

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI

C.P.No.IB-1410(ND)/2018

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

In the matter of:

M/S. RAM SWARUP NATHI MAL
B-10, NAVEEM ,MANDI,
HARDUAGANJ,
ALIGARH,
UTTAR PRADESH- 202125

.....OPERATIONAL CREDITOR/APPLICANT

AND

KHAIRWALA INTERNATIONAL LIMITED
4273, FIRST FLOOR
GALI BAHU JI,
PAHARI DHIRAJ,
DELHI 110006

.....CORPORATE DEBTOR

Coram:

R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)

DEEPA KRISHAN
Hon'ble Member (Technical)

Counsel for the Petitioners: Mr. Karan Gandhi, Ms. Sudiksha Sinha
(Advocates)

Counsel for the Respondent / Corporate Debtor: None

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10.5.19

ORDER

Delivered on: 09.05.2019

1. The above petition has been filed under the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity IBC,2016) by M/s. Ram Swarup Nathimal (Partnership Firm), through Mr. Rajendra Swarup Agarwal (Partner), (for brevity "Operational Creditor/ Applicant") to initiate Corporate Insolvency Process against M/s. Khairwala International Limited (for brevity " Corporate Debtor").
2. The operational creditor represent that, it has been supplying paddy crop to the Respondent / Corporate Debtor as and when order was placed. That sixteen invoices were raised on different occasions amounting to Rs. 74,68,168/- which remained unpaid by the Respondent/ Corporate Debtor. That later an amount of Rs. 34,48,428/- has been paid on different occasions till 12.03.2018. Hence a sum of Rs. 34,48,428/- has been adjusted and the amount claimed to be in default is the Principal amount of Rs. 40,19,740/- and the interest of Rs. 5,03,807/- amounting to a total of Rs. 45,23,547/-. The date of default being the date of receipt of last payment from Respondent/ Corporate Debtor i.e. 12.03.2018.
3. Since the payment of the balance amount was pending for long the operational Creditor issued a statutory notice dated 17.09.2018 under

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Section 8 of the Code read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 which being undelivered, the Operational Creditor has again sent the demand notice dated 17.09.2018 through email on 18.09.2018 and 24.09.2018 as also seen from the order dated 19.11.2018 at the email ids as mentioned in the master data of the Corporate Debtor/ Respondent which were not been bounced back.

4. The Operational Creditor has placed on record, copy of various invoices dated from 02.10.2017 till 20.01.2018, as well as copy of bank statement of State Bank of India for the period 01.12.2017 – 31.03.2018. A copy of the declaration issued by 'Krishi Utpadan Mandi Samiti, Khair, Aligarh' upon receipt of goods from Operational Creditor to rice mill of the Corporate Debtor dated 23.03.2019 and a copy of the gate pass issued by Mandi, Hardauganj, Aligarh from where the goods were dispatched dated 03.08.2019.

5. Further it is also evident from the order dated 05.02.2019 that notice of the proceedings before this Tribunal has also been attempted through courier, by hand and even through email to the Corporate Debtor as well as Directors and an affidavit is also filed to this effect on 18.12.2018 vide diary no. 10386 with a detailed tabulation of the attempts of service to the Corporate Debtor and the Directors, however despite all of it there has been no representation on the part of the Corporate Debtor. Hence this Tribunal was constrained to proceed with the matter in the absence of the

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Corporate Debtor/ Respondent since the notice had been delivered to the Corporate Debtor vide email ids of the directors as well as other as available by the Operational Creditor thereby making the service complete and the Corporate Debtor had deliberately avoided answering to the notice addressed to it.

6. That the Operational Creditor has filed an affidavit along with the petition as mandated under section 9 (3) (b) of the Insolvency and Bankruptcy Code, 2016 thereby submitting that no payment has been made by the Corporate Debtor to the Operational Creditor.
7. In the circumstances mentioned above and since the Corporate Debtor despite repeated attempts have not appeared before this Tribunal and a default of debt due to the Operational Creditor is also in existence as evidenced from the records, remaining unsatisfied as evident prima facie, this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.
8. The Applicant has proposed name of Mr. Amit Gupta, an Insolvency Professional registered with The Indian Institute of Insolvency Professionals of ICSI having registration number IBBI/IPA-002/IP-N0002/2016-17/10048, to be the Interim Resolution Professional and he is appointed as the Interim Resolution Professional and a written communication in the format prescribed under Form 2 of the Insolvency



and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed interim resolution professional. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-



(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

9. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named who is figuring in the list of Resolution Professionals forwarded by IBBI, be also furnished with copy of this order forthwith by the Registry, who in turn shall communicate with the Registrar of Companies, NCT of Delhi & Haryana with a view to enable the said authority to update its record as well as the Master Data maintained in MCA website.

Sd/