

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB)-1753(ND) 2019

In the matter of

SIMBA LOGISTICS PRIVATE LIMITED
D-86, LGF,
Kalkaji,
New Delhi - 19

.....Operational Creditor

V/S

HINDUSTAN ONLINE TRADE PVT. LTD.
Ground Floor, Plot No. 1,
New Rajdhani Enclave, Vikas Marg,
Near Preet Vihar Metro Station,
New Delhi - 92

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 16.10.2019

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE, HON'BLE MEMBER (J)
SMT. SUMITA PURKAYASTHA, HON' BLE MEMBER (T)

PRESENT- Mr. Angad Mehta for the Petitioner
None Present for the Respondent

ORDER

Per Justice (Retd.) Rajesh Dayal Khare (Member Judicial)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.

sd/-

2. The petitioner/Operational Creditor has been dealing with the respondent/Corporate Debtor for logistics services wherein the Corporate Debtor has been placing orders for pickup and shipping upon the Operational Creditor on a regular basis. A Merchant Agreement dated 07.10.2018 was entered into between the Operational Creditor and the Corporate Debtor in terms of which services were provided to the Corporate Debtor, and invoices for the same were raised on the Operational Creditor. The Corporate Debtor has made the payment in full of 1 invoice, partial payments made for the 2 invoices and 4 invoices are still unpaid. He has therefore filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate ~~its~~ here claim of Rs. 6,39,817.3/-.
3. As per averment, from October 2018-April 2019, the Corporate Debtor availed services of the Operational Creditor, and for the provision of which services, invoices were raised by the Operational Creditor on the Corporate Debtor. However, the Corporate Debtor has made the payment in full of only 1 invoice (Adjusted via COD amount), partial payment made for the 2 invoices and 4 invoices are not paid and are outstanding. As only one of the invoices were satisfied, the Operational Creditor sent several email reminders to the Corporate Debtor for the outstanding amount.

Sd/-

4. The Operational Creditor has claimed as detailed as under: -

Particulars	Amount (Rs.)
Principal Outstanding Amount	2,46,576.70/-
Interest @ 12% for every 7 days due to the delay in payment	3,93,240.6/-
Total	6,39,817.3/-

5. The Operational Creditor issued the demand notice dated 18.04.2019 as required under Section 8 of the Code was issued, demanding a total sum of Rs. 6,39,817.3/- which was duly served on 22.04.2019.

6. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.

7. The Corporate Debtor has been duly served by Courier Service. None was present on behalf of the Corporate Debtor hence they were proceeded ex-parte vide order dated 02.09.2019. Considering the circumstances, the prayer of the Operational Creditor merits consideration. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 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 judgement, 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 or 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."

Sd K

8. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Vishnu Dutt, an Insolvency Professional, registration no. IBBI/IPA-001/IP/P-00102/2017-2018/10202 email-vishnudutt2050@yahoo.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
9. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. 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. Copy of the order be sent to both the parties as well as to the IRP.
11. To come up on for further consideration.

Sd/-

SUMITA PURKAYASTHA

Member (T)

Sd/-

JUSTICE RAJESH DAYAL KHARE

Member (J)