IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-873/(ND)/2022

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. Evlion Technologies Private Limited
Registered Office at: E-121, G /F Greater Kailash II,
Delhi- 110048

...Applicant/Operational Creditor

Versus

M/s. Khati Solutions Private Limited
Registered Office at: B - 286 A, G/F, Hari Nagar,
Delhi - 110064

...Respondent/Corporate Debtor

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)
SHRI.RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Applicant: Adv. Avinash Bhati

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Date: 09.11.2023

1. This is an application filed by the Applicant M/s. Evlion Technologies Pvt. Ltd., the Applicant/Operational Creditor seeking initiation of CIRP under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code') against M/s. Khati Solutions Private Limited for a default of Rs. 1,00,36,380/- (Rupees One Crore Thirty-Six Thousand Three Hundred and Eighty).

2. The brief facts as stated by the Applicant for filing the present Application are as follows:

i. That the operational creditor is a manufacturer of lithium batteries, electric accumulators, etc. The Corporate Debtor approached the Operational Creditor for supply of goods including the Lithium batteries.

ii. That a vendor agreement was signed on 18.11.2021 for supply of goods including lithium battery packs, between the corporate debtor and the operational creditor. It was agreed that the corporate debtor shall pay 20% in advance, 77% before dispatch, and 3% as a hold for warranty costs in accordance with the purchase order and vendor agreement.

iii. That thereafter, the Corporate Debtor issued purchased order no. 946, dated 25.11.2021 for 500 units of Lithium Battery Packs as per agreed Specification.

iv. That the Operational Creditor purchased the material from the market in compliance with the purchase order and manufactured 500 Units. The Operational Creditor supplied 250 Units of Lithium Battery Packs to the Corporate Debtor, and the Corporate Debtor paid the amount for the Units in accordance with the Vendor Agreement.

v. That the Operational Creditor on 10.09.2022 issued Proforma Invoice No. EV-PI-100922-KSPL-1 for remaining 250 units of Battery Packs for an amount of Rs. 1,00,54,000/-. The Operational Creditor issued a tax invoice for an amount of Rs. 31,860 on 31.05.2022 and on 08.06.2022 the Operational Creditor issued tax invoice for an amount of Rs. 16,520/-. However, no payment was made by the corporate debtor against the said invoices for a total amount of Rs. 1,00,36,380/-.

vi. That the Operational Creditor issued a Demand notice under Section 8, IBC, 2016 demanding to pay a sum of Rs. 1,01,02,380.00 dated 13.09.2022 and the demand notice demanding payment was served on to the Corporate Debtor on 15.09.2022. No reply to Demand notice/ Invoice demanding payment was received within statutory 10 days.

3. The Corporate Debtor was set ex parte vide order dated 02.02.2023.

4. We have heard the submissions made by Ld. Counsel for the Operational Creditor. Ld. Counsel for the Operational Creditor has submitted that as per the agreement the batteries were supplied to the Corporate Debtor and invoice was raised, however, the Corporate Debtor has failed to make any payment. The Operational Creditor therefore, prayed that the present application be admitted and CIRP be initiated against the Corporate Debtor.

5. The Corporate Debtor has failed to reply to the Section 8, IBC, 2016 notice dated 13.09.2022 within the statutory limit of 10 days and therefore has not raised any pre-existing dispute.

Further, in compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 22.11.2022 stating that no notice of any pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt.

6. We are therefore of the view that the Operational Creditor has been able to establish that the present case is a fit case for admission. Therefore, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due. We therefore, admit the present Application filed under Section 9, IBC, 2016 and initiate CIRP against the Corporate Debtor.

7. The name of Insolvency Resolution Professional has not been proposed in the Application filed by the Operational Creditor. This Adjudicating Authority, hereby appoints Mr. Sandeep Gupta, (Email – sandeepgupta1969@gmail.com), Reg. No: IBBI/IPA-001/IP-P01873/2019-20/12895 to act as Insolvency

Resolution Professional from the panel of Insolvency Professionals (IPs) valid from the period 01.07.2023-31.12.2023 issued by IBBI in terms of Section 16(4) of the IBC, 2016. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

8. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

9. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

10. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) 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;

(b) transferring, encumbering, alienating or disposing of 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

11. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

12. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

13. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

14. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

SD/-	**SD/-**
(RAHUL BHATNAGAR)	**(BACHU VENKAT BALARAM DAS)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**