

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-692/(ND)/2021

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s GLS Films Industries Private Limited

...Operational Creditor/Applicant

Versus

M/s Kay Pan Fragrance Private Limited

...Corporate Debtor/Respondent

Coram:

MR. DHARMINDER SINGH, Hon'ble Member (Judicial)

MS. SUMITA PURKAYASTHA, Hon'ble Member (Technical)

Order Delivered on: 13.05.2022

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER (JUDICIAL)

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

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2. The applicant, GLS Films Industries Private Limited has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.

3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The Operational creditor used to supply printed laminated paper roll to the Corporate Debtor.

b. The Operational Creditor submitted that between 01.04.2021 to 14.09.2021, the operational creditor raised 68 invoices amounting to Rs. 16,86,14,367/-. The total outstanding financial debt is Rs. 8,52,04,134/-.

c. The operational creditor received a letter dated 05.10.2021 written by the corporate debtor where by the corporate debtor has acknowledge the outstanding amount of Rs. 12,51,89,460/-.

d. The Operational Creditor sent a Demand Notice dated 16.10.2021 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. After the issuance of the

demand notice, corporate debtor paid Rs. 3,99,85,326/- to the operational creditor. The balance outstanding operational debt is Rs. 8,52,04,134/-

4. The Corporate Debtor has submitted his reply . The main objections raised by the corporate debtor are as follows:

a. It was agreed mutually between the Applicant and Corporate Debtor in the month of April, 2021 that the business between the parties will continue to run in the same manner as it has been in operation since 3 years and the payment for the Tax Invoices generated after 01.04.2021 will be made alongwith the outstanding amount of Rs. 11,65,30,707/-.

b. The Corporate Debtor further alleged that in the financial year i.e. 01.04.2021 till date Operational Creditor supplied articles for the value of Rs. 16,86,14,367/- to the Corporate Debtor and to which the corporate debtor had made payment of Rs. 20,00,00,940/-

c. The Corporate Debtor further submitted through his reply that they have reduced its liability from Rs. 11,65,30,706.86/- to Rs. 8,52,04,134/- .

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d. It's been alleged by the Corporate Debtor that after receiving the notice from the Operational Creditor, Corporate Debtor had made the payment of Rs. 3,99,85,326/- with an understanding that the Operational Creditor will not initiate legal proceedings against them.

e. The dispute between the parties was settled much prior to the filing of the present application. In terms of the settlement, the Corporate Debtor instead of making full payment withheld the sum of Rs. 1,61,568/- in lieu of the deficient service provided by the Operational Creditor. And with respect to the same the debit notes by way of 'Journal Voucher' dated 31.03.2018 has been provided to the Operational Creditor.

f. Corporate Debtor further submits through his reply that they were clearing off the old payments along with the payments for regular supplies being made from 01.04.2021 by the Operational Creditor. The reason behind the delay in payment is due to the wrongful course adopted by the Operational Creditor which has also affected the business if the Corporate Debtor.

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5. We have heard Ld. Counsel for both the parties and perused the averments made in the application and reply filed by the parties. There is a clear admission of the Corporate Debtor in its reply that the default has occurred and was unable to make the payments to the Operational Creditor due to lack of funds. It has been repeatedly held that 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. Resultantly, since there is no dispute raised by the Corporate Debtor, in fact the corporate debtor has clearly admitted that a default has occurred and they are eventually willing to pay the rest remaining dues.
6. In view of the foregoing documents, this Tribunal is of the affirm view that there was default on the part of the respondent in pursuance of invoices raised on behalf of the applicant, accordingly, the present application stands admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.
7. The operational creditor has proposed the name of an Interim Resolution Professional therefore this bench appoints Mr. Shashi Bhushan Prasad as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00676/2018-19/12114 with email – id: shashibpd@gmail.com who has also agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no

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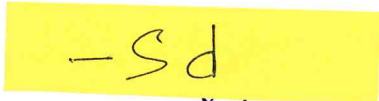
disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by IRP above named as per the requirement of the IBBI Regulations.

8. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Shashi Bhushan Prasad 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 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.
9. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
10. 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

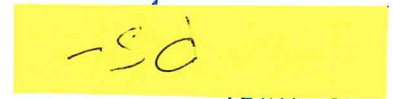
directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Consign the file to the record room.



(SUMITA PURKAYASTHA)
MEMBER (T)



(DHARMINDER SINGH)
MEMBER (J)