

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 1796/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, 2016se

In the matter of

Hallmark Metals Private Limited
..... Operational Creditor
v.

Anand Teknow Aids Engineering India Limited
..... Corporate Debtor

Heard on : 25.09.2018
Order delivered on : 04.10.2018

Coram :

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

For the Petitioner :

Advocate Ramesh Saraogi.

For the Respondent :

Ritesh Mahajan, Practising Company Secretary.

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

ORDER

1. Hallmark Metals 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 26.12.2017 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, Anand Teknow Aids Engineering India Limited (hereinafter as **Debtor**) having registered address at, Kunal Puram Commercial Complex, 2nd Floor, OPT. Atlas Capco, Mumbai-Pune Road, Dapodi-411012, Maharashtra.
3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as ₹ 9,63,229/- along with interest @10% which works out to ₹9,96,031, payable as on 30.06.2017.

Submissions by the Operational Creditor :

4. The Learned Advocate for the Operational Creditor has submitted that the Operational Creditor sold and delivered Steel Items to the Operational Debtor and has raised invoices for the same. The Respondent has made all the payments for the goods sold and delivered to the Petitioner for the supplies made prior to 08.06.2016. The payment of goods sold and delivered from 08.06.2016 is outstanding and the details of unpaid invoices is given below:

Sr. No.	Invoice No.	Invoice Date	Invoice Amount (₹)	Outstanding Amount (₹)	Due Date of Payment
1.	93	08.06.2016	89,677/-	46,334/-	08.08.2016
2.	341	19.10.2016	10,345/-	10,345/-	19.12.2016
3.	451	28.12.2016	1,75,133/-	1,75,133/-	28.02.2017
4.	457	03.01.2017	1,75,133/-	1,75,133/-	03.03.2017
5.	463	04.01.2017	1,75,133/-	1,75,133/-	04.03.2017
6.	474	15.01.2017	1,75,133/-	1,75,133/-	15.03.2017
7.	486	20.01.2017	1,96,418/-	1,96,418/-	20.03.2017
8.	9	20.01.2017	9,600/-	9,600/-	20.03.2017
	,	Total		9,63,229/-	

5. The Petitioner has sent legal demand notice dated 08.07.2017 to the Corporate Debtor, to which the Corporate Debtor replied vide letter dated 22.07.2017. However, the Corporate Debtor has nowhere disputed its liability for the payment of 8 unpaid invoices of total amount of ₹9,63,229/- in its reply letter dated 22.07.2017 and has disputed simple interest of 10% only.
6. Hence, on 01.12.2017 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 raised a dispute regards to the 'Debt' within the stipulated time of 10 days. The Operational Creditor has annexed the affidavit u/s 9(3)(b) of IBC stating that no notice of dispute has been received from the Respondent Corporate Debtor.
7. 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.

Submissions by the Debtor :

8. The Learned Advocate for the Debtor has appeared and almost admitted the liability. Both the parties entered into Consent Terms and the same were placed on record on 26.06.2018. The Consent Terms reveal that the Corporate Debtor was supposed to make the payment of its outstanding dues of ₹9,96,031/- to the Operational Creditor as under:
 - a. ₹50,000/- on or before signing the present consent terms.
 - b. ₹2,50,000/- on or before 15.07.2018.
 - c. ₹3,00,000/- on or before 14.08.2018.
 - d. ₹3,46,031/- on or before 31.08.2018.
9. Further stated that the accepted position is that the Debtor has already paid ₹50,000/- vide Cheque No. 019566 dated 22.06.2018 drawn on Pavana Sahkari Bank Ltd. as the first instalment in view of the consent terms but thereafter the Corporate Debtor states that the Debtor is incurring losses and is in great financial crunches, due to which he is unable to pay.

Findings :

1. I have gone through the submissions of both the parties and pleadings on record. On the basis of the evidences on record the Operational Creditor has established that he has sold, supplied and delivered the Steel Items to the Operational Debtor in November 2017, for which an amount of ₹9,96,031/- is due and a default of non payment had also occurred. Considering these facts and circumstances, in my humble 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.
2. 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 has not paid the amount of unpaid outstanding 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. Further, the act of the Corporate Debtor to enter into the Consent Terms and then paying an amount of ₹50,000/- in view of settlement as a first instalment clearly reveals that the amount defaulted is payable and the liability has been admitted by the Corporate Debtor.
3. 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.

4. The Operational Creditor has proposed the name of Interim Resolution Professional. Consequentially, this Bench hereby appoints **Mr. Hansraj Chandanlal Ahuja**, having registration no. as IBBI/IPA-002/IP-N00510/2017-18/11454, as Interim Resolution Professional for initiation of CIRP.
5. 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.
6. 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.
7. 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.
8. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

Dated : 04.10.2018

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

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