

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT-V AT NEW DELHI

Company Petition No. IB-813/ND/2021

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

IN THE MATTER OF:

M/s. TRIMURTI TRADING CO.

THROUGH ITS SOLE PROPRIETOR

...Applicant/Operational Creditor

VERSUS

M/s. RUKMINI IRON PVT. LTD.

...Respondent/ Corporate Debtor

Pronounced on: 11.05.2022

CORAM:

SH. ABNI RANJAN KUMAR SINHA

HON'BLE MEMBER (JUDICIAL)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Rohit Kumar Singh, Advocate

For the Respondent : Mr. Abhishek Anand & Mr Joy Bajaj, Advocates

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IB-813/(ND)/2021

M/s. TRIMURTI TRADING CO. VS. M/s. RUKMINI IRON PVT. LTD.



MEMO OF PARTIES

M/s. TRIMURTI TRADING CO.

Through its Sole Proprietor

Having its registered office at:

Lalukheri Road, Near Prathmik Vidyalaya,

Village- Kharar, Tehsil-Budhana,

Distt. Muzaffarnagar, U.P.

...Applicant/Operational Creditor

VERSUS

M/s. RUKMINI IRON PVT. LTD.

Having its registered office at:

X-18, 3rd Floor, Room No. 4,

Loha Mandi, Naraina,

New Delhi 110028

...Respondent/Corporate Debtor

ORDER

PER- HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016'), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules'),



by M/s. Trimurti Trading Co. (for brevity 'Applicant'), through its Sole Proprietor Mr. Farukh, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Rukmini Iron Pvt. Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is the Sole Proprietorship, whose proprietor is Mr. Farukh, having its address at Lalukheri Road, Near Prathmik Vidyalaya, Village-Kharar, Tehsil- Budhana, Distt. Muzaffarnagar, U.P.
3. The Respondent, the Corporate Debtor, namely M/s. Rukmini Iron Private Limited, is a company incorporated on 11.03.2004, under the provisions of Companies Act 1956, with CIN No. U22109DL2004PTC125131, having its registered office at X-18, 3rd Floor, Room No. 04, Loha Mandi, Naraina, South West Delhi-110028. The Authorised Share Capital of the respondent company is Rs.7,500,000/- and Paid Up Share Capital of the company is Rs.6,350,000/- as per Master Data of the company.
4. The Operational Creditor ("OC") states that it is engaged in the business of Iron products (TMT bars of different description), the same were sold to the Corporate Debtor



("CD"), from 08.09.2021 to 16.09.2021, amounting to Rs. 1,09,46,237/- (Rupees One Crore Nine Lakhs Fourty Six Thousand Two Hundred Thirty Seven).

5. The OC states that when the aforesaid amount became due, it sent emails dated 20.09.2021, 23.09.2021, 25.09.2021 to the CD demanding the payment of the dues. The CD responded to the aforesaid emails, vide its email dated 09.10.2021, thereby acknowledging the dues and stating that they are in process of clearing the said dues. However, even after passage of considerable time the CD failed to clear the dues. Though the CD accepted the dues towards the OC and had resolved to clear the dues at the earliest, the CD failed to make the payment till date. The OC tried all possible ways to get back their legitimate dues but delay in payment is causing a serious financial problem for the OC.
6. In spite of various requests made and reminders sent by the Operational Creditor, the Corporate Debtor did not reply. On failure to pay the outstanding dues by the Corporate Debtor, the Operational Creditor sent a demand notice dated



08.11.2021, under Section 8 of the Insolvency and Bankruptcy Code, 2016, to the Corporate Debtor, asking them to make the entire payment of Rs.1,09,46,237/- (Rupees One Crore Nine Lakhs Fourty Six Thousand Two Hundred Thirty Seven), within 10 days from receipt of the notice, failing which the Operational Creditor shall initiate the Corporate Insolvency Resolution process against the Corporate Debtor.

7. The OC, along with its Application, has annexed the reply dated 22.11.2021, sent by the CD to the said demand notice, in said reply, the CD has admitted the Operational Debt, however, questioned the issuance of demand notice on two grounds viz. *firstly*, the said proceedings are recovery proceedings and thus, Operational Creditor could not approach this Hon'ble Tribunal and *secondly*, that the criteria as mandated under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has not been followed by the OC as the demand notice does not provide details of record of default with the Information Utility ("IU").



8. The OC states that it has duly complied with all statutory requirements. The payment of the OC has not been released till date. The Omission on part of the CD in releasing the payment is causing grave loss to the OC. Therefore, the CD has defaulted in payment of admitted liability amounting to Rs. 1,09,46,237/-, which is more than the amount prescribed for commencement of CIRP under the I & B Code, 2016. Hence this application, seeking to unfold the process of CIRP.
9. The Operational Creditor, in Part-IV of the Application, has stated that total debt due and payable is, Rs.1,09,46,237/- (Rupees One Crore Nine Lakhs Forty Six Thousand Two Hundred Thirty Seven). The date of default is 16.09.2021.
10. Hence, the current application, under section 9 of the IBC, 2016 was filed by the Operational Creditor to initiate CIRP. The Operational Creditor has also filed an affidavit of service wherein, it states that the Corporate Debtor has been served through email on 13.01.2022. The copy of email, in this regard, has also been annexed along with the affidavit.



