

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1628/IBC/NCLT/MB/MAH/2018

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 Acasia Tele Services Private Limited
..... Operational Creditor
(Petitioner/Applicant)

v.

M/s. Auspice Trading Private Limited
..... Corporate Debtor
(Respondent)

Heard on : 12.03.2018
Order delivered on : 24.04.2018

Coram :

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

For the Petitione. :

1. Balasaheb S Yewale, Advocate, Advocate for Operational Creditor

For the Respondent :

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



ORDER

1. M/s Acasia Tele Services 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 30.10.2017 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 Auspice Trading Private Limited (hereinafter as **Debtor**) having registered address at, Shop No. 110, 1st Floor, V Star Plaza Chandavarkar Road, Borivali West 400092.

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3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as 35,89,67,296- (Thirty-Five Crore Eighty-Nine Lakh Sixty-Seven Thousand Two Hundred and Ninety-Six).
4. It is further submitted that, Operational Creditor entered into negotiations with the Corporate Debtor, and upon request of the Debtor gave advance against the purchase order to enable the Corporate Debtor to start the procurement on priority basis. The relevant Purchase orders are annexed with the Petition/Application.
5. The Details of transaction as per Part IV of Form 5 submitted by Petitioner is reproduced as under:

"The applicant entered into an agreement with the clients for purchase of infrastructure material which will be used for telecom tower. The Corporate Debtor agreed to supply the material as per applicant's requirement. As per industrial practice, corporate debtor had asked for advance money towards procurement of material. Upon the request of corporate debtor, applicant had given advance payment towards purchase order to enable corporate debtor to start procurement on priority basis. Hereto annexed and marked Exhibit-A, A-1, and A-2, are the copies of purchase orders issued to defendant. Various correspondences confirming the receipt of advance are attached herewith as Exhibit (Colly).

By a letter dated 30th August, 2017 the Applicant informed to Auspice Trading Private Limited that since there were certain issues that had arisen in respect of the project of the customers of the applicant company, the Corporate Debtor should cancel the orders on to the Procurement of Material. A letter dated 30th August 2017 to that regard is attached herewith as Exhibit-C.

The Transaction had fallen apart due to the Cancellation of the project of Applicant's Client. The applicant Company requested the Corporate Debtor to return the advances given to the Corporate Debtor. Acasia Tele Services Private Limited by its letters demanded the outstanding dues payable by the Auspice Trading Private Limited and the Auspice Trading Private Limited has by its various letters confirmed the said liabilities. Hereto annexed Exhibit-D (Colly) is the correspondence related to the same. It is also pertinent to note that the Auspice Trading Private Limited vide Letter dated the 3rd, April, 2017 and 30th September, 2017 confirmed the balance amount of Rs. 35,89,67,296/-. Hereto annexed and marked as Exhibit-E and Exhibit-F.



Finally the Applicant Company has issued a Demand Notice dated 2nd October, 2017 to Corporate Debtor by hand delivery and the same has been received by the Corporate Debtor on 2nd October, 2017. Hereto annexed and marked as Exhibit-G is a copy of the Demand Notice and Acknowledgement of the same.

