



S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
05-01-2023 AT 10:30 AM**

CP(IB) No.289/9/HDB/2022
U/s 9 of IBC, 2016

IN THE MATTER OF:
Kabamy India LLP

...Operational Creditor

Vs

M/s. Lumiford Pvt Ltd

...Corporate Debtor

C O R A M :-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in CP (IB) No.289/9/HDB/2022 pronounced. Recorded vide separate sheets. In the result the Company Petition is admitted and the Corporate Debtor is put under CIRP as per the terms and conditions mentioned in the order.

SD

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MEMBER (T)

MEMBER (J)



**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 289/9/HDB/2022

U/S 9 of IBC, 2016, r/w Rule 6 of I & B(AAA) Rules, 2016

Between

M/s. Kabamy India LLP,
B-2406, Raj Grandeur,
Behind Hirnandani Hospital,
Powai, Mumbai, Maharashtra-400 076.

...Operational Creditor

Versus

M/s.Lumiford Private Limited
H.No8-2-594/A, Road No.10,
Banjara Hills, Hyderabad,
Telangana- 500 034.

...Corporate Debtor

Date of order: 05.01.2023

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Sh. Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant: Mr.Asad Hussain Advocates.



PER: BENCH

ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the application for initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 3,29,99,087/-(Rupees Three crores twenty nine lakhs ninety nine thousand and eighty seven only).
2. **The averments in brief of the Application are that;**
 - 2.1 The Operational Creditor is a Limited Liability Partnership firm incorporated on 30.12.2020, having two designated partners.
 - 2.2 The Corporate Debtor is a Private Limited Company incorporated on 22.03.2017 and the authorised share capital is Rs. 5,00,00,000/- and the paid up share capital is Rs.2,00,00,000/-.
 - 2.3 The Operational Creditor and Corporate Debtor had entered into a Carrying and Forwarding Agent (CFA) dated 22.12.2020 for the purpose of sale of their products to super stockist, distributors, wholesalers, dealers etc on behalf of the Corporate Debtor and the agreement would remain in force and binding on the party till 31.12.2023, unless the same is terminated earlier by either party by



giving two months' notice in writing to the other or termination as per mutual consent.

- 2.4 Complying with the Agreement, the Operational Creditor provided its services by stocking the products of the Corporate Debtor and the Corporate Debtor regularly transacted with the Operational Creditor for availing the Operational Creditor's expertise. The date of engagement of the Operational Creditor was 18.12.2020 and the same has been acknowledged in Agreement dated 22.12.2020.
- 2.5 It is averred that as per the terms of the Agreement, the operational creditor had paid Rs.2,00,00,000/- as **Security Deposit**". The terms and conditions are mentioned at page 4 of the Petition. It is submitted that corporate debtor defaulted in making payments from the inception of CFA Agreement. It is submitted that corporate debtor had never disputed the liability to pay any of the amounts due to the operational creditor. With regard to the payment operational creditor filed invoices, multiple emails and text and whatsapp messages which are annexed at page no.'s 56-69,70-132,133-152,153-161,162-175,176-188,189-195.
- 2.6 It further averred that due to recurring defaults of the corporate debtor, operational creditor requested for full and final payment of the outstanding dues and to terminate the CFA Agreement vide email dated 29.01.2022(page no.132). Subsequently, corporate debtor vide reply dated 01.02.2022 requested for the dispatch of the inventory stocked in the warehouse in Mumbai.



- 2.7 It is averred that operational creditor in reply to the email dated 01.02.2022 sent by corporate debtor, operational creditor sent email dated 02.02.2022 by highlighting the outstanding dues along with ledger attached. Since there was no response from the corporate debtor, operational creditor sent an email dated 29.03.2022 demanding the total outstanding amount of Rs.3,12,81,028/-.
- 2.8 It is averred that there are neither any pending legal proceedings nor any dispute raised by the corporate debtor before receipt of the demand notice dated 28.06.2022 and not even made the payment.
- 2.9 It is further averred that the present Application is in jurisdiction of this Tribunal and since the default amount is more than one crore, under Section 4 of the I&B Code, 2016 read with notification of Ministry of Corporate Affairs in S.O.1205(E) dated 24.03.2020, therefore this Company petition is maintainable.
- 2.10 Thus operational creditor prayed the Tribunal to initiate CIRP against the corporate debtor.

3. FINDINGS:

- a. It is noted that the Corporate Debtor has defaulted in making payments as per the CFA agreement entered between them.
- b. It is noted that a demand notice was issued to the Corporate Debtor vide email dated 29.03.2022 and Form-3 notice as per I&B Code, 2016 and the same was delivered to the registered office of Corporate Debtor , who has filed its reply dated 12.07.2022.



