



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-202
IB-143/ND/2020

IN THE MATTER OF:

Mr. Udaivir Singh

Vs.

M/s Keep in Touch Clothing Pvt. Ltd. & Anr.

....Applicant

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 28.07.2023

CORAM:

SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-143/ND/2020 stands **admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

COMPANY PETITION IB (IBC)/ 143(ND)/2020

An Application 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.

IN THE MATTER OF:

MR. UDAIVIR SINGH

Proprietor of M/s D.M Lining & Fabrics

Shop No. G-6, Master Complex,
Sharma Market, Harola, Sector-5,
Noida-201301

...Operational Creditor

Versus

M/S KEEP IN TOUCH CLOTHING PVT. LTD.

Regd. Add: - 128, HOG Market,
Rajendra Place, Delhi-110008

Office At: - B-63, Sector-83,
Noida, Gautam Budh Nagar, U.P.-201305

Also, At: - E-26, UPSIDC, Site-2,
Haridwar, Uttarakhand-249402

...Corporate Debtor

Order Delivered on: 28.07.2023

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)



Appearances (through Video Conferencing/physical hearing)

For the Applicant : Mr. Aman Choudhary, Advocate

For the Respondent : None Present

O R D E R

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **Mr. Udaivir Singh ('Operational Creditor')**, duly authorized for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) against **M/s Keep in Touch Clothing Pvt. Ltd. & Anr. ('Corporate Debtor')**.
2. **Mr. Udaivir Singh** (Operational Creditor) is a Proprietor of M/s D.M Lining & Fabrics [PAN- AIGPS1156D] having office at Shop No. G-6, Master Complex, Sharma Market, Harola, Sector-5, Noida-201301. **M/s Keep in Touch Clothing Private Limited** (Corporate Debtor) is a Company registered under the Companies Act, 1956 [CIN-U74899DL1994PTC059221], having its office at 128, HOG Market, Rajendra Place, Delhi-110008. The Corporate Debtor has Authorized Share Capital of Rs 1,75,00,000 (One Crore Seventy-Five Lacs) and Paid Up Share Capital of Rs 1,68,29,800 (One Crore Sixty-Eight Lacs Twenty-Nine Thousand Eight Hundred).
3. The present Petition was filed on 11.12.2019 before this Adjudicating Authority for the initiation of CIRP Proceedings by Mr. Udaivir Singh (Operational Creditor) against the M/s Keep in Touch Clothing Private Limited (Corporate Debtor) under Section 9 of the IB Code. The total amount claimed in default is Rupees 7,53,471.56 (Rupees Seven Lacs



Fifty-Three Thousand Four Hundred Seventy-One and Fifty-Six Paise) including interest @24% p.a. of which Rs. 6,65,555 (Six Lacs Sixty-Five Thousand Five Hundred Fifty-Five) is the principal amount and Rs. 87,916.56 (Rupees Eighty-Seven Thousand Nine Hundred Sixteen and Fifty-Six paise). The ***date of default*** is stated to be on 01.11.2019.

4. Facts of the case as submitted by the Ld. Counsel appearing on behalf of the Operational Creditor.

- a) That the Corporate Debtor has placed from time to time, orders for the purchase of Non- Woven Tricot, Mobilon Tape, Denim Fabric & Polyester Lining Fabrics etc. for which the applicant (Operational Creditor) has raised number of invoices from time to time in respect of the said purchases.
- b) That certain invoices are placed on record by the Operational Creditor in regard to purchase order by the Corporate Debtor disclosing the terms and conditions of the transaction.
- c) That the Applicant has opened a running ledger account in the name of Corporate Debtor and as per the books of account, there is an outstanding amount of Rupees 6,65,555 (Six Lacs Sixty-Five Thousand Five Hundred Fifty-Five).
- d) That the Operational Creditor sent the demand notice dated 14.11.2019 to the Corporate Debtor but received no response from the Corporate Debtor.
- e) That the Applicant made several requests to the Corporate Debtor to make the payment but the Corporate Debtor failed to do so and therefore, an interest @ 24% p.a., as per the prevailing market price, is to be charged for the delay in the payment. Hence, an interest of Rupees 87,916.56 (Eighty-Seven Thousand Nine



Hundred Sixteen Rupees and Fifty-Six Paise) is to be paid by the Corporate Debtor.

- f) That the Corporate Debtor has not issued any notice of dispute in terms of the provisions of the Code relating to a dispute of the unpaid operational debt and that the Operational Creditor has no knowledge of any proceedings/dispute pending or filed before any court of law or authority in respect of the transaction between the parties whereupon the said Operational Debt has become due and payable by the Corporate Debtor to the Operational Creditor.
- g) That one of the Directors of the Corporate Debtor had acknowledged the debt in his conversation with the Operational Creditor via text messages and the same has been placed on record along with this application.
- h) That the Operational Creditor has enclosed copies of emails and statement of accounts, for which a certificate under Section 65B of the Indian Evidence Act, 1872 has been enclosed by the Operational Creditor.
- i) That the total outstanding amount to the tune of Rupees 7,53,471.56 (Seven Lacs Fifty-Three Thousand Four Hundred Seventy-One Rupees and Fifty-Six Paise) is still due and payable. Therefore, the Applicant has brought the present application.