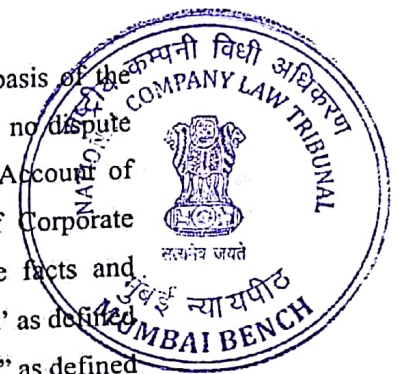
6. The Learned Advocate for the Operational Creditor has submitted that, the nature of the Debt is trade receivables of Rs. 1,51,11,296/- in F.Y. 2014-15, Rs. 34,25,82,000/- in F.Y. 2015-16 and Rs. 62,74,000/- in F.Y. 2016-17. However Corporate Debtor paid back amount of Rs. 50,00,000/- in F.Y. 2016-17, leaving Total Outstanding Balance to Rs. 35,89,67,296/-. The Ledger of Auspice Trading Pvt Ltd in Books of Account of Acasia Tele Services Private Limited annexed to the Petition/Application.
7. It is further submitted that, the Operational Creditor vide its letter dated 15.02.2017, informed the Corporate Debtor to treat all orders as cancelled due to some changes in DoT rules and regulation; demanding refund of outstanding advance of Rs. 35,89,67,296/-. The Corporate Debtor vide letter dated 01.06.2017 requested the Operational Creditor to provide two months' time for payment of outstanding dues. The Letters dated 15.02.2017 and 01.06.2017, discussed herein, are annexed to the Application/Petition.
8. It is further submitted that, vide letter dated 30.09.2017, the Operational Creditor requested the Corporate Debtor to acknowledge the Outstanding due of Rs. 35,89,67,296/- as per their Books of Account which was duly acknowledged by the Corporate Debtor. The said letter dated 30.09.2017 with acknowledgment receipt thereof is annexed with the Petition/Application.
9. It is further stated that, the Corporate Debtor failed to make payment within two months as promised vide its letter dated 01.06.2017.
10. Hence, on 02.10.2017 the Operational Creditor has issued a 'Demand Notice' U/s. 8 of the Code and the said notice is duly served upon the Debtor. But even after service of this Notice the Debtor has neither paid the Demanded Amount nor informed about any dispute regards to the 'Debt' within the stipulated time of 10 days.
11. Hence, the Operational Creditor has filed this Petition/Application to initiate CIRP over the Debtor. It is stated that, as the Debtor has neither paid the amount nor contesting the Debt, this Petition/Application may be Admitted for Commencement of CIRP.



12. The Learned Representative of the Corporate Debtor was present before this Bench on 31.01.2018 and submitted that Settlement is in progress, subsequent to which this Bench passed an order dated 31.01.2018 directing the parties to place on record Settlement Terms. However, the Corporate Debtor remained absent from further hearings and failed to settle the matter; even after communication of next date of hearing by Learned Representative of Operational Creditor.
13. The non-appearance or non-communication of the Corporate Debtor has thus established that it has nothing to say in defence in respect of the impugned outstanding amount.

Findings :

14. I have gone through the submissions and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that there is no dispute with regard to outstanding dues being reflected as Debit in Books of Account of Operational Creditor with corresponding entry of Credit in Books of Corporate Creditor, in terms of Outstanding Trade receivable. Considering these facts and circumstances, in my opinion the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor. Undisputedly the advance money was an Operational Debt in default.
15. I have also perused the notice sent under Section 8 (2) of the Code and it came to my notice that, the Debtor has received the same but had not paid the amount of unpaid due. Further, if the Debtor 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.
16. 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. It is my conscientious view that this Petition deserves 'Admission' specially wherein the Debtor is accepting its default.
17. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints Mr. Gaurav Sharma, IBBI Registration IBBI/IPA/001/IP-P01046/2017-18/11719, as the Interim Resolution Professional to



initiate the Corporate Insolvency Resolution Process. Form 2 under Rule 9(1) of IB Rules is placed on record.

18. Having admitted the Petition/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.

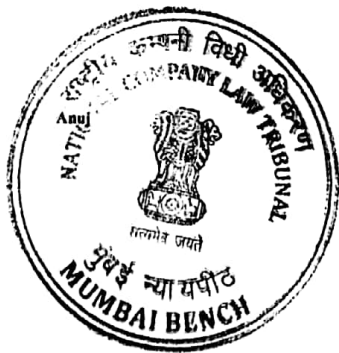
19. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

20. 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.

21. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Dated : 24.04.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)



Certified True Copy
Copy issued on 29.5.18
Assistant Registrar
National Company Law Tribunal Mumbai Bench