IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) No.05/ALD/2020

In the matter of
A petition under section 9 of Insolvency & Bankruptcy Code, 2016 read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016
And

In the matter of:
Sanghvi Movers Limited
Having registered office at:
Sy. No. 92, Tathawade
Taluka Mulshi, Pune
Maharashtra … Operational Creditor

Versus

Anindya Infratech Pvt. Limited
Having registered office at:
38C/28, Hamilton Road, George Town
Prayagraj
Uttar Pradesh-211002 … Corporate Debtor

Order reserved on 20.04.2022

Order pronounced on :23.05.2022

Coram:

Sh. Rajasekhar V.K.	:	Member (Judicial)
Sh. Virendra Kumar Gupta	:	Member (Technical)

Appearances (via videoconference):

For Operational Creditor	:	Sh. Rohan Gupta, Adv.
For Corporate Debtor	:	Sh. Ravi Kant, Adv

O R D E R

Rajasekhar V.K., Member (Judicial)

1. The court convened through videoconference.

2. The present petition has been filed by Sanghvi Movers Limited ***(the Operational Creditor)***, under section 9 of Insolvency & Bankruptcy Code, 2016 ***(hereinafter referred to as "IBC" of "the Code")*** for initiation of Corporate Insolvency Resolution Process ***(hereinafter referred to as "CIRP")*** against Anindya Infratech Private Limited, the Corporate Debtor.

—Sd—

3. In support of its claim, the operational creditor has placed on record copies of work order dated 17.10.2015 and 01.10.2016 which was extended on 29.05.2017 and invoices were raised against the work order for supply of cranes on lease/hire charges from 31.12.2016 till 19.07.2017. The total amount for which the invoices were raised against the corporate debtor was ₹73,74,504/-, however, certain invoices were cleared and the amount of ₹19,95,817/- remains to be due and payable. Despite requests, the amount due was not paid. The date of default is stated to be 24.06.2018.

4. The operational creditor sent its first Demand Notice on 04.07.2018, which was duly received by the Corporate Debtor. The Corporate Debtor chose not to reply to the Demand Notice, though on 04.08.2018 an amount of ₹8,00,000/- was deposited by the corporate debtor with the Operational Creditor. No payment was made for the remaining dues.

5. Again, another demand notice dated 21.01.2019 was issued by the Operational Creditor, which was also duly received by the Corporate Debtor. Like on the previous occasion, the Corporate Debtor chose not to reply. It also did not make any payment.

6. The total sum due is claimed to be ₹19,95,817/-, consisting of a principal sum of ₹11,53,817/- plus interest at the rate of 24% per annum.

7. Affidavit in compliance of section 9(3)(b) of the Code has been placed on record.

8. It is submitted on behalf of the Corporate Debtor that as per clause-14 of the terms of mutual agreement/ work order dated 01.10.2016 executed between the parties, the agreed rate of interest was 18% in case of delay in payment of outstanding invoices but the Operational Creditor has imposed interest at the rate of 24%. It is further submitted that applicant was also having the right to stop the Crane Services if the outstanding invoices are not cleared within 90 days from the date of invoice, but the applicant chose to continue the service because they were at fault by supplying defective and outdated 40 years old

—Sd—

Crane at the site. After objections were raised by the Corporate Debtor, they assured replacement. It is further submitted that the corporate debtor has also paid an amount of ₹5.00 lakh towards mobilisation of the Operational Creditor's Crane, which has been also concealed by the Operational Creditor in its petition.

9. The Corporate Debtor has also pleaded that it has not received any demand notices dated 04.07.2018 and 21.01.2019 issued by the Operational creditor.

10. In his rejoinder submissions, Ld. Counsel for the Operational Creditor submitted that the Operational Creditor has charged interest of 24% instead of 18 % as a penal interest for inordinate delay on payment of dues. Ld Counsel submitted that it is ready to reduce the same @ 18%. With regard to the dispute of providing defective crane, it is submitted that no such communication has ever been raised by the corporate debtor. It is further stated that the demand notice has been duly served to the corporate debtor on 07.07.2018 and evidencing the same the postal receipt has also been placed on record.

11. We have considered the submissions made on both sides and perused the record.

12. As per tracking information, the Demand Notice dated 21.01.2019 under section 8 dated 21.01.2019 has been duly delivered to the Corporate Debtor. This fact has remained uncontroverted during the course of hearing. Therefore, the contention of the Corporate Debtor regarding non-receipt of Demand Notice is rejected. Affidavit under Section 9(3)(b) of IBC has also been filed. The last payment was made on 24.08.2018 and this petition has been filed on 18.11.2019. Therefore, the petition is filed well within limitation in terms of provisions of section 19 of the Limitation Act, 1963.

13. It is further noted that the Corporate Debtor, *vide* its letter dated 10.04.2018, has also confirmed and admitted that the amount is due and payable. Therefore, there is really no defence to the section 9 petition.

14. The petition filed under section 9 is complete in all respects. The outstanding amount is more than the threshold limit of ₹1,00,000/- (Rupees one lakh) only

—Sd—

existing at the time of filing of the petition. The petition is also well within the limitation. There is no pre-existing dispute of any kind that inhibits the admission of the present petition..

15. The operational creditor has not proposed the name of the Interim Resolution Profession (IRP). Therefore, we propose to appoint someone from the panel of names made available to this Bench by the Insolvency & Bankruptcy Board of India (IBBI) to act as the IRP.

(a) The petition filed by Sanghvi Movers Limited, the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, ***Anindya Infratech Private Limited,*** is hereby **admitted**.

(b) There shall be a moratorium under section 14 of the IBC.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) Mr. Sudhir Kumar Shukla [Reg No.IBBI/IPA-001/IP-P-01139/2018-19/12386], having address at B-16 Agnipath Colony, TB Sapru Marg, Civil Lines, Prayagraj, Uttar Pradesh 211001 [email: skshukla22@hotmail.com], having Authorisation for Assignment (AFA) Certificate No.AA1/12386/02/071122/103034, to act as the IRP under Section 13(1)(c) of the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

(f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC.

—Sd—

The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. It is directed that the key managerial personnel of the Corporate Debtor shall coordinate with the Interim Resolution Professional to hand over the documents, and this shall be done without further delay.

(g) The IRP/RP shall submit to this Adjudicating Authority quarterly reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(h) The Operational Creditor shall deposit a sum of ₹2,00,000/- (Rupees two lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) The Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately.

(j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Uttar Pradesh, Kanpur, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. List the matter on 25.07.2022 filing of the progress report.

17. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

—Sd—

Rajasekhar V K
Digitally signed by Rajasekhar V K
Date: 2022.05.23 18:43:14 +05'30'

Virendra Kumar Gupta
Member (Technical)

Rajasekhar V.K.
Member (Judicial)