- c. It is noted that the Adjudicating Authority directed the operational creditor to issue notice to the corporate debtor on 30.09.2022. Subsequently, Mr.Shreyas Hingmire, Counsel appeared on behalf of corporate debtor on 28.10.2022 and requested time for filing vakalat and counter.
 - d. It is noted that operational creditor filed memo stating the copy of the petition and the supporting documents has been sent through speed post and the same was served on 02.11.2022. Despite of service of copy, counter not filed. Thus this Adjudicating Authority closed the opportunity to file the counter on 21.11.2022.
 - e. It is further noted that the claim amount is more than Rs. One Crore and the Petition is filed before the notification dated 24.03.2020, hence, it is clear that the company petition is admissible.
4. In the above backdrop the point that emerges for consideration by this Tribunal is:
- “Whether an operational debt as claimed by the Applicant is due and payable by the corporate debtor to the applicant, If so, whether the Corporate Debtor defaulted in payment of the same”?**
5. We have heard learned counsel for operational creditor Shri Asad Hussain, and perused the record.
 6. At the outset it may be stated that despite availing sufficient opportunity and being represented by a Counsel, the corporate debtor did not choose to file any counter in the Company petition, hence, this Tribunal vide order dated 21.11.2022 closed the opportunity to



file counter. Thereafter the corporate debtor has not taken any steps to file counter. In this back drop the contentions and allegations as made in this application by the operational creditor remain un-rebutted by the corporate debtor.

7. According to the learned counsel for the operational creditor, the corporate debtor had entered into a Carrying and Forwarding Agent (CFA) dated 22.12.2020 for the purpose of sale of their products to super stockist, distributors, wholesalers, dealers etc., on behalf of the Corporate Debtor and the agreement would remain in force and binding on the party till 31.12.2023, unless the same is terminated earlier by either party by giving two months' notice in writing to the other or termination as per mutual consent.
8. Learned counsel further submitted that complying with the Agreement, the Operational Creditor provided its services by stocking the products of the Corporate Debtor and the Corporate Debtor regularly transacted with the Operational Creditor for availing the Operational Creditor's expertise. The date of engagement of the Operational Creditor was 18.12.2020 and the same has been acknowledged in Agreement dated 22.12.2020.
9. According to the learned counsel, as per the terms of the Agreement, the operational creditor had paid Rs.2,00,00,000/- as **Security Deposit**". The terms and conditions are mentioned at page 4 of the Petition. It is submitted that corporate debtor defaulted in making



payments from the inception of CFA Agreement. It is submitted that corporate debtor had never disputed the liability to pay any of the amounts due to the operational creditor. With regard to the payment operational creditor filed invoices, multiple emails and text and whatsapp messages which are annexed at page no.'s 56-69,70-132,133-152,153-161,162-175,176-188,189-195.

10. Learned counsel further submitted that due to recurring defaults of the corporate debtor, operational creditor requested for full and final payment of the outstanding dues and to terminate the CFA Agreement vide email dated 29.01.2022(page no.132). Subsequently, corporate debtor vide reply dated 01.02.2022 requested for the dispatch of the inventory stocked in the warehouse in Mumbai. The operational creditor in reply to the email dated 01.02.2022 sent by corporate debtor, operational creditor sent email dated 02.02.2022 by highlighting the outstanding dues along with ledger attached. Since there was no response from the corporate debtor, operational creditor sent an email dated 29.03.2022 demanding the total outstanding amount of Rs.3,12,81,028/-.
11. The operational creditor got issued legal notice dated 28.06.2022 which has been received by the corporate debtor. The corporate debtor had sent reply dated 12.07.2022 raising certain contentious pleas.



12. We have carefully examined the record, there is no denial of entering into CFA Agreement dated 22.12.2020 between the parties and its termination after giving due notice. The deposit of Rs.2,00,00,000/- by the operational creditor in terms of the CFA Agreement is not in dispute. Invoices raised by the operational creditor as referred above are not in dispute. No payment has been made by the corporate debtor. No dispute is contemplated under Section 8(2) of I&B Code has been raised.

13. Therefore, we are fully satisfied that the Operational debt of sum over one crore was due and payable by the corporate debtor stands established and as no material has been placed before us by the corporate debtor discharging the debt, we hold that both existence of a operational debt and its default by the corporate debtor has been established.

The point is answered accordingly.

14. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP.

15. Hence, the Adjudicating Authority admits the Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:



- (a) The Bench hereby prohibits 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; transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.



- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) The Operational Creditor prayed this Adjudicating Authority to appoint the IRP. This Bench hereby appoints Shri Pesaladinne Madhusudan Reddy, having IBBI Registration No: IBBI/IPA-002/IP-N00926/2019-2020/12982, with email id: pmreddy2000[at]gmail[dot]com as to carry the functions as mentioned under the Insolvency & Bankruptcy Code. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with. Proposed IRP shall file Form-B issued by the IBBI within three days hereafter. This information is also available in IBBI Website. Authorisation for Assignment is valid to 08.02.2023. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.
- (g) The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.



- (h) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- (i) This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- (j) Accordingly petition is admitted.
- (k) The Operational Creditor is directed to communicate this order to the IRP appointed in this case.

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Charan Singh
Member Technical

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Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani