

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 400/Chd/Pb/2018

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

**Delta Electronics India Private Limited
(Formerly Known as Delta India Electronics Pvt. Ltd.)**
having its offices at Plot No. 43,
Sector-35, Gurgaon,
Haryana-122001

...Petitioner-Operational Creditor

Vs.

Blue Life Infra Private Limited
(Formerly known as Sam Pacific Engineers Private Limited)
having its registered office at
Pacific Tower, Post Office Road,
Nr. Kay Jay Forging, C-20,
Phase-V, Focal Point, Ludhiana-141010,
Punjab.
CIN No. U31100PB2009PTC032659

...Respondent-Corporate Debtor

Judgement delivered on: 25.01.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

**For the Petitioner-
Operational Creditor : Mr. Tarun Vir Singh Lehal, Advocate**

**For the Respondent-
Corporate Debtor : Mr. Om Pal Sharma, Advocate**

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Delta Electronics India Pvt. Ltd.** through its authorised representative Rakshpal Singh Dehal (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of SAM Pacific Engineers Pvt. Ltd. (Now Blue Life Infra Private Limited) (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Blue Life Infra Private Limited, is a Company incorporated on 06.03.2009 under the provisions of Companies Act, 1956 with CIN No. U31100PB2009PTC032659 with its registered office at Pacific Tower, Post Office Road, Nr. Kay Jay Forging, C-20, Phase-V, Focal Point, Ludhiana-141010, Punjab. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A-10.

3. The facts of the case, briefly, as stated in the petition are that Operational Creditor was supplier of Telecom Power Solutions, Industrial Automation, Display Solutions, UPS, DC Fans & Blowers, Components, Bio-Medical, LED Lighting, Automotive Electronics & Renewable Energy Products. The Corporate Debtor issued several purchase orders dated 07.02.2013 till 30.05.2013 (Annexure A-3). The Operational Creditor supplied and delivered the goods to Corporate Debtor as per specifications and requirement. The Operational Creditor raised several invoices. The

Corporate Debtor vide email dated 31.10.2013 apologised for non-payment of dues. The Corporate debtor did not pay the outstanding amount, as a result, the operational creditor issued statutory notice dated 08.04.2015.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 26,08,558.59/- (Rupees Twenty Six Lakhs Eight Thousand Five Hundred and Fifty Eight Only) along with 12% per annum. The default occurred on 29.07.2013 i.e. date on which the debt was due but since the corporate debtor did not pay the debt, the Operational Creditor filed CP No. 18 of 2016 under Section 433(e) of Companies Act, 1956 wherein Notice of Motion was ordered on 01.03.2016. The matter was transferred to this Adjudicating authority wherein the matter was adjourned Sine-Die on 31.03.2017 for enabling the petitioner to file necessary information. The second amendment in Transfer Rules came on 29.06.2017 and new proviso was added which shows that any party or parties to petition shall after the 15.07.2017 be eligible to file fresh applications under Section 7, 8 and 9 of the Code. The present petition was filed in October 2018, which is well within the limitation period from date the proviso to Rule 5 came into being. Copy of purchase order dated 07.02.2013 till 30.05.2013 (Annexure-A3), invoice dated 26.03.2013 till 29.06.2013 (Annexure-A4), Statutory notice (Annexure A6) Judgement CP No. 18/2016 (Annexure-A7) is attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 20.04.2018 and the same has been delivered to the corporate debtor as postal receipt and delivery report are attached at Annexure-8 of

the application and notice issued vide e-mail dated 21.05.2018 attached at Annexure-9 of the application.

6. Notice of this petition was issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavits of services were filed vide Diary Nos. 2497 dated 16.05.2019 and 5966 dated 30.10.2019. The corporate debtor had filed reply vide Diary No.2110 dated 17.03.2020, wherein it is stated that no amount as mentioned is due towards respondents rather respondent is entitled to get some of approximately Rs. 12 lakhs.

7. The rejoinder was filed vide Diary No.00022/1 dated 12.07.2022, wherein it is stated that the Corporate Debtor had misled and camouflaged its inability to make payment that remained due. The Corporate Debtor had neglected and failed to pay the Operational Creditor's legitimate due. the Corporate Debtor had asserted without any material evidence on record that the Operational Creditor stopped supply of goods to Corporate Debtor and due to such reason the Corporate Debtor suffered huge losses and material supplied was defective and not taken back which turned into scrap. The Corporate Debtor had never raised any concern including its admission to the debt and offered to pay in tranches. The Corporate Debtor asserted without any document that he had released payment of Rs. 30,50,000/- between July, 2013 till December, 2013 to restore supply of goods. The Corporate Debtor made a fictitious claim that he has suffered loss of Rs. 38 lakhs without any material evidence. The short written submissions have been filed by applicant vide Diary No.00022/4 dated 13.12.2022 and by respondent corporate debtor vide diary No.00022/2 dated 14.07.2022 and 00022/3 dated 18.07.2022.

8. We have heard the learned counsels and have perused the records.

9. The first issue for consideration is whether the demand notice dated 20.04.2018 was properly served. The demand notice was served through a registered post (Annexure-8) as well as e-mail dated 21.05.2018 (Annexure-9). Therefore, demand notice was duly served.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit that there was no dispute of unpaid operational debt pending between the parties in any court of law and no notice has been given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Hence, it can be safely concluded that there was no pre-existing dispute regarding the claim in hand.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 20.04.2018 is attached as (Annexure A-8) was duly served on the corporate debtor. However, no reply to the demand notice was filed. Therefore, the period of limitation would begin from the date of default i.e. 29.07.2013 i.e. date on which the debt was due but since the corporate debtor did not pay the debt, the Operational Creditor filed CP No. 18 of 2016 under Section 433(e) of Companies Act, 1956 wherein Notice of Motion was ordered on 01.03.2016. However, the matter was transferred to this Adjudicating authority wherein the matter was adjourned Sine-Die on 31.03.2017 for enabling the petitioner to file necessary information. The second amendment in Transfer Rules came on 29.06.2017 and new proviso was added which shows that any party or

parties to petition shall after the 15.07.2017 be eligible to file fresh applications under Section 7, 8 and 9 of the Code. The proviso is reproduced as under:-

5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.— (1) *All petitions relating to winding up of a company under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:*

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent.

This application was filed vide Diary No. 4176 on 26.01.2018. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 26,08,558.59/- (Rupees Twenty Six Lakhs Eight Thousand Five Hundred and Fifty Eight Only) along with 12 % per annum. Copy of purchase order dated 07.02.2013 till

30.05.2013 (Annexure-A3), invoice dated 26.03.2013 till 29.06.2013 (Annexure-A4), Statutory notice (Annexure A6) Judgement CP No. 18/2016 (Annexure-A7) is attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Blue Life Infra Pvt. Ltd.** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Arvind Kumar and there is nothing adverse

against him. In view of the above, we appoint Mr. Arvind Kumar, Registration No. IBBI/IPA-001/IP-P00178/2017-18/10357 , E-mail: sankhyain@gmail.com, Mobile No. +91-9816055657, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Arvind Kumar shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of

Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and

its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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 Securitization and Reconstruction of Operational 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.

17. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31

or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

19. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

21. This petition is accordingly admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 25, 2023
VN/TB