IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI

COURT-VI

Item No. 211
IB-2924/ND/2019

IN THE MATTER OF:
Mr. Naveen Sachdeva (M/s. Jay Packaging) ...PETITIONER

Vs.

M/s. Magppie International Ltd. ...RESPONDENT

Section
Under Section 9 of IBC **Order delivered on 26.02.2020**

Coram:
SHRI. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)
DR. V.K. SUBBURAJ, HON'BLE MEMBER (TECHNICAL)

For the Petitioner/Op.-Creditor/F.C. :Mr. Avdhesh Bairwa, Adv..
For the Respondent/ Corporate-debtor :Mr. Vivek Yadav, Adv.

ORDER

As per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 praying therein to initiate the CIRP against the corporate-debtor.
2. The facts of the case is M/s. Jay Packaging, (hereinafter referred to as 'Operational Creditor') having its registered Office situated at Plot No. 1559, Rai Ind. Area Sonepat, Haryana-131029 is authorized Supplier of packaging materials to Magppie International Ltd., having its registered office at 206, 2nd Floor, Jaksons Crown Heights, Plot No. 381, Twin District Centre, Sector- 10, Rohini, Delhi 110085 and corporate office at 153 ABC, EPIP EXTN; Kundli, Sonepat – 131028.

hereinafter to be referred to as "Corporate Debtor". The Corporate debtor has sought the supply of Certain types of packaging materials with regard to the business negotiated between the parties and after due and proper negotiations between the parties, under an assurance of timely payments, it was agreed that against the regular orders to be placed by the Corporate Debtor, the Operational Creditor shall supply the goods to the Corporate Debtor at its work or at such other places as and when so demanded by way of the purchase orders to be issued by the Corporate Debtor.

i. That a bare perusal of the abstract ledger account of the Corporate Debtor would reveal that virtually each of the payment against the supply effected from the Corporate Debtor by the Operational Creditor had been delayed and the Corporate Debtor Virtually never made any timely payment.

ii. That despite extension of the credit facility by the Operational Creditor upon assurance of the Corporate Debtor for timely payments and regular business dealings, taking advantage of the precarious position of the Operational Creditor as a supplier of material and its high business ethics, the Corporate Debtor delayed the payments on one excuse or the other.

iii. That though the Corporate Debtor confirmed the balance amount of Rs.1,34,46,595/- as due payable by it to the Operational Creditor as per the books of account of the

Corporate Debtor, for the period from 19.09.2017 till 15.04.2019 by way of its letter dated 25.07.2019, however, despite the said confirmation the Corporate Debtor failed to make the payments without any just cause or reason thereby causing absolutely unwarranted inconvenience and financial burden to the Operational Creditor.

iv. That compelled by the failure of the Corporate Debtor to make the payments long overdue the Operational Creditor also caused serve upon the Corporate Debtor a notice dated 10.07.2019, however, Corporate Debtor replied on 25.07.2019 stating various reasons in the letter. Further asking for the leverage to pay the amount in instalments and gave assurance to pay the full amount by 10th August 2019.

v. It is submitted that despite mutual understanding as regards the release of the payments by the Corporate debtor to the Operational Creditor, the Corporate Debtor failed to make the payments in time causing huge losses to the Operational Creditor.

vi. On 30th August 2019, the operational creditor issued letter intimating the initiation of legal proceedings if the outstanding dues are not paid on or before 10th August 2019.

vii. On 28th August 2019 the Operational issued demand notice under Section 8 and rule 5 of Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) through speed post as well as by hand delivery of the notice was completed. To which Magppie International replied on 2nd September 2019 and admitted the defaulted amount stating that the production of the company has halted, also, they have been declared as NPA on 30th August. Owing to this reasons and various other market factors CD is unable to pay the outstanding amount.

viii. On 30th September 2019 communicated finally to release our genuine outstanding amount otherwise after the expiry of 5 days of serving the said Demand notice we have no other option but to move ahead with legal action at NCLT

ix. That now despite repeated requests and demands of the Operational Creditor, the Corporate Debtor had failed to make the payments in which regard, it now appears that the Corporate Debtor is not left with sufficient funds to clear its liability.

x. Magppi International failed to pay the outstanding debt. Hence this petition.

