

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1267/ND/2019

(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)

IN THE MATTER OF:

M/s. Dhanya Corporation

Through its sole proprietor Mr. Mohandas P

...Applicant/Operational Creditor

VERSUS

M/s Sudhir Power Projects Limited

...Respondent/ Corporate Debtor

Judgment Pronounced on:28.07.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

IB-1267/ND/2019

M/s. Dhanya Corporation vs M/s Sudhir Power Projects Limited

MEMO OF PARTIES

M/s. Dhanya Corporation

Through its sole proprietor Mr. Mohandas P

Registered office at C-604, Sudama Complex,

Raju Nagar, Ganesh Nagar, Dombivli(West),

Thane-421202

...Applicant/Operational Creditor

VERSUS

M/s Sudhir Power Projects Limited

Registered office at 507, International Trade Tower,

Nehru Place, New Delhi- 110005

...Respondent/ Corporate Debtor

For the Applicant: Mr. Sreenath S. Advocate

For the Respondent: Mr. Nukul Jain, Advocate

IB-1267/ND/2019

M/s. Dhanya Corporation vs M/s Sudhir Power Projects Limited

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Dhanya Corporation through its proprietor Mr. Mohandas P. (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s Sudhir Power Projects Limited (for brevity 'Corporate Debtor').
2. It is stated that the proprietorship concern of Mr. Mohandas P. is engaged into the business of Supply, Install and commission of Diesel Generating Sets and other Electrical & Mechanical Installation commissioning. The applicant is having registered office at C-604, Sudama Complex, Raju Nagar, Ganesh Nagar, Dombivli(West), Thane-421202.
3. The Corporate Debtor M/s Sudhir Power Projects Limited is a company registered under Companies Act incorporated on 21.03.2007 bearing CIN 70102DL2007PLC160912 and is engaged into the business of

*IB-1267/ND/2019**M/s. Dhanya Corporation vs M/s Sudhir Power Projects Limited*

installing power plants. The registered office of the corporate debtor is situated at 507, International Trade Tower, Nehru Place, New Delhi-110005.

4. The Applicant has stated that the Corporate Debtor had entered into with various Purchase/ Work order with the applicant for Supply and Installation of low end materials for Diesel Generator sets in various locations. It is submitted that upon completion of the work order, the Applicant had raised various Invoices for the total amount of Rs.73,18,545/- from the period 19.04.2016 to 24.11.2017. The Applicant continuously requested for payment and upon such requests the corporate debtor released the payment of Rs 5,00,000/- on 20.06.2017 and the payment of Rs 3,81,000/- on 26.11.2018. Thereafter, despite various reminders and requests to clear the outstanding dues, the corporate debtor had failed to clear the outstanding dues.
5. The Applicant issued demand notice dated 16.01.2019 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate

Debtor calling to pay a sum of Rs 7,70,594/-. It is submitted that after receipt of the demand notice, the corporate debtor made a part payment of Rs 3,43,034/- on 25.01.2019 towards the outstanding dues.

6. The Corporate Debtor has replied to the demand notice by asserting that only amount of Rs. 343,034/- was due & the same has been paid to the applicant vide RTGS dated 24.01.2019. Further, an amount of Rs. 296,358/- is payable to the applicant but the same is not yet due for payment, since this is on account of ongoing project & the contract was given to the applicant on back to back basis and payment terms were also on back to back basis. The corporate debtor states that they have been regularly making the payments as & when they fall due and that they have always paid the outstanding payments to the applicant.
7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.
8. The Corporate Debtor has replied to the application and has asserted that in terms of the Purchase Orders placed upon the applicant mention that payment terms as per purchase order which are reproduced:

“10% advance balance back to back basis”

It is submitted that in business parlance after making 10% advance payment, the remaining 90% payment would become due and payable to the alleged applicant only upon receipt of the same from the corporate debtor's Client/Principal. The corporate debtor further states that it is denied that they have received the entire payment from its Client/Principal who is illegally withholding the same and hence the corporate debtor committed a default.

9. The Applicant has filed its rejoinder controverting the averments made in the reply and has asserted that the Corporate Debtor has not provided the details of the reasons stated by their Client/Principal for non-payment and the steps initiated by the Corporate Debtor for recovery.
10. As claimed by the applicant, the Corporate Debtor is liable to pay a sum of Rs.4,27,559/- (Rupees Four Lakh Twenty-Seven Thousand Five Hundred Fifty-Nine Only).
11. On perusal of documents on record and submission made by the counsels, it is clearly established that the default in payment of the Operational debt has occurred by the corporate debtor as per the purchase order. The payment terms were on the back to back basis from receiving the payment from the client/principal and then to be paid to

the applicant. It is submitted that the corporate debtor has nowhere mentioned about the receiving of the payment from the client/principal and further in the all the trailing emails between the parties, the corporate debtor never stated these reasons for non-payment of dues. Over and above the corporate debtor has not disputed receipt of goods, without any demur and has not challenged or disputed invoices or amount due. Therefore, the dispute created by the corporate debtor is not considered to be a plausible dispute and hence the present is fit to be admitted. We are supported by the observations of The Hon'ble Supreme Court in "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**" observed and held as follows:-

“The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in

respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

12. The Applicant has filed an affidavit under section 9(3)(b) dated 10.05.2019 affirming that no notice of dispute has been given by the Corporate debtor prior to the section 8 demand notice relating to dispute of the unpaid operational debt.

13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The default occurred from 25.01.2019, hence the debt is not time barred and the application is filed within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant has proved the claim which fell due, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
16. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Sanjay Agrawal, with registration number IBBI/IPA-001/IP-P00494/2017-18/10882 (email – ska9001@gmail.com, is appointed by this Hon'ble Tribunal as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP nab med who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make

disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

17. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sanjay Agrawal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

19. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

(HEMANT KUMAR SARANGI)
MEMBER (T)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (J)