5. Declaration of Corporate Debtor set as Ex-Parte.

The applicant was directed to issue notice on the respondent by all modes including e-mail of the respondent, vide order dated 02.08.2021. The Applicant has served the notice along with Application to the Respondent via email dated 13.09.2021 and the same has not bounced



back. Further, the Affidavit of service is filed by the Applicant claiming that the notices were served on the Respondent through speed post, dated 23.08.2021 and the same has returned un-served. It is to be noted that since the notices on the postal address were not served, the Applicant, vide order dated 04.10.2021, was directed to serve the notices by publishing in the two newspapers (one in English and the other one in Hindi), circulating in the area where the registered office of the Corporate Debtor is situated, and the said direction has been carried out by the Operational Creditor by publishing in “The Hindu” (English) dated 03.12.2021 and in the “Rashtriya Sahara” (Hindi) dated 03.12.2021.

This Adjudicating Authority vide order dated 31.03.2022 granted 10 days’ time to the Corporate Debtor to file the reply in the present matter and it was made clear by this Adjudicating Authority that no further extension will be granted and if the reply is not filed within 10 days’, then the right to file the reply will be closed. However, no such reply has been filed by the Corporate Debtor and therefore, the right to file reply of the Corporate Debtor was closed by this Tribunal vide order dated 21.04.2022.

On the hearing dated 04.10.2022, the counsel for the Corporate Debtor had sought time for filing vakalatnama and also an application for restoration of the right to file reply and the same was granted to the Corporate Debtor. However, no one had appeared before us and no such application was ever made. **Therefore, vide order dated 01.11.2022, the Corporate Debtor has been set as ex-parte.**

Analysis & Findings

6. We have heard the Learned Counsel for the Operational Creditor and perused the averments made in the petition and also in additional



affidavits filed by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 14.11.2019 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues. As per the requirement of Section 8(2) of the IB Code, 2016, the Corporate Debtor is required to file reply to the demand notice within 10 days of the Receipt of the Demand Notice. However, in the present case, no such reply has been placed on record before us.
8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:
 - a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
 - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
 - c) 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 if the unpaid operational debt in relation to such dispute?

- 9.** In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of ‘Operational Debt’, it is pertinent to analyze the definition of ‘Operational Debt’ as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said section, ‘Operational Debt’ is defined as:

“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”.

While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the said Operational Creditor sold certain goods to the Corporate Debtor for which invoices were raised by the Operational Creditor. The said Operational Creditor has annexed true copies of the invoices which justifies that there had been a transaction between the parties. Furthermore, the Ledger Account of the Corporate Debtor specifies that there is an outstanding amount of Rs. 6,53,361.50 (Rupees Six Lacs Fifty-Three Thousand Three Hundred Sixty-One and Fifty Paise) payable by the Corporate Debtor to the Operational Creditor. Therefore, the outstanding debt which is due and payable to the Operational Creditor would fall under the ambit of ‘operational Debt’ and hence, the said Creditor would be termed as the ‘Operational Creditor’ within the meaning of Section 5(20) of the Code.

- 10.** Moreover, in the present case, there has been no pre-existing dispute as raised by the Corporate Debtor, nor there is any suit or arbitration proceeding regarding the present matter, pending before any forum.



11. It is further observed that the Operational Creditor has justified the existence of an Operational Debt by annexing true copies of the invoices, copies of emails and statements along with a certificate under Section 65B of the Indian Evidence Act, 1872. The said invoices sufficiently justify that the Operational creditor had sold goods to the Corporate Debtor and that the amount exceeding Rs. 1 Lakh is due and payable by the Corporate Debtor to the Operational Creditor and the same has not been paid yet. Therefore, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.

12. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code (stipulated at the relevant point of time). In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing *CP (IB) No. 143/ND/2020* filed by, Mr. Udaivir Singh, Proprietor of M/s D.M. Lining & Fabrics, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Keep in Touch Clothing Pvt. Ltd. & Anr., the Corporate Debtor, is ***admitted***.
- b) The Applicant has not proposed the name of any IRP in Part-III of the application. Therefore, based on the list provided by the Insolvency and Bankruptcy Board of India (IBBI) vide its Letter for July 01, 2023 to December 31, 2023 and as per the serial no. in the list, Mr. Brijesh Singh Bhadauriya , Registration Number



IBBI/IPA-002/IP-N01045/2020-2021/13385, Email: bsb@bsbandassociates.in, 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 Form AA, Disclosure and a valid Authorization for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016..

- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Brijesh Singh Bhadauriya, 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.
- d) 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.”

(e) The IB Code 2016 also prohibits Suspension or termination of any 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, 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, concessions, clearances or a similar grant or right during the moratorium period.”

e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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. 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.

f) 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'.

- g) 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 its 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.
- h) 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.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(P.S.N. PRASAD)
MEMBER (JUDICIAL)