

**THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**Company Petition No. (IB)-176 (ND)/2020**

In the matter of:

Arun Kumar Singh

Sole Proprietor of A.K. Singh & Co.

..Operational Creditor

Vs.

Genius Exports Private Limited

.....Corporate Debtor

*Section 9 of Insolvency and Bankruptcy Code, 2016*

**Judgment delivered on:01.07.2021**

**Coram:**

**SHRI P.S.N. PRASAD**

**HON'BLE MEMBER (JUDICIAL)**

**SHRI NARENDER KUMAR BHOLA**

**HON'BLE MEMBER (TECHNICAL)**

**Present:**

**For the Applicant: Mr. Ashish Makhija along with Mr. Gitesh Aneja,  
Advocates.**

**For the Respondent: Mr. Shubham Pandey, Advocate.**



## ORDER

PER: P.S.N. PRASAD, MEMBER (J)

- 1) Mr. Arun Kumar Singh, Sole proprietor of A.K. Singh & Company, claiming as the operational creditor has filed this application 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') for initiation of Corporate Insolvency Resolution Process in respect of Respondent Company namely, Genius Exports Private Limited claimed to be the Corporate Debtor.
- 2) The Respondent, Genius Exports Private Limited against whom initiation of Corporate Insolvency Resolution Process has been prayed for, is a company incorporated on 01.08.2011 under the provisions of the Companies Act, 1956 having its registered office at C-128/2, 1<sup>st</sup> Floor, Mohammadpur, Bhikaji Cama Place. New Delhi-110066. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal having territorial jurisdiction over the place, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.



- 3) The Operational creditor has submitted that in the year 2014 the applicant was appointed as a statutory auditor of the Corporate Debtor and accordingly performed his duties and raised bills from 30.08.2014 to 26.03.2019 totaling to Rs. 5,59,250/- payable from 01.03.2018. It is stated that Rs. 8,93,530/- inclusive interest is due and payable by respondent, which the company has failed to pay.
- 4) The operational creditor on 27.07.2019 sent a demand Notice to the Corporate Debtor to pay outstanding debt. The Corporate Debtor has replied to the demand notice and objected the claim of applicant.
- 5) Respondent company has filed its reply to the petition mainly with the contention that the claim of applicant does not fall within the ambit of operational debt and thus no default has been committed by Corporate Debtor. It is claimed that several payments were made to the Operational Creditor from different companies (part of group companies) and hence, no amount is payable to applicant.
- 6) It is claimed that the applicant did not complete the accounting for the Financial Year 2018-2019 and the respondent had to complete its accounting through the other auditor. The act of applicant caused hardship on respondent. It is therefore stated that the claim of applicant is disputed and the present application should not be allowed.
- 7) Heard the parties and perused the case records.



8) Needless to say, that the expressions “Operational Creditor” and “Operational debt” have been defined in Section 5 (20) and 5 (21) of the Code, which are reproduced below:

*“5. In this part, unless the context otherwise requires, -  
.....  
(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;  
(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”*

9) From the definition of “operational creditor” and “operational debt”, it can be seen that the following persons can claim to be an “operational Creditor”.

- i. The person who has claim in respect of provision of goods (supplied) to the Corporate Debtor.*
- ii. Persons who have provided service to the Corporate Debtor, including those who are in employment.*
- iii. Central Govt., State Govt. and local authorities, who are entitled to claim debt in respect of dues arising under any law for time being in force.*

10) It is thus seen that the unpaid petitioner, who rendered services to the Corporate Debtor, comes within the purview of ‘Operational creditor’.



- 11) The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Operational Creditor” is delineated under Section 9 of the Code. The present application filed by operational creditor, accordingly, has to be dealt with in terms of Section 9 of the Code.
- 12) Sub-section (1) of Section 9 mandates filing of the petition only after expiry of the period of 10 days from the date of delivery of notice or invoice demanding payment under sub-section (1) of Section 8 of the Code.
- 13) In the present case admittedly the demand notice in Form-3 as per Section 8 of the Code was sent on 27.07.2019. It is thus seen that before filing the present application under Section 9 of the Code, requisite notice under Section 8 was duly served on the Respondent. In response to Section 8 notice, respondent Corporate Debtor has sent its reply. However, no pre-existing dispute regarding the services rendered by the applicant has been claimed or proved by the respondent. The respondent has claimed that various payments through different companies have been made to applicant, however, it could not be proved by respondent that the said payments are part of same transaction.
- 14) The respondent has not placed any communication or proof regarding existence of dispute between the parties in respect of services rendered. The respondent has raised objection that the applicant left his



services midway and Balance Sheet for the F.Y. 2018-19 was completed by another auditor and hence the applicant is not liable to get payment. However, the applicant has raised bills for F.Y. 2016-17 and 2017-18 in respect of which no objection has been raised by respondent.

15) The present application under Section 9 of the Code has been filed in requisite Form-5, wherein it was specifically mentioned that services were rendered which has not been denied by the Corporate Debtor. The application under Section 9 is thus complete and the required particulars have been furnished along with details of subsistence of default.

16) It is reiterated that in the present case the default committed by the Corporate Debtor is not denied. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the applicant operational creditor.

17) Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, reported in AIR 2017 SC 4532 has held that:

*"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*



*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”*

- 18) In the present application all the aforesaid requirements have been satisfied. It is seen that the application preferred by applicant operational creditor is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the applicant operational creditor. The respondent failed to show that the claim of applicant is disputed. Once, the application is complete and in the absence of any dispute and with the subsistence of default, the application is liable to be admitted.
- 19) Therefore, on fulfillment of requirements of Section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.
- 20) The Operational Creditor has filed Form-2 and proposed name of an Insolvency Professional for appointment as an IRP. Accordingly, we appoint Mr. Parag Singhal Registration No. IBBI/IPA-001/IP-P02127/2020-2021/13322 contact no. 9717494425, as IRP of Corporate Debtor. 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.
- 21) In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the IRP immediately (within 3 days) with regard to admission of this application under Section 7 of the Code.



22) We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow 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.*

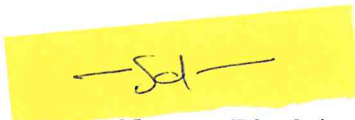
23) The supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period [Sec 14(2) of the Code]. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government in consultation with any financial regulator. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 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.

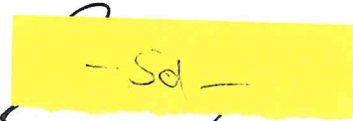


24) The IRP shall perform all his functions contemplated, inter-alia, under Sections 17, 18 and 21 of the Code and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations and shall file reports before the Adjudicating Authority. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

25) The Operational Creditor is directed to deposit an amount of Rs 2 lakh with the IRP to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by IRP and shall be reimbursed by the Committee of Creditors (CoC) to the Operational Creditor to be recovered as CIRP cost.

26) The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, New Delhi at the earliest possible but not later than seven days from today.

  
(Narender Kumar Bhola)  
Member (Technical)

  
(P.S.N. Prasad)  
Member (Judicial)