

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

C.P. IB. NO. 814/ND/2022

IN THE MATTER OF:

M/S GANESH ENTERPRISES

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S TRIKALP LAMINATES INDIA PVT. LTD.

...CORPORATE DEBTOR

ORDER DELIVERED: 09.04.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Vishal Sharma, Ms. Priyanka Mandal, Advs.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by the M/s Ganesh Enterprises (for brevity 'Applicant') through Mr. Balraj Yadav, Authorized Representative with a prayer to initiate a Corporate Insolvency Resolution Process against M/s Trikalp Laminates India Private Limited (for brevity 'Corporate Debtor').
2. The Applicant M/s Ganesh Enterprises is a proprietor firm who deals and supply coal and having its registered office at Shop No. 187, Nai Anaj Mandi, Rewari, Haryana.

3. The Respondent Trikalp Laminates Private Limited is a company incorporated on 10.02.2017 under the Companies Act, 1956 having its registered office at H. No. 22, 1st floor block F pocket 22 sector 3, Rohini, Delhi 110085 and CIN: U20219DL2017PTC312696 and is engaged in Manufacture of products of wood, cork, straw and plaiting materials.
4. Briefly stated the facts of the present case as averred by the Applicant are: -
 - i. The Applicant had supplied the coal to the Corporate Debtor during the financial year 2020-21 to the financial year 2021-2022 and the same was used on credit basis for the said commercial period as per terms of invoices. But thereafter, the Corporate Debtor had failed to make the payment outstanding dues of Rs. 1,23,26,641/- till the last payment was received on dated 27.09.2022.
 - ii. The Applicant/Operational Debtor sent a demand notice on 03.10.2022 under section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs. 1,23,26,641/-. The notice was served upon the Corporate Debtor vide speed post on 04.10.2022 and on the email on 03.10.2022 at the Registered address reflected on the MCA website.
 - iii. It is pertinent to mention that after receiving the demand notice from the Operational Creditor, the Corporate Debtor made a payment of Rs. 2,50,000/- on 11.10.2022 and still the amount after adjusting the same is Rs. 1,20,76,641/- which is still recoverable and due from Corporate Debtor who is trying to divert the business from the entity which is Corporate Debtor to another Company M/s Morris Laminates Pvt. Ltd., which came to the knowledge of the Operational Creditor.
 - iv. The Corporate Debtor has not issued any reply against the Demand Notice dated 03.10.2022. The Operational Creditor has

complied with the mandatory provisions of Section 9(3) (b) and (c) of the Code.

- v. The Applicant has filed this application on 03.11.2022 as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for Rs. 1,20,76,641/- towards unpaid invoices for the coal supplied by the Operational Creditor.

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 with respect to the application was issued to the Corporate Debtor vide order dated 20.04.2023 of the Adjudicating Authority. From the records placed before this Adjudicating Authority, it transpires that the Corporate Debtor neither replied to the Demand Notice nor to Section 9 application was filed by the Corporate Debtor. The Corporate Debtor has never appeared before the Adjudicating Authority hence vide order dated 02.08.2023 the Corporate Debtor was proceeded ex-parte.
7. 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.

8. 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.
9. Having considered the facts and circumstances and the material available on record, the Application filed by the Operational Creditor is complete in all respect. This authority is satisfied that an amount of Rs. 1,20,76,641/- towards unpaid invoices for the coal supplied by the Operational Creditor, is due and payable by the Corporate Debtor to the Operational Creditor, which it failed to pay. Therefore, the Application is admitted and the commencement of the CIRP is ordered.
10. 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 January 01st, 2024 to June 31st, 2024, and as per the serial no. 62 in the said list Mrs. Shalu Khanna, Registration Number IBBI/IPA-001/IP-P00917/2017-2018/11523 Email: skhanna@llca.net 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.
11. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mrs. Shalu Khanna, 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.

12. 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.

13. 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.

14. 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'.

15. 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.
16. 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.
17. 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.
18. Accordingly, the instant application bearing no. **C.P. (IB)/814/ND/2022 stands admitted.**

Sd/-
DR. SANJEEV RANJAN
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)