IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-3277/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Saran Equipments and Engineers Pvt. Ltd.
Registered Office at:
G-19, Tiwari Complex, 1st Floor, Vijay Chowk,
Laxmi Nagar, New Delhi- 110092

...Applicant/Operational Creditor

Versus

M/s. ASPG Infrastructures Pvt. Ltd. & Anr.
Registered Office at:
246, Loha Mandi, Site – I
BS Road Industrial Area,
Ghaziabad Uttar Pradesh.

...Respondent/Corporate Debtor

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Coram:

SHRI. P.S.N. PRASAD, Hon’ble Member (Judicial)
SHRI.RAHUL BHATNAGAR, Hon’ble Member (Technical)

Counsel for Applicant/ Operational Creditor: Mr. Mohit Nandwani, Advocate

Counsel for Respondent/ Corporate Debtor: Ms. Prity Mishra, Advocate

ORDER

Per P.S.N PRASAD, HON’BLE MEMBER (JUDICIAL)

Dated: 09.06.2022

1. This is an application filed by the Applicant, M/s. Saran Equipments and Engineers Pvt. Ltd. on 30.11.2019, through Mr. Ram Yash Singhal, Authorised Representative of Operation Creditor, Authorised vide Board Resolution dated 01.10.2019 to initiate corporate insolvency resolution process (“CIRP”) under Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code’) of the Respondent M/s. ASPG Infrastructures Pvt. Ltd. for the alleged default on the part of the Respondent in clearing

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the debt of Rs. 1,79,63,109 (Rupees One Crore Seventy Nine Lakhs Sixty Three Thousand One Hundred Nine) including outstanding principle of Rs. 1,14,77,632 (Rupees One Crore Fourteen Lakhs Seventy-Seven Thousand Six Hundred and Thirty Two) and Rs.64,85,477 (Rupees Sixty Four Lakhs Eighty Five Thousand Four Hundred and Seventy Seven) as interest till 04.10.2019 i.e. the date of issue of demand notice as alleged by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

i. That, the Operational Debt arises out of the supply of various grades of basic Iron and Steel Products supplied by the applicant on orders made by the Respondent. The Applicant used to issue running invoices and Respondent used to make payment to the Applicant

ii. That, since inception of the business between the Applicant and Corporate Debtor, many transactions took place and there has been no dispute regarding the quality of goods supplied by the applicant, however, the Corporate Debtor defaulted in making payments for a few invoices.

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iii. That, the Operational Creditor issued a Demand Notice under clause (a) of sub-rule (1) of Rule 5 of the Insolvency and Bankruptcy Code, 2016 on 05.10.2019 in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 through speed post at the registered address of the Corporate Debtor.

iv. That, the Corporate Debtor has not been able to make any payment towards settling dues.

v. That, the said demand notice was duly delivered to Corporate Debtor on 07.10.2019 but the Operational Creditor did not receive any reply from the Corporate Debtor to the said demand notice.

vi. That, therefore, the Applicant has filed the present application under section 9 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process of the Respondent.

2. Consequent to the notice issued by this Tribunal on 21.12.2020, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor as below: -

- That, the Operational Creditor has filed the present application to claim illegal money from the Corporate Debtor for the goods that were never received by the Corporate Debtor.
- That, the Corporate Debtor is engaged in the business of real estate activities and the Corporate Debtor has a sound financial position which is reflected from the balance sheet of the Corporate Debtor 2018-2019 which shows the total assets of the Corporate debtor as on 31st March 2018 are 18,46,34,940 (Rupees Eighteen Crores Forty Six Lakh Thirty Four Thousand Nine Hundred Forty) and total revenue from operations for the same Financial Year is 19,01,29,169 (Rupees Nineteen Crore One Lakh Twenty Nine Thousand One Hundred Sixty Nine)
- That, the Operational Creditor has duly received the payments for the goods supplied by them and they are now indulging in illegal practices by raising wrong/unethical/false invoices, and the Applicant has failed to provide any documents as to prove that any goods were delivered by them.

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- That the Corporate Debtor, on request of the Applicant, employed Mr. Sandeep Mittal and Ms. Prachi Mittal, in the company in good faith.
- That both of them, during their employment, cleverly raised wrong invoices on behalf of the Applicant for the goods that were neither ordered and nor received by the Corporate Debtor. The alleged invoices were never known to the Corporate Debtor.
- That, the Corporate Debtor, after knowledge of said mischief filed a police complaint against both i.e. Mr. Sandeep Mittal and Ms. Prachi Mittal in Meerut Police Station and the said complaint is itself a dispute related to the wrong/false invoices raised by the Applicant and should be consider as pre-existing dispute.
- That, the Applicant never demanded the payment from the Corporate Debtor before the Demand Notice.
- That, as per the calculation sheet, the interest charged by the Applicant is unreasonable and never agreed upon by the Corporate Debtor.

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- That, the application filed by the Applicant is based on wrong and misleading statements and the Adjudicating Authority shall reject/dismiss the application filed by the Operational Creditor.

3. The Operational Creditor has filed rejoinder to the reply of the Corporate Debtor stating that:

- That, the Corporate Debtor has raised frivolous objections with a sole purpose to confuse the Ld. Adjudicating Authority.
- That, the Applicant denied that the allegation made by the Corporate Debtor of Non- Delivery of goods and stated that the goods were delivered by the Applicant to the Operational Creditor and the Operational Creditor has the knowledge of the same and the Applicant placed some receipt of transportation to claim that the goods were delivered to the Corporate Debtor.
- That one of the representatives of the Corporate Debtor, Mr. Tushar Gupta on 31.05.2017 asked for copy of excise invoice via email against one tax invoice no 94 dated

19.05.2017 this shows that there was no dispute regarding delivery of goods.

- That, the Corporate Debtor requested the Applicant for Form D for Financial Year 2015-2016 to 2017-2018 vide email dated 30.07.2019, in the said email, the Corporate Debtor has annexed the purchase ledger of Operational Creditor which clearly shows the pending invoices as demanded by the Operational Creditor.
- That, the Police Complaint against Sandeep Mittal & Prachi Mittal is nothing but an attempt to confuse this Hon'ble Tribunal, the Corporate Debtor is fully aware of the invoices and has never disputed the same.
- That, based on the abovementioned facts the Hon'ble Tribunal may please to allow the aforesaid application and initiate CIRP of the Corporate Debtor

4. We have heard the Ld. Counsels for the Operational Creditor, Corporate debtor and also the pleadings of both the parties and documents filed in support of pleadings.

5. The Counsel for the Corporate Debtor, during the course of hearing of the matter, on 13.04.2022 has admitted the liability and claim filed by the Operational Creditor. The Counsel for the Corporate Debtor further submitted that the admission is made as per the instructions of her client and, as on date, the Corporate Debtor is unable to pay the amount claimed in the section 9 application.

6. The Tribunal on 13.04.2022 passed an Order and it reads as under: -

> *"Heard the submissions made by the Learned Counsel for the Operational Creditor as well as Learned Counsel for the Corporate Debtor. The claim filed by the Operational Creditor is admitted by the Counsel for the Corporate Debtor and the Counsel for the Corporate Debtor has submitted that the admission is made as per the instruction of her client and her client is unable to pay the amount claimed in the section 9 application. Order is* ***reserved*** *in the matter. This order is dictated in open Court where Counsels for both the parties are physically present."*

It is clear from this order that the Counsel for the Corporate Debtor has specifically admitted the debt and submitted to the Tribunal to pass appropriate orders. The counsel for the Corporate Debtor, on instructions of her client, has therefore admitted the debt and default.

7. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and accepted the said default. Therefore, in the absence of any pre-existing dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect:

(i) The Applicant, in his application, has proposed the name of Mr. Jayanti Jain, to act as interim resolution professional ("IRP"), however, later the applicant has filed an application (I.A. 646/2021) for replacement of IRP from Mr. Jayanti Jain to Mr. Ram Phal Bhardwaj. The Proposed IRP has already placed on record the Certificate of Registration, written communication by proposed Interim Resolution Professional in Form 2 as per 9(1) of the IBBI (Application to Adjudicating

Authority) Rules, 2016, and valid Authorisation for Assignment dated 07.12.2021 which is valid till 06.12.2022. This Tribunal vide order dated 01.04.2021 allowed the aforesaid application. Accordingly, the name of IRP as proposed by the Applicant, Mr. Ram Phal Bhardwaj, (Mobile No. - 9811160725), Reg. No: IBBI/IPA-001/IPP01308/2018-19/12053 is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench. Mr. Ram Phal Bhardwaj has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 21.01.2021.

(ii) Section 16(3)(b) of the Code mandate that the Resolution Professional proposed by the Operational Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule

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9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Vinod Mr. Ram Phal Bhardwaj has submitted the declaration in Form 2 dated 21.01.2021.

(iii) A moratorium in terms of Section 14 of the Code is imposed forthwith on the following:

(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

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

(v) 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.

(vi) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under Section 31(1) or passes an order for liquidation of the 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.

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

(viii) The office 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, NCT of Delhi, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

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(P.S.N. PRASAD)
MEMBER (JUDICIAL)