



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.301  
CP(IB) 377 of 2020

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Kayem Industries Partnership Firm  
V/s  
Aashinita Enterprise LLP

.....Applicant

.....Respondent

**Order delivered on: 14/09/2023**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant : Mr. Kunjal Dalal, PCS  
For the Respondent : Mr. Jaimin Dave, Adv.

**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**



**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT – I**

**CP(IB) No. 377 of 2020**

*[Application for initiation of Corporate Insolvency Resolution Process U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF

**Kayem Industries- Partnership Firm**

Plot No. 556, Opposite Road No. 10.  
GIDC Kathwada. Ahmedabad,  
Gujarat - 382430

**... Applicant/Operational Creditor**

**VERSUS**

**Aashinita Enterprises LLP**

4A Golden Tulip Bungalows, Shreyas,  
Ambavadi, Ahmedabad,  
Gujarat - 380015

**... Respondent/Corporate Debtor**

**Order Pronounced on: 14.09.2023**

**CORAM:**

**SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)**

**SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

For the Applicant : Mr. Kunjal Dalal, PCS.

For the Respondent : Mr. Jaimin Dave, Adv.



**ORDER**  
**(Per: Bench)**

1. This is an application filed on 17.11.2020 by one M/s. Kayem Industries - Partnership Firm (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Aashinita Enterprises LLP (hereinafter referred to as '**Corporate Debtor**') with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint IRP.
2. On perusal of the Part-I of Form-5, it reveals that the applicant herein is a Partnership Firm having address at Plot No. 556, Opposite Road No. 10. GIDC Kathwada, Ahmedabad, Gujarat - 382 430.
3. Part-II of the form reveals that the Corporate Debtor M/s. Aashinita Enterprises LLP (formerly known as Aashinita Enterprises Private Limited) with registration number is AAE-9344 is Limited Liability Partnership Firm (LLP).
4. It is seen from page no. 13 of the application that Aashinita Enterprises Private Limited was converted to as Limited Liability Partnership on 15.10.2015. The registered office of the Corporate Debtor is situated at 4A Golden Tulip Bungalows, Shreyas, Ambavadi, Ahmedabad, Gujarat 380 015.
5. The present application has been filed by one Mr. Ashvinbhai Prabhudas Patel a partner of the applicant firm. The copy of



authority letter is placed at Annexure-D, which is signed by the two partners.

6. From Part III of the Application, it is seen that the applicant has not named any IRP.
7. The Part-IV of the application reveals that the applicant is claiming a debt of Rs.1,32,26,332/-. The debt is in respect of Rent payable by Corporate Debtor to Operational Creditor pursuant to Rent Agreement dated 30.06.2015. The amount of debt is in respect of rent for the period from 01.06.2016 to 01.02.2020. The details of rent payable are provided in Annexure E. The copy of the rent agreement is attached at Form-IV Annexure F.
8. It is stated that date of default is 01.02.2020, being the due date for payment of rent for last month claimed in this application and demand notice issued.
9. The Corporate Debtor relies upon the following documents in support of the application:-
  - I. Copy of civil suit no 1481 of 2016 filed by Corporate Debtor seeking mandatory relief and copy of order directing the corporate debtor to file the same before appropriate Court. (Annexure H).
  - II. Copy of Commercial Suit no. 213 of 2017 filed by Corporate Debtor before Commercial Court Ahmedabad for Damages. (Annexure I).
  - III. Affidavit Pursuant to Section 9(3) of IBC, 2016 (Annexure J).



List of documents attached as per instruction to Form 5:

- IV. Copy of Demand Notice dated 06/10/2020 in Form 3 and Notice in Form 4 issued to the Corporate Debtor (Annexure K)
  - V. Reply to Demand notice dated 17/10/2020 purporting to be Notice of Dispute received from Advocate Jaimin R Dave on behalf of Corporate Debtor (Annexure L)
  - VI. Affidavit in support of Application (Annexure M)
  - VII. Copy of Bharat Kosh receipt evidencing payment of application fee (Annexure N)
  - VIII. Proof of Serving of Application to the Corporate Debtor [Not attached to the Copy served on Corporate Debtor} (Annexure O).
9. It is submitted that the applicant herein has given an industrial plot bearing no. 556 at GIDC, Kathwada Industrial Estate along with Shed Area being 1486.20 sq. mts. along with land admeasuring around 5442.50 sq. mts, for the period on 01.07.2015 to 30.06.2020. For an annual rent of Rs.2,00,000/- (+ applicable service tax) for the period on 01.07.2015 to 30.06.2016. Thereafter, by mutual understanding of both the parties there could be an increase of 5% to 10% in the rental amount.
10. The Corporate Debtor was to pay all types of charges levied by GIDC, bill from KIA INFRACTURE DEVELOPMENT LTD., and



all Government and Semi - Government taxes, electricity bill etc. All the expense of further power-load required for the use of business of Second Part shall be borne by the Second Part (Corporate Debtor). The Applicant herein has not attached any of the invoice along with the application.

