

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Company Petition (IB)No. 2371/ND/2019

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016

AND

In the matter of:

Ingram Micro India Private Limited (IMPL)

5TH Floor, Block B, Godrej IT Park,
02 Godrej Business Dist. , Pirojshanagar,
Vikhroli(W), Mumbai-400079

...Applicant/Operational Creditor

VERSUS

K.D.K. Enterprises Private Limited

Unit No.-4, LGF, Gallon Plaza, 3/31-34,
Shivalik Road, Malviya Nagar, New Delhi
South Delhi DL-110017

...Respondent/Corporate Debtor

ORDER DELIVERED ON:20.03.2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Operational Creditor: Adv. Saurabh Jain, Adv Samarth Arora,
Adv. Ashutosh Gupta, Adv. Abhishek

For the Corporate Debtor: None



AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER, JUDICIAL

1. The applicant/Operational Creditor is filing the present application against the Respondent/Corporate Debtor under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") read with Rule 6 of the IBC, 2016 initiate corporate insolvency resolution process in respect of corporate debtor.
2. The facts of this case in short is that the operational creditor claims an amount of Rs. 33,97,727/- against the outstanding value of the supplies made along with the interest due on the value of outstanding invoices @ 24 per cent per annum amounting to Rs. 11,50,038/- both aggregating to Rs. 45,47,765/-. The operational creditor herein is a leading distributor of IT hardware and software products including all telecommunication equipment, office automation equipment and also provides training, warehousing and other allied services.
3. We have heard the Ld. Counsel for Operational Creditor and perused the averments made in the application.
4. Ld. Counsel for applicant submitted that in pursuant to the demand notice issued upon the Corporate Debtor and which was duly delivered on 13.08.2019, no reply to the demand notice has been received, even no payment has been made against the unpaid debt. He further submitted that even after filing of this application, the copy of the same was also sent to Corporate Debtor but none appeared on behalf of



Corporate Debtor. Therefore, vide order dated 08.11.2019, the proceeding was fixed for ex-parte hearing. He further submitted that the applicant has enclosed the ledger account to show that unpaid debt has not been paid. He further submitted that cause of action arose when the applicant present a cheque of Rs. 33,97,727/- before the ICICI bank and the same was dishonoured. So, under such circumstances, CIRP may be initiated against the Corporate Debtor.

5. Considering the submissions made on behalf of Operational Creditor and on perusal of the averments made in the application as well as documents enclosed with the main application, we find that at page 35. statement of unpaid invoices and interest is enclosed and from the perusal of record, we find that invoice is in between from 15.03.2018 to 10.05.2018, whereas the present application is filed on 20.09.2019, therefore, the application is filed within limitation. We further find that the demand notice was duly delivered upon the Corporate Debtor on 13.08.2019 but no reply has been sent by the Corporate Debtor within 10 days as required under Section 8(2) of the IBC. We further find that applicant has filed Section 9(3)(b) of IBC, 2016, stating that no reply to the demand notice has been received. We further find that even after the filing of this application, Operational Creditor has sent the notice along with application to the Corporate Debtor but none present on behalf of Corporate Debtor, therefore, the proceeding was fixed for ex-parte hearing against the Corporate Debtor.



6. Considering these facts, no reply has been sent by the Corporate Debtor in response to the demand notice as required under Section 8(2) of the IBC, therefore, Corporate Debtor has neither raised the existence of dispute nor the payment of unpaid operational debt has been made. Therefore, at this juncture, we would like to quote Section 9(5)(i) and the same is quoted below:-

“(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no 3[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

In the light of this provision, when we shall consider the case in hand then we find, the application is complete, payment is not made and amount is more than Rs. One Lakh is being the minimum threshold limit fixed under IBC, 2016.

7. Therefore, in view of Section 9(5)(1) of IBC, we inclined to admit this application, hence, the same is admitted. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect forthwith staying:-

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

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.

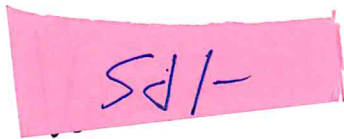
8. Since, name of IRP is not proposed, hence we appoint, Mr. Naveen Kumar Jain, an Insolvency Professional, registration no. IBBI/IPA-001/IP-P00650/2017-2018/11097, email id -



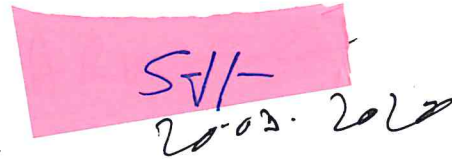
insolvencyprofessional@rediffmail.com and IRP is directed to follow the rules and regulations as per Section 15, 16, 17 & 18 of IBC.

9. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

10. Registry is directed to communicate the order with the IRP as well both the parties.



Kapal Kumar Vohra
(Member Technical)



Abni Ranjan Kumar Sinha
(Member Judicial)