

CP 4709 (IB)/MB/2018

Under Section 9 of the IBC, 2016

In the matter of

PUTHWALA & CO.

Through its Partners

TARIQ PUTHAWALA

...Petitioner

v/s.

SONHIRA STATIONARIES

PRIVATE LIMITED

...Respondent

Order Delivered on 28.06.2019

Coram: Hon'ble Member (Judicial) :Mr V.P. Singh

Hon'ble Member (Technical): Mr Ravikumar Duraisamy

For the Petitioner: Adv. Saurabh Pandya.

For the Respondent: Mr Amol Deshpande

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Company Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) by M/s Puthwala & Co. through its partner Tariq Puthawala, the Petitioner/Operational Creditor against the Sonhira Stationaries Private Limited, the Respondent/Corporate Debtor for initiation of Corporate Insolvency Resolution Process (**CIRP**) on the ground that the Corporate Debtor has defaulted in payment of Rs.54,61,408/- against various invoices for supply of goods in the form of raw materials of papers. The Petition was filed on 20.12.2018.
2. The total amount in default as per the Form-5 is Rs.54,61,408/- and the date of default is 31.08.2018.



3. The Operational Creditor stated that the Corporate Debtor approached the Operational Creditor in the year 2016 and introduced that the Corporate Debtor Company is involved in the business of packaging solution and for which they would like to purchase the papers and raw materials from the Operational Creditor. Further, the Operational Creditor stated that from 2016 to 2018, the Corporate Debtor was regularly purchasing goods from the Operational Creditor and made payment against the same.
4. The Operational Creditor stated that they had duly provided goods as per requirements of the Corporate Debtor and issued several invoices between 26.01.2016 to 22.05.2016 on a running account basis to the Corporate Debtor for the same and no complaint or dispute has been raised by the Corporate Debtor about the same till 20.12.2018. Further, the Operational Creditor has stated that as per its books of accounts on 31.08.2018 the outstanding dues of the corporate debtor was Rs.54,61,408/- for which the Corporate Debtor had given assurance to pay within a month.
5. The Operational Creditor has sent the Demand Notice dated 26.09.2018 under section 8 of I&B Code demanding the total amount of debt of Rs.54,61,408/- and Corporate debtor received on 04.10.2018.
6. Since the Corporate Debtor failed to make a payment, the Operational Creditor has filed this Petition on 20.12.2018 before this Tribunal.
7. The Operational Creditor has further stated that they have asked the Corporate Debtor several times for payment of said dues, but the Corporate Debtor has failed to make the payment towards the said outstanding dues of Rs.54,61,408/-. Further, it is stated that despite repeated requests and telephonic reminders, the Corporate Debtor has not shown any willingness to pay the outstanding amount and deliberately neglecting to pay the same without any justifiable reasons.



8. Heard the parties and perused the material available on record.
9. The Petition is filed by Mr Tariq Puthawala, Authorised signatory, of the Puthwala & Co. duly authorised by Authority letter dated 07.12.2016.
10. The Operational Creditor has raised several invoices between period 26.01.2016 to 22.05.2016 amounting to Rs.54,61,408/- for the supply of goods in the form of raw materials of papers to the Corporate Debtor. Since the invoices remained unpaid, the Operational Creditor called upon the Corporate Debtor to make the payment. The Operational Creditor sent demand notice dated 26.09.2018 to the Corporate Debtor, and the same has been duly delivered to Corporate debtor on 04.10.2018, but the Operational Creditor has not received any reply.
11. As per section 9(3)(b) of the I&B Code, the Operational Creditor has stated on affidavit that in response to the demand notice the corporate debtor neither made a payment towards the outstanding dues nor raised any dispute. Further, Operational Creditor states that there is no dispute in existence about the unpaid operational debt.
12. In compliance of Sec 9(3)(c) of the Insolvency and Bankruptcy Code,2016, the Operational Creditor submitted the certificate of HDFC Bank Limited dated 07.12.2018 certifying that no credit of Rs. 7,00,000/- from the Corporate Debtor is deposited into the current account of the Operational Creditor during the period 04.05.2017 to 06.12.2018.
13. In our order dated 11.06.2019, we have given further opportunity to the Corporate Debtor to file its written submission. However, as also noted in our order dated 26.06.2019, the Corporate Debtor has not raised any defence against the admission of this petition. The Corporate Debtor has not filed any reply, despite several opportunities been given to it. Therefore, it is held that the



Corporate Debtor does not dispute its liability and defaulted in the payment to the operational creditor.

14. Thus it is clear that there is no pre-existing dispute regarding the unpaid operational debt. The invoices for the period of 2016-2018 were raised upon the Corporate Debtor on a running account basis, but the outstanding dues were not paid. Thus, the existence of debt and default is established.
15. The application made by the Operational Creditor is complete in all respects as required by law, and it clearly shows that the operational debt of more than Rs one lac has not been paid by the corporate debtor.
16. The Operational Creditor has proposed the name of Mr Mahesh Sureka, Registration No. IBBI/IPA-001/IP-P00413/2017-2018/10736, as Interim Resolution Professional. However, the Form-2 of the said insolvency professional, declaring that no disciplinary proceedings are pending against him, is not submitted on record. Thus it is clear that petition filed U/S 9 of the Code deserves to be admitted.

Order

The petition filed by M/s Puthwala & Co., the Petitioner/Operational Creditor against the Sonhira Stationaries Private Limited, the Respondent/Corporate Debtor, U/S 9 of the I&B Code 2016 is at the moment admitted. We further declare moratorium under section 14 of the I&B Code with consequential directions, as mentioned below:

- I. That this Bench at this moment prohibits:
 - 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 possession of the corporate debtor.
- II. It is further made clear that:
- a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- b. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- c. 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 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- e. That this Bench at this moment appoints Mr. Mahesh Sureka, Registration No. IBBI/IPA-001/IP-P00413/2017-2018/10736, as Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee to be paid to Interim Resolution Professional/ Resolution Professional should be strictly by the Regulations of the IBBI, circulars, directives issued in this regard.
17. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by speed post/



email/ WhatsApp. Compliance report of the order by Designated registrar is to be submitted today.

Sd/-

RAVIKUMAR DURASAMY
Member (Technical)

28th June, 2019


Siddhi Butala - LRA

Sd/-

V.P. SINGH
Member (Judicial)



Certified True Copy
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On 05-7-2019


Assistant Registrar
National Company Law Tribunal Mumbai Bench