BW) (M61BW180100042) found to be defective and several complaints were received after installation. These complaints were never addressed by the Operational Creditor even after the reminder vide an email dated 17.06.2019. Copy of Email dated 28.05.2019 and 17.06.2019 has been annexed as **Annexure No.3** with the



Counter Reply.

- iv.** It is further contended by the Respondent that notice of dispute dated 04.07.2019 was raised in response to the demand notice. Copy of notice of dispute dated 04.07.2019 has been annexed as **Annexure No. 4** with the Counter Reply.
- v.** The Respondent has raised several critical issues during the course of the business dealings with the Operational Creditor. These issues pertain to the Operational Creditor's failure to address defective items and equipment making repeated requests for repair or replacement. Furthermore, there is a matter of excess material supplied by the Operational Creditor that remains uncollected, amounting to a total worth of Rs. 6 Lakhs. Copy of list of surplus materials supplied has been annexed as **Annexure No.5** with the Counter Reply.
- vi.** Furthermore, the Respondent contends that despite numerous reminders and even personal



visits to the Lucknow office of the Operational Creditor, it has failed to retrieve its surplus stock as promised.

vii. It is contended by the Corporate Debtor that the payment was withheld due to failure of the Operational Creditor to provide the correct quantity of items as per the purchase order, as well as their inability to address the issues relating to the defective items promptly. It is alleged by the Corporate Debtor that it appears that the Operational Creditor might have been attempting to clear their dead stock by raising invoices to its dealers without proper purchase orders in place. Therefore, it is further alleged by the Corporate Debtor that the Operational Creditor sent excessive items, not required for its operations, while also omitting items that were clearly specified in the purchase list. Furthermore, the quality of the goods supplied was subpar and defective, a matter which was communicated to the Operational



Creditor well before the issuance of the demand notice. As per the reply submitted by the Corporate Debtor, the pre-existing dispute as mentioned in its reply has been concealed by the Operational Creditor in their petition before this authority.

REJOINDER ON BEHALF OF THE OPERATIONAL CREDITOR

11. In response to the averments made in the Corporate Debtor in its Reply, the Operational Creditor has filed Rejoinder vide dairy no. 254 dated 22.01.2020 wherein the Applicant has denied all the allegations made in the reply of the Corporate Debtor as discussed above and against these allegations , followings submissions have been made:-

- i.** It is contended by the Operational Creditor that Corporate Debtor has duly confirmed the balance of the operational debt of Rs.19,24,386/- as mentioned in account statement as on 31.03.2019 .Copy of Confirmation of Account as on 31.03.2019 has been annexed as **Annexure RA-1 and RA-2** with the Rejoinder.



ii. With respect to allegation of excess materials supplied, It is contended by the Operational Creditor that materials were supplied as per the purchase order dated 24.11.2018 and 26.12.2018 issued by the Corporate Debtor. Mr. Vishal Singh, Managing Director of the Corporate Debtor vide an email dated 11.12.2018 placed a request order for the supply of additional materials while acknowledging the materials supplied. Copy of Purchase orders dated 24.11.2018 and 26.12.2018 and email dated 11.12.2018 have been annexed as **Annexure RA3 and RA4** with the Rejoinder.

iii. With regard to the allegation of complaints raised by the Corporate Debtor regarding supply of defective materials, it is contended by the Operational Creditor that such complaints were raised after 06 months from the date of supply of materials and only two complaints were registered out of 50 items sold and these two complaints were duly redressed to the satisfaction of the customers. Copies of Service Reports of these two complaints have been annexed as



Annexure-RA5 with the Rejoinder. The Corporate Debtor has already made payment of Rs.11,00,000 (Rupees Eleven Lakhs Only) against the invoices raised of Rs.9,65,609, Rs.7,53,878/- , Rs.8,18,232/- and Rs.4,86,667 constituting a sum of Rs.30,24,386/- and has duly availed GST input credit. The Operational Creditor in support of his averments has placed reliance on the judgment passed by the Hon'ble Supreme Court in *Civil Appeal No. 9405 of 2017 titled as Mobilox Innovations Private Limited vs Kirusha Software Private Limited*. It is contended that it is well settled that once the Debt is admitted, a Corporate Debtor cannot wriggle out its liability which is rightfully owed to the Operational Creditor by raising a sham of dispute regarding deficiency of proper services or the functioning or quantity of the goods supplied. It is also emphasised that the Corporate Debtor has accepted its liability to the principal amount of Rs.19,24,386/- in the Account Statement annexed in RA-2 of the rejoinder.

iv. In view of the submissions made by the Operational



Creditor in the rejoinder as discussed above, it is pleaded that the submissions of the Respondent/Corporate Debtor as to excess quantity, service etc. is out of place , unsubstantiated , incorrect and ought to be rejected and the present petition u/s 9 of the Code, 2016 may be allowed.

