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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1416/ND/2018

(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:

Mr. RAM PAL TOSHNIWAL

SOLE PROPRIETOR- M/S RIDHI SIDHI

...Applicant/Operational Creditor

VERSUS

M/s R. K. SILK MILLS (INDIA) LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 19.11.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

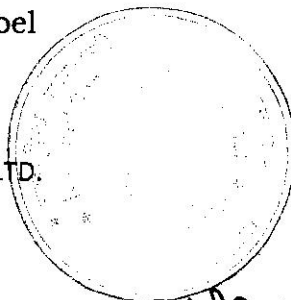
HON'BLE MEMBER (Technical)

For the Applicant : Mr. Rohit Bansal, Mr. Ankit Sareen

For the Respondent : Mr. R.K. Goel

IB-1416/(ND)/2018

M/S RIDHI SIDHI VS. M/S R.K. SILK MILLS (INDIA) LTD.



Handwritten signature and date: 25/11/19

MEMO OF PARTIES

Mr. RAM PAL TOSHNIWAL

SOLE PROPRIETOR- M/S RIDHI SIDHI

B-57, Bhilwara Textile Market

Bhilwara-311001, Rajasthan

...Applicant/Operational Creditor

VERSUS

M/sR. K. SILK MILLS (INDIA) LIMITED

Having its registered office at:

5666/78, 1ST & 3RD Floor,

Regar Pura, Karol Bagh,

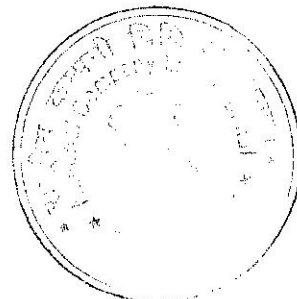
New Delhi, Central Delhi-110005

...Respondent/Corporate Debtor

JUDGEMENT

PER- SH.HEMANT KUMAR SARANGL, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Ram Pal Toshniwal, sole proprietor of M/s Ridhi Sidhi (for



brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s R. K. Silk Mills (India) Limited (for brevity 'Respondent').

2. The Applicant, namely Mr. Ram Pal Toshniwal is the sole proprietor of M/s Ridhi Sidhi, with PAN No. AAKPTS0509M, having its office at B-57, Bhilwara Textile Market, Opp Badal Textile Market, Bhilwara-311001, Rajasthan.
3. The Respondent, namely M/s R. K. Silk Mills (India) Limited, is a company incorporated on 20.01.1991, under the provisions of Companies Act, 1956 with CIN No. U18201DL1991PLC042809, having its registered office at 5666/78, 1st & 3rd Floor, Raigarpura, Karol Bagh, New Delhi-11005.
4. The Authorised Share Capital of the respondent company is Rs.3,25,00,000/- and Paid Up Share Capital of the company is Rs.3,23,05,510/- as per Master Data of the company.
5. It is the case of the applicant, that it is primarily engaged in the business of supplying chemicals in Bhilwara which is



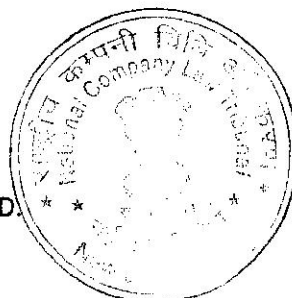
sued for manufacturing and processing of textiles. The Operational Creditor started doing business with the Corporate Debtor in the year 2010. The CD used to place order for such chemicals on telephone from Alwar and Delhi and the OC used to supply such chemicals (TRO/LM500) by strictly adhering to the particulars of the orders placed and used to raise the invoice accordingly. The CD upon receiving such invoices used to make payment through cheques or NEFT/RTGS transfers and at no point of time cash payments were made by the CD or received by the OC. There is a balance amount in default to the tune of Rs.19,05,525/- (Rupees Nineteen Lakhs Five Thousand Five Hundred Twenty Five), as on 10.05.2016, after adjusting/setting off the last payment of Rs.93,016/- (Rupees Ninety Three Thousand Sixteen) dated 10.05.2016, received from the CD.