3. The corporate debtor filed the reply and by filing reply in Para D at page No. 3 of the reply he raised the "existence of disputes" which are as follows:

   i. That the corporate debtor submits that there exists an 'existence of disputes' between the parties which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. The operational creditor have no ground for commencing a proceeding under the "Code" in as much as no amount of capital INR 1,34,46,595/- is due and payable by corporate debtor as of today. The operational creditor's application solely rests upon tax invoices & Bills which does not bear any stamp or receiving by our client and have never come into sigh of our client and hence the said amount of money as claimed by virtue of the said manufactured and invoices were never due and payable on the part of corporate debtor. That it is pertinent to mention herein that the alleged invoices are disputed, forged and manufactured on Operational-creditor's behalf just to create an illegal debt in their own favour and against corporate debtor. That it is submitted that the said invoices were manufactured by operational creditor just to harass our client in order to pay you illegal sum of money which was never due and payable.

4. We have heard the learned counsel appearing for the petitioner as well as the respondent.

5. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has raised the invoice which is referred at page 15 of main applications and the total amount of the invoices is of Rs. 1,34,46,595.64/- which is referred at page No. 7 part IV of the main application. He further submitted that thereafter he has raised the invoice when the petitioner have not received payment then he delivered the demand notice on August, 28, 2019 which is at Page 47 of the application. He also received the reply to the demand notice on 2nd September, 2019 which is at page 65 of the application. He further submitted that by sending reply to the demand notice the respondent has admitted the amount by stating the facts. His reply to the demand notice is as follows:-

"Though we agree the amount is pending for a quite sufficient time, and we have every intention to pay the amount, but due to financial constraint, we are not in a position to pay it right now. The market is also undergoing crisis and the financial position of the company is also not strong enough to pay the amount".

6. He further submitted that although by filing the reply, the respondent in Para D of the reply raised the dispute but that was not raised earlier when the reply to the demand notice was sent by the respondent. He further submitted that he has also proposed the IRP

who has also given the written consent, so CIRP have to be initiated against the corporate-debtor.

7. On the other hand learned counsel appearing on behalf of the respondent submitted that in reply to the demand notice, the petitioner has not raised any dispute but he has filed the reply to the main petition at page 3 part D and it is specifically mentioned that there exists an 'existence of dispute' between the parties which requires further investigation but no document in support of that has been filed on behalf of the corporate-debtor.

8. Considering the submissions made on behalf of both the parties and perusal of the averment made on the application as well as reply filed by the respondent and the documents enclosed with the applications, we find that petitioner has claimed Rs. 1,34,46,595.64/- as a defaulted amount on the basis of the invoices which he has raised and same are referred from page 8 to 29 of the application and we further find that thereafter the petitioner also delivered the demand notice and reply of the demand notice was also received from the petitioner which is at page No. 65 of the main applications, says that in para 3 of the reply, the corporate-debtor admitted the amount and nowhere in the reply he has raised any dispute. We further find that although in the reply filed after his appearance in pursuant of the notice issued after filing of the applications under section 9 in para D at Page 3 of the reply he has stated that there exists an 'existence of dispute', but

no document has been filed on behalf of the respondent to show that there is any dispute. Therefore, we find in pursuant of Section 8 when the demand notice was delivered upon the corporate-debtor then as per Section 8(2) of the Insolvency and Bankruptcy Code, 2016 he was required to give a reply within ten days from the receipt of the demand notice and raise a dispute or the records to show that the operational-debt has been paid, but as appears from the records available us neither any dispute raised by the corporate-debtor nor any document to show the payment has been made is produced before us. Therefore, under such circumstances in view of Section 9 (5) (i) in order to admit an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 the Adjudicating Authority is required to consider the following points.

a) ***the application made under sub-Section (2) is complete;***

b) ***there is no [payment] of the unpaid operational debt;***

c) ***the invoice or notice for payment to the corporate-debtor has been delivered by the operational-creditor;***

d) ***no notice of dispute has been received by the operational-creditor or there is no record of dispute in the information utility; and***

e) ***there is no disciplinary proceeding pending against any resolution professional proposed under Sub-section (4), if any.***

9. In the light of that provisions as above and considering the application filed by the petitioner, we find that the application is complete, no

payment is made and no notice of dispute has been raised and the applicant has also proposed the name of IRP at page 44 of the main application and the IRP has already sent the written communication and there is no disciplinary proceeding pending against the IRP. Therefore we have no option but to admit the application. Accordingly, we hereby admit the application.

10. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

> "(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.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

11. The interim resolution professional ("IRP") proposed by the Applicant is **Mr. Ashwani Kumar Gupta (Email – akguptafca@gmail.com, Mobile – 8108097518)** and is being confirmed by this Bench. 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. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

13. Registry is directed to communicate the order with the IRP as well both the parties.

-Sd-

(V.K. Subburaj)
Member (T)

-Sd-

(Abni Ranjan Kumar Sinha)
Member (J)

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