

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No. 282/ND/2021

IN THE MATTER OF:

**M/s D.R. International Pvt. Ltd.
8/42, Industrial Area,
Kirti Nagar, New Delhi-110015**

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

**M/s. UM Autocomp Pvt. Ltd.
CIN No. U35999DL2016PTC304695
Registered Office- 806,, Devika Tower 6
Nehru Place, New Delhi-110019**

... RESPONDENT / CORPORATE DEBTOR

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on:. 17.02.2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (T)**

Present:

For Petitioner : Mr. Rishi Sood, Advocate

Mr. Anand M. Mishra, Advocate

ORDER

**Per: JUSTICE RAMALINGAM SUDHAKAR,
HON'BLE PRESIDENT**

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

Page 1 of 8



2016 (hereinafter, Rules) by Kerry Indev Logistics Pvt. Ltd., (hereinafter “applicant/operational creditor”), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Divinesear Logistics Pvt. Ltd. (hereinafter, Respondent/Corporate Debtor).

2. As per averments made in the petition, the Corporate Debtor approached the Operational Creditor for supply of Polycarbonates (PC), Acrylonitrile Butadiene Styrene (ABS), (ACRYLIC) and (PMM) etc. for its units at Saharanpur and Haridwar on credit basis. After due discussions and deliberation between the parties and agreeing to the terms of payment of 60 days of credit period & interest @ 24% on overdue payment, the Operational Creditor began the procedure for supply of aforesaid goods to the Corporate as per the purchase orders placed by the corporate debtor. Subsequently the Operational Creditor raised various invoice dated 10.08.2018, 22.06.2018, 11.07.2018, 20.02.2019, 23.02.2019, 25.02.2019, 26.02.2019, 10.06.2019, 10.07.2019, 03.08.2019, 03.08.2019 and 24.07.2020 for a total sum of Rs. 3,05,70,968/-. It is claimed that the Operational Creditor supplied goods according to the need of Corporate Debtor and the said goods were duly received by the Corporate Debtor through road transport.
3. In lieu of aforesaid invoices totalling to an amount of Rs. 3,05,70,968/-, the Corporate Debtor from made partial payments of its liability had released a total sum of Rs. 37,11,261/-. Thus, an amount of Rs. 3,49,66,314/- inclusive of interest @ 24% on overdue payment, is due and payable by the Corporate Debtor.
4. The Operational Creditor has served the demand notice in Form-3 & 4 dated 17.02.2021 under Section 8 of the Insolvency and Bankruptcy Code,

2016 to the Corporate Debtor at its registered office for payment of outstanding dues within 10 days of receipt of the notice. The operational creditor submitted that despite service of the legal demand notice, the Corporate Debtor has neither replied to the said demand notice nor paid the outstanding amount.

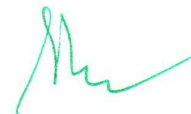
5. As per part IV of the application, Rs. 3,49,66,314/- is due and payable by corporate debtor.
6. The applicant has filed affidavit dated 23.03.2021 in terms of Section 9 (3) (b) of the Code, stating that the demand notice was duly served on the Corporate Debtor and no dispute in any form has been raised by the Corporate Debtor nor it had brought to the notice of Operational Creditor details of any suit or arbitration proceedings initiated against the Operational Creditor prior to the receipt of the demand notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
7. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:
 - a) It is claimed that the Corporate Debtor resolved all the issues with the Operational Creditor before and after receiving the Demand Notice, whereas, it was mutually agreed and settled that Corporate Debtor is liable to pay a sum of Rs. 2,36,71,000/- as full and final settlement towards all dues, claims, interest and rights including the invoice dated 24.07.2020. And the amount of Rs. 2,36,71,000 shall be paid in 9 equated monthly instalment of Rs.25 lacs each



and remaining balance thereafter with the understanding that the Operational Creditor shall withdraw the above-mentioned Company Petition immediately on handing over the cheques to them.