11. After the service of said notice, the Corporate Debtor has caused an appearance in the matter and filed its reply. In its reply the Corporate Debtor states that;

“6. It is submitted that in terms of Section 215 of IBC, it is incumbent upon the Operational Creditor to furnish the record of default recorded with the Information Utility. It is stated that the record of default as available with the Information Utility is required to be annexed at Part V of Form 5 which the Operational Creditor has failed to provide.

9. Without prejudice, it is submitted that the Petitioner has filed the instant petition with the sole intent of recovery and not resolution. It is submitted that proceedings before this Hon’ble Tribunal under the provisions of the Insolvency and Bankruptcy Code, 2016 are not recovery proceedings and the instant petition preferred with the sole intent of recovery entails dismissal of instant petition.

10. It is submitted that the Hon’ble Supreme Court in the matter of K. Krishan Vs. Vijay Nirman Company Pvt.



Ltd., Civil Appeal No. 21824 & 21825 of 2017 has categorically held that the IBC cannot be used as a substitute for debt enforcement procedure...

13. Without prejudice to the above, it is submitted that the Corporate Debtor is willing to safeguard the interest of stakeholders including the present petitioner. It is submitted that Corporate Debtor is willing to pay the entire outstanding debt of Operational Creditor without interest in 15 equal installments starting from 01.10.2022 and the present petition be dismissed with the aforesaid direction.

14. It is submitted that the pandemic has affected the economy of the entire nation and due to the unprecedented situation, the Corporate Debtor is facing financial difficulties, however, assures the repayment of debt of Operational Creditor in a time-bound manner.”

12. After the reply by CD to the present Application filed by OC, the OC has filed its rejoinder to the said reply, in the rejoinder the OC states as follows;



“4. At the cost of repetition, the Operational Creditor herein submits that the Corporate Debtor has admitted and acknowledged the outstanding dues amounting to Rs. 1,09,46,237/- vide their email dated 09.10.2021, further stating that they are in the process of clearing the said dues. But as on the date of filing the present Rejoinder date, no payment whatsoever has been received by the Operational Creditor. In fact, the Operational Creditor has been trying all the possible ways to get back their legitimate dues, but to no avail, and such delay in repayment is causing serious financial distress to the Operational Creditor. Thus, there is a “default” as defined under Section 3(12) of the Code on the part of the Corporate Debtor, which has been duly admitted by the Corporate Debtor.

5. That the expression ‘Operational Debt’ has been defined under Section 5(21) of the Code, and to be an operational debt, it must fulfil substantive elements namely debt arising out of provisions of goods,



services or out of employment or government dues. What falls within the scope of operational debt also becomes clear from the case of **Col. Vinod Awasthy v. A.M.R. Infrastructures Limited (CP No. (IB)-10(PB)/2017**, wherein the Hon'ble Principal Bench of this Hon'ble Tribunal observed that 'operational debt' under the code only covers four categories viz. goods, services, employment and government dues. In the present case, the amount which has become due is towards the purchase of the Iron Products (TMT bars of different prescriptions). Thus, as the outstanding dues pertain to goods, the amount due is an operational debt under the Code.

7. It is submitted that a harmonious reading of Section 215 of the Code with Section 9(3)(d) of the Code along with Regulation 7(2)(b) of the Insolvency Resolution Process for Corporate Persons Regulations 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016



and Form-5 therein, it can be inferred that apart from the financial information of the Information Utility, other classes of documents can be considered as an evidence for satisfying the requirement of “operational debt”, thereby making the compliance of Section 215 optional rather than being mandatory provision.

10. With regard to the submission of the Corporate Debtor qua its willingness to protect the interest of stakeholders, it is submitted that the proposal made by the Corporate Debtor to clear the outstanding dues without interest in 15 equal installments starting from 01.10.2022 is another attempt to buy time based on false commitments. Also, the Corporate Debtor seeking to make payment of the outstanding debt without interest can also be seen for the purpose of adjudging the intention of not making the payment within the stipulated time. Hence, the said proposal made by the Corporate Debtor is not accepted by the Operational Creditor and the same



also does not warrant any consideration of this Hon'ble Tribunal."

13. Further the Hon'ble Supreme of India in ***Mobilox Innovations Private Limited vs. KirusaSoftware Private limited*** has observed that-

"The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?



If any one of the aforesaid conditions is lacking, the application would have to be rejected.

Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

14. It is pertinent to note that the Operational Creditor has placed on record the demand, notice along with invoices, bank statements with its Application, stating that the Corporate Debtor itself had acknowledged the said invoices. Once the debt is shown as due, it is for the Corporate Debtor to prove that there are no outstanding dues to be paid to the Operational Creditor. The Corporate Debtor has in its reply acknowledged its liability to pay the due amount. However, no such payment has been made by the Corporate Debtor.



15. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
16. The registered office of Corporate Debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. The Operational Creditor has proposed the name of Interim Resolution Professional. In view of the same, this Bench confirms the same and appoints **Mr. Ajit Kumar**, having registration no. **IBBI/IPA-003/IP-N00062/2017-18/10548**, email address is **cmaajitjha@gmail.com**, as the IRP of the Corporate Debtor. The IRP is directed to take all such steps, as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the I & B Code, as per the following directions:-



- a. The Moratorium is hereby declared prohibiting all of the following actions, namely,
- i. 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.
 - ii. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI Act);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



18. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
19. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator
20. That the order of moratorium shall have effect from the date of this Order, till the 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.
21. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of the Code.
22. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person)



Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

23. The Registry 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, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

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(HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

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(ABNI RANJAN KUMAR SINHA)
MEMBER(JUDICIAL)