

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III (SPECIAL BENCH)  
C.P. (IB) – 704(ND)/2023**

Order 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:**

**M/s. NUTTISH EXIM INDIA PRIVATE LIMITED**

*Having Its Registered Office at:*

Office No 201, A-39, Sector 65,

Noida, Gautam Budha Nagar, Uttar Pradesh- 201301

*Through Its Authorized Representative*

Ms. Preeti Goel

**..... Operational Creditor**

**VERSUS**

**M/s. BUYOUT RETAIL INDIA PRIVATE LIMITED**

*Having Its Registered Office at:*

114, Shakti Vihar, Pitampura, Delhi- 110034

**..... Corporate Debtor**

**Order Pronounced On: 02.02.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Sumit Kansal, Adv.

For the Respondent : Mr. Siddhant Awasthy, Adv.

## **ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This application has been filed by the Applicant, Nuttish Exim India Private Limited through Ms. Preeti Goel, Authorized Representative seeking initiation of CIRP against the Corporate Debtor. The Operational Creditor is engaged in providing Gold Bar scrap services to its clients and in lieu of such sale made to the Corporate Debtor, various payments with respect to invoices raised by the Operational Creditor on several occasions have not been duly paid by the Corporate Debtor. The Corporate Debtor had bought Gold Bar Scrap on 23.08.2023 by way of 2 invoices. The total unpaid debt is amounting to Rs 1,09,23,641.93/- (Indian Rupees One Crore Nine Lakh Twenty Three Thousand Six Hundred Forty One and Paise Ninety Three Only) as the total debt due from Corporate Debtor.
2. The Operational Creditor sent several e-mails and reminders to the Corporate Debtor seeking payment of dues. It is submitted that the Corporate Debtor vide e-mail dated 01.09.2023 has admitted the liability and sought time for making the payment. Since, the Corporate Debtor did not make any payment, the Operational Creditor issued a Demand Notice on 12.09.2023 under Section 8 of the Code in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Corporate Debtor did not give any reply to the Demand Notice.
3. Hence this application.
4. The Corporate Debtor in the reply affidavit has stated that due to the delay in supply of gold bars scraps by the Operational Creditor to the Corporate Debtor, the Corporate Debtor could not realize the payment from its customers, and consequently could not make the payment to the Operational Creditor. The Corporate Debtor has also stated in the reply affidavit that vide e-mail dated 01.09.2023, the Corporate Debtor assured the Operational Creditor that payments would be made by 04.09.2023, however, since the funds were not available with the Corporate Debtor, the payment could not be made.

## **5. Analysis and Findings**

- i. We have heard the submission of Ld. Counsel and perused the records. The Operational Creditor has established that he has supplied the goods/material to the Corporate Debtor and raised proper invoices along with the log sheet and the Corporate Debtor has failed to make the payments due to the Operational Creditor.
- ii. The Corporate Debtor has not denied the receipt of the goods supplied by the Operational Creditor and the invoices raised thereto. Further, the Corporate Debtor in its reply has admitted that due to financial issues, the payment could not be made to the Operational Creditor which has been communicated to the Operational Creditor vide e-mail dated 01.09.2023.
- iii. In view of the aforesaid position, it is crystal clear that there is an admission by the Corporate Debtor with regard to the default committed by it.
- iv. We may further note that vide order dated 10.01.2024, the parties were directed to file an affidavit stating clearly that the present application is not a collusive one and in compliance with the said order both the parties have filed the affidavits stating that the present application is not a collusive application.
- v. The Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited** reported in (2018) 1 SCC 353 has held that the Adjudicating Authority, when examining an application under Section 9 of the Act will have to determine:
  - (a) *Whether there is an "operational debt" as defined exceeding Rs 1 lakh?*
  - (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 of the unpaid operational debt in relation to such dispute?"*

The Hon'ble Supreme Court had further held that if any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the Adjudicating Authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the

Code, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.

- vi. In our considered view, the Applicant has been able to comply with all the parameters as laid down by the Hon'ble Supreme Court in the case of ***Mobilox Innovations (Supra)***. Further, the Corporate Debtor has not been able to establish either a pre-existing dispute or that the demand notice or the application under Section 9 was defective.
6. In view of the aforesaid reasons, the present application under Section 9 is admitted and CIRP is initiated.

### **7. Order**

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i.** The Application bearing **IB-704/ND/2023** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- ii.** 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:
- (i) *"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;*
- (ii) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) *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;*
- (iv) *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in*

*force, a licence, permit, registration, quota, concession, clearance 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;]”*

- iii.** 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.
- iv.** The Operational Creditor has proposed the name of Mr. Bhim Sain Goyal as the Interim Resolution Professional (“IRP”). On perusal of the details of IRP, it is found that the area of practice of the proposed IRP is different from the trading area of the Corporate Debtor. We are of the considered view that the IRP from the same trading area of the Corporate Debtor should be appointed for the revival of the Corporate Debtor. Therefore, this Adjudicating Authority appoints Mr. Mukesh Kumar Grover, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by the IBBI. The registration number of the IRP is IBBI/IPA-001/IP-P00383/2017-2018/10640, the address of the IRP is 102, B-3, Perna Complex, Subhash Chowk, Laxmi Nagar, Delhi-110092 and the e-mail id of the IRP is mukesh.mjra.co.in and the contact no. of the IRP is +919810331606.
- v.** Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

- vi.** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vii.** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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. There shall be no future opportunity given in this regard.
- viii.** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- ix.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- x.** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of the 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 IRP, and shall be paid back to the Operational Creditor.
- xi.** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the

status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.

- xii.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- xiii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-Sd-

**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

-Sd-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**