

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCP No. 418/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. Krystal Integrated Services Pvt. Ltd.
..... Operational Creditor

V/s

M/s. Global Gallarie Motors Pvt. Ltd.
..... Corporate Debtor

Order delivered on: 23.01.2018

Coram :

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

For the Petitioner:

Adv. Prasad Sarvankar, Advocate for Petitioner.

For the Respondent:

Adv. Shreyas Maniar, Advocate for Respondent.

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

ORDER

1. This is a transferred Petition from the Hon'ble High Court. The Petitioner had earlier moved before the Hon'ble High Court for "Winding Up" under the old provisions Section 433, 434 of Companies Act 1956. On transfer the creditor has filed this Petition on 14th July, 2017 on Form no. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Financial Creditor.
2. In the requisite Form, under the Head "Particulars of Operational Debt" the total Principal amount in default is stated to be Rs. 5,12,499/- (Rupees Five Lakh Twelve Thousand Four Hundred Ninety-Nine only).
3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. Global Gallarie Motors Private Limited having Registered office at, Plot No. 1, Mohan Mill Compound, Ghodbunder Road, Thane (West), Thane - 400607, Maharashtra.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the Corporate creditor is in the business of providing security, guarding and supervising manpower.
5. Further it is submitted that, the Operational Creditor generated bills every month; however, there were short payments against certain bills and certain bills were not

at all honoured by the corporate debtor. Every invoice generated had a clause written underneath that interest @ 14% will be charged on the bill amount, if the payment gets delayed beyond 15 days of bill receipt.

6. The operational creditor issued 18 sales invoice in favour of the corporate debtor aggregating to Rs.16,91,788/ (Rupees Sixteen Lakh Ninety-One Thousand Seven Hundred Eighty-Eight only). The payment of Rs. 11,79,289/- (Rs. Eleven Lakh Seventy-Nine Thousand Two Hundred Eighty-Nine only) was received by the Operational Creditor from the Corporate Debtor till date.
7. Hence, on account of non-payment of balance amount i.e. Rs. 5,12,499/- (Rupees Five Lakh Twelve Thousand Four Hundred Ninety-Nine only), the Petitioner has issued a Demand Notice under section 8 on prescribed Form No. 3 on 18th December, 2015 and on 22nd February, 2016 by post to Respondent Company and its directors namely Mr. Maish Sunitkumar Malhotra and Mrs. Geeta Sunil Malhotra on the Registered Address of Corporate. The acknowledgement to this effect, is attached to the Application/Petition.
8. On 2nd November, 2016 while hearing, the Ld. Representative of the Respondent side was present. He has admitted the liability. No objection from the side of the corporate debtor.
9. It is submitted that, the Corporate Debtor has admitted the liability. No dispute/objection has been raised from the side of the debtor to the Demand Notice of the Operational Creditor.
10. The statement of bank account of the Operational Creditor stating that, in the account of the Operational Creditor no payment has been received after 31st May, 2016 from the Corporate Debtor till date.
11. **FINDINGS:** - Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the goods to be supplied and invoices were raised to claim the amount but there was non-payment of Debt on the part of the Corporate Debtor.
12. We have perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and 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.
13. 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 Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner we are of the conscientious view that this Petition deserves '**Admission**'.
14. The Operational Creditor has not proposed the name of Interim Resolution Professional hence, vide a power conferred through a letter bearing No. 25/2/2018-NCLT we hereby appoint Mr. Manoj Kumar Jain, IBBI/IPA-001/IP-P00535/2017-2018/10960, having mail id manojj2102@gmail.com, 09819165816 as Interim Resolution Professional.

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15. 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 order 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.
16. 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.
17. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.
18. 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.
19. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

Bhaskara Pantula Mohan
Member (J)

Sd/-

M. K. Shrawat
Member (J)

Dated : 23rd January, 2018

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