BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

Free of Cost Copy

3623
25/02/2020

C.P. (I.B) No.368/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.02.2020

Name of the Company: Indraj Sharma Sole Proprietor of Sharma Motor Body Repairing
V/s
Navrang Roadlines Pvt Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1. HETVI H. SANCHETI	Adv	for the applicant	
2. Narendra L. Jain	Lawyer	for the Corporate Debtor	

ORDER

The parties are represented through learned counsels.

The order is pronounced in the open court vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 24th day of February, 2020

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 368/9/NCLT/AHM/2019

In the matter of:

Mr. Indraj Sharma
C/o. Thakkar and Pahwa Advocate
71, New York Tower – A,
Thaltej Cross Roads
Thaltej
AHMEDABAD 380 054
Gujarat State : **Petitioner**
Financial Creditor

Versus

M/s. Navrang Roadlines Private Limited
G-12-13, Vijay Plaza
Behind Abad Dairy
Kankariya
Maninagar
AHMEDABAD
Gujarat State : **Respondent**
[Corporate Debtor]

Order delivered on 24th February, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Ms. Hetvi Sancheti for petitioner.
Advocate Mr. Narendra L. Jain for respondent.

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mr. Indraj Sharma, in his individual capacity filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

2. The applicant/operational creditor is proprietor of Sharma Motorbody Repairing, a firm engaged in the business of body repairing for the trucks and other vehicles and located at Narol, Ahmedabad.

3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 08.06.2000 having identification No. U06301GJ2000PTC038173 and having registered office at Maninagar, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 12,00,00,000/- and paid up share capital is Rs. 10,98,30,000/-. The corporate debtor is engaged I the business of transportation.

4. The applicant/operational creditor has stated that during the financial year 2017-18, the corporate debtor got body repairing works done from the operational creditor to the tune of Rs. 21,38,950/- as per the ledger account of the corporate debtor maintained by the operational creditor, annexed to the application (**page 60-61**). That, the operational creditor raised several invoices (**page 13-59**), however, the corporate debtor has failed to clear the same till date. Thus, in all, an amount of **Rs. 21,38,950/- (Rupees twenty-one lacs thirty-eight thousand nine hundred fifty only)** is due and outstanding from the corporate debtor with effect from **26.02.2019**, as per computation annexed to the application (**page 11-12**).

5. The operational creditor has stated that having failed to receive the operational debt, the operational creditor issued notice/letter dated **01.11.2018** (**page 67**) to the corporate debtor. Thereafter, the operational creditor issued demand notice under section 8 in form 3 of the Insolvency & Bankruptcy Code on **08.05.2019** (**page 68-73**) calling upon

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

the respondent to make payment of unpaid operational debt.

6. In support of its claim the operational creditor has furnished relevant documents like copy of demand notice, table showing the calculation of operational debt, affidavit in support of the application, affidavit verifying facts and documents in support of the petition, copy of ledger account, bank statement etc.

Findings

7. On perusal of the record it is found that the corporate debtor has not filed any reply. During the course of hearing, learned lawyer for respondent conceded that he does not wish to file reply and fairly admitted the debt under the instruction of the corporate debtor.

8. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt and/or any pre-existing dispute regarding the operational debt from the corporate debtor.

9. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt to the Applicant.

10. In the instant case, the documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

11. On perusal of the records it is also found that the corporate debtor has never raised any dispute on issuance of notice u/s 8 of the I & B Code nor have ever raised any dispute prior to the issuance of notice.

12. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.

13. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC*** that while examining an application under Section 9 of the Act, will have to determine the following: -

(i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (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 of the aforesaid conditions is lacking, the application would have to be rejected.

14. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

15. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

16. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

17. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

(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 (54 of 2002);

(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. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

19. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.

20. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Sachin Bhattbhatt, A-103, Yogiraj Villa 2, Kunal Char Rasta, Nr. Signat Plaza, Behind Iscon Heights, Gotri Laxmipura Road, Gotri, Vadodara 390

023 having registration No. IBBI/IPA-003/IP-N000138/2017-18/11514 to act as an interim resolution professional under Section 13(1)(c) of the Code.

21. This Petition is accordingly admitted.

22. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.

23. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

NATIONAL COMPANY LAW TRIBUNAL * AHMEDABAD *

Certified to be True Copy of the Original

Deputy Registrar
NCLT Ahmedabad Bench
Ahmedabad