IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-2185/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

SUN CONTROL SYSTEMS
Registered office at:
Plot No. 88, Phase- IV, Sector-57,
Kundli, Sonipat, Haryana- 131028

... *Operational Creditor/Applicant*

Versus

M/s AARCITY INFRASTRUCTURE PRIVATE LIMITED
Registered office at:
Unit No. 552, Fifth Floor,
Terrace Tower- B, D-4,5,6,
Krishna Apra Business square,
Netaji Subhash Place, New Deli- 110034

...*Corporate Debtor/Respondent*

Coram:
SH. P.S.N. PRASAD,
Hon'ble Member (Judicial)

SH. RAHUL BHATNAGAR,
Hon'ble Member (Technical)

Appearance:

For Operational Creditor: Mr. Ahsan Ahmad, Mr. Bhuvan Arora, Mr. Dhrubajit Saikia and Ms. Megha Purohit Advocates.

For Corporate Debtor: Mr. Pawan Kumar Choudhary, Advocate.

ORDER

Per P.S.N. PRASAD, Member (Judicial)

Date: 28.02.2022

1. This is an application filed by the Operational Creditor, 'Sun Control Systems'., through one of its Partner Mr. Ramesh Gupta, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code') against the Corporate Debtor, 'M/s Aarcity Infrastructure Private Limited.' for the alleged default on the part of the Corporate Debtor in clearing the debt of Rs. 56,38,850/- (Rupees Fifty-Six Lakh Thirty-Eight Thousand Eight Hundred Fifty Only), as alleged by the Operational Creditor, towards the goods provided. The details of transactions leading to the filing of this application as averred by the Operational Creditor are as follows:
    i. That the Operational Creditor is a Micro category manufacturing enterprise registered with the Ministry of Micro, Small and Medium Enterprise as per MSME Development Act, 2006 and is a Registered Partnership firm. The Operational Creditor is engaged in the business of manufacturing, supply and fixing of UPVC Doors and Windows.
    ii. It was submitted that the Corporate Debtor approached the Operational Creditor in the year 2015 and issued three purchase orders dated 10.06.2016, 05.05.2017 and 16.08.2017 in favor of Operational Creditor for supply and fixing of UPVC Profiles,

doors and windows for the Corporate Debtor's project named "Regency Park".

iii. The Operational Creditor based on the said purchase orders supplied goods as per specifications of the Purchase orders and raised 21 invoices from 22.09.2015 till 28.12.2018. That the copy of invoices, Debit notes and RA Bills bearing Invoice No. 0058 dated 22.09.2015 amounting to Rs. 52,783/-, Invoice No, 0096 dated 03.02.2016 amounting to Rs. 14,763/-, RA Bill No. 1 dated 03.09.2016 amounting to Rs. 13,11,181/-. Debit Note dated 04.02.2016 amounting to Rs. 3,500/-, RA Bill No.2 dated in 09.2016 amounting to Rs. 3,59,286/-, RA Bill No.3 dated 03.10.2016 amounting to Rs. 4,57.303/-, RA Bill No.4 dated 05.10.2016 amounting to Rs. 4,69.778/-, RA Bill No.5 dated 24.10.2016 amounting to Rs. 4,87,004/-, RA Bill No.6 dated 11.01.2017 amounting to Rs. 4,82849/-, RA Bill No.7 dated 23.01.2017 amounting to Rs. 5.42,979/-, RA Bill No.8 dated 30.03.2017 amounting to Rs. 4,36,408/-, RA Bill No.9 dated 15.06.2017 amounting to Rs. 3,31,464/-, RA Bill No.10 dated 17.08.2017 amounting to Re. 7,77,996/-. RA Bill No.11 dated 17.08.2017 amounting to Rs. 5,97,271/-, RA Bill No.12 dated 23.06.2017 amounting to Rs. 8,04 830/-RA Bill No.13 dated 29.06 2017 amounting to Rs. 15,349,57/-. Invoice No. 026 dated 05.09.2017 amounting to Rs. 10,39,495/-. Invoice No. 030 dated 11.09.2017 amounting to Rs. 8,55,933/-. Invoice No.

031 dated 11.09.2017 amounting to Rs. 3,95,333/-. Debit note No. 4 dated 05.02.2018 amounting to Rs. 6,930/-, Invoice No.003 dated 01.11.2018 amounting to Rs. 2,06,838/-, Invoice No.004 dated 01.11.2018 amounting to Rs. 2,56,488/- and Invoice No.005 dated 28.12.2018 amounting to Rs. 3.83,909/- raised by the Operational Creditor and acknowledged by the Corporate Debtor are annexed with the application as Annexure A VI.

iv. The Operational Creditor further submitted that after raising invoices various emails were sent requesting the Corporate Debtor for release of the outstanding amount. However, the corporate Debtor failed to make the payment of outstanding debt.

v. That the Operational Creditor issued the statutory Demand Notice under section 8 of IBC, 2016 upon the Corporate Debtor through email on 03.06.2019 and the same was delivered vide speed post on 10.06.2019 demanding the outstanding payment. It was further submitted that the Corporate Debtor vide its reply dated 10.06.2019 raised dispute regarding the goods delivered.

