

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1584/IBC/NCLT/MB/MAH/2017

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

In the matter of

M/s. Auspice Trading Private Limited
..... Operational Creditor
(Petitioner/Applicant)

V.

M/s. Global Proserv Limited
..... Corporate Debtor
(Respondent)

Heard on : 12.01.2018
Order delivered on : 23.02.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Ms. Alpana Gone, Advocate a/w. Mr. Chandrakant Mhadeshwar i/b. Mr. Satish Raut,
Advocate – Advocate for the Petitioner/Applicant.

For the Respondent :

None Present.

Per: M. K. Shrawat, Member (J)

ORDER

1. M/s. Auspice Trading Private Limited (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 12.09.2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, M/s. Global Proserv Limited (hereinafter as **Debtor**) having registered address at, Global Vision, Electronic Sadan No. II, TTC Industrial Area, Mahape, Navi Mumbai – 400710.



3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹ 9,02,01,328/-.

Submissions by the Petitioner :

4. It is submitted that, the Debtor is engaged in business of Supply of material which is required for tower used in telecom industry.
5. It is submitted that, the Operational Creditor has entered into an agreement with his clients for purchase of software and tower material which will be used for telecom tower. The Debtor has agreed with Operational Creditor to supply the material as per his requirement.
6. It is further submitted that, as per the industrial practice the Operational Creditor has paid the advance amount, to the tune of ₹ 16,83,61,328/-, regards to said business purchase. But thereafter there had certain issues between the Operational Creditor and his clients consequentially thereupon the Operational Creditor vide a letter dated 19.11.2013 cancelled the placed order.
7. It is further stated that, thereupon the Operational Creditor has requested the Debtor to repay the advance paid in the very cancellation letter only.
8. It is further submitted that, thereafter there were number of letters exchanged regarding the outstanding amount and after number of follow-ups the Debtor has repaid the amount of ₹ 71,60,000/-.
9. It is further stated that, the Debtor thereafter vide a letter dated 18.12.2015 had proposed to enter into Share Purchase Agreement and proposed for transfer of shares of M/s. European Projects & Aviation Limited which were originally owned by the Debtor. The Operational Creditor has accepted the said proposal and purchased the said shares amounting to ₹ 7,10,00,000/-.
10. It is further submitted that, at present the Operational Creditor has those said shares hence, the original amount stands revised as amount stated to be in default i.e. ₹ 9,02,01,328/-. And the Debtor himself has confirmed the said amount in his letter dated 23.02.2016 which was issued after transfer of shares to the Operational Creditor.

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11. It also stated that, in the very letter dated 18.12.2015 the Debtor has agreed to pay the remaining outstanding amount within 1 year thereafter but after issuance of these shares the Debtor has not repaid the outstanding amount till date.
12. Further that, hence feeling aggrieved the Operational Creditor has issued a Demand Notice under provisions of the Code on 18.08.2017 on the Debtor claiming the defaulted/outstanding amount.
13. Further that, the said notice has been delivered by hand to the Registered Office of the Debtor hence, it has been duly served upon the Debtor.
14. It is further stated that, inspite of receipt of Notice the Debtor has neither repaid the claimed amount nor given a reply to the notice raising any dispute regards to the claimed amount.
15. Further that, the Debtor neither within stipulated time after the receipt of notice nor till date of filing this Petition/Application has approached to the Operational Creditor to make the payment of outstanding amount.
16. Hence, the Operational Creditor has filed this Petition/Application before this Bench praying for declaration of insolvency upon the Debtor.
17. Further that, after filing of this Petition/Application the Operational Creditor has served the Notice intimating the date of hearing to the Debtor and the said notice has been received by the Debtor through hand delivery. The **Affidavit of Service** to that effect is also placed on record. In spite of knowledge of this Petition/Application the Debtor remained absent for hearing.
18. Hence, it can be carved out that, the Debtor has nothing to say in his defence and the liability is accepted to him. In light of these facts, this Petition/Application may be admitted.

Findings :

19. We have gone through the submissions of the Operational Creditor and we also perused the pleadings on record. Consequentially found that, the Operational Creditor has issued valid purchase orders to the Debtor and also paid the Advance amount for the said purchase.



20. Further that, on number of occasions the Debtor has accepted his default in payment of outstanding amount but has not repaid the outstanding amount.
21. We have also perused the Affidavit of Service and came to conclusion that the Debtor has a knowledge of this Petition/Application, but he has nothing to represent in this matter.
22. Considering the above facts, in our opinion, the Operational Creditor has established that the nature of Debt is an "Operational Debt" as defined under section 5 (21) of the Definitions under The Code, as the Operational Creditor has issued a valid purchase orders and also paid the advance amount for those purchases. Further, he has also established that there is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
23. We have also perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and it came to our notice that the said notice is duly served upon the Debtor. Further, if the Respondent wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt.
24. Further that, inspite of notices of hearing the Debtor choosed to remain absent for hearing.
25. Further we have also perused our record and it is noticed that from the side of Debtor no representation has been done so far.
26. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner/Applicant hence, we are of the conscientious view that this Petition deserves '**Admission**' specially wherein the Debtor is not representing his case.
27. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially we hereby appoint Mr. Sanjay Kumar Ruia, having registration no. IBB/IPA-001/IP-00353/2017-2018/10654, as Interim Resolution Professional.

20/11/17



28. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
29. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
30. The appointed IRP shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
31. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the order.

sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 23rd February, 2018

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Certified True Copy
Copy Issued "free of cost"
On 12/08/2018


Assistant Registrar
National Company Law Tribunal Mumbai Bench