

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

Rst. A. (IB) No. 5/CB/2021

In

CP (IB) No.152/CTB/2019

In the matter of:

An application 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;

And

In the matter of:

Unigold System, a proprietorship concern, bearing PAN: ADZPG6261D, its registered office at situated at 143, Karl Marx Sarani, Kolkata – 700023.

...Operational Creditor

Versus

Fortune Spirit Ltd., limited by share, Unlisted Non-Government Company bearing CIN: U155110R2007PLC009628 and incorporated on 21.11.2007, having its registered office at Plot No. 31, Kharavala Nagar, Unit III, Bhubaneswar, Khordha, Odisha - 751001

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner (s) : Mr. Anirudh Wadhwa, Adv.
Mr. Rohit Sharma, PCS

For Respondent (s) : Mr. L.D. Sahoo, Adv.

Order reserved on: 18.04.2022

Order pronounced on: 25.04.2022

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ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. This is an application filed by **Unigold System** for restoration of main petition i.e., CP (IB) No. 152/CTB/2019. The applicant herein is the Operational Creditor in the aforesaid CP (IB) No. 152/CTB/2019, which was earlier filed before this Bench under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC** for brevity) for alleged default of a sum of ₹ 55,66,694.76 (Rupees Fifty-Five Lakh Sixty-Six Thousand Six Hundred Ninety-Four and paise Seventy-Six only) by the Corporate Debtor, namely **Fortune Spirit Ltd.** The total amount claimed by the petitioner included principal and interest at the rate of 18%. The Petitioner had stated therein that they had supplied mono cartoons & labels to Corporate Debtor and raised invoices (as stated in Pg. No. 43 of the Petition) for the period of 19.05.2015 to 09.12.2016. This application for initiation of CIRP against the Corporate Debtor which was filed on 18.11.2019. The petitioner had submitted that seventeen (17) invoices enclosed along with this application are due and payable. This Tribunal has dismissed the aforesaid petition vide order passed on 02.03.2021 primarily on the grounds that it is barred by limitation.
2. The applicant herein submits that against the said impugned order, the Operational Creditor had filed an appeal before the Hon'ble National Company Law Appellate Tribunal, New Delhi (NCLAT). Hon'ble NCLAT vide order dated 12.11.2021 had set aside the order passed by this Tribunal by stating that -

“It is contended by the counsel that pursuant to the part payment made by the Corporate Debtor on 17.05.2017 There is a default of an outstanding debt of ₹ 33,77,708/-. By way of an e-mail dated 10.05.2018, the Corporate Debtor issued a statement of account admitting and acknowledging the outstanding debt. Hence, the

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period of limitation calculated from 10.05.2018 ends on 10.05.2021 and, therefore, the Section 9 application is within the limitation period”.

3. While setting aside aforesaid Order of this Tribunal Hon'ble NCLAT had directed the Adjudicating Authority to proceed in accordance with law. Learned Counsel appearing for the Corporate Debtor submitted that aforesaid NCLAT Order has been challenged in the Hon'ble Apex Court. However, this Tribunal notes that thereupon there is no stay or interim relief has been granted by the Hon'ble Supreme Court. As a matter of fact, on this date the Orders of Hon'ble NCLAT holds.
4. In view of the aforesaid orders of the Hon'ble NCLAT dated 12.11.2021, this Restoration Application No. (IB) 5/CB/2021 is ALLOWED. Consequently, the main petition CP (IB) No. 152/CTB/2019 shall stand restored to file. The petition filed by the Corporate Debtor i.e., Unigold System under Section 9 of Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the respondent/corporate debtor is ADMITTED.
5. In the main petition, CP (IB) No. 152/CTB/2019, the Operational Creditor has not suggested the name of Interim Resolution Professional (IRP). Therefore, this Tribunal appoints **Mr. Saroja Kumar Prusty, Registration No. IBBI/IPA-002/IP-N00803/2019 -2020/12890, residence of Plot No-33/7, Gada Mahavir Vihar, Old Town, Bhubaneswar-2, Khordha, Orissa, 751002 and E-mail Id: sarojprusty.adv13@gmail.com** from the list of Interim Resolution Professional, Liquidator, Resolution Professionals and Bankruptcy Trustee for Cuttack Zone, issued by the Insolvency and Bankruptcy Board of India. There is nothing on record to say that any disciplinary proceedings against the proposed Interim Resolution Professional is pending.

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ORDER

- (a) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **Fortune Spirit Ltd.**, Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-Section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (b) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

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- (c) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (d) The provisions of sub-Section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (e) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (f) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for Liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- (g) Necessary public announcement as per Section 15 of the IBC, 2016 may be made by the Resolution Professional upon receipt of the copy of this order.
- (h) **Mr. Saroja Kumar Prusty, Registration No. IBBI/IPA-002/IP-N00803/2019 -2020/12890, residence of Plot No- 33/7, Gada Mahavir Vihar, Old Town, Bhubaneswar-2, Khordha, Orissa, 751002 and E-mail Id: sarojprusty.adv13@gmail.com** is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a

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resolution plan subject to production of written consent within one week from the date of receipt of this Order. He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.

- (i) We direct the Operational Creditor to deposit a sum of ₹ 2.00 lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
- (j) Directions are also issued to the suspended management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
- (k) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- (l) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

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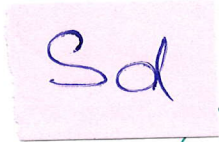
CP(IB) No. 152/CTB/2019
In re: CIRP of Fortune Spirit Ltd.

- (m) List the main CP for reporting progress on 30.05.2022.
- (n) Let the certified copy of the order be issued upon compliance with requisite formalities.



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Satya Ranjan Prasad
Member (Technical)



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P. Mohan Raj
Member (Judicial)

Signed this 25th April, 2022.

(Nilesh_Steno)