

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

5, ESPLANDE ROW (WEST), KOLKATA-700001

Tel. No. (033) 2248 6330

Fax No. (033) 2252 1750

Dated: 04/10/2019.

No. NCLT/KB/ 2019/2937

① Sumit Kumar Kasera
Room No. 109-110, 1st Floor, 2618-19, Maruti
Bhawan, Naya Bazar, Delhi-100006.

② Amsicon Agrovet Pvt Ltd.
158, Lenin Sarani, Kolkata-700013.

③ Ms. Asim Kumar Bose.
Flat No. 002a, Dwitiya, Uttara Pathama Dwitiya
Housing Complex, Rajarhat Newtown, A-11d
North 24 Pgs, Kolkata-700157, WB.

CP(NB)-1335/KB/2018
Sub: C.A. No. of I.A. No. 01

In the matter of

Sumit Kumar Kasera

Sir,

Amsicon Agrovet Pvt Ltd.

I am directed to forward herewith a copy of the order dated 30/09/2019,
passed by this Tribunal in respect of the above matter, for information / compliance thereof.

Enclosures stated

Yours Faithfully,



Ar Banerjee
Court Officer
National Company Law Tribunal
Kolkata Bench
Asst. Registrar
NCLT Kolkata Bench.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

C.P. (IB) No. 1338/KB/2018

IN THE MATTER OF:

The Insolvency and Bankruptcy Code, 2016;

And

IN THE MATTER OF:

A Petition under Section 8 of 9 of the Insolvency and Bankruptcy Code 2016 read with Rule 6 of the insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

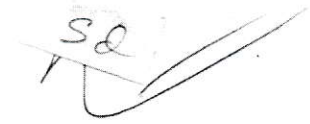
IN THE MATTER OF:

Sunil Kumar Kasera, proprietor carrying on business under the name and style of "Mahalaxmi Sales Corporation," from Room No. 109-110, 1st floor, 2618-19, Maruti Bhawan, Naya Bazar, Delhi 100006.

.....Operational Creditor

And



IN THE MATTER OF:

Amricon Agrovat Private Limited, a company within the meaning of the Companies Act, 2013 having its Registered Office at '158 Lenin Sarani Kolkata - 700013;

....Corporate Debtor.

CORAM:

Shri M. B. Gosavi., Member (Judicial)

Shri V.K. Gupta, Member (Technical)

COUNSELS ON RECORD:

1. Mr. Deepak Agarwal,
2. Ms. Prasun Mukherjee } on behalf of Operational Creditor
3. Mr. Shunak Mitra
4. Mr. Suryaksh Manish }....On behalf of the Corporate Debtor

Date of pronouncement of order: 30/09/2019

ORDER

Per Shri V.K. Gupta, Member (Technical)

This petition has been filed under Section 9 by the Operational Creditor namely Sunil Kumar Kasera carrying on business under the name and style of "Mahalaxmi Sales Corporation" for initiation of CIRP against the Corporate Debtor namely Amricon Agrovat Private Limited. The amount of default has

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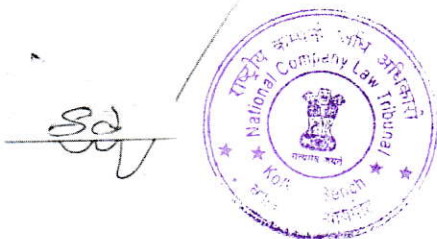


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been claimed at Rs. 44,33,855/- which include interest @ Rs. 24% per annum. The Facts, in brief, are that the Operational Creditor pursuant to order placed by Corporate Debtor supplied Makka, Bajara, Guwar Korma, Cattle / Poultry Feed etc. to the Corporate Debtor which were duly received and accepted by the Corporate Debtor. The Operational Creditor raised corresponding invoices. Corporate Debtor made payment from time to time but some of the invoices remain unpaid, and, hence this Petition.

2. The Ld. Counsel for the Operational Creditor narrated the basic fact and drew our attention to pages 6 (six) to 35 (thirty-five) of the paper book containing copies of the invoices raised from 01.08.2015 till 31.08.2015. The Ld. Counsel thereafter drew, our attention to the pages 236 and 238 containing copy of the letter of Corporate Debtor dated 15.06.2016 and e-mail dated 25.07.2018 wherein amount payable by Corporate Debtor had been confirmed and the Corporate Debtor had also provided the copies of ledger account of the Operational Creditor as per its book which contained details of invoices raised, GRN details and vehicles through which such goods were transported to the location of the Corporate Debtor. Based upon these documents, the Ld. Counsel pleaded that was not barred by limitation nor any dispute existed, hence, petition filed by the Operational Creditor was liable to be admitted.

3. The Ld. Counsel for the Corporate Debtor contended that demand notice had not been served rather it was dispatched only. Hence, Corporate Debtor could not file any reply to notice issued under Section 8 of the IBC. He drew our attention to pages 45 to 47 of the paper book to show that no proof of



delivery of notice was attached. Accordingly, he contended that this was an incurable defect, hence, petition was liable to be dismissed.

4. He further contended that letter dated 15.06.2016 was a forged one and, hence, no cognizance could not be taken thereof. As regards to the e-mail dated July 25, 2018, the Ld. Counsel contended the same was also procured in an unauthorised manner and did not come from the e-mail ID of the company, hence, no cognizance of the same was to be taken. He further contended that materials were supplied to Hajipur, Bihar. However, such invoices did not have the acknowledgement of the Corporate Debtor, hence, not admissible evidence against the Corporate Debtor.

5. In the rejoinder, the Ld. Counsel for the Operational Creditor submitted that all these claims were an afterthought and raised just two for the sake of creating a situation where Corporate Debtor could be save from the clauses of law. The Ld. Counsel drew our attention to page 45 to 47 to show that the notice had been delivered on the address of the Corporate Debtor and the acknowledgement was bearing the signature of the Corporate Debtor. Hence, this claim of the Corporate Debtor had not merit and substance. We have considered the submissions made by both the sides and have also perused the material on record. It is noted that the Corporate Debtor has merely denied the claims of the Operational Creditor but has not been able to produce any evidence to show that the claims made by the Operational Creditor were wrong. From the perusal of the postal documents, it is evident that the notice under Section 8 has been delivered at the registered office of the Company. It is not necessary and it is not mandatory that only track report can be taken as proof of delivery of the notice of demand. Thus, the



claim of the Corporate Debtor that notice of demand was delivered stands not rejected. We are, of the view, that the Corporate Debtor did not submit any reply to the notice of demand, hence, this claim has been made to circumvent the same. As regard to the letter dated 15.06.2016, whereby the outstanding amount has been confirmed by the Corporate Debtor no counter evidence has been produced to show that such letter was forged one. As regards to veracity and genuineness of e-mail. We find that such e-mail ID contains the name of www.amritgroup.net which is a common platform for electronic communication by all companies of the Amrit Group and the Corporate Debtor is undisputedly one of them, hence, in view of this, we do not find any merit in the contention of the Corporate Debtor in this regard.

6. Before parting, we may also add that if Corporate Debtor is allowed to get out of the clutches of the IBC in this fashion then, the fate of the Operational Creditor would completely be jeopardized. Having said so, the caution is also to be exercised to see that stale claims are not revived through IBC. We have kept these principles in mind while disposing of this petition.

7. As no name has been proposed as IRP, hence, we will appoint the same from the list / penal maintained by IBBI.

8. Thus, there does not exist any dispute as evident from the material on record. Accordingly, we hold that this petition is liable to be admitted. We order as under:



O R D E R

- i. The application filed by the Operational Creditor under section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **Amricon Agrovet Private Limited**, is hereby admitted.

- ii. We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

- iii. Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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

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any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- v. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any Operational sector regulator.
- vii. The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii. 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.
- ix. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- x. Mr. Asim Kumar Bose, IP Registration No. IBBI/IPA-001/IP-P01538/2019-2020/12480, E-mail ID: asimkumarbose09@gmail.com; Mob No. 7890546485 is appointed as Interim Resolution Professional for ascertaining the particulars of

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creditors and convening a Committee of Creditors for evolving a resolution plan.

xi. The Operational Creditor to pay sum of Rs. 1,00,000/- (Rupees One lakh only) to IRP as advance fees as per Regulation 33(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016 which shall be adjusted from final bill.

xii. The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xiii. Registry is hereby directed under section 7(7) of the I.B.Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through e-mail.

9. List the matter on 30/9/2019 for the filing of the progress report.

10. Certified copy of the order may be issued to all the concerned parties if applied for, upon compliance with all requisite formalities.

Sd. Gupta

(V.K. Gupta)
Member (Technical)

Sd. Gosavi

(M.B. Gosavi)
Member (Judicial)

Signed on this, the 30th day of September, 2019.

M_Jana_Steno.



Court Officer
National Company Law Tribunal
Kolkata Bench