

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB) No. 737/KB/2019

In the matter of:

An application for initiation of corporate insolvency resolution process by an Operational Creditor 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.

And

In the matter of:

M/s. Vaikunth Motor Finance Private Limited, bearing CIN: U65929WB1996PTC151085, having registered office at: 12 Waterloo Street, Room No.10, 3rd Floor, Kolkata-700069

Operational Creditor

Versus

M/s. Endless Properties Private Limited, bearing CIN: U45400WB2009PTC139334, having registered office at 12 Waterloo Street, Kolkata-700069.

Corporate Debtor

Sd

Coram: Shri Jinan K.R., Hon'ble Member [Judicial]

Counsel on record:

Pratyush Patwari, Advocate] For the Operational Creditor

Date of pronouncement of Order: 21/08/2019

ORDER

Per Shri Jinan K.R., Member (J):

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as the "I & B Code"] by **M/s. Vaikunth Motor Finance Private Limited** [hereinafter referred to as the "Operational Creditor"] for initiating Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] against **M/s. Endless Properties Private Limited** [hereinafter referred to as the "Corporate Debtor"] as the Corporate Debtor for its default in paying its operational debt of Rs. 25,66,301/- (Rupees Twenty Five Lakhs Sixty Six Thousand Three Hundred and One Only).
2. It is stated in the application that sale of 5,00,000 (Five Lakhs Only) equity shares of Navketan Merchants Limited at the rate of Rs. 4 per share was done by the Operational Creditor to the Corporate Debtor. The Operational Creditor had filled the delivery instruction slip dated 03.03.2017 and had transferred the said Equity Shares to the Demat Account maintained by the Corporate Debtor.
3. It is stated in the application that the Operational Creditor is maintaining a ledger account of the Corporate Debtor for period of

03.03.2017 to 21.01.2019. Despite repeated requests and reminders made by the Operational Creditor the debt remains unpaid till date. The Operational Creditor therefore issued a demand notice dated 23.01.2019 in Form 3 which was duly served on the Corporate Debtor on 25.01.2019. It is submitted that there is no notice given by the Corporate debtor relating to any dispute of the said unpaid Operational Debt.

4. The Corporate Debtor has proposed the name of **Mr. Mahesh Chand Gupta** residing at FE-202 Salt Lake City, Sector-III, 1st Floor, Kolkata-700106, having email-mcgupta90@gmail.com and registration number being IBBI/IPA-001/IP-P01489/2018-2019/12304 as the Interim Resolution Professional. The proposed IRP in Written Communication dated 17.04.2019 in Form 2 has certified that there are no proceedings pending against him with the Board of Indian Institute of Insolvency Professionals of ICAI.
5. All the compliance for initiation of CIRP have been met with. The Operational Creditor produced proof of sale of Equity Shares to the Corporate Debtor and the following are the documents relevant for the consideration of the case in hand:- Copy of the invoice dated 03.03.2017 raised by the Operational Creditor upon Corporate Debtor bearing acknowledgement by the Corporate Debtor annexed as **Annexure-B** to the application; Copy of delivery instruction slip dated 03.03.2017 filled and submitted by the Operational Creditor with its depository participant annexed as **Annexure-C**; Copy of

ledger account of the Corporate Debtor as maintained by the Operational Creditor for the period of 03.03.2017 to 21.01.2019 annexed as **Annexure-D**; copy of demand notice alongwith postal receipt and track consignment report obtained from website of India post showing delivery of the said demand notice upon the Corporate Debtor annexed as **Annexure-E**; Copy of statement of Bank account of the Operational Creditor maintained with the Punjab National Bank annexed as **Annexure-G**.

6. Notice of admission was served upon the Corporate Debtor. The Operational Creditor filed an affidavit of service proving delivery of notice to the Corporate Debtor via post as well as via e-mail. So, delivery of notice to the Corporate Debtor is declared sufficient. Since nobody on the side of the Corporate Debtor appeared, thereby, the Corporate Debtor was called absent and declared *ex-parte* vide order dated 01.08.2019.
7. Heard the Ld. Counsel appearing for the Operational Creditor and perused the records.
8. The main question for consideration is whether the transaction of sale of Equity Shares in question is an "Operational Debt" and the Applicant qualifies as an "Operational Creditor". It is therefore important to go through the relevant sections some of which have also been highlighted and relied upon by the Applicant.



Section 3 (11), I & B Code, "Debt" means a liability or obligation in respect of a claim which is due from any person and it includes a financial debt and "Operational Debt".

Section 5 (20), I & B Code, "Operational Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred"

Section 5 (21), I & B Code, "Operational Debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

9. Upon perusing the sections it is understood that a person seeking the initiation of CIRP under Section 9 of I & B Code must be a person to whom a claim in respect of section 5 (21) i.e. in the present case in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law and payable to the Central Government, State Government or local authority is owed. Therefore, in the case at hand whether the claim is in respect of the provision of goods or services also has to be ascertained for which the learned counsel appearing for the applicant relied on section 2 (7) of the Sale of Goods Act, 1930 which is reproduced below:

Sd

10. From the aforementioned section it is clear that the shares are goods therefore it is established that a claim in respect of the provision of goods or services is owed.
11. Being satisfied that the Operational debt is due to the Operational Creditor and the Corporate Debtor committed default in payment

Section 2 (7) "goods" mean every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

10. From the aforementioned section it is clear that the shares are goods therefore it is established that a claim in respect of the provision of goods or services is owed.
11. Being satisfied that the Operational debt is due to the Operational Creditor and the Corporate Debtor committed default in payment, an application of this nature is liable to be admitted, provided the Operational Creditor satisfy that all the requirement to be meted out is complied. The applicant has produced 9 (3) (b) affidavit and bank statement in compliance of (3) (c) of the Code. The form 2 produced proves that there is no disciplinary proceeding is pending against the proposed resolution professional. In the Light of the above said discussions, the application is hereby admitted under section 9 of the I & B Code upon the following directions:-

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Kolkata Electronics Private Limited is hereby **admitted**.

50

- ii) I hereby declare and order a moratorium, and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of 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 Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (54 of 2002);

50

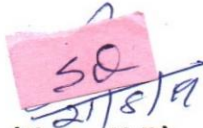
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v) The services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) 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 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.
- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

sd

- x) **Mr. Mahesh Chand Gupta** residing at FE-202 Salt Lake City, Sector-III, 1st Floor, Kolkata-700106, having email-mcgupta90@gmail.com and registration number being IBBI/IPA-001/IP-P01489/2018-2019/12304 is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- xi) 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 within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit 3,00,000/- (Rupees Three Lakhs Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench for the purpose of meeting the preliminary expenses for initiating the CIRP by the Interim Resolution Professional within one week of the date of this order.
- xiii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through email.

52

- xiv) List the matter on **23.09.2019** for the filing of the progress report.
- xv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


21/8/19

(Jinan K.R)

Member (J)

Signed on this 21st day of August, 2019.

/vc