

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
Company Petition (IB)No.292/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 :

Kisan D'Net India Pvt. Ltd

.....Operational Creditor/ Applicant.

VERSUS

M/s Fortune Infraheight Pvt. Ltd

.....Corporate Debtor/Respondent.

ORDER RESERVED ON : 05.02.2020

ORDER DELIVERED ON : 10.02.2020

CORAM:

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

For the Applicant/ Operational Creditor: Sh. Ashok Kumar Pandey (Adv)

For the Respondent/ Corporate Debtor:

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. "**Kisan D'Net India Pvt. Ltd**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s Fortune Infraheight Pvt. Ltd**".
2. As per averments made in the petition , the operational creditor had supplied various PVC product for the use in " The Aranya " project of the corporate Debtor which was well within time and satisfaction of the corporate debtor. Subsequently, operational creditor raised invoices of Rs.12,10,163/- which is contended as amount in default. Several request

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were made to the corporate debtor to pay off the debts but no reply was received . Further the operational creditor issued demand notice Under Section 8 of the IBC,2016 dated 20.11.2018 demanding a total sum of Rs. 16,33,488/- along with interest; which was duly received by the respondent ***(The Copy of demand notice along with the delivery report is annexed as Annexure P-9 of the application)*** and despite demand notice being delivered to the Corporate debtor, no payment of 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.

3. The corporate Debtor has been duly served by speed post and the tracking report is on record. Pursuant to the court notice issued to the Corporate Debtor which has been delivered and tracking report is also on record which shows that the respondent has been served the notice. However no one appeared on behalf of the respondent.
4. It is a matter of record that although several opportunities were granted but the Corporate Debtor has chosen not to contest the case, hence vide order dated 17.01.2020, the case is fixed for ex parte hearing on 05.02.2020 and on the date of hearing also the respondent opted not to appear.
5. I have heard the arguments raised by the Ld. Counsel for the Operational Creditor and perused the application and the documents annexed there in.
6. Now, before considering the submissions raised on behalf of the petitioner, I would like to refer Section 9 (5) of the IB Code and the same is quoted below:

Sec 9: Application for initiation of corporate insolvency resolution process by operation creditor"

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(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, --

(a) the application made under sub-section (2) is complete;

(b) there is no ³ [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if--

(a) the application made under sub-section (2) is incomplete;

(b) there has been ³[payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

7. Mere plain reading of the provision shows that when demand notice Under Section 8 of the IB Code is delivered for initiation of proceeding Under Section 9 of the IB Code and if no dispute has been raised by the Corporate Debtor in pursuance of the demand notice issued by the Operational Creditor then requirement is to be considered before triggering the insolvency process.

8. Therefore, in light of the aforesaid provisions, I would like to consider the present application and this adjudicating Authority is of the considered view that the total amount claimed in default is of Rs. 16,33,488/- which is more

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than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.

9. It is matter of record that applicant filed a copy of invoices dated 07.01.2017 to 05.05.2017 along with the present petition and the present petition is filed under section 9 of IB code on 01.08.2019. 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.
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. Thus 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. Accordingly, this Adjudicating Authority hereby admit the application of the Operational Creditor and declare moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

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(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;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein.

(c) 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);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]

2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(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

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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:

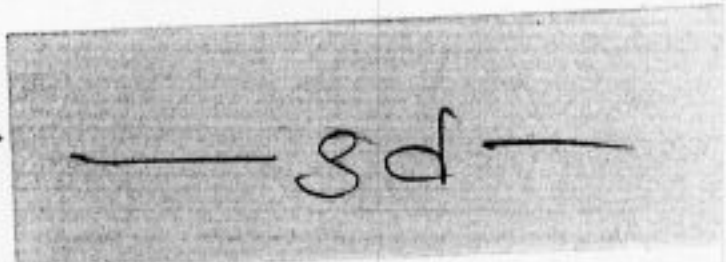
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

13. Since in the present matter the applicant did not propose the name of the IRP. Hence, this Adjudicating Authority hereby appoint **Mr. Satyendra Sharma IBBI/IPA-002/IP-N00737/2018-19/12260** as Interim resolution Professional.

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 04.03.2020 for the filing of the progress report.



JUSTICE RAJESH DAYAL KHARE
MEMBER (J)

Date: 10.02.2020

Swati Gupta
(LRA)