12. The notice under Section 8 was duly served on the Respondent on 09.10.2020, and the same was replied by the Corporate Debtor through his advocate. The following objections were raised by the Corporate Debtor:-

- (i) Demand notice is not accompanied by valid authority letter.
- (ii) Pre-existence dispute *qua* the alleged outstanding debt.
- (iii) Non - signing of application for increase in the electricity load by the applicant.
- (iv) Issuance of legal notice dated 24.06.2016 by corporate debtor.
- (v) Pendency of Commercial Civil Suite no. 61 of 2019 before the Learned City Civil Court, Ahmedabad.
- (vi) Pendency of Commercial suit No. 213 of 2017 before the Learned Commercial Court Ahmedabad seeking damages to the tune of Rs.10,51,26,526/-.

9. The reply was filed by the Corporate Debtor on 16.04.2021. The Corporate Debtor further states that another company within the same management as of the Corporate Debtor namely M/s. Aashinita Engineering Pvt. Ltd., is also operating from the said premises and that plot was leased of both the persons.



10. The main contention of the Respondent is that they were in need of additional electricity load for which they made a request to the applicant herein to sign necessary forms to be submitted to Uttar Gujarat Vij Company Ltd.
11. The Applicant herein refused to sign the same leading to insufficient power load, for this legal notice was issued on 24.06.2016. However, despite notice, Civil Suit, Commercial Suit, the load was never increased from 54 KV to 99 KV due to insufficient load, the respondent has suffered breakdown of machine and suffered losses.
12. The respondent states that the outcome of the various civil proceedings initiated by the respondent is awaited and thus relying upon *Mobilox Innovations Private limited vs. Kirusa Software Private Limited reported in AIR 2017 SC 4532*.
13. The respondent seeks dismissal of the present application.
14. Rejoinder was filed on 22.04.2021. It is admitted by the corporate debtor in reply that Civil Suit No. 1481 and Commercial Suit No. 213 between the parties is pending at various forums. It is further stated that there is an admission in para 6 of the reply by the Corporate Debtor in suit no. 1481 of 2016 the reliefs sought is to deposit the rent in the Court.
15. It is submitted that in special civil suit No. 270 of 2017, the petitioner herein has sought relief to get back the possession of



the leased premises and for recovery of rent and other dues and the same cannot be considered as dispute.

16. The additional affidavit was filed by the respondent under diary no. D3237 on 29.08.2023. The respondent is states that they a running company. In para No.7, the respondent has very clearly stated that, “the respondent- LLP is not operating from the leased premises any more”. In other words, respondent- LLP has vacated the leased premised since November, 2022 and is now operating from different premises.
17. Heard both the sides. The perusal of the documents reveals that, Civil suit No. 213 of 2017 was filed by the Respondent against the applicant herein seeking certain damages, besides the above there are two more suits i.e. Civil Suit No. 1481 of 2016 and Civil Suit no. 270 of 2017 which are pending before the Civil Court / Commercial Court. Thus, the entire controversy between the parties is marred with several litigation.
18. It is not in a dispute that a demand notice was issued by the applicant herein and was received by the Corporate Debtor herein. On perusal of the application and demand notice reveals that the Applicant herein has not attached along with the application duly receipted copies of various invoices. During the hearing, Ld. Counsel for the applicant confirmed that no invoices have been issued.
19. On perusal of the page no. 15 and 16 reveals that the applicant herein is seeking service tax to the extent of 1,945,372.80/- for which it was necessary to issue tax invoice.



20. It is also seen that the applicant herein has unilaterally increased the amount of rent from Rs. 2,42,000/- on 01.07.2017 to Rs. 2,66,200 on 01.07.2018 and to Rs.2,92,820/- on 01.07.2019. On perusal of the rent agreement attached with the application reveals that the rent was to be increased as per mutual agreement between the parties and no such mutual agreement was placed before us for consideration.
21. In light of the above discussion and relying upon *Mobilox Innovations Private limited vs. Kirusa Software Private Limited reported in AIR 2017 SC 4532 mobilox*, we are of the view, that there exists a plausibility of dispute between the parties and accordingly this application **C.P. (IB) 377(AHM)2020** stands dismissed. No order as to cost.

-SD-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-SD-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

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