FINDINGS AND ORDER

- 12.** We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder and Written Submissions along with the documents enclosed with the application.

- 13.** The Corporate Debtor has paid a sum of Rs.11,00,000 towards the invoices raised in November and December 2018 for a sum of Rs.30,24,386. It is essential to mention here that Corporate Debtor/Respondent while admitting its liability towards payment of operational debt has stated that payment was withheld due to discrepancy in supply of items and non-replacement or non-repair of defective items but it is shown by the Operational Creditor that such complaints were duly redressed to the satisfaction of the



customers. Further, it is also important to highlight that the Corporate Debtor has confirmed its liability for a sum of Rs.19,24,386/- as stated in confirmation of accounts as on 31.03.2019 which is annexed as **Annexure-RA2** with the Rejoinder.

- 14.** It is also relevant to mention here that Corporate Debtor raised the notice of dispute dated 04.07.2019 in response to demand notice dated 01.06.2019 which is beyond the period of ten days as stated under Section 9(1) of the I & B Code, 2016.
- 15.** Thus, we found that amount of outstanding debt cannot be said to be disputed and is well above the threshold limit of Rs. 1 lakhs prior to the amendment vide notification no. S.O.1205(E) dated 24.03.2020. Thus, the very fact that the operational debt of an amount exceeding Rs. 1 lakhs exists and is unpaid, makes this petition fit for admission u/s 9 of the I & B Code, 2016.
- 16.** Taking into account the provisions of Section 9 of the Code, 2016, we find that the application made under sub-section (1) of Section 9 along with documents and fees as



mentioned in its sub-section (2) is complete. The payment of the unpaid operational debt has not been made which is well above the threshold limit of Rs.1 lakh. The date of default as per petition has been found to be 28.02.2019. The petition u/s 9 is filed on 14.08.2019, hence, petition is found to have been filed well within the limitation period. In terms of section 9(3) of the Code 2016, the Operational Creditor has submitted copies of invoices demanding payment and demand notice given to the Corporate Debtor for payment of goods supplied. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor, has been fulfilled and the Ld. Counsel of the Corporate Debtor has failed to demonstrate before us anything about there being any pre-existing dispute as regards the payment of the operational debt, we find this application fit for admission under Section 9(5)(i) of the Code, 2016 for starting CIRP against the Corporate Debtor i.e Himlayan Equipment Manufacturing Company Private Limited.

- 17.** The Operational Creditor has not proposed the name of the Interim Resolution Professional (hereinafter referred as



“IRP”) in the present application. Hence, this Adjudicating Authority appoints Mr. Rakesh Jindal as the IRP in the present case, having Registration No. IBBI/IPA-001/IP-P00375/2017-2018/10632, R/o II/E-64 Nehru Nagar, Ghaziabad, Uttar Pradesh, 201001, Email- ca.rakeshjindal@gmail.com. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Ankita Sharma, and it is found that there is no proceeding pending against the proposed IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 18.06.2024.

18. Accordingly, this application is admitted u/s 9(5)(i) of the Code, 2016 under the following terms and conditions.

i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. Himlayan Equipment Manufacturing Company Private Limited is hereby admitted.

ii. We hereby declare a moratorium u/s 14 and public



announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

- iii.** This Adjudicating Authority hereby appoints Mr. Rakesh Jindal as IRP as discussed in para 17 above.
- iv.** The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -
 - 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal



right or beneficial interest therein;

- b)** 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- c)** The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- vi.** The supply of essential goods or services rendered to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii.** The provisions of sub-section (1) of Section 14 of the Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii.** The IRP shall after collation of all the claims received



against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee.

- ix.** The Committee of the Creditors shall appoint a Resolution Professional as per section 22 of I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the time line as prescribed under the provision of section 12 of the Code, 2016.
- x.** The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.
- xi.** However, at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating



Authority approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

xii. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant in accordance with the Code, 2016 read with the relevant rules & regulation framed thereunder.

xiii. The Operational Creditor/Applicant is directed to deposit Rs.1,00,000/- with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.

19. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the



jurisdictional Registrar of Companies by Speed Post as well as through email.

20. List the matter on 10.11.2023 for filing of the first monthly progress report.
21. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
22. Ordered accordingly

-Sd-

**(Ashish Verma)
Member (Technical)**

-Sd-

**(Praveen Gupta)
Member (Judicial)**

Dated : 6th October, 2023

Ankita Sharma
(LRA)