2. Consequent to the notice issued by this Tribunal the Corporate Debtor filed its reply affidavit submitting the following:

a. That the Operational creditor is an unregistered Partnership Firm within the meaning of section 59 of Indian Partnership Act, 1932 and, as such, is not competent to file present petition/application against the Operational Creditor being barred under section 69(2) of Indian Partnership Act, 1932. Therefore, in the light of the fact of the Operational Creditor being an Unregistered Partnership Firm, it is not a 'person' within the meaning of Section 3(23) of the Insolvency and Bankruptcy Code, 2016.

b. That the Operational Creditor has been demanding the entire payment of the Invoices raised by him to the Corporate Debtor annexed as Annexure A/VII (Colly.) to the Application under reply. However, the agreement between the Corporate Debtor and the Operational Creditor speaks of some other terms as against the demand of the Operational Creditor. As per the Annexure A/V of the Application under reply, 15% of the payment was payable after installation of the goods at the Site and 5% Retention money was payable after six (06) months of the completion of the Installation process only.

3. While arguing the matter before the Tribunal the Ld. Counsel for the Operational Creditor submitted that the last part payment of Rs. 1,00,000/- was received by the Operational Creditor on 18.02.2019, therefore the present application is within the period of limitation. Further, the counsel submitted that the Corporate Debtor failed to establish the pre-existence of dispute as the Operational Creditor rendered its services to the Corporate Debtor for the period from

22.09.2015 to 28.12.2018 and no dispute regarding materials supplied was ever raised by the Corporate Debtor.

4. The Ld. Counsel for the Corporate Debtor while arguing the matter submitted that at the time of filing of the application the Operational Creditor had not completed his work which was required to be completed as per work orders and therefore there was an existence of dispute between the parties.

5. We have heard the arguments advanced by the Learned Counsels for both the parties and perused the documents filed. The Operational Creditor herein has prayed for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for the outstanding debt of Rs. 56,38,850/- The Statutory Demand Notice under section 8 of IBC, 2016 has been sent by the Operational Creditor to the Corporate Debtor on 03.06.2019. The Corporate Debtor replied to the Demand Notice by way of letter dated 10.06.2019 and raised pre-existence of dispute between the parties.

6. The Corporate Debtor's contention that the operational creditor is an unregistered partnership firm and is not competent to file present application does not hold any merit as the Operational Creditor in its rejoinder affidavit has annexed the copy of the Partnership Deed dated 01.04.2001 along with Form-A maintained with Register of Firms maintained under section 59 of Indian Partnership Act, 1932. It is

further pertinent to mention that the present application has been filed by one of the partners of the Operational Creditor as required under the law.

7. In regard to the Corporate Debtor's submission regarding pre-existence of dispute between parties it is pertinent that no documentary evidence or any communication substantiating the existence of dispute has been annexed with the reply. However, a Memorandum of Settlement vide email dated 12.12.2019 i.e., after filing of the present application was sent by the Corporate Debtor for settling amounting of Rs.31,11,025/-.

8. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the Purchase orders and invoices raised by Operational Creditor from 22.09.2015 to 28.12.2018 along with the copy of ledger account of Corporate Debtor maintained by the Operational Creditor as well as copy of ledger account of Operational Creditor maintained by the Corporate Debtor clearly indicates that there is an operational debt which is due from the Corporate Debtor. Furthermore, the Corporate Debtor's contention regarding pre-existence of dispute stands no merit

as no dispute in regard to goods supplied was raised prior to the issuance of statutory Demand Notice under section 8 of IBC, 2016.

9. Therefore, this Adjudicating Authority is of the view that there is an operational debt which is due from the corporate debtor and the corporate debtor has defaulted in making payment of the amount due along with that in absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.

10. The Operational Creditor in Part-III of its application proposed the name of Mr. Deepak Kumar, having Registration Number: IBBI/IPA-002/IP-N00584/2017-2018/11778 subsequently, the Operational Creditor filed an application i.e. IA/659/2021 for change of name of proposed IRP from Mr. Deepak Kumar to Mr. Arun Chadha. This Tribunal vide its order dated 16.03.2021 took the written communication of the proposed IRP on record and allowed the application.

11. Therefore, this Adjudicating Authority, hereby appoints Mr. Arun Chadha, Reg. No: IBBI/IPA-001/IP-P00165/2017-2018/10334 to act as Insolvency Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

"(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.

14. *It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the*

time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of 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.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as

may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

-Sd-

(SH. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-Sd-

(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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