IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-3354/ND/2019

(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:

SAILESH KUMAR

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S FCRD INDIA PVT. LTD

MINISTRY OF CORPORATE AFFAIRS

...RESPONDENTS/ CORPORATE DEBTOR

ORDER DELIVERED ON: 19.02.2021

CORAM:

DR. DEEPTI MUKESH
HON'BLE MEMBER (JUDICIAL)
MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. D. Abhinav Rao, Adv.,
Ms. Deepali Singhal, Adv.

For the Respondent : None

MEMO OF PARTIES

SAILESH KUMAR
Sole proprietor of Singhania`s
Office at:
H NO. 8-2-672/S, Ground Floor,
Sufi Chambers, Road No.1,
Banjara Hills, Hyderabad 500034

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S FCRD INDIA PVT. LTD
Registered office at:
420 Gitorni, Mehrauli
Gurgaon Road, South Delhi,
New Delhi 110030

MINISTRY OF CORPORATE AFFAIRS
A Wing, Shastri Bhawan,
Rajendra Prasad Road, New Delhi 110001

...RESPONDENTS/ CORPORATE DEBTOR

ORDER

AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by SAILESH KUMAR (Sole proprietor of Singhania`s) (for brevity 'Applicant')) with a prayer to initiate the

Corporate Insolvency process against M/S FCRD INDIA PVT. LTD (for brevity 'Corporate Debtor').

2. The Applicant SAILESH KUMAR (Sole proprietor of Singhania`s), claimed to be the Operational Creditor, is engaged in the business of supplying sarees and fabrics to retailers across India having its registered office at H NO. 8-2-672/S, Ground Floor, Sufi Chambers, Road No.1, Banjara Hills, Hyderabad 500034 .

3. The Respondent M/S FCRD INDIA PVT. LTD is a company incorporated on 04.06.2013 under the Companies Act, 1956 having its registered office at 420 Gitorni, Mehrauli, Gurgaon Road, South Delhi, New Delhi 110030 and CIN 54390DL2013PTC253501 is engaged in the business of retail trade of new goods in specialized stores.

4. As per the averments mentioned in the application in May 2017, the Operational Creditor entered into a business transaction with M/s FCRD India Pvt. Ltd. ("Corporate Debtor') and started supplying sarees and fabrics against various purchase orders. The Corporate Debtor failed to make payments with respect to the following bills:

SNO.	BILL NO.	DATE	AMOUNT
1.	1128	20.06.2017	Rs. 6,507/-
2.	A-729	06.10.2017	Rs. 5,829.50/-
3.	A-912	24.10.2017	Rs. 75,087.62/-
4.	A-913	24.10.2017	Rs. 84,505.75/-
5.	A-914	24.10.2017	Rs. 82,223.84/-
6.	A-915	24.10.2017	Rs. 82,727.64/-
7.	A-938	25.10.2017	Rs. 49,715.25/-
8.	A-1081	04.11.2017	Rs. 83,769.50/-

9.	A-1084	05.11.2017	Rs. 36,800/-
10	A-1154	09.11.2017	Rs. 22,167.63/-
11	A-1227	15.11.2017	Rs. 16,700/-
12	A-1262	18.11.2017	Rs. 27,358.13/-
13	A-1359	24.11.2017	Rs. 32,665.75/-
14	A-1373	25.11.2017	Rs. 41,0160/-
15	A-1410	28.11.2017	Rs. 4,049.50/-
16	A-1586	12.12.2017	Rs.71,843.77/-
17	1607	13.12.2017	Rs. 22,579.99/-
18	A-1848	03.01.2018	Rs. 34,900.95/-
19	A-1942	11.01.2018	Rs.15,206.70/-
20	A-2044	20.01.2018	Rs. 5,869.50/-
21		**TOTAL**	**Rs. 8,41,322.68/-**

5. The Corporate Debtor repaid a total sum of Rs. 1,03,831.93/- hence, the principal amount of Rs. 7,37,490.76/- is outstanding towards the balance price of goods supplied by Operational Creditor. It is submitted that the amount of default against each bill is the bill value plus 5% GST on the bill along with interest @ 21% p.a. from the due date till 09.10.2019, amounting to a total debt of Rs. 10,75,655/-.

6. The Operational Creditor placed reminders to the Corporate Debtor for payment of the default amount. The Corporate Debtor did not raise any dispute with respect to the amount due towards them in response to any of the reminders placed by the Operational Creditor. In view of the above, the Operational Creditor was constrained to issue demand notice dated 14.10.2019 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating

Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs. 10,75,655/- within a period of 10 (ten) days from the date of receipt of the notice. The said notice was served upon the Corporate Debtor vide email on 14.10.2019 and vide speed post and registered post on 16.10.2019.

7. The corporate debtor never replied to the said notice, nor made any payment towards outstanding debts. Therefore, the Applicant filed this as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 10,75,655/-. The Applicant has complied with the provision of Section 9(3)(b) vide affidavit dated 25.11.2019, filed along with the application.

8. Notice was issued to the Corporate Debtor vide order dated 14.01.2020 of the Adjudicating Authority. Further, it has been observed that neither a reply was filed by the Corporate Debtor nor has the Corporate Debtor ever appeared before the Adjudicating Authority therefore, vide order dated 11.02.2020 the Corporate Debtor was proceeded ex-parte. Post the ex-parte order the Corporate Debtor did not appear before the Adjudicating Authority hence, the order was reserved on 06.01.2021.

9. The date of default is 20.01.2018 which is the date of the last invoice issued which was unpaid, and the present application is filed on 19.12.2019. Hence the application is not time barred and filed within

the period of limitation. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

10. Having considered the facts and circumstances and the material available on record, the Application filed by the Operational Creditor is complete in all respect. This authority is satisfied that an amount of Rs. Rs. 10,75,655/- (which includes the bill value plus 5% GST on the bill along with interest @ 21% p.a. from the due date till 09.10.2019), is due and payable by the Corporate Debtor to the Operational Creditor, which it failed to pay. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. Therefore, the Application is ***admitted*** and the commencement of the CIRP is ordered.

A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

"(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent 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."

11. Since no name was proposed in the application, the Adjudicating Authority hereby appoint the interim resolution professional ("IRP"), named in the list provided by the IBBI, Mr. Pawan Kumar Goyal, IBBI/IPA-001/IP-P00875/2017-2018/11473 mail id: ca.pawangoyal@gmail.com , Phone No. 9313502143 being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

12. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

13. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

14. The Application is allowed and disposed off in terms of above order.

SD/-	SD/-
Sumita Purkayastha	**Dr. Deepti Mukesh**
Member (T)	**Member (J)**