

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.1571/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Hoya Lens India Private Limited
[CIN: U26107MH2006PTC162759]

... Operational Creditor

Versus

Hollywood Opticians Private Limited
[CIN: U33201MH2009PTC193958]

... Corporate Debtor

Order pronounced on : 28.04.2020

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Ms Roshni Tripathi, Practising
Company Secretary, i/b Mr
Pankaj Kandhari, Advocate
For the Corporate Debtor : Mr J Ramgopal, i/b Kaleyantey
Law Firm, Advocate

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ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 ("IBC") by Hoya Lens India Private Limited [CIN: U26107MH2006PTC162759] ("the Operational Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Senior Accountant, Mr Sandeep Shridhar Shinde, on the basis of a Board Resolution dated 25.03.2019 seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Hollywood Opticians Private Limited ("the Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares and incorporated on 09.07.2009 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U33201MH2009PTC193958. Its registered office is B-607, BSEL Tech Park, Plot No.39/5 & 39/5a, Sector 30-A, Vashi, Navi Mumbai 400 705, in the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 22.04.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹50,35,714.00 (Rupees fifty lakh thirty-five thousand seven hundred and fourteen only) as principal and ₹10,18,182.00 (Rupees ten lakh eighteen thousand one hundred and

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eighty-two only) as interest as on 31.03.2018, which is the date of default.

4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor has been supplying spectacle lenses to the Corporate Debtor pursuant to several work orders;
 - (b) Subsequently, the Operational Creditor had raised a total of twenty-four invoices for a total amount of ₹50,35,714/- between 16.12.2017 and 31.03.2018.
5. Invoices have been placed on record as Exhibit 'E' to 'W' at pp.14-265. The invoices do not provide for interest in case of delayed payments. Bank statements are attached as Exhibit 'D' at pp.13. The total debt due and payable to the Operational Creditor is ₹60,53,896.00 (Rupees sixty lakh fifty-three thousand eight hundred and ninety-six only), as mentioned at p.12 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 09.02.2019 to the Corporate Debtor (pp.275-279) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice. Necessary affidavit of No Dispute in terms of section 9(3)(b) of the IBC has been placed on record by the Operational Creditor by way of additional affidavit.
7. Mr J Ramgopal, i/b Kaleyantey Law Firm, Learned Counsel appeared on behalf of the Corporate Debtor and made his submissions.

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8. In its reply dated 19.09.2019, the Corporate Debtor has submitted as follows: -

- (a) The Operational Creditor shared a business relationship with the Corporate Debtor from 2016 onwards and there was a running account between the parties. The bills as and when presented were usually cleared subject to satisfactory quality of goods and any non-conformance of goods would ultimately result in appropriate adjustments in payments (para 1 at page 287 of the Reply);
- (b) The payment terms were always flexible and routine batches of payments were appropriated to the account of the Operational Creditor deducting the applicable amount towards goods that were not in line with the desired quality, spillages and goods receipt note (para 2 at page 287-288 of the Reply);
- (c) Regular clients of the Corporate Debtor started raising complaints at regular intervals due to the substandard quality of lens supplied by the Operational Creditor to the Corporate Debtor. The lenses were customised to specific needs and any deviation from the actual standard would mean rejection, in addition to losing out on clients (para 3 at page 288 of the Reply);
- (d) The Operational Creditor had assured that the quality and technology that the product range offered were to the highest order with regard to the quality, technology and other aspects. Additionally, the Operational Creditor had assured training

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programmes on quarterly basis, branding and merchandising support and customer services, but these were never provided. As a result, the Corporate Debtor lost out on clients. It also had to make refunds to several customers (paras 5 & 6 at page 289 of the Reply);

- (e) The Operational Creditor was not in the habit of supplying delivery challans and transporter bills evidencing receipt of goods (para 7 at page 290 of the Reply);
- (f) On earlier occasions, the Operational Creditor was diligent in attaching the acknowledged delivery challans (para 7 at page 291 of the Reply);
- (g) From 2017 onwards, the goods supplied by the Operational Creditor were not in line with the actual requirements. These were communicated to the Operational Creditor in time, through emails (para 8 at page 291 of the Reply).;
- (h) The Operational Creditor had failed to supply Goods Receipt Note (GRN), Delivery Challans, MRA (Material Receipt Acknowledgement), and credit notes in respect of the complete chain of transactions, upon receipt of which the Corporate Debtor would have been inclined to honour the transactions (para 11 at page 292 of the Reply);
- (i) The Corporate Debtor has requested the Operational Creditor several times over telephone to replace the defective goods, but

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the Operational Creditor did not do so in spite of assurances to this effect (para 13 at page 293 of the Reply);

(j) The Operational Creditor has failed to attach bank certificate of bankers apart from Axis Bank regarding receipt of payments. The Operational Creditor has suppressed the fact that certain payments have been received by Axis Bank as well. (para 14 at page 293 of the Reply).

9. We have heard the arguments of both sides and perused the records.
10. As regards interest, the learned Counsel for the Operational Creditor fairly conceded that there is no provision in the invoices for charging of interest. Upon instructions from the Operational Creditor, she submits that the interest component may be treated as given up. That leaves only the principal sum of ₹50,35,714/- as the claim of the Operational Creditor in the present petition.
11. The Corporate Debtor has not attached any documents in support of the contention that goods were substandard and that there were complaints to this effect from customers. In the absence of any such communications on record, it is difficult to ascertain at this stage whether there was any such communication at all between the parties.
12. As regards non-receipt of Demand Notice, the Operational Creditor has attached copies of the envelopes addressed to the Corporate Debtor at its registered office as well as to another address at Unit No.C-02, Punit Industrial Premises Cooperative Societies Limited,

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Turbhe, Navi Mumbai 400 705. Both of these envelopes have been returned to sender by the postal authorities with the seal "unclaimed."

13. In terms of rule 5(2)(a) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Demand Notice is required to be delivered to the corporate debtor, among others, at the registered office by hand, registered post or speed post its acknowledgement due. Section 27 of the General Clauses Act, 1897, lays down the law on service as follows: -

“27 Meaning of service by post. Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

14. Therefore, this Bench deems that the Operational Creditor has fulfilled the requirements of law in addressing the Demand Notice to the Corporate Debtor at its registered office as per MCA web portal, which has been returned by the postal authorities with the remarks “unclaimed.”
15. The defences raised by the Corporate Debtor are unsupported by any documents on record.

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16. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
17. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
18. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing CP(IB) No.1571/MB/C-IV/2019 filed by Hoya Lens India Private Limited [CIN: U26107MH2006-PTC162759], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Hollywood Opticians Private Limited [CIN: U33201MH2009PTC193958], the Corporate Debtor, is admitted.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including

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- 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 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.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority

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approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, this Adjudicating Authority hereby appoints Mr Balkrishan Sharma, Registration No.IBBI/IPA-002/IP-N00045/2016-2017/10084, having address at Flat No. 302, Om Apartment (3rd Floor), Plot No. 667 & 670, Sector-20, Nerul (W), Navi Mumbai, 400 706 [email: balkrishanassociates@gmail.com, Mobile: 8879804637] as the IRP in the matter. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to

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the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP of the Corporate Debtor.
- (i) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) In terms of section 9(5)(i) of the IBC, the Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-
Ravikumar Duraisamy
Member (Technical)

28.04.2020

Sd/-
Rajasekhar V.K.
Member (Judicial)