

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-252/ND/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

SEITZ GMBH

...Applicant/Operational Creditor

VERSUS

SEITZ INDIA PRIVATE LIMITED

...Respondent/ Corporate Debtor

Judgment Pronounced on: 08 .08.2019

CORAM: DR. DEEPTI MUKESH

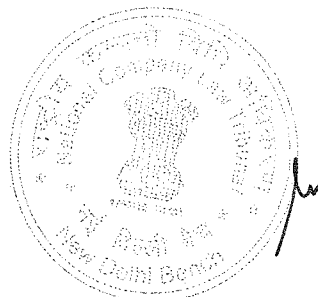
HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Rudrajat Ghosh, Adv.; Ms. Neelam Singh, Adv.

For the Respondent: ----



MEMO OF PARTIES

SEITZ GMBH

Registered office at Gutenbergtr 1-3

65830 Kriftel, Germany

...Applicant/Operational Creditor

VERSUS

SEITZ INDIA PRIVATE LIMITED

Registered office at 147, New Manglapuri

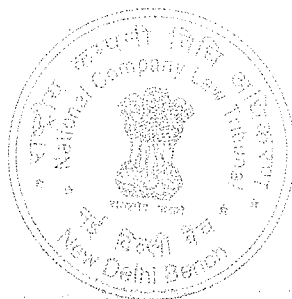
MG Road, New Delhi-11030

...Respondent/ Corporate Debtor

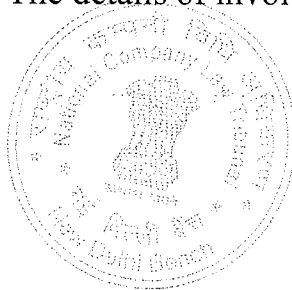
JUDGEMENT

Dr. Deepti Mukesh, Hon'ble Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Seitz Gmbh (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Seitz India Private Limited (for brevity 'Corporate Debtor').



2. The Applicant is a company incorporated and registered under the laws of Germany, having its registered office at Gutenbergstr 1-3, 65830 Kriftel, Germany and is one of the market leaders in the field of manufacture of chemical products for dry cleaning, institutional and commercial laundry, leather cleaning, carpet cleaning and machinery maintenance.
3. The Corporate Debtor is a private company registered under the Companies Act, 1956 having its registered office at 147, New Delhi-110030, India and was engaged in the business of supply and distribution of the products of the applicant. The corporate debtor was incorporated on 29.11.2012 bearing CIN U24100DL2012PTC245429 as per master data. The Authorised Share Capital of the Corporate Debtor is Rs. 20,00,000/- and Paid Up Share Capital is Rs. 19,00,000/- as per Master Data of the company.
4. The Applicant has stated that the corporate debtor has been regularly placing orders for surface acting industrial detergents of various specifications for the dry-cleaning industry and the applicant has been duly supplying the same to the corporate debtor. However, the corporate debtor has not made any payments against the invoices raised by the applicant. The details of invoices which were not paid in full by



the corporate debtor and against which payment of the applicant is due are mentioned in part IV of Form 5 filed in the application.

5. The Applicant has submitted that various representations and reminders were sent by the applicant to the corporate debtor asking for release of payment of outstanding operational debt, but the debt remained unpaid by corporate debtor. Thus, the corporate debtor has continued to be in default of its obligations to make the payment to the applicant.
6. The Applicant issued demand notice dated 05.04.2018 under section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as per provisions of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the corporate debtor demanding payment of unpaid operational debt. The said notice was sent by Speed Post at the registered address reflected in the MCA website, which was duly delivered on 09.04.2018 as per track report which is annexed with the application.
7. The Corporate Debtor has replied to the demand notice dated 23.04.2018 and has asserted as below:

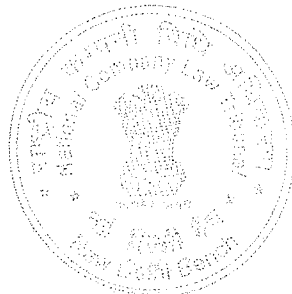
"It is important to state herein that the entire gamut of the dispute is not between SEITZ GmbH and SEITZ India but between, Mr. Sandeep Sood and Mr. Alexander Seitz which is pending resolution



and settlement of accounts. Therefore, without admitting any liability it is stated that before any amount is claimed by SEITZ GmBH from SEITZ India, SEITZ India should first remit an amount of Rs 1,01,23,821/- towards repayment of loan to Mr. Sandeep Sood; Rs 6,00,00,000/- as consideration for transfer of all its customers and sales business from Simtech to SEITZ India and Rs 1,46,44,927/- due and payable by SEITZ India on account of goods supplied by Simtech, which has not happened at the behest of SEITZ GmBH and Mr. Alexander Seitz. It is further reiterated that the accounts have to be settled inter se between all the relevant stakeholders i.e. (i) Simtech (ii) Mr. Sandeep Sood (iii) SEITZ India (iv) SEITZ GmBH and (v) Mr. Alexander Seitz.”