- b) It is submitted that the Corporate Debtor and Operational Creditor reached out to a settlement and amount to be paid was mutually agreed to Rs 2,36,71,000/- as full and final settlement of all claims, dues, interests and rights. Thereafter, the Corporate Debtor has written a letter dated 20.04.2021 to the Operational Creditor and propose the instalments and manner of payment of Rs. 2,36,71,000/- by way of monthly instalment of Rs.25,00,000/- each and balance in the last instalment. Subsequently, the Corporate Debtor by way of letter dated 14.06.2021 handover all ten cheques for payment mutually agreed amount of Rs.2,36,71,000/- to the Operational Creditor.
- c) The Corporate Debtor also raised dispute over the claimed amount. It has been stated that no complete ledger was ever provided and only Opening Balance and false interest was shown in the ledger by the Operational Creditor. It is further stated that the Operational Creditor has not filed the complete purchase order, which consist of many terms and conditions. It is stated that there was no terms of payment of any interest towards the delay in making the payment.

8. The applicant has filed rejoinder to the reply of respondent and submitted as follows:



- a) The applicant denied the fact that the parties agreed to settle the operational debt.
 - b) The applicant also stated that the terms of settlement letter dated 20.04.2021 were never approved by the applicant. The corporate debtor also failed to file its ledger statement which would clearly indicate that the amount due to the operational creditor. The applicant also argued that the letter dated 14.06.2021 is false and fabricated by corporate debtor.
 - c) The corporate debtor has failed to reply the Demand Notice issued by the applicant and also admitted the fact of part payments in its reply. The applicant further confirmed the fact of interest component of operational debt.
9. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and additional affidavits filed by the parties.
10. Notice in this case was issued on 30.07.2021 and on 26.08.2021 the matter was adjourned stating that parties are exploring the settlement and was adjourned. On 29.09.2021, the Learned Counsel for the Corporate Debtor sought more time to file reply and if no reply is filed, right to file reply was to be closed. However, reply has been filed. At the time of final hearing on 17.02.2022 when the matter was taken up, Mr. Sood and Ms. Sushmita Kumari, Mr. Rajesh Aggarwal could not join by regular Video Conferencing mode but appeared through phone.
11. Insofar as the objection is concerned, the detailed reply-affidavit has been filed on 28.09.2021, in that it is contended that a settlement has

been arrived between the parties and in respect of that documents are marked as Annexure R-2 at Page No. 25, Annexure R-3 at Page No. 26 and Annexure R-4 at Page No. 27, which is the HDFC Bank's statement. According to the respondents, they have finally settled the issue of outstanding amount of Rs.2,36,71,000 (Rupees two crores thirty six lacs seventy one thousand only) by issuing ten post-dated cheques and it was acknowledged by the petitioner in Annexure R-3 dated 14.06.2021. The factum of receipt of cheques is not disputed by the petitioner. However, insofar as Annexures R-2 and R-3 is concerned, petitioner stated that it is forged. The seal and signature of the petitioner is false and fabricated. The stamp is also not matching with the regular stamp of the petitioner-company. No proof of handing over the letter dated 20.04.2021 and 14.06.2021 is filed alongwith the reply. These letters were never delivered to the petitioner. Only the cheques were, handed. Out of the total 8 cheques were realised whereas there was no settlement for a sum in a sum of Rs.2,36,71,000 (Rupees two crores thirty six lacs seventy one thousand only). This statement of respondent made after issuance of notice by this Adjudicating Authority is a counter blast to the Section 8 notice in terms of Form-3 and Form-4, making a demand of Rs. 3,49,66314/- (three crores forty nine lakhs sixty six thousand three hundred and fourteen).

12. We have considered the objection on the documents which appears to be a letter purported to have been sent by the Corporate Debtor, but the proof of acknowledgement is disputed by the petitioner. Be that as it may, there is no reply to the section 8 notice, Form-3 and Form-4,

denying the claim and a settlement of Rs. 2,36,71,781/-. The claim of the corporate debtor that a settlement has been arrived for a lesser amount has no legal and feasible basis. Therefore, we reject this objection.

13. In view of the above discussions, the present application is admitted initiating Corporate Insolvency Resolution Process in respect of Corporate Debtor.

14. The applicant has not proposed the name of an Interim Resolution Professional; therefore, this bench appoints Mr. Pankaj Kumar Singhal, as the Interim Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N00532/2017-18/11561 and email id. aprassociatesllp@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 made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Anil Kumar Mittal 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.

16. 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 14(1), shall follow in relation to the corporate debtor, prohibiting initiation/continuation of various actions 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.

17. 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.

S/D/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd-

(NARENDRA KUMAR BHOLA)
MEMBER (TECHNICAL)