



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V

IB-468/(ND)/2020

IN THE MATTER OF:

M/s Tri-Wall Pak Private Limited

Plot no 108 3rd cross, 4th phase,
Bommasandra, Industrial Area,
Bengaluru, Karnataka, 560099.

...Operational Creditor/Applicant

Versus

M/s 5 Core Acoustics Private Limited

WZ-15B, Uggarsain Market,
Ashok Nagar, New Delhi 110018

...Corporate Debtor/Respondent

Section: 9 of IBC, 2016

Order Delivered on: 16.11.2022

CORAM:

SH. P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SH. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Monish Surendran, Adv.

For the Corporate Debtor : None

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*Company Petition No. IB-468/(ND)/2020
M/S Tri-Wall Pak Private Limited Vs. M/s 5 Core Acoustics Private Limited*



ORDER

PER SHRI. RAHUL BHATNAGAR, MEMBER (T)

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. That the Applicant, M/S Tri-Wall Pak Private Limited is a company, incorporated on 10.08.2001 having CIN No. U28992KA2001PTC02390 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at Plot No. 108, 3rd Cross, 4th Phase, Bommasandra Industrial Area, Bengaluru, Karnataka- 560099

3. That the Corporate Debtor, M/s 5 Core Acoustics Private Limited is a Company incorporated on 07.09.1995 with CIN U29100DL1995PTC072253 under the provisions of erstwhile Companies Act, 1956 having its registered Office at WZ-15B, Uggarsain Market, Ashok Nagar, New Delhi- 110018.

4. The Corporate Debtor had placed various purchase orders of corrugated boxes with the Applicant since April, 2017. In terms of the said purchase orders the goods were delivered to the Corporate Debtor from time to time. Accordingly, the applicant raised invoices from February 2019 to November 2019, of Rs. 25,56,641.40/- in total, which were duly received and acknowledged by the Corporate Debtor through the Authorized representative of the Corporate Debtor.

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*Company Petition No. IB-468/(ND)/2020
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5. The applicant submits that till date no grievance has been raised by the Corporate Debtor as to the quality or quantity of the materials supplied by them. Further the Corporate Debtor has made a payment of Rs. 22,51,892/- towards the invoices raised. However, with respect to the remaining amount several reminders were made to the corporate debtor, to which they failed to reply or clear the outstanding dues.

6. Therefore, the applicant sent a Demand Notice dated 05.11.2019 demanding payment of an unpaid operational debt i.e. Rs. 3,79,342.40/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The demand notice was duly served upon the corporate debtor at its registered office as per MCA master data. However, he failed to reply to the said notice.

7. Consequently, the Applicant filed the present Application. It is submitted by the Applicant in Part IV that the amount of his total debt due as on date is of Rs. 3,79,342.40/- along with interest charged at the rate of 24% per annum from the date of invoices respectively. The Applicant has also filed an affidavit dated 04.02.2020 under Section 9(3)(b) stating that no notice of dispute has been raised.

8. That on perusal of records it has been observed that inspite of various opportunities no one appeared or filed reply on behalf of the Corporate Debtor. Therefore, vide order dated 19.07.2022, the Corporate Debtor was proceeded ex-parte.

9. On perusal of the documents on records, it is observed that the date of default as per Form-5, Part IV is date of expiry of credit period of thirty days for each invoices. In terms of the same the last invoice was raised on 11.02.2019 which became due on 13.03.2019. The present application has

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been filed on 05.02.2020. Therefore, from the date of last invoice the present application is within limitation.

10. On considering the documents on record and submissions made, it is observed that the Corporate Debtor has defaulted in payment of operational debt, in terms of the Invoices No. TWN/2018-19/1083, TWN/2018-19/313 and TWN/2018-19/87 amounting to a total sum of Rs. 3,04,749/- along with interest calculated @ 24% per annum. Further, in the present case the corporate debtor has failed to appear and file its defence. This Tribunal is of the view that default has occurred on the part of the corporate debtor in pursuance of invoices raised on behalf of the applicant. Accordingly, the present application stands admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.

11. In the given facts and circumstance, the operational creditor has been able to establish the default on part of the corporate debtor in payment of the operational debt. The present Application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The present application is filed on 05.02.2020 and the debt fell due on 13.03.2019, therefore the present application is not barred by the threshold limit of Rs.1,00,00,000/- as per Section 4 of IBC. Further the default being well above, **the present application is admitted in terms of Section 9(5) of the IBC.**

12. **Accordingly, the CIRP is initiated** and moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate Debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to

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14(4) of the Code shall come in force. 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.

13. Since there is no IRP has been proposed by the Operational Creditor, this Bench appoints Mr. Radhey Shyam Yadav as IRP of the corporate debtor, having registration no. IBBI/IPA-001/IP-P-01496/2018-19/12255, having email address rsyadav01@gmail.com as an IRP of the Corporate Debtor with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and hereby:

“Mr. Radhey Shyam Yadav is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The court officer will inform the IRP so appointed by all modes.”

14. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet to the immediate expenses. IRP may on receipt of Rs.2 Lakhs inform in writing to this tribunal that Operational Creditor has complied with directions. The amount however will be subject to adjustment by the Committee of Creditors, in resolution process cost as accounted for by Interim Resolution Professional.

15. Let copy of the order be served to the parties. Applicants are also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of the order shall also be forwarded to IBBI for

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its records and to ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.

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(RAHUL BHATNAGAR)
MEMBER (T)

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MEMBER (J)