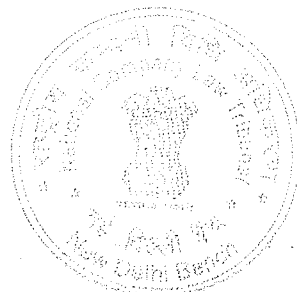
Further, the corporate debtor in its reply has denied the liability of the outstanding amount raised by the applicant due on him and has affirmed that there is no outstanding or debt due and payable by the corporate debtor to the applicant as demanded by the applicant in the said demand notice.

8. Therefore, from the contentions of the corporate debtor it is clear that the corporate debtor has tried to create and raise a pre-existing dispute by asserting that the entire gamut of dispute is amongst the

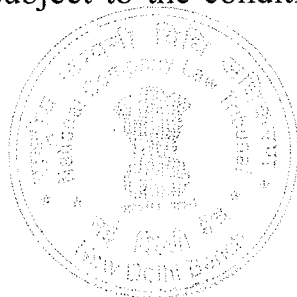


applicant and the corporate debtor qua the third parties and directors which is a pending resolution therein. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to Section 8 demand notice.

9. The Applicant claims that as on date, the corporate debtor is liable to pay amount of Rs. 1,42,07,946.36/- (Rupees One Crore Forty-Two Lakhs Seven Thousand Nine Hundred and Forty-Six and Thirty-Six Paise Only) which is due and payable as on 30.11.2017.
10. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application by speed post to the Corporate Debtor on its registered office address as per the affidavit of service filed by the applicant. The corporate debtor has not appeared in the matter through out neither filed reply to the application and the matter was heard exparte. The conduct of corporate debtor proves that there is no plausible dispute as attempted to be raised in their reply to section 8 notice.
11. The Applicant has filed affidavit that no notice of dispute has been received from the corporate debtor under section 9(3)(b) of the IBC, 2016.

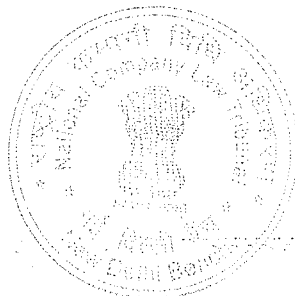


12. The Applicant further states that in spite of several opportunities given none appeared on behalf of the corporate debtor nor any reply is filed and the matter was listed to be heard exparte on 22.07.2019.
13. The Registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
14. The Default occurred from 30.11.2017, hence the debt is not time barred and the application is filed within the period of limitation.
15. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
16. The Applicant has named the Interim Resolution Professional (IRP), to be appointed by the order of Tribunal, as Mr. Atul Kumar having registration number IBBI/IPA-001/IP-P00035/2016-17/10088, ([email-cakansal@yahoo.com](mailto:cakansal@yahoo.com)), Mobile No. 9899027510, duly registered with Insolvency and Bankruptcy Board of India, as the Interim Resolution Professional subject to the condition that no disciplinary proceedings



are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor and specific consent has been filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the Corporate Debtor and the Applicant herein and the disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has been complied with.

17. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Atul Kumar 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 three days for 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.
18. 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 Respondent prohibiting



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 vogue.

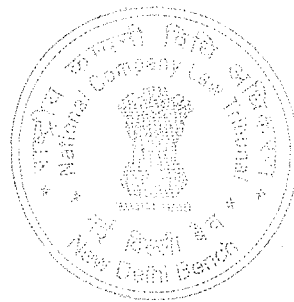
19. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

SK

HEMANT KUMAR SARANGI
MEMBER (T)

SK

DR. DEEPTI MUKESH
MEMBER (J)



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14/8/19
राष्ट्रीय कंपनी विधि अधिकरण
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
C.G.O. COMPLEX, NEW DELHI-110003

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