NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB)-2041/ND/2019

In the matter of

Mr. Vishal Jain,
Sole Proprietorship, Jitendra & Co.
Office at 4189, Gali Ahiran, Pahari Dhiraj,
Delhi – 110006
Email: "Jitendra_impex@ yahoo.com

...Applicant/Operational Creditor

Versus

SEHGAL PACKAGING PVT. LTD.
(A company incorporated and registered under the provisions of the companies Act, 1956)
Reg. Office at A-13, Naraina Industrial Area Phase II, New Delhi, South West Delhi Dl 110028 India
Email: "sehgalgroup@gmail.com"

...Respondent/ Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 07.01.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SH. L. N. GUPTA, HON'BLE MEMBER (T)

Present.: Mr. Arihant Jain, Mr. Sidharth Gupta, Advocates for the Petitioner
Respondent proceeded ex parte

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner, as an Operational Creditor, has prayed for initiation of the Corporate Insolvency Resolution Process of the respondent company for its inability to liquidate its outstanding dues.

2. As per averments the Operational Creditor has been dealing with the Corporate Debtor for the last several years on regular basis and has been supplying paper and paper board. It is submitted that after the financial year 2018 there was an outstanding due of Rs. 1,22,00,000/-. The Operational Creditor had initially filed a petition under section 9 of the Insolvency and Bankruptcy Code, 2016 being IB No. 381/ND/2018 which culminated in a settlement. In compliance with the term of their statement, eight postdated cheques were issued.

3. It is submitted by the Operational Creditor that out of the aforesaid eight cheques, five cheques were duly honored. Two subsequent cheques returned dishonoured. During proceedings under section 138 of the Negotiation Instruments Act, the Corporate Debtor remitted the amounts under the dishonoured instruments. However, the last postdated cheque no. 023748 dated 31.10.2018 drawn on Allahabad Bank for Rs. 14,19,500/- which also returned on grounds of "Exceeds Arrangement" remains unpaid.

4. Ld. Counsel for the Operational Creditor submits that several requests and reminders were made to the Corporate Debtor for remittance of this amount of Rs. 14,19,500/-, but the Corporate Debtor has failed to respond. The Operational Creditor was therefore constrained to issue a fresh demand notice under section 8 of the Code, which though delivered, was not replied to.

5. On filing of the present petition none appeared on behalf of the Corporate Debtor after service. They were therefore proceeded ex-parte.

6. Ld. counsel has taken us through the various documents on record, more specifically, the settlement agreement entered into between the parties and the cheques tendered by way of acknowledgment of the outstanding liability. The cheque no. 023748 issued by the Corporate Debtor for a sum of Rs. 14,19,500/- has been placed on record.

7. Keeping in view that there is no resistance to the present petition, as well as the outstanding liability being duly acknowledged, not only vide the settlement agreement on record, but also by issuance of the cheques, it is amply clear that the Corporate Debtor has defaulted in making payment towards the operational debt. In the facts of the case, the prayer made by the petitioner merits consideration. This petition is

therefore Admitted. A moratorium in terms of Section 14 of the Code shall come into effect forthwith, staying:

> *"the institution of suits or continuation of any pending legal proceedings, transferring or disposing of any asset of the Corporate Debtor, foreclosure or enforcement of any security or recovery of any property by the owner of lessor of the property occupied or in possession of the Corporate Debtor.*
>
> *Further, in terms of Section 14 of the Code, the supply of essential goods or services shall not be terminated. The moratorium shall remain in effect till competition of the CIR Process.*

8. The Operational Creditor has not proposed the name of any Interim Resolution Professional. Accordingly, we appoint Mr. Ashutosh Jain, Registration No. IBBI/IPA-001/IP-P00394/2017-18/10712 , E-mail Id:- aj@ajtax.in Mob: - 9871256760 duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and file his report. The Operational Creditor shall deposit a sum of Rs. 2 lakhs with IRP to meet the immediate expenses incurred which shall be reimbursed to him by the COC and recovered as CIR costs. The IRP shall maintain an account to be submitted to the COC.

9. Copy of the order be communicated to both the parties as well as to the IRP who may file his consent in the required format within 1 week of intimation.

10. Report be filed before this Bench on 14th February, 2020.

-Sd-

(L. N. Gupta)
Member (T)

-Sd-

(Ina Malhotra)
Member (J)