

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition (IB)No.189/ALD/2019

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

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

AND

In the matter of :

MKM TECHNOLOGIES PVT. LTD

.....Operational Creditor/ Applicant.

VERSUS

LEEL ELECTRICALS LIMITED

.....Corporate Debtor/Respondent.

ORDER RESERVED ON : 27.02.2020

ORDER DELIVERED ON : 04.03.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Ms. Monica Nanda, PCS

For the Respondent/ Corporate Debtor: Mr. Ram Kausik, Advocate

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. "MKM Technologies Pvt. Ltd." for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "Leel Electricals Limited".

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2. As per averments made in the petition , the operational creditor has supplied various goods in the nature of electrical equipments to the corporate debtor since 01.10.2005 and during the period beginning from 01.04.2018 to 28.02.2019, the corporate debtor purchased electronic products from the operational creditor amounting to Rs 6,79,51,588/- for which invoices were raised and as per the terms mentioned in the purchase order and invoices , the payment was to be made within 45 days of the receipt of the material.
3. Further, the operational creditor delivered the goods in full as per the terms and conditions, which was received by the corporate debtor without any demur but the corporate debtor failed to comply with the payment terms and conditions stipulated between the parties and further failed to discharge their liabilities.
4. It is further stated that the operational creditor had received an amount of Rs.3,56,56,024/- from the corporate debtor against the invoices raised of Rs.6,79,51,588/- during the period beginning from 01.04.2018 to 28.02.2019 and on date the corporate debtor owes a principal amount of Rs.3,22,95,564/- to the operational debtor.
5. Further stated that the operational creditor also maintained an open and running account in its books in the name of the corporate debtor which shows an outstanding invoice amount of Rs. 3,22,95,564/- accrued on the account of the bills/ invoices raised from 01.04.2018 to 28.02.2019 with an interest of 18% p.a on delayed payment.
6. Subsequently, operational creditor raised total amount with interest of Rs.3,34,06,172/- which is contended as amount in default. Several request were made to the corporate debtor to pay off the debts but no

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reply was received . Further the operational creditor issued demand notice Under Section 8 of the IBC,2016 dated 27.03.2019 demanding a total sum of Rs.3,34,06,172/- along with interest; which was duly received by the respondent ***(The Copy of demand notice along with the delivery report is annexed as Annexure-VIII of the application)*** and despite demand notice being delivered to the Corporate debtor, no payment of the due amount has been made till the date of application. The respondent has therefore filed this petition as an operational creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.

7. It is submitted by the operational creditor that corporate debtor has accepted and admitted the default of debt on its part in the counter affidavit filed by the corporate debtor wherein it is stated that the corporate debtor has always made the payment due on time and this is the first instance wherein there has been a default. Further it is stated in the counter affidavit that the corporate debtor will utilize the net proceeds realized from the sale of business verticals towards repayment of its debt owed to the operational creditors which clearly amounts to acknowledgements of the debt.
8. Pursuant to the court notice issued to the Corporate Debtor, reply was filed and it was submitted by the corporate debtor that the respondent is suffering from financial losses and it is the first instance wherein there has been a default due to which they are unable to pay off the debts and want some time to pay off the liabilities as they will utilize the net proceeds realized from the sale of business verticals towards repayment of its debt owed to operational creditor.

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9. I have gone through the documents filed by the parties and heard the arguments by both the counsels. This Adjudicating Authority has observed that:

- a) The operational creditor has provided all the necessary documents required for proving that the debt has been defaulted. While going through copy of invoices and the bank account statement of the operational creditor, it was observed that it is an admitted fact that there is work relation between the Operational Creditor and the Corporate Debtor whereby operational creditor provided goods to the corporate debtor and no payment was made for the same. The Corporate Debtor has not disputed or denied the fact that there was a work relation between the parties.
- b) Further the default of the debt has been admitted by the corporate debtor in the reply filed by them. It is settled proposition of law that express admission of a party to the suit is the strong evidence against him and the amount claimed in default is Rs. 3,34,06,172/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.
- c) It is matter of record that applicant filed a copy of invoices dated 13.09.2018 to 29.01.2019 along with the present petition and the present petition is filed under section 9 of IB code on 03.05.2019. A perusal of the same goes to show that invoices of this period are found well within the limitation **(As per section 238 A of IB Code)** to triggered the CIRP in respect of corporate debtor.

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10. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards supply of goods to corporate debtor as per its purchase order. The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.

11. The Petitioner, in the present IB petition, has complied with Section 9 (3) (b) and 9(3) (c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code, the present application is found complete and the default of debts is established. Hence, the present petition deserves admission.

12. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

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(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]

(3) The provisions of sub-section (1) shall not apply to —

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of 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.

13. The Operational Creditor has proposed the name of **Mr Arvind Mittal, Registration Number IBBI/IPA-001/IP-P01358/2018-**

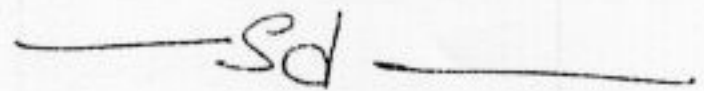
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19/12081 for appointment as Interim Resolution Professional(IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. This Adjudicating Authority accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

14. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

15. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

16. List on 03.04.2020 for the filing of the progress report.



JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 04.03.2020

Swati Gupta
(LRA)