

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-308
IB-1807/ND/2019

IN THE MATTER OF:

M/s Techmate Industries

....Applicant

Vs

M/s. Retail Kart Solutions Pvt. Ltd.

....Respondent

SECTION

U/s 9 of IBC Code, 2016

Order delivered on 27.02.2020

CORAM:

SHRI ABNI RANJAN KUMAR SINHA
HON'BLE MEMBER (JUDICIAL)

SHRI K.K. VOHRA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

:

For the Respondent

: Ms. Madhu Sudan Singh, Mr. Animesh Kumar Sinha

ORDER

As per Mr. Abhi Ranjan Kumar Sinha (Hon'ble Member (J))

The present application has been filed on behalf of the Applicant/Operational Creditor ("hereinafter referred as OC") under Section 9 of the IBC for the initiation of proceeding against the Corporate Debtor ("hereinafter referred as CD") for a default of Rs. 3,69,358/-. The facts of the case are that the "Retail Kart Solution Pvt. Ltd. (hereinafter called the Corporate Debtor) is inter alia into business of bakery and uses various equipments and appliances for kitchen, bakery and refrigeration and operate under the brand "Bachat Bazar". M/s Techmate Industries, Proprietor Sh. Manoj Kumar (herein after called the Operational Creditor), is the manufacture and supplier of various kitchen, bakery and refrigeration equipments/appliances. Under the terms of the arrangement between the

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Corporate Debtor and the Operational Creditor, the Corporate Debtor in and around August, 2017 contacted and visited the Operational Creditor for supply of Kitchen, Bakery and Refrigeration equipments/appliances and accordingly, as per description and requirement of the Corporate Debtor, the Operational Creditor issued its quotation dated 25.08.2017 through mail on 28.08.2017 for the said materials and on request, a revised, quotation dated 23.09.2017 was issued through mail on 24.09.2017 and on being satisfied with the price and terms of the quotation, the Corporate Debtor placed order and accordingly, the Operational Creditor supplied the goods to the Corporate Debtor to his satisfaction against Invoice bearing No. TM/17-18/0066 dated 17.10.2017 of Rs. 13,69,358/- which was duly received by the Corporate Debtor.

We have heard the Ld. Counsel for the petitioner and perused the averments made in the application as well as records of the case and we find that after issuing notice on 29.08.2019, none appeared on behalf of the respondent and the proceedings was fixed for ex-parte hearing against the respondent. But again due to inadvertent, vide order dated 24.01.2020, it was ordered to issue fresh notice against the respondent, but the same was recalled vide order dated 13.02.2020 and the case was fixed for ex-parte hearing for today.

We have heard the Ld. Counsel for the petitioner ex-parte who in course of arguments submitted that the petitioner has raised several invoices and received part payment, which is evident from the statement of accounts annexed at page 37-40. He further submitted that he has also filed ledger account to show that this amount of Rs. 3,69,358/- is still due and that said amount is the defaulted amount and in support of that he placed reliance at annexed at page no. 31. He further submitted that he has served the demand notice upon the respondent and received no response and in this regard he has filed affidavit of service under Section 9 (3) (b) of IBC. He further submitted that he has also filed the written consent obtained from the **IRP Mr. Praveen Kumar Agrawal**. He further submitted that since there is a default of Rs. 3,96,358/- plus interest and that has not been paid as yet and no dispute



has been raised after receipt of the demand notice, therefore, CIRP be initiated against the CD.

Considering the submissions made on behalf of the parties and on perusal of the averments made in the application, we find that the petitioner has raised invoices which are at page no. 32 of the application and he also filed the statement of accounts to show that he has received part payment which is evident from page 38-40 of the bank statement. We further find that as per ledger account, amount of Rs. 3,69,358/- is due. We further find that after receipt of the demand notice under section 8 (1) neither dispute was raised nor any document produced showing that the payment is made to the petitioner which is required to show under Section 8 (2) of IBC, therefore, at this juncture, we would like to refer Sections 8 & 9 of IBC and the same are quoted below:

“ Section -8.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, 1[if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the 2[payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor

demanding 3[payment] of the operational debt in respect of which the default has occurred.

Section-9

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt 1[by the corporate debtor, if available;]

[(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no 3[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been 4[payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section”.

From the perusal of the provisions referred above, we find that in case of Operational Debt, the OC is required to deliver a Demand Notice to the CD or copy of the invoices demanding payment from the CD and in view of Section 8 (2), within 10 days of the receipt of the Demand Notice, the CD has to raise

existence of the dispute or produce records showing that the payment has been made and if the OC fails to receive the reply within 10 days, then in view of Section 9 (1), the OC is entitled to file an application under Section 9 of the IBC for initiation of proceedings against the CD.

From the perusal of the averments made on behalf of the parties we find no dispute was raised after the receipt of the demand notice, therefore, after the expiry of ten day, the OC has right to file application under Section 9 of IBC and accordingly, the OC filed the present application and from the perusal of the application, we find that neither any payment has been made nor any dispute has been raised by the CD. We further find that the applicant also proposed the name of the IRP and no disciplinary proceeding is pending against him and the defaulted amount is more than Rs. 1,00,000/- is being the minimum threshold limit fixed under IBC, 2016. Under such circumstances this Adjudicating Authority is inclined to admit this petition and initiate CIRP against the respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

1. effect forthwith staying:-

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

Further:

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

(3) 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.

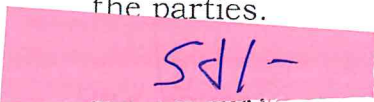
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

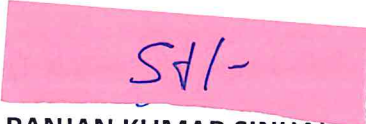
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect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

Accordingly, **Sh. Praveen Kumar Agrawal, IRP having Registration No. IBBI/IPA-002/IP/N00700/2018/2019/12348 is hereby appointed as IRP.**

Operational Creditor is directed to deposit the fee of Rs. 1,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

Registry is directed to communicate the order with the IRP as well both the parties.


(R.R. VERMA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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