IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 348/ND/2020

[*Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*]

IN THE MATTER OF:

M/S ADINATH INTERNATIONAL PRIVATE LIMITED

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S AVR OVERSEAS PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 04.03.2022

CORAM:
SHRI. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER(TECHNICAL)

ORDER

Per Smt. Sumita Purkayastha, Member (Technical)

1. This is an application filed by M/s Adinath International Private Limited the applicant/operational creditor seeking (for brevity Operational Creditor) to initiate CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s AVR Overseas Private Limited., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 38,28,521/- on account of providing licenses for exporting various kind of material to the corporate debtor. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-

   a. The Operational creditor is involved in the business of export and import of commodities. In pursuance to the same, the corporate debtor contacted operational creditor through one of its client i.e Arinitis Sales Private Limited as the operational creditor holds good reputation for their services in providing various licenses which are required for exporting items to other countries from excise and custom department.

   b. It is submitted that the operational creditor entered into business relationship with the corporate debtor to facilitate availing of various types of licenses.

   c. Further it is stated that for the services performed, invoice dated 27.05.2017 was raised on the corporate debtor and due to the services of the operational creditor, the following licenses were raised to the corporate debtor which is as follows:

a. License No. 3319009132 and 3319009133 dated 17.05.2017
b. License No. 3319007627 dated 14.02.2016
c. License No. 3319009070 dated 09.05.2017
d. License No. 0519078778 dated 15.05.2017
e. License No. 0519068188 dated 04.01.2017
f. License No. 0519072943 dated 06.03.2017
g. License No. 0519073252 and 0519073254 dated 08.03.2017
h. License No. 0519076256 dated 12.04.2017

Copy of the Invoice dated 27.05.2017 is annexed along with. Further the copy of license issued by the Indian Customs EDI Systems is also annexed.

d. It is further submitted that the copy of the ledger account maintained by the operational creditor from 01.04.2017 to 31.03.2018 and 01.04.2018 to 31.03.2019 showing the failure of the corporate debtor to clear the unpaid invoice dated 27.05.2017 has been filed on record.

e. The applicant sent demand notice under Section 8 of the code on 04.11.2019 calling upon the corporate debtor to pay the total amount of Rs. 38,28,521/-. The Copy of demand notice along with postal receipts and the tracking reports has been annexed.

2. The Corporate Debtor in its reply to the application submits that:-

a. That the authorized representative of Arinits Sales Pvt. Ltd, Ashish Chopra stated that as he had to settle the accounts with dealers, he was under obligations to offer such an offer, therefore he asked for a part payment through banking channels and part payments through cash as some of the dealers wanted cash in returns. Further Ashish Chopra had gained the trust of the company over a period of time, the company paid Rs.31,0000/- in cash through its director, after borrowing the same from family and friends and Rs. 3,41,79,221/- through various bank channel.

Copy of the invoice and the LC has been placed on record.

b. It is submitted that in the month of January, 2016, Ashish Chopra showed his inability to honor the whole contract on the pretext of inferior good quality of the product and supplied goods of 510 Mt PVC Raisins of an amount of Rs. 3,41,79,221/-. Furthermore it is submitted that on believing him, the corporate debtor granted him time to make the aforesaid remaining payment.

c. Further in the month of April, 2017, a meeting was held with Mr. Ashish Chopra and the applicant wherein it was decided that the applicant will provide the import license to the corporate debtor, however the payment of the said license will be paid by Mr. Ashish Chopra as the applicant owed an amount of Rs. 40,00,000/- to Mr. Ashish Chopra's company Arinits Sales Private Limited.

3. We have heard the arguments of Ld. Counsels for the applicant and all the respondents and perused the case records. In order to establish its claim, the applicant has placed copy of the invoice dated 27.05.2019 and copies of Licenses alleged to have been issued in the favour of corporate debtor, but neither the invoice is acknowledged nor the licenses were signed by the corporate debtor. The ledger placed by the applicant is also not acknowledged or verified by the corporate debtor. The applicant has not placed any other document to show that the claimed operational debt is due and payable by the corporate debtor. Further, no communication or agreement has been placed before this Tribunal to establish the fact that the claim amount is due and payable by the respondent. Unless any cogent and convincing evidence is there on the record, merely on the basis of some invoices and copies of licenses, it could not be proved that the applicant herein was engaged by the respondent to arrange those licenses for the corporate debtor. Moreover, there must be some Tripartite agreement between the applicant, corporate debtor and the licenses issuance authorities, however, that is lacking. Thus, in the absence of any reliable evidence,

it could not be established that the applicant herein was actually engaged by the corporate debtor to arrange licenses for it. Accordingly, as per Section 9 of the Code, the applicant has failed to establish its claim against the respondent corporate debtor.

4. In view of the abovesaid discussion, the applicant measurably failed to establish the fact that its operational debt is payable by the respondent corporate debtor, thus the present application being devoid of any merit, stand rejected without any costs.

5. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicants before any other forum shall not be prejudiced on account of dismissal of instant application.

Let the copy of the order be served to the parties.

File be consigned to record room.

-Sd-

SUMITA PURKAYASTHA
MEMBER (T)

-Sd-
4/3/22

DHARMINDER SINGH
MEMBER (J)