IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No. 80/ND/2022

IN THE MATTER OF:
Eureka Forbes Ltd.
B1/B2, 701, 7th Floor
Marathon Innova
Off Ganpatrao Kadam Marg
Mumbai-400013

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

M/s. B L Kashyap & Sons Ltd.
CIN No. L74899DL19890PLC036148
Registered Office- 409, 4th Floor
DLF Tower-A Jasola, New Delhi-110025

... RESPONDENT / CORPORATE DEBTOR

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

Order delivered on:. 22.02.2022

CORAM:

MR. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

1. This is an application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 filed by Eureka Forbes Ltd. for initiation of Corporate Insolvency Resolution Process against M/s. B L Kashyap & Sons Ltd., the respondent Corporate Debtor.

2. As per averments made in the petition, the applicant supplied goods like effluent pumps, sludge pumps & filter feed pumps for Water Treatment

Plant of Corporate Debtor at Patna & Raipur in terms of work order dated 05.12.2012 and raised invoiced accordingly. It is the case of the applicant that the Corporate Debtor has committed default in making payment of Rs. 74, 92, 216/-.

3. The applicant issued Demand Notice under Section 8 of the Code dated 08.12.2020, however the applicant inadvertently failed to raised correct claim amount in Demand Notice dated 08.12.2020 and issued fresh Demand Notice in February 2021, which was delivered on corporate debtor on 22.02.2021.

4. As per part IV of the application, Rs. 74,92,216/-, alongwith interest is still pending to paid by Corporate Debtor since 24.04.2018.

5. We have heard the arguments of Ld. Counsel for the applicant and perused the case records.

6. As per Section 4 of the Code, in order to file application for initiation of Corporate Insolvency Resolution Process the applicant must prove that the default committed by the Corporate Debtor is Rs. 1 Crore or more. The relevant provision of Section 4 has been reproduced below:

> *"4. Application of this Part.—(1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one Crore rupees:*
>
> *Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees:*
>
> *Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall*

not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A."

7. Before the publication of notification No.S4/1205 (E) dated 24.3.2020 published by the Ministry Corporate Affairs, Government of India (hereinafter be referred as "the notification"), the threshold limit in Part-II was Rs. 1 lac only, however, to prevent large scale insolvencies due to the financial stress caused by the pandemic, the Government notified the minimum amount of default as Rs.1 Crore instead of Rs.1 Lakh.

8. In respect of applicability of the aforementioned amendment Hon'ble Kerala High Court in the matter of M/S. Tharakan Web Innovations Pvt. Ltd. Vs. NCLT & Ors. WP(C) No. 27636 OF 2020 vide its order dated 01.02.2022 has observed as follows:

   "......Once that is the position, the application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore.

   ....

   .....since the declaration sought for cannot be granted in view of the finding that the litmus test on the anvil is whether there exists a default as defined under Section 4 of the IBC, which if answered in the affirmative alone will give rise to a petition under Sections 7, 8, 9 and 10 of the IBC."

9. When we apply aforementioned litmus test in the facts of the present matter it is seen that the fresh Demand Notice was served upon the Corporate Debtor on 22.02.2021 and the application was filed for initiation of Corporate Insolvency Resolution Process on 09.10.2021. The amount of default as claimed by the applicant is less than the threshold limit defined under Section 4 of the Code. Therefore, the present case is not maintainable in terms of provisions of Section 4 of the Code.

10. Resultantly, the present application stand rejected as not maintainable with no order as to costs.

Let the copy of the order be served to the parties.

File be consigned to record.

-Sd-

(SUMITA PURKAYASTHA)
MEMBER (T)

-Sd-

(DHARMINDER SINGH)
MEMBER (J)