6. The applicant further states that, the practice adopted by it was to appropriate whatever payment received to the oldest invoice first. Therefore, after appropriating the last payment of Rs.93,016/- dated 10.05.2016 to the relevant invoice, the



petitioner has not received any payment starting from invoice no. 179/15-16 dated 05.09.2015 to the last invoice no. 17/16-17 dated 23.04.2016.

7. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply nor made the payment of balance amount, i.e., Rs.19,05,525/- (Rupees Nineteen Lakhs Five Thousand Five Hundred Twenty Five).
8. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 29.04.2017, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.19,05,525/- (Rupees Nineteen Lakhs Five Thousand Five Hundred Twenty Five), within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.
9. Despite the demand notice sent under Section 8 of the Code, the Respondent failed to pay the amount demanded and has neither raised any notice of dispute. As no payment was



coming, hence this application, seeking to unfold the process of CIRP.

10. The applicant has stated that total debt due and payable is Rs. 19,05,525/- (Rupees Nineteen Lakhs Five Thousand Five Hundred Twenty Five), along with interest.
11. The applicant has also filed affidavit of service wherein he states that the respondent has been served through speed post on 10.10.2018, the applicant also states that the respondent was also served through email on 30.10.2018. The postal receipt along with the copy of email has been annexed along with the application.
12. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply, in its reply to the present section 9 application, the respondent states that there is no default on the part of respondent, no amount is payable to applicant for supply received. The respondent states that the same was also informed to the applicant on 07.06.2017 in response to the demand notice. It has been stated by the respondent that the applicant has



concealed the material facts in as much as the applicant, who has alleged that the last transaction took place on 23.04.2016 as mentioned in application, in fact, the last transaction took place by purchasing of goods on 08.08.2015 and after that on 07.05.2016 vide invoice no. 24/16-17 for Rs.55,188/-, material supplied under this invoice was not accepted being not of quality and returned thereafter, the respondent has been clearing the amount payable and paid the entire sum by making the final payment of Rs.93016/- on 05.10.2016.

13. In its rejoinder the applicant states that, the respondent at once denied receiving any of the goods as per the invoices starting from 05.09.2015 to 23.04.2016 and pleads that after the goods received as per the invoice no. 155/15-16 dated 08.08.2015, the respondent received goods as per the invoice no. 24/16-17 dated 07.05.2016 which were returned for want of quality however, in the process of denying the invoices forgot the correspondence quo 2 invoices numbered 267/15-16 & 279/15-16 for which the respondents wrote a letter dated 10.01.2016 complaining about quality of the goods



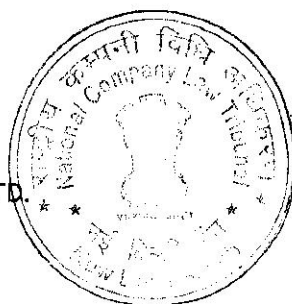
supplied as per 2 invoices numbered 267/15-16 & 279/15-16.

14. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.
15. The applicant has attached the copy of Bank statements issued by Yes Bank Ltd., Axis Bank Ltd. in compliance with the requirement of Section 9(3)(C) of the IBC 2016.
16. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code.
18. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.



19. The Applicant has proposed the name of any Interim Resolution Professional as Mr. Prashant Agrawal. In view of the same, this Bench appoints the same Mr. Prashant Agrawal, having registration no. IBBI/IPA-001/IP-P00053/2017-2018/10127, and email address is ippagrawal@gmail.com, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.


20. We direct the Operational Creditor to deposit a sum of Rs. 1 lakh with the Interim Resolution Professional, Mr. Prashant Agrawal, to meet out the expenses 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 three days from the date of receipt of this order by the Operational Creditor. The amount however will 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.

21. 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 Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
22. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest, but not later than seven days, from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

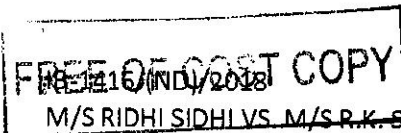
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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)



(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)



25/11/19

25.11.19
Deputy Registrar

National Company Law Tribunal
CGO Complex, New Delhi-110003