

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB-1457/ND/2018

IN THE MATTER OF :

M/S. SHIVANSH DIAMOND (P) LIMITED
HAVING ITS REGD. OFFICE AT 2028, BANK STREET,
KAROL BAGH, NEW DELHI – 110 005.

OPERATIONAL CREDITOR/ PETITIONER

Vs.

SAMPAN TRADEX (P) LIMITED
HAVING ITS REGD. OFFICE AT SHOP NO.2542,
GROUND FLOOR, GALI NO.7,
BEADUNPURA, KAROL BAGH,
NEW DELHI – 110 005

(Represented through its Director
Sh. Hitesh Salwan)

..CORPORATE DEBTOR/RESPONDENT

SECTION

UNDER SECTION 9 OF IBC, 2016

ORDER DELIVERED ON 30.7.2019

Coram :

Sh. R. Varadharajan,
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble member (Technical)

For the Petitioner /Op. Creditor :
For the Respondent/Corporate Debtor :

ORDER

(Order dictated in the open Court)

Learned Counsels for the parties are present. It is seen that this Petition
has been filed under Section 9 read with Section 13, 14 & 33 of the IBC, 2016

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for initiating of CIR process against the Corporate Debtor in relation to the claim of Rs.31,43,56,154/- arising out of the supply of Gold & Jewellery to the Corporate Debtor against several Invoices for the year 2014-15, 2015-16 & 2016-17. In relation to support of the petition, Ld. Counsel for the petitioner points out to the Order dated 31.5.2017 passed by the Hon'ble High Court of Punjab & Haryana, Chandigarh, available at Page -275 (Annexure P-8 (Colly) of the Petition.

2. Perusal of the said order in relation to the material portion discloses as under :

- “1. The respondents admit that presently, a sum of Rs.31,98,12,664/- is due to the petitioner in the normal course of business transaction carried on in FY-2016-17.**
- 2. That the present settlement has been entered voluntarily and without any coercion threat or inducement.**
- 3. That the respondent-Company states that it defaulted in its payment due to the default in receiving payments from its various buyers/debtors.**
- 4. That it is mutually decided between parties that the payment of the aforesaid sum of Rs.31,98,12,664/- is to be made in the following manner :**
 - i. Rs. One crore by 15.11.2017.**
 - ii. Rs. One Crore to be paid by the 15th day of every month thereafter.**
- 5. That Sh. Hitesh Salwan, Director of the respondent-company gives his personal guarantee regarding the payment of the above amount in the time period as decided.**
- 6. Under the present settlement, Sh. Naveen Saini, Director of the respondent-company acknowledges to have admitted true liability of the company towards**



the petitioner whether or not the same was truthfully disclosed by him or the respondent-company before Income tax Authorities to escape from their true liability towards the petitioner.

7. In case of breach of any of the conditions of the settlement, the petitioner would be at liberty to take appropriate legal action against the respondents apart from charging simple interest at 12% p.a.”

3. It is evident from the above order that the terms as reported in the order are arising out of the settlement as arrived between the parties as above which is extracted in the said order. It discloses that the Respondent Corporate Debtor has admitted the liability of Rs.31,98,12,664/- before the Hon'ble High Court of Punjab & Haryana, Chandigarh and was also granted time to pay the said amount in instalments commencing from 15.11.2017 in a sum of Rs.One Crore payable on or before the said date and the payment ~~comes~~ to be completed on 15.7.2020. g

4. In relation to the complinace of above said order, Ld. Counsel for the petitioner brings to the notice of this Tribunal that even in relation to the payment of 1st instalment due on 15.11.2017, out of a sum of Rs. One crore, a sum of Rs.50 lacs was only paid by the Corporate Debtor and balance was not paid and the subsequent instalments which was due to be paid as per the settlement Agreement under the terms has not been paid by the Corporate Debtor as well, and there is a default on the part of Corporate Debtor as well and contemplated under the provisions of IBC, 2016 and in the circumstances, this petition is maintainable before this Tribunal.

5. Ld. Counsel for the Corporate Debtor is also present and on a query posed by this Tribunal as to whether the amount is disputed, Ld. Counsel for

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the Corporate Debtor points out to Paragraph -5 of the reply, perusal of which shows that a sum of Rs. 31,98,12,644/- stands admitted. However, a contention is put forward that the payment has not become due as the time granted by virtue of the said order is till 15.7.2020. ✓

6. The above contention on the part of Corporate Debtor we are not able to accept for the reasons that in relation to 1st instalment due to be payable by 15.11.2017 and out of which, only a sum of Rs.50 lacs has been paid and balance of Rs.50 lacs is left unpaid and thus even in relation to the 1st instalment and subsequent instalments, there is an existence of default. The Master Data as enclosed along with the petition shows that the Company/Corporate Debtor has not been struck off.

7. Taking into consideration the existence of a debt and default and dispute which is not in existence and in relation to the payments having become due, the dispute seems to be a moonshine or illusory and this petition hence stands admitted and consequently, the following directions are issued : ✓


Since the Applicant has not named the Interim Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy Board of India appoints Mr. Pawan Kumar Goyal, as Insolvency Resolution Professional (IRP) having Registration No. IBBI/IPA-001/IP-P00875/2017-2018/11473 (e-mail ca.pawangoyal@gmail.com), (Mobile No.9313502143), 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 Corporate Debtor 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. As a consequence of the application being admitted in terms

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of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

(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 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.

However, during the pendency of the moratorium period in terms of Section

14(2) and 14(3) as extracted hereunder:

(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.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

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. The Applicant is directed to pay a sum of rupees two lakhs to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of IBC, 2016 to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

9. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this order forthwith by the Registry.



Upon receipt of the copy of the Order, IRP to forward the same to the Registrar of Companies, NCT of Delhi & Haryana without any delay for the records of ROC to be updated.

-Sd-

(K. K. Vohra)
MEMBER (TECHNICAL)

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(R. VARADHARAJAN)
MEMBER (JUDICIAL)