

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-261/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Swastik Pipe Ltd.

...Operational Creditor/Applicant

Versus

M/s Faridabad Stampings Pvt. Ltd.

...Corporate Debtor/Respondent

Coram:

MR. DHARMINDER SINGH, Hon'ble Member (Judicial)

MS. SUMITA PURKAYASTHA, Hon'ble Member (Technical)

Order Delivered on: 19.05.2022

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

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2. The applicant, Swastik Pipe Ltd. has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:
 - a. The Operational creditor used to supply C.R. Sheets to the Corporate Debtor.
 - b. The Operational Creditor sent a Demand Notice dated 03.12.2019 demanding payment of an unpaid operational debt i.e. Rs. 3,89,265/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post as well as via email.
4. The Corporate Debtor has not submitted his reply . But argued the matter on merits before this Tribunal.
5. We have heard Ld. Counsel for both the parties and perused the averments made in the application. On behalf of the applicant, the ledger Annexure A2 pertaining to Stamping Private Limited has been filed on record which shows that certain payments were regularly made with respect to the invoices raised by the applicant herein, ultimately, on 14.09.2018 a sum of Rs. 1,78,992/- were due against the Faridabad Stampings Pvt. Ltd., which were not paid. Accordingly, two invoices were further raised by the applicant

herein on 01.11.2018 and 01.03.2019 which includes the interest over the above said amount as mentioned in the tax invoices raised by the applicant qua the commencement of the payments made to the Faridabad Stampings Pvt. Ltd. i.e. respondent herein. Therefore, an amount of Rs. 3,89,265/- were due against the respondent which was not paid. Although, the contention has been raised by the Ld. Counsel for the respondent that different amounts has been mentioned at different conjuncture but as discussed, it is clear that the principle amount of Rs. 1,78,992/- were due whereas, an amount of Rs. 2,10,273/- were due as interest. Therefore, the said amount has not been paid by the respondent. Despite the fact that the demand notice was raised by the applicant on 03.12.2019. Hence the applicant succeeded in proving the fact that the above said amount was due against the C.R. Strips which were sold by the applicant to the respondent and the said amount was not paid qua. It has been repeatedly held that 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. Resultantly, since there is no dispute raised by the Corporate Debtor, in fact the corporate debtor has clearly admitted that a default has occurred.

6. In view of the foregoing documents and the averments made, this Tribunal is of the affirm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant, accordingly, the present application stands admitted in terms of Section 9(5) of the Code and

CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.

7. The applicant has not proposed the name of an IRP, therefore, this bench appoints Ms. Ashu Gupta, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N00339/2017-2018/10943 and email id. ashugupta.cs@gmail.com IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures be made as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
8. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Ms. Ashu Gupta 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.
9. 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

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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.

10. 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 is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Consign the file to the record room.

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(SUMITA PURKAYASTHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)