IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-V

IB-130/(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:

Aditya Kumar

(Proprietor of M/S S.B. ELECTRICALS)

BB-45C (East) Shalimar Bagh, Delhi-110088

...Operational Creditor

Versus

LKB Engineering Private Limited

Registered office at:

Office No. 204, 2nd floor, Shivam House,

Karampura, Delhi-110015

And works at:

GJ-118, Mayapuri Industrial Area,

Phase 2, New Delhi – 110064

And also at:

G1/1319, Rampur Mundan Industrial Area,

Bhiwadi, District Alwar, Rajasthan - 301019

...Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)
SHRI HEMANT KUMAR SARANGI, Hon'ble Member (Technical)

PRESENT-
Counsel for Applicant : Ms. Arisha Jain, Advocate
Counsel for Respondent : Ms. Deepika, Advocate

ORDER

PER SHRI. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 24.05.2022

1. The present application is filed by Mr. Aditya Kumar, Proprietor of M/s S. B. Electricals (hereinafter referred to as 'Operational Creditor'), under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) rules, 2016, for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as `CIRP'), against M/s LKB Engineering Private Limited ('hereinafter referred to as 'Corporate Debtor), for the alleged default on the part of the Corporate Debtor, for an amount of Rs. 26,20,992/-, inclusive of principal amount of Rs. Rs.17,91,103/- and

interest @ 18% per annum, calculated w.e.f. 11.07.2018 till 11.01.2021 tentatively. The details of transactions leading to the filing of this application, as averred by the Operational Creditor, are as follow:

i. That the Corporate Debtor approached the Operational Creditor in 2016, for the purpose of selling electric cables to the Operational Creditor. The Operational Creditor commenced business with the Corporate Debtor and started maintaining a running account of the Corporate Debtor where the Operational Creditor started making payments on demand by the Corporate Debtor.

ii. That the business continued on regular basis between the parties. The Corporate Debtor supplied goods from its two units, one in Delhi and the other one in Bhiwadi and hence, the Operational Creditor maintained separate ledger accounts of the two units accordingly.

iii. In August 2018, it came to the knowledge of the Operational Creditor that in the Delhi account of the Corporate Debtor, an excess of Rs. 20,00,000/- has been paid by the Operational Creditor to the Corporate Debtor. That the

Corporate Debtor also acknowledged the said excess and assured that the same shall be adjusted against the running pending purchase orders.

iv. That the Corporate Debtor started delaying the delivery of goods and pursuant to repeated follow ups, disputes started arising between the parties and it was finally agreed in February 2019 that the balance payable by the Operational Creditor to the Corporate Debtor at its Bhiwadi/ Delhi unit, i.e. 4,20,577/- shall be adjusted in the excess amount paid by the Operational Creditor to the Delhi unit of the Corporate Debtor. Also, it was agreed that certain defective goods shall also be returned by the Operational Creditor to the Corporate Debtor. As agreed, on 12.02.2019 goods valuing Rs. 2,11,680/- were returned by the Operational Creditor which were also acknowledged and accepted by the Corporate Debtor, leaving a total excess of Rs. 17,91,103/- with the Corporate Debtor. Thereafter, it was also agreed between the parties that the Corporate Debtor shall supply goods for the said amount to the Operational Creditor.

However, no goods were supplied despite repeated reminders.

v. That the Operational Creditor issued a Demand Notice under section 8 of the Code on 09.03.2019 demanding the payment of principal amount of Rs.17,91,103/- alongwith interest. However, the Corporate Debtor has neither issued any notice of dispute nor paid the aforesaid sum demanded.

2. Consequent to the notice issued by this Tribunal, the Corporate Debtor filed its reply in which the following contentions are made:

i. That the Corporate Debtor is not liable to pay anything to the Operational Creditor, rather the Operational Creditor is liable to hand over form 'C' of the previous business transaction and amount in lieu of that and therefore the present application is liable to be dismissed.

ii. That the present application is not maintainable because is the applicant raising the issue with respect to the year 2017-2018 and the present matter is filed in the year 2021 without any condonation of delay or justified reason which prove that the applicant had no grievance since past several years.

iii. That the demand raised by the Operational Creditor is not payable and it is counter blast to the legal notice date 18.02.2018 issued by the Corporate Debtor. That the true facts of the case are that material was sent to the Operational Creditor worth Rs. 13,70,060/- and it was reflected in the ledger account. That a settlement was reached and it was agreed that the above said amount shall not be claimed by the Operational Creditor as the material has already been utilized. It was duly agreed by the Operational Creditor that they are liable to pay a sum of Rs. 3,01,496/- in lieu of 'C' forms which have not yet been supplied.

iv. That the present application is liable to be dismissed in view of the fact that the pecuniary jurisdiction before this Tribunal is Rs. 1 crore and above and the present matter has been filed only for Rs. 20 Lacs. Hence, the same is liable to be dismissed.

3. That the Operational Creditor has filed its rejoinder in which the facts of the case are reiterated and the following contentions are made:

i. That the Corporate Debtor sold goods to the Operational Creditor and the Operational Creditor made the payment to the Corporate Debtor in exchange which specifically establishes their relationship as such in accordance with Section 5 (21) of the Code.

ii. That the debt became due on 11.07.2018, which was the date on which the Operational Creditor became aware of the excess payments made to the Corporate Debtor. Thereafter, constant negotiations and demands for payment were going on between the parties.

iii. That this Tribunal has the pecuniary jurisdiction to hear and dispose of the present application according to Section 4 of the Code and also, the main intent of the notification pertaining to increasing of the threshold limit w.e.f. 24.03.2020 can be reasonably interpreted as constituting a relief-oriented measure to protect the Corporate Debtors from the impact of the pandemic upon their business.

4. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. It transpires from the records that although the Demand Notice was issued in 2019, the Operational Creditor has filed the present application in the year 2021 after a lapse of nearly two years. Further, the Operational Creditor has claimed the default on part of the Corporate Debtor for the amount of Rs. 26,20,992/- which is inclusive of interest @18% per annum calculated from 11.07.2018 till 11.01.2021. However the, said amount is below the pecuniary limit fixed by the Central Government vide notification dated 24.03.2020. The Relevant portion of the Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, is extracted below,

"S.O. 1205(E) : MANU/DCAF/0051/2020.--In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as

the minimum amount of default for the purposes of the said section."

5. Further, we would like to refer to the judgment dated 25.10.2021 of Hon'ble NCLAT in the *Company Appeal (AT) (Insolvency) No. 813 of 2021* in the matter of *Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd.* The relevant portion (paragraph 10) of the decision is reproduced below:-

   "10. The other judgments cited by learned Counsel for Appellant broadly lay down that any statute/law can be applied retrospectively only if explicit provision regarding its retrospective application is made in the statute. It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.3020 even if debt is of a date earlier than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on

13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case."

6. When we consider the case in hand, the present application is filed on 14.02.2021 and the amount claimed in default is less than Rs. 1 Crore. Therefore, in the light of the notification dated 24.03.2020 and the decision referred to Supra, we are of the considered view that the present application does not fulfill the minimum threshold limit to trigger the Corporate Insolvency Resolution Process

7. Thus, in view of the discussions made supra, the instant Application filed by the Applicant under Section 9 of IBC, 2016 is not maintainable and accordingly stands dismissed

-Sd-

(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

-Sd-

(P.S.N. PRASAD)
MEMBER (JUDICIAL)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (J), Shri P. S. N. Prasad is holding another court today and will not be able to attend this court.

For **COURT OFFICER**