



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
C.P. NO. (IB) 2830 OF 2019**

IN THE MATTER OF:

ASR Logistics India Pvt. Ltd.

...OPERATIONAL CREDITOR/APPLICANT

VERSUS

M/s Leo Creations Pvt. Ltd.

...CORPORATE DEBTOR/RESPONDENT

Under Section: 9 of IBC, 2016.

CORAM:

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

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

Order Delivered on: 08.03.2024

PRESENT:

For the Applicant : Mr. Mohit Chaudhary,
Mr. Prakhar Mithal, Adv.

For the Respondent : Mr. Akhil Krishan Maggu,
Ms. Mahinder Kaur, Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. This instant application was filed by **ASR Logistics India Pvt. Ltd** (hereinafter referred as 'Applicant'/ 'Operational Creditor') through its authorized representative Mr. Rajendra Singh Rao (Director), having



registered office at Room no 26, 2nd floor, 282 Khandke Building Shahid Bhagat Singh Road, Fort Mumbai, Maharashtra-400001, 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 Leo Creations Pvt. Ltd.** (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 6,47,780/- (Rupees six lacs forty seven thousand seven hundred and eighty rupees only) along with interest @ 18% per annum to be paid by the Corporate Debtor.

2. The present application was filed dated 30.10.2019 before this Adjudicating Authority. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 6,47,780/- along with interest @ 18% per annum.
3. The Threshold amount at the time of filing this Application was Rupees One lakh Only and therefore the present application falls within the pecuniary Jurisdiction of this Adjudicating Authority.
4. The Respondent Company M/s Leo Creations Pvt. Ltd. having CIN: UI8101DL2004PTC131677, incorporated on 30.12.2004 under the provisions of the Companies Act, 1956, is having its registered office situated at G25-A, Flat No 1, LGF, Basement Vishwakarma Colony, New Delhi South Delhi DL 110044. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having 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.



A copy of the Master Data of the Respondent/Corporate Debtor as accessed from the MCA website is annexed at **Annexure II (c)** at Pg. 64 of the Application.

5. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**

- i. The Operational Creditor/ Applicant is engaged in the business of customs clearing & freight forwarding including consignment storage and management of logistic processes.
- ii. It is submitted by the Applicant that the Corporate Debtor had placed orders and requested the Applicant/ Operational Creditor to provide services, i.e. clearing the shipping from the Port of Nhavasheva etc. from time to time.
- iii. It is placed on record that the Operational Creditor had raised 10 invoices for a period between from 13.07.2016 to 31.10.2018 for an aggregate amount of Rs. 13,97,780/-. It has been submitted by the Corporate Debtor was required to make payments against invoices within 7 days from date of issuance of invoices.
- iv. The Corporate Debtor has made part payment to the said invoices. However, the Corporate Debtor started making defaults in payment and thereby forced the Operational Creditor to terminate the business transaction. After adjusting the part payments made to the Operational Creditor, an amount of Rs. 6,47,780/- along with an interest of 18% per annum from the date of default is due and payable by the Corporate Debtor.
- v. The Applicant served the Operational Creditor with a demand notice under Section 8 of the Code dated 31.10.2018 as prescribed in Form 3 demanding the repayment of the Operational debt.



vi. The date of default as per the Part IV of the Form 5 of the Application is 07.11.2016 and the default amount is Rs. 6,47,780/- along with an interest of 18% per annum from the date of default.

6. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- i. Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. The Corporate debtor alleged that there has been no written and signed contract between both the parties and that Respondent/Corporate Debtor has paid each and every amount due to the Operational Creditor and there exist no default for Rs. 6,47,780/- as alleged by the Applicant / Operational Creditor.
- ii. It is submitted by the Corporate Debtor that a Demand notice dated 31.10.2018 was duly received by them dated 28.11.2018 and a reply to this Demand notice was sent to the Operational Creditor dated 05.12.2018 along with the ledger account which stated payments that been made to the Operational Creditor.
- iii. It has been alleged by the Corporate Debtor that the dispute between the parties is in the year for 2016, whereas the Applicant/Operational Creditor had served upon them with a demand notice in 2018 after 2 years.
- iv. It has been submitted by the Corporate Debtor that they had paid a full amount of Rs. 8,77,392/- to the Applicant/operational creditor and that there was no demand raised whatsoever by the Applicant/Operational Creditor from the Respondent/Corporate Debtor before sending the demand notice dated 31.10.2018.



- v. It has been placed on record by the Corporate Debtor that the invoices so raised by the Applicant/ Operational Creditor in the present Application are contrary in the nature to the Invoices received in Section 8 Demand notice. The Corporate debtor has raised dispute with the invoices generated.
- vi. The Corporate Debtor has stated there were no demand raised by the Operational Creditor before the demand notice issued dated 31.10.2018.

ANALYSIS AND FINDINGS

7. We have heard the Ld. Counsel on behalf of the Applicant/Operational Creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, and written submission presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority 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.
8. From the perusal of the material available on record, it transpires that the 'Operational Creditor'/ 'Applicant' had sent a demand notice dated 31.10.2018 to the 'Corporate Debtor' under Section 8 of the Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 6,47,780/- (Six Lakh Forty Seven Thousand Seven Hundred Eighty). The present Application was filed before the 24.03.2020 when the Pecuniary jurisdiction was Rs. 1 lakh rupees for Application under Section 9 of the



Code, therefore present application meets the pecuniary threshold limit of Rs. 1 lakh, in terms of Section 4 of the Code. The Applicant has tabulated a total of 10 invoices included in its claim as mentioned in Part IV of the Application from the date 13.07.2016 to 31.10.2016. We observe that this demand notice dated 31.10.2018 under Section 8 was served to the Opposite party and was accordingly received by the Corporate Debtor. From the records placed before this Adjudicating Authority, it transpires that the Corporate Debtor had replied to this Demand notice dated 05.12.2018 though the fact receiving of such a reply to Demand notice has been categorically denied by the Operational Creditor.

9. 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 (as the present application if filed before 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?

10. The first instance, to determine whether the impugned 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”.

11. While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the Operational Creditor was approached for business of custom clearing and freight forwarding including consignment storage and management of logistic process. The Operational Creditor provided the service for the same as required by the Corporate Debtor and issued the invoices in the regular course of business.
12. On a perusal of the ledger account maintained in the books of the Corporate Debtor as submitted by the Corporate Debtor, this Adjudicating Authority observe that Corporate Debtor has raised 10 invoices for an aggregate amount of Rs.13,97,780/- against which only part payments of Rs. 7,50,000/- were received. It has been submitted that the amount mentioned in invoice is not disputed by the Corporate Debtor.
13. The corporate debtor has accordingly issued cheques for the payment of invoices to the operational creditor and part payments to the tune of Rs. 7,50,000/- were made by the Operational Creditor and thereafter the said default has occurred. It is submitted that the Corporate Debtor has failed to substantiate any pre-existing dispute regarding claim of the operational creditor.



14. With regards to the issue of Operational Debt being disputed, it is the contention of the Corporate Debtor in its reply that there has been no written and signed contract between the parties and has disputed the very existence as well as nature of invoices so raised by the Operational Creditor. But the said contention is not found rational as on one hand the Operational creditor questions the authenticity of the said invoices and on the other hand it has made part-payment to the Operational Creditor. The Hon'ble Supreme Court in catena of Judgements has laid down the principle that 'pre-existing dispute' which may be ground to thwart an application under Section 9 has to be a real dispute, a conflict or controversy. The Corporate Debtor is not to raise bogie of disputes, but there has to be real substantial dispute.
15. In the present case, the Applicant has placed sufficient documents to show that the debt is due and that there has been default in payment to the said invoices. Therefore, we are of the opinion that the claim of the Applicant is arising out of the provisions of services rendered, hence, it is an operational debt and there is no pre-existing dispute between the parties. This leaves no doubt that the default has occurred for the payment of the operational debt to the Applicant. Hence, despite the fact that, the corporate debtor had raised dispute, in our view, the said dispute raised by the Corporate Debtor is a patently feeble argument and is moonshine. Hence, we do not find the alleged dispute to be genuine.
16. The debt of more than Rs.1 Lakh has become due to the Applicant. We are also strengthened by the law laid down by the Hon'ble Supreme Court in



"Innoventive Industries Ltd. v. ICICI Bank and Ors. - (2018) 1 SCC 407"

wherein it is observed as follows: -

"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority."

17. In view of the above facts and circumstances, we are of the considered view that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Applicant has established



that the Corporate Debtor is in default of a debt due arising out of services rendered by the operational creditor and the same is payable. Further, that the default amount 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 C.P. No. (18) 2830 OF 2019 filed by ASR Logistics (India) Pvt. 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 Leo Creations Pvt. Ltd., the Corporate Debtor, is hereby admitted.
- II. The applicant has not proposed the name of an Interim Resolution Professional; therefore, this bench appoints **Mr. Anurag Goel** as the Interim Resolution Professional of the corporate debtor. The registration number of the IRP being **IBBI/IPA-001/IP-P00876/2017-2018/11460** and email id- agoel@caanurag.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and made disclosures made as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- III. We direct the applicant to deposit a sum of Rupees One Lakh with the Interim Resolution Professional, namely **Mr. Anurag Goel** to meet out the expense 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 shall 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, Adjudicating Authority, 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 Adjudicating Authority 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.
- X. Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing IB/2830(ND)/2019 stands admitted.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)