

In the National Company Law Tribunal
Kolkata Bench
Kolkata

Before Shri Jinan K.R., Hon'ble Member (J)

C.P. (IB) No. 989/KB/2018

In the matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

Foil Forms, represented by its proprietor, Manju Chetani, having its registered office at 25, Chanditola Branch Road, P.O. & P.S. New Alipore, Kolkata 700053, West Bengal, within the aforesaid jurisdiction;

... Operational Creditor

-Versus-

Bewell Labs Pvt. Ltd., a company having its registered office at Rabindranagar Po Laskarpur, 24 Paraganas (South), Sonarpur, Kolkata 700153, West Bengal, within the aforesaid jurisdiction;

... Corporate Debtor

Counsel appeared:

Mr. Shashi Agarwal, Pr. CA

] For the Operational Creditor

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Order pronounced on 08/01/2019

O R D E R

1. This is an application filed by M/s Foil Forms represented by its proprietor, Manju Chetani, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (In short, I & B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short, CIRP) against the Corporate Debtor, Bewell Labs Private Limited claiming that an amount of Rs. 16,60,872.57/- (Rupees Sixteen Lakhs Sixty Thousand Eight Hundred Seventy Two and Fifty Seven Paise only) is the unpaid operational debt due from the Corporate Debtor including interest at the rate of 24% p.a. as on 31.08.2017 and that despite demand, the Corporate Debtor did not pay the outstanding amount and hence defaulted in payment of the unpaid operational debt and therefore, the Operational Creditor has filed this application.

2. The facts, in brief, as stated by the Operational Creditor, are as follows:-

The Operational Creditor has supplied certain goods to the Corporate Debtor pursuant to the purchase orders and raised invoices against the same. The Corporate Debtor failed to make payments against those

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invoices to the Operational Creditor with regard to the supplies made including interest at the rate of 24% p.a. till 31.08.2017 to the tune of Rs. 16,60,872.57/- (Rupees Sixteen Lakhs Sixty Thousand Eight Hundred Seventy Two and Fifty Seven Paise only) . Copies of the said Purchase Orders and Invoices are annexed with the application and marked as Annexure-A and Annexure-B respectively. The Corporate Debtor issued a cheque on S.B.I. dated 15.07.2016 for Rs. 50,000/- for part payment which was later on dishonored. The Operational Creditor, thereafter issued a demand notice dated 06.02.2017 under Section 433, 434 and 439 of the Companies Act, 1956 to the Corporate Debtor. However, the Corporate Debtor did not make payments for the said unpaid operational debt. The Operational Creditor, then issued a statutory demand notice dated 26.09.2017 in Form 3 under I & B Code, 2016 demanding payment from the Corporate Debtor, in spite of which the Corporate Debtor failed to make the payments and denied any amount due in its reply dated 24.10.2017. Despite repeated requests/demands made by the Operational Creditor, no amount has been paid by the Corporate Debtor and therefore, the Operational Creditor has filed this application.

3. The Corporate Debtor has failed and neglected to make payment of Rs. 16,60,872.57/- (Rupees Sixteen Lakhs Sixty Thousand Eight Hundred Seventy Two and Fifty Seven Paise only) including the principal amount and interest thereon at the rate of 24% p.a., in spite of repeated

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demands. In support of the claim of unpaid operational debt, the Operational Creditor has submitted the following documents:-

- i) Copies of the Purchase Orders and Invoices are annexed and marked as "Annexure-A" (at pages 19-31) and "Annexure-B" (at pages 32-66), respectively.
- ii) Copy of the Ledger Account maintained by the Operational Creditor pertaining to the account of Corporate Debtor, marked as "Annexure-D" (at pages 69-80).
- iii) Copy of the Bank Statements of Operational Creditor evidencing non-payment of operational dues by the Corporate Debtor is annexed and marked as "Annexure-G" (at pages 92-118).
- iv) Copy of the Demand notice dated 06.02.2017 issued under Section 433, 434 and 439 of the Companies Act, 1956, to the Corporate Debtor referred to in the application as "Annexure-F" (at pages 87-91).
- v) Copy of the Demand notice dated 26.09.2017 in Form 3 issued under the I & B Code, to the Corporate Debtor

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referred to in the application as “Annexure-H” (at pages 119-191).

vi) Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of unpaid operational debt referred to in the application as “Annexure-J”(at pages 194-195).

4. The Operational Creditor has also proposed the name of the Interim Resolution Professional as Mr. Sanjai Kumar Gupta, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045, Telephone No. 9339904839/9874877220 E-mail: casanjaigupta@gmail.com along with written communication in Form 2.

5. The Operational Creditor further contends that several reminders were sent to the Corporate Debtor via e-mails but the Corporate Debtor failed to clear the outstanding dues. Subsequently, the Operational Creditor issued statutory demand notice dated 26.09.2017 as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, a copy of which is annexed and marked as Annexure H to the petition. However, the Corporate Debtor in its reply letter dated 24.10.2017 against the said demand notice denied any amount due to the Operational Creditor, and therefore, the applicant/Operational Creditor

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has filed the instant application under Section 9 of the I & B Code for initiating Corporate Insolvency Resolution Process as against the Respondent.

6. The Respondent/Corporate Debtor entered appearance, but did not choose to file reply affidavit. Further, on two occasions, the Corporate Debtor did not turn up and was called absent and declared ex parte.

7. Heard the Ld. CA for the Operational Creditor. Perused the records.

8. This is an application filed under Section 9 of the I & B Code, 2016 for initiating CIRP as against the Corporate Debtor alleging that the Corporate Debtor, who was in receipt of certain goods provided by the Operational Creditor, had failed to make payments for the said goods received, despite demand and had committed default in payment of the operational debt to the extent of Rs. 16,60,872.57/- including interest payable by the Corporate Debtor to the Operational Creditor, claiming that the amount is due on the basis of invoices, copies of which were produced along with the application. The Operational Creditor issued notice under Section 433, 434 and 439 of the Companies Act, 1956 upon the Corporate Debtor to make payments for the said unpaid operational debt. However, the Corporate Debtor did not make any payments. The Operational Creditor also

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issued demand notice under the I & B Code, 2016 demanding payments from the Corporate Debtor. However, the Corporate Debtor, in his reply dated 24.10.2017 to the demand notice is seen denying any operational debt due to the Operational Creditor. Copies of the two notices have been produced along with reply of the Corporate Debtor and annexed with the application. Copies of e-mails sent by the Operational Creditor to the Corporate Debtor demanding payments are also seen produced with the application.

9. According to the Ld. CA for the Operational Creditor, the requirement to be meted out to file an application of this nature by the applicant has been complied with. He has submitted that since the Corporate Debtor did not pay the operational debt due to the Operational Creditor, he has filed this application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and upon the said contentions, the Operational Creditor pressed for admitting the application.

10. This application is filed under Section 9 of the I & B Code, 2016. To fulfill all requirements under Section 9(3), the Operational Creditor has furnished along with the application, (i) copies of the purchase orders and invoices demanding payment and the demand notice delivered by the operational creditor to the corporate debtor as required under Section 9(3)(a); (ii) an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt as required under Section 9(3)(b); (iii) copy of the bank account statements showing

non-payment of operational dues by the Corporate Debtor. A Demand Notice as per Section 8(1) of the I & B Code was issued by the Operational Creditor which has been duly served upon the Corporate Debtor. The Operational Creditor has further submitted copy of Ledger Account maintained by it pertaining to the Account of the Corporate Debtor which adds strength to the contention on the side of the Operational Creditor that the unpaid operational debt is due from the Corporate Debtor.

11. Therefore, the Operational Creditor succeeds in proving that the application is complete, that there is no payment of the unpaid operational debt, also that the demand notice has been delivered by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The Operational Creditor has proposed the name of an Interim Resolution Professional (In short, I.R.P.). Written Communication by the I.R.P. in Form 2 produced along with the application certifies that no disciplinary proceeding is pending against the Insolvency Resolution Professional. The applicant in the case in hand, succeeds in proving all the ingredients of Section 9 (5)(i) of the Code and therefore, the application is liable to be admitted.

12. In view of the above-said discussion, the application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is admitted upon the following orders:-

ORDER

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, Bewell Labs Pvt. Ltd. is hereby admitted.

ii) I hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement,

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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 (54 of 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.

v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

x) Mr. Sanjai Kumar Gupta, an Insolvency Professional registered with the Indian Institute of Insolvency Professionals of ICAI having Registration No. IBBI/IPA-001/IP-P00592/2017-18/11045, Telephone No. 9339904839/9874877220 E-mail: casanjaigupta@gmail.com is appointed as Interim Resolution Professional

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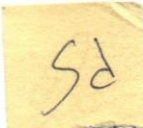
for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.

xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

List the matter on 11/02/2019 for the filing of the progress report.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


8/1/19
(Jinan K.R.)
Member (J)

Signed on this, the 8th day of January, 2019.