



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT – IV

ITEM No.504
IB/2926/ND/2019

IN THE MATTER OF:

Elantas Beck India Ltd

...

Applicant

Versus

Agh Wires Pvt Ltd

...

Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 16.10.2023

Coram:

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

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IB/2926/ND/2019 stands admitted.

Sd/-

DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-

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



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
COMPANY PETITION I.B. NO. 2926/ND/2019**

IN THE MATTER OF:

ELANTAS BECK INDIA LIMITED

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

AGH WIRES PRIVATE LIMITED

...CORPORATE DEBTOR/RESPONDENT

Order Delivered on: 16.10.2023

CORAM:

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

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Applicant : Mr. Ashish Choudhary & Ms. Kinjal Sethi, Advs.

ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. This instant application was filed by M/s Elantas Beck India Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor'), having office at 147, Mumbai-Pune Road, Pimpri, Pune-411018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s AGW Wires Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 71,92,458/- only.
2. The Respondent Company M/s AGW Wires Private Limited having CIN: U28910DL2011PTC222577 was incorporated on 20.07.2011 under the



provisions of the Companies Act, 1956 having its registered office situated at A-19/B-1 Extension, Mohan Co-operative Industrial Estate, P.O. Badarpur, Mathura Road, New Delhi-110044. Since the registered office of the Respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.

3. The present petition was filed on 08.11.2019 before this Adjudicating Authority by Mr. Abhijit Tikekar, the Head Legal & Company Secretary and the Authorized Signatory of the Operational Creditor's Company, authorized vide Board Resolution dated 23rd July, 2019. The total amount claimed to be due and payable is Rs. 71,92,458/-. The date of default is not expressly mentioned in Part-IV of the petition. However, it is mentioned in the Demand Notice, that the debt fell due after 45 days from the date of receipt of respective invoices.
4. Briefly stated the facts of the present case as averred by the applicant are:-
 - i. That the operational creditor/applicant was approached by the corporate debtor for purchase and supply of the following items: Enamel (H Class) TEREPEC MT 533-36 PA, Enamel (H Class) TEREPEC TR 543-38 and Enamel (Top Coat) AI 1013BV/35 (hereinafter referred to as "Products"). The Operational Creditor/Applicant agreed to sell and supply the required products to the Corporate Debtor as per requisitions.



- ii. Thereafter, the Corporate Debtor issued purchase order dated 16.10.2017 upon the operational creditor for sale of Enamel (H Class) TEREPEC MT 533-36 PA, Enamel (H Class) TEREPEC TR 543-38 and Enamel (Top Coat) AI 1013BV/35 (“products”) and that upon receiving the purchase order, the operational creditor accepted the same and supplied products to the corporate debtor.
- iii. That upon delivery of the products, the operational creditor raised invoices on the corporate debtor, which were accepted by the corporate debtor. The payment in respect of said invoices as mentioned therein was warranted within the credit period of 45 days from the date of receipt of respective invoices. Thus, the aggregate amount of invoice payable by the corporate debtor is Rs. 28,50,624/-.
- iv. That the Corporate Debtor failed to pay the invoice amount, within the stipulated credit period, to the operational creditor, even though the delivery of the said products was received by the Corporate Debtor without any objections or disputes.
- v. That the Corporate Debtor was reminded to make the payment of the invoice amount by the operational creditor on various occasions. However, the corporate debtor assured the operational creditor that it would be making payments and admitted its liability towards repayment of dues.
- vi. That further the corporate debtor issued a cheque bearing no. “276710” dated 11.11.2017 for the amount of Rs. 11,89,440/-



against the invoice no. IHA4287. However, the said cheque was dishonored with the remark “Insufficient funds”.

- vii. That the Corporate Debtor made a partial payment of Rs. 6,46,331/- by way of RTGS on 5th January, 2018 towards the invoices. However, the Corporate Debtor defaulted in making the remaining payments to clear the invoice amount. Thus, the corporate debtor is liable to pay a sum of Rs. 22,04,293/- as outstanding amount.
- viii. That on 8th May, 2018, a letter was sent to the corporate debtor by the operational creditor wherein it mentioned the event that took place between the corporate debtor and the operational creditor with regard to the pending payments and further called upon the corporate debtor to make the payment of the amount due to the operational creditor by 25th May, 2018. However, the Corporate Debtor failed to respond to the letter or to make any payments.
- ix. That further, the Corporate Debtor has also failed to provide ‘C-Forms’ to the Operational Creditor, owing to which, the Corporate Debtor is liable to pay the tax liability amounting to Rs. 49,88,165/-. Therefore, the total amount of unpaid operational debt (in default) payable by the Corporate Debtor to the Operational Creditor aggregates to Rs. 71,92,458/-.
- x. Thereafter, the Operational Creditor sent a demand notice on 13.06.2019 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the



Corporate Debtor demanding outstanding amount of Rs. 71,92,458/- which was duly served upon the Corporate Debtor at its registered office. However, no reply to the notice has been received from the Corporate Debtor disputing the Operational Debt. Therefore, the present application is filed in Form 5.

Analysis and Findings

5. We have heard the Ld. Counsel on behalf of the Operational Creditor and perused the averments made in the application. The relevant documents annexed with the application have been examined. Since the registered office of the Respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
6. Notice was issued by this Adjudicating Authority to the Corporate Debtor once again on 29.07.2021 as this application is of year 2019. In the Adjudicating Authority's daily order, it is made clear that if on the next date i.e., 16.08.2021 none appears on behalf of the Corporate Debtor, the Corporate Debtor will be proceed ex-parte. However, despite service of notices, none appeared on behalf of the Corporate Debtor therefore, the Corporate Debtor/Respondent was proceeded ex-parte vide order dated 14.07.2022.
7. It is observed that the Operational Creditor has sent a demand notice dated 13.06.2019 to the corporate debtor under section 8(1) of the



Insolvency and Bankruptcy Code, 2016, demanding payment of outstanding dues worth Rs.71,92,458/- including C-Form Amount. We observe that this notice was served through Registered post which was received by the Corporate Debtor on 17.06.2019 as per tracking report filed with the application. Therefore, we hold that the statutory notice under section 8 of Code was duly served. From the records placed before this Adjudicating Authority, it transpires that the Corporate Debtor neither replied to the Demand Notice nor paid the outstanding amount to the Operational Creditor. It is also to be noted that there has been no appearance on the part of the Corporate Debtor since petition for initiating Corporate Insolvency Resolution Process has been filed by the Operational Creditor.

8. In *Vinay Kumar Ranchhoddas Mohota Vs Shree Shyam Trading Co. & Anr.*, Company Appeal (AT) (Insolvency) No. 235 of 2022, the Hon'ble National Company Law Appellate Tribunal has held that *"After ample opportunities granted by the Adjudicating Authority when the appellant has not availed the opportunities to appear and also not filed reply to section 9 application, no option was left with the Adjudicating Authority except to proceed ex-parte and pass order of admission."* Therefore, we are constrained to adjudicate this present application as the Corporate Debtor remained ex-parte.
9. The amount claimed to be in default is Rs. Rs.71,92,458/- including C-Form Amount which fulfils the criteria of minimum threshold limit of Rs. 1 lakh as required by Section 4 of the IBC. Furthermore, the date of default is not expressly mentioned in Part-IV of the petition. However,



it is mentioned in the Demand Notice, that the debt fell due after 45 days from the date of receipt of respective invoices. From the details of invoices, it is found that first invoice was issued on 27.09.2017 and the last invoice was issued on 24.11.2017. Therefore, the dates of default would fall between 11.11.2017 and 08.01.2018. Accordingly, it is observed that the present petition is filed under the period of limitation.

10. In order to determine the admissibility of petition for initiating CIRP under section 9 of the Code, the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353***, is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (Rs. 1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
- b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

11. In the first instance, to determine whether the said amount claimed by the Operational Creditor would fall under the ambit of Operational



Debt, it is pertinent to analyze the definition of ‘Operational Debt’ as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under the said section, ‘Operational Debt’ is defined as:

“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

12. While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the Corporate Debtor issued purchase order dated 16th October, 2017 upon the Operational Creditor for sale of the Products. The Operational Creditor delivered the products to the Corporate Debtor for which invoices were raised by the Operational Creditor. The said Operational Creditor has annexed true copies of the invoices which justifies that there had been a transaction between the parties. Furthermore, the Ledger Account of the Operational Creditor specifies that there is an outstanding amount of Rs. 22,04,293/- payable by the Corporate Debtor to the Operational Creditor. Therefore, the outstanding debt which is due and payable to the Operational Creditor would fall under the ambit of ‘Operational Debt’ and hence, the said Creditor would be termed as the ‘Operational Creditor’ within the meaning of Section 5(20) of the Code.

13. Moreover, in the present case, the Corporate Debtor has neither appeared nor has taken the defense of any pre-existing dispute, nor there is any suit or arbitration proceeding regarding the present matter, pending before any forum.



14. It is further observed that the Operational Creditor has established the existence of an Operational Debt by annexing true copies of the invoices, and statements along with a certificate under Section 65B of the Indian Evidence Act, 1872. The said invoices sufficiently justify that the Operational creditor had delivered products to the Corporate Debtor and that the amount exceeding Rs. 1 Lakh is due and payable by the Corporate Debtor to the Operational Creditor and the same has not been paid yet. Therefore, we are of the view that there is a debt due and payable and that there has been default committed on the part of the Corporate Debtor.
15. The Operational Creditor has also filed an affidavit under section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016, which shows that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt.
16. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code (stipulated at the relevant point of time). In the light of the above facts and circumstances, it is, hereby ordered as follows: -
- i. The application bearing CP (IB) No. 2926/ND/2019 filed by M/s Elantas Beck India Ltd., the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy



(Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Agh Wires Pvt Ltd., the Corporate Debtor, is hereby admitted.

- ii. The Applicant has not proposed the name of any IRP in Part-III of the application. Therefore, based on the list provided by the Insolvency and Bankruptcy Board of India (IBBI) for July 01, 2023 to December 31, 2023, and as per the serial no. 30 in the said list Mr. Varun Sethi, Registration Number IBBI/IPA-002/IP-N01106/2021-2022/13634 Email: ca.varun.sethi.81@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of Form AA, Disclosure and a valid Authorization for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- iii. We direct the applicant to deposit a sum of Rs. 3 lacs with the Interim Resolution Professional, namely Mr. Varun Sethi, to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.



iv. 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.

(e) The IB Code 2016 also prohibits Suspension or termination of any 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, 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, concessions, clearances or a similar grant or right during the moratorium period.

v. 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.

- vi. 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'.
- vii. 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.
- viii. 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 its 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.



ix. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

17. Accordingly, the instant application bearing no. C.P. (IB)/2926/ND/2019 **stands admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(P.S.N. PRASAD)
MEMBER (JUDICIAL)