IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1388/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:

M/S RAKESH KUMAR PARDEEP KUMAR
Partnership firm
Through its partner, Sh. Sanjay Kumar

…Applicant/Operational Creditor

VERSUS

M/S DASH EXPORT PRIVATE LIMITED

…Respondent/ Corporate Debtor

Judgment Pronounced on:26.02.2020

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
SH. HEMANT KUMAR SARANGI
HON'BLE MEMBER (Technical)

MEMO OF PARTIES

M/S RAKESH KUMAR PARDEEP KUMAR

Partnership firm

Through its partner, Sh. Sanjay Kumar

Registered office at: A-64, New Grain Market

Najafgarh, Delhi

…Applicant/Operational Creditor

VERSUS

M/S DASH EXPORT PRIVATE LIMITED

Registered office at: 1102-B, Pearl Business Park

Netaji Subhash Palace

Pitampura, Delhi-110034

…Respondent/ Corporate Debtor

For the Applicant: Mr. Prashant Bhardwaj, Advocate

For the Respondent: Ms. Anindita Shah, Mr. Pravesh Khyalia, Advocates

ORDER

Dr. Deepti Mukesh, Hon'ble Member (J)

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 M/S Rakesh Kumar Pradeep Kumar through its partner, Sh. Sanjay Kumar (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency Resolution Process against M/S Dash Export Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a partnership firm duly registered bearing no 0575 of 2011 and having its office at A-64 New Grain Market Najafgrah, Delhi.
3. The Corporate Debtor is private limited company incorporated under the provisions of the Companies Act, 1956 on 04.08.1994 having CIN U74899DL1994PTC06073 and having registered office at 1102-B, Pearl Business Park Netaji Subhash Palace Pitampura, Delhi-110034
4. The Applicant has submitted that the corporate debtor had approached the applicant for purchase of wheat in the beginning of the year 2016 and the applicant supplied wheat worth Rs 1,44,83,316/- to the corporate debtor.

5. The Applicant has submitted that invoices from 06.02.2016 to 08.11.2016 were raised upon the corporate debtor but the corporate debtor has not made any payment against the said invoices of wheat supplied by the applicant. Thus, it is submitted that a sum of Rs 2,03,01,612/-, including interest is due and payable by the corporate debtor.

6. The Applicant has further submitted that confirmation of accounts for the period 01.04.2016 to 09.11.2016 were sent to the corporate debtor which were duly received and acknowledged by the corporate debtor. The copy of confirmation of accounts acknowledged by corporate debtor dated 01.04.2017 with stamp of corporate debtor is annexed with the application.

7. The Applicant issued a demand notice dated 10.09.2018 in Form 3 & Form 4, under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the corporate debtor to pay the total outstanding amount of Rs. 2,03,01,612/-.

8. The corporate debtor replied to the section 8 demand notice dated 22.09.2018 and has admitted its liability towards the outstanding dues by asserting as follows:

> "In its usual course of business, your clients would send our client the confirmation of accounts at the end of every financial year, which our client would sign with the bona fide belief and understanding that the balance claims of our client would be settled as promised by your clients against the future supplies. It is for this reason that our clients did not sign and acknowledged any confirmation of account after April 01, 2017.
>
> It is stated that though part claims have been settled by your clients until March 31, 2017 however the substantial claims of our client remained pending settlement, therefore, reliance of your client on the confirmation of accounts as on April 01, 2017 is not the final statement of accounts as huge claims of our clients remained pending for settlement against the future supplies and your clients never came forward to reconcile the statement of accounts".

9. The Applicant has filed present Application on 09.10.2018 under section 9 of IBC, 2016 and served the copy of this application through speed post which has been duly delivered to the corporate debtor as per the tracking report.

10. The corporate debtor has replied to the application and has tried to raise/create a pre-existing dispute by asserting that the applicant had supplied the goods with inferior quality and with shortage in its quantity. The corporate debtor has asserted that the same was brought to the notice of the applicant over the phone or during various meetings.

11. Heard the learned counsels for both the sides and perused the documents on record, it is beyond doubt that the default has occurred with respect to the payment of the operational debt due to the Applicant. The corporate debtor has not placed on record any documents or proof which shows the pre-existing dispute between the parties before the issuance of section 8 demand notice. Therefore, we are not convinced that there is pre-existing dispute. The Applicant is entitled to claim its dues, which the corporate debtor has failed to rebut. On the contrary in reply to section 8 notice there is an admission of receiving goods and amount payable with confirmation of accounts by the corporate debtor as on 01.04.2017.

12. The application is complete as per the requirements of section 9 of the code. Further the date of default occurred from 06.02.2016 and the application is filed on 09.10.2018, hence the debt is not time barred and the application is filed within the period of limitation.

13. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

14. The Applicant has filed an affidavit under section 9(3)(b) affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.

15. The present application is complete and perusing the documents on records it goes beyond doubt that the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt. In the light of above facts and records the present application is admitted.

16. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Santosh Sharma, with registration number IBBI/IPA-002/IP-N00898/2019-20/12842 (email – sci.santoshsharma@gmail.com, is appointed by this Hon'ble Tribunal as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

17. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Santosh Sharma to meet out the expense 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 for the date of receipt of this order by the Operational Creditor. The amount however 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.

18. 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 Corporate debtor prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.

19. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI

for its records. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-	**Sd/-**
HEMANT KUMAR SARANGI	**DR. DEEPTI MUKESH**
MEMBER (T)	**MEMBER (J)**