

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP(IB) No. 54 /KB/2020

In the matter of:

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:

Arvinder Singh, carrying on business under the trade name and style of M/s A.B. Singh & Associates, in sole proprietorship, from his office at SCO: 59-60, Phase- 3B2, SAS Nagar (Mohali)- 160055

.....Operational Creditor

-Versus-

M/s Sanmati Distributors Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 1956, and being a company under the Companies Act, 2013, having Corporate Identification No- U51102WB2005PTC101265 and its registered office at 52, Weston Street, Kolkata-700072, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing :23rd March 2022

Date of pronouncing the order: 27th April 2022

Coram:

Shri Rohit Kapoor, Member(Judicial)

Shri Harish Chander Suri, Member(Technical)

Appearances (via video conferencing):

For Operational Creditor : Mr. Ritoban Sarkar, Advocate

Mr. Avishek Das, Advocate

For Corporate Debtor : Mr. Satyaki Chaudhuri, Advocate

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through video conferencing.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Arvinder Singh**, carrying on business under the trade name and style of M/s A.B. Singh & Associates, in sole proprietorship, (**Operational Creditor**), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s Sanmati Distributors Private Limited (“Corporate Debtor”)**.

Submissions on behalf of the Operational Creditor

3. The Counsel on behalf of the Operational Creditor submits that the Operational Creditor was engaged by the Corporate Debtor to provide auditing services to the Corporate Debtor since 2015-2016 uptil date and the Operational Creditor has raised their invoices as and when they provided their services to the Corporate Debtor. The Corporate Debtor did not make regular payments to the Operational Creditor and the outstanding audit fee till the financial year 2018-19 was of Rs. 4,00,000/- (Rupees Four Lakh only).
4. According to the Operational Creditor, after several requests, the Corporate Debtor could only make a payment of Rs. 41,500/- in March 2019 but after that, no payment was received. Aggrieved by the actions of the Corporate Debtor, the Operational Creditor issued a demand notice dated 21st August, 2019 in Form 3 and Form 4 under Section 8 of the Insolvency and Bankruptcy Code, 2016.
5. The Counsel on behalf of the Operational Creditor submits that the Corporate Debtor admitted that there exists an outstanding fee of Rs. 3,58,500/- (Rupees Three Lacs Fifty Eight Thousand and Five hundred only) through their letter dated 5th September, 2019 but they are unable to pay the same as they are experiencing liquidity crunch. In view of the continued default and neglect on the part of the Corporate Debtor in making payment of its legitimate dues, it

is evident and clear that the Corporate Debtor has become insolvent and is liable to be sent into liquidation because of its failure to make of its legitimate dues.

6. The counsel on behalf of the Corporate Debtor submits that the instant application is liable to be dismissed as there is suppression of material facts. It is stated that the Operational Creditor was informed by the Corporate Debtor through a letter dated 5th September, 2019 that the Corporate Debtor was facing financial crunch and was not in a position to pay the amount of debt that is outstanding. However, the Corporate Debtor is taking all possible measures to make the payment at the earliest. The Corporate Debtor is trying to clear the outstanding fee in a phased manner as soon as the financial condition improves.
7. According to the Counsel on behalf of the Corporate debtor, the Corporate Debtor has taken all the necessary steps to make the payment of the Operational Creditor and clear its dues, however, due to the financial instability and cash crunch, the Corporate Debtor is unable to clear the outstanding dues of the Operational Creditor amounting to Rs. 3,58,500/- (Rupees Three Lacs Fifty Eight Thousand Five Hundred only).
8. It is further stated in the rejoinder that even though the Corporate Debtor paid an amount of Rs. 41,500/- (Rupees Three Lacs Fifty Eight Thousand Five Hundred only.) the said amount has been made by the Corporate Debtor after repeated verbal and written communications were made by the Operational Creditor. The Operational Creditor had to constantly remind the Corporate Debtor to make payment of the outstanding amount and after constant reminders, did the Corporate Debtor pay Rs. 41,500/-.
9. The Counsel on behalf of the Operational Creditor contends that it is an admitted fact that the operational creditor has provided auditing services to the tune of Rs. 4,00,000/- (Rupees Four Lacs only) to the Corporate Debtor and out of the total debt, the Corporate Debtor has made a payment of Rs. 41,500/- (Rupees Forty-one Thousand Five Hundred only.) The pending amount which is payable by the Corporate Debtor is Rs. 3,58,500/- (Rupees Three Lacs Fifty

Eight Thousand Five Hundred only). They would deliberately and purposely delay the payment of the Operational Creditor and after constant reminders, would make payment of a very small proportion. The same situation prevailed since the day the Operational Creditor started providing their services. The Corporate Debtor is a habitual defaulter who never paid the amount on time and after a lot of deliberation and communication would make payment of a small amount. In the financial year of 2018-2019, five tranches of payment has been paid totaling to Rs. 41,500/- (Rupees Forty One Thousand Five Hundred only) and the remaining is still unpaid and the same is produced in writing in letter dated 30th July, 2019 which is relied upon by the Corporate Debtor. In the said letter, it surely is stated that Rs. 41,500/- (Rupees forty One Thousand Five Hundred only) has been paid by the Corporate Debtor but it is also stated clearly that the Corporate Debtor is still liable to pay an amount of Rs. 3,58,500/- (Rupees Three Lacs Fifty Eight Thousand Five Hundred only) is pending. The said claim comes under the provisions of the Indian Contract Act, 1872 and Insolvency and Bankruptcy Code, 2016 along-with the rules.

10. According to the Operational Creditor, that the Corporate Debtor is trying to avoid the payment of the legitimate dues of the Operational Creditor. The operational creditor has diligently provided auditing services to the Corporate Debtor and had given ample opportunities to the Corporate Debtor to make the payment of the dues. However, after observing the trend of the Corporate Debtor of not making payment, the Operational Debtor was forced to send a demand notice dated 10th September, 2019 to the Corporate Debtor to make the payment of the legitimate dues or else, legal action will be taken. However, even after the notice was sent, the Corporate Debtor did not take any steps or necessary action to make the payment of the dues and thus, left with no choice, the Operational Creditor had to institute the legal proceeding and file the instant application. It is denied that the said application is not maintainable and that the same is liable to be dismissed with costs.
11. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.

12. The invoices for the audit fee for Financial Years 2015-16, 2016-17, 2017-18, 2018-19 were raised between 6.03.2019 to 4.06.2019. A payment of ₹41,500/- was made by the Corporate Debtor in 2019. Further, the Corporate Debtor has admitted to the due outstanding fee of ₹3,58,500/- vide their letter dated 5.09.2019. Therefore, in essence, the instant petition is within the prescribed period of limitation.
13. The records indicate that there clearly exists a debt due from the Corporate Debtor towards the Operational Creditor and that there has been a default in the payment of the same. The Operational Creditor sent a demand notice dated 21st August, 2019 in Form 3 and Form 4 under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor has not raised any dispute regarding the same and has failed to clear its due too. As such, this petition is complete in all respects.
- 4 It is, accordingly, hereby ordered as follows:-
- a) The application bearing **CP (IB) No. 54/KB/2020** filed by by **Arvinder Singh**, carrying on business under the trade name and style of M/s A.B. Singh & Associates, in sole proprietorship, (**Operational Creditor**), under section 9 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Sanmati Distributors Private Limited** (“**Corporate Debtor**”) is **admitted**.
 - b) There shall be a moratorium under section 14 of the IBC.
 - c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e) **Mr. Santanu Bhattacharjee**, registration number **IBBI/IPA-001/IP-P01141/2018-19/11868**, email: ip.santanu@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Operational Creditor shall deposit a sum of Rs. 50,000/- (Rupees Fifty Thousand only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the

Registry of this Court within seven days from the date of receipt of a copy of this order.

12. **CP (IB) No. 54/KB/2020** to come up on 16/06/2022 for filing the progress report.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on the 27th day of April, 2022

SM[LRA]