

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-2198(ND)2019

IN THE MATTER OF:

**I-Promark Services
Krishna, A 601, Vasant Nagar Complex
Thakur Village, Kandivali (East)
Mumbai-400101**

...Operational Creditor

VERSUS

**M/s Bony Systems and Technologies Limited
First Floor, S-44 Panchsheel Park
New Delhi-110017**

... Corporate Debtor

Section: 9 of IBC, 2016

Judgement Delivered on: 12.02.2020

CORAM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Petitioner : Mr. Bharat Singh, Advocate

For the Respondent : Mr. Sanyam Goel, Advocate



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M/s I-Promark Services vs M/s Bony Systems and Technologies Ltd.

JUDGEMENT

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 9 of the 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 M/s I-Promark Services through its Authorized Representative Mr. Sreekanth Shrivante (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Bony Systems and Technologies Ltd. (for brevity 'Corporate Debtor').

2. The Corporate Debtor namely, M/s. Bony Systems and Technologies Ltd. is a Company incorporated on 06.05.2010 under the provisions of Companies Act, 1956 with CIN No. U29292DL2010PLC202363, having its registered Office at 1st Floor, S-44 Panchsheel Park, New Delhi-110017.

3. The Authorized Share Capital of the Respondent Company is Rs.5,00,00,000 and its Paid-up Share Capital is Rs.5,00,000 as per the Master Data of the Company annexed.



4. It is submitted by the Operational Creditor that it is engaged in the business of developing and supplying Automotive Filters. It is added that the Corporate Debtor had placed orders for the desired products from time to time.

5. It is added by the Operational Creditor that in pursuance of such orders, it had supplied 3 consignments and raised 3 Invoices dated 05.05.2018 against the same. The total value of the consignments inclusive of tax and discounts comes to Rs.10,55,500. After adjusting the payment received, the net payable amount of debt comes to Rs.4,72,714 (Four Lakh Seventy Two Thousand Seven Hundred and Fourteen) only.

6. It is submitted by the Operational Creditor that for the total liability of Rs.4,72,714, it had sent a Demand Notice dated 30.05.2019 under Section 8 of IBC 2016 vide Speed Post at the Registered Office of the Corporate Debtor. It is further submitted by the Operational Creditor that the Corporate Debtor had not replied to the Demand Notice. The same has been averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016. The Operational Creditor has also annexed the Bank Statements for the period 02.07.2018 to 31.03.2019 issued by Greater Bank, The Greater Bombay Cooperative Bank Limited in compliance of Section 9(3)(c) of IBC 2016.

7. That the Corporate Debtor has filed its reply on 07.11.2019 and had submitted that :

“4. That upon receipt of the Demand Notice under Section 8 of IBC 2016, the Corporate Debtor raised the dispute vide letter dated 06.06.2019 and the same was sent to the Applicant via Speed Post. That at occasion the delivery report of the postal department was showing that this docket was in fact received opened and returned by the Applicant. That the said docket was received back by the Corporate Debtor. That the postal receipts evidencing the dispatch of the said notice of dispute were kept at one of the group company address of the Corporate Debtor located at Faridabad. That the said premises caught fire on 20.08.2018 and as a result the entire record evidencing the dispatch of the said notice of dispute was also burnt down and could not be produced before this Hon’ble Tribunal.

5. That again on 26.08.2019 the Corporate Debtor raised notice of dispute and dispatched the same to the Applicant. The said notice of dispute-dated 26.08.2019 was returned back to the Applicant on 11.09.2019.”

8. It is further submitted by the Corporate Debtor that it had returned the goods back to the Operational Creditor on 12.01.2019. To support its contention, the Corporate Debtor has annexed Transport Chalan dated 12.01.2019 in its reply.

9. That the Operational Creditor had submitted that vide its email dated 17.01.2019 it had informed the Corporate Debtor that it cannot take the goods back. The contents of the Email are reproduced below :



*“Dear Mr. CM Pandey,
Greetings from i-Promark*

This refers to my joint telecon with yourself and your Mr. Srivastava on 14th Jan 2019 on the subject. During the telecon, I had explained to Mr. Srivastava the main reason for not able to take back the unsold stocks lying at your end was that these parts were exclusively developed by us in your BSTL brand. I am quite sure that he is fully convince with the genuine reason given by me.

We are a very small player in the After-Market Business and it is becoming increasingly difficult to carry the burden of overdue payments. Hence we request you to kindly arrange for making the balance payment of Rs.740440 without further delay.

Looking forward to your urgent support.

*Thanks & Regards,
Vikrant Baibhaw”*

10. The Corporate Debtor had denied the contention made by the Operational Creditor in the aforesaid email on the ground that there was no such agreement on record between the parties..

11. Further, it is submitted by the Corporate Debtor that the Applicant had filed an application before the Micro, Small and Medium Enterprise Facilitation Council (MSEFC) under Section 18(1) of Micro, Small and Medium Enterprise Development Act, 2006. It is added that the said application was filed for recovery of its alleged dues of Rs.7,40,440. It is submitted by the Corporate Debtor that it had sent its reply dated 20.03.2019 to the Notice of MSEFC to the Joint Director of Industries

(MMR) Mumbai, which, according to them, indicates a pre-existing dispute between the Parties.

12. During the course of the argument, the Ld. Counsel for the Corporate Debtor neither denied the purchase of goods nor the balance outstanding. It was submitted by the Ld. Counsel for the Operational Creditor that as per the purchase order the payment was required to be made by the Corporate Debtor within 60 days from the receipt of goods. However, the Corporate Debtor had neither paid nor returned the goods within 60 days. The Corporate Debtor had returned the goods vide Chalan dated 12.01.2019 i.e., much later than the stipulated period. Therefore, the same were not accepted by the Operational Creditor. Further, the Ld. Counsel for the Corporate Debtor submitted that the reply to MSEFC Notice dated 20.03.2019 alleged to have been sent by the Corporate Debtor was neither delivered to the Operational Creditor nor the same reached the office of MSEFC.

13. After hearing submissions of both the Parties, this Bench is of the view that the plea raised by the Corporate Debtor that it had returned the goods to the Operational Creditor does not merit consideration since the same was done much after the expiry of 60 days. Further, the MSEFC vide its Intimation Letter dated 14.03.2019 had only asked the Corporate Debtor to make the payment within 15 days from the receipt of the notice, failing which the case will be registered by the MSEFC Mumbai. The



Corporate Debtor, who raised the plea of a pre-existing dispute on the ground of their reply dated 20.03.2019 to the Intimation of MSEFC, failed to provide any proof of its delivery to the Operational Creditor. Also, the Corporate Debtor did not place any document in support of Registration or pendency of any proceeding before the MSEFC, Mumbai.

14. In the given facts and circumstances, the present Petition being complete and establishing the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs.1,00,000 for the unpaid invoice, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 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;
- (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.”

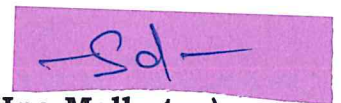
15. The Operational Creditor has not proposed any IRP. Therefore, this Bench based on the list furnished by IBBI, appoints Mr. Mohinder Singh as an IRP, Registration No. IBBI/IPA-001/IP-P00593/2017-18/11046 (Email: mohinder@singhandsingh.in and Mobile No. 9910522800) subject to the condition that no disciplinary proceedings are pending against the IRP named and disclosures as required under IBBI Regulations, 2016 are made within a period of one week from this Order. The IRP is directed to take the steps as mandated under this Code specifically under Section 17, 18, 20 and 21 of IBC, 2016.

16. The Operation Creditor is directed to deposit Rs.1,00,000 (One Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

17. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above, by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.



(L. N. Gupta)
Member (T)



(Ina Malhotra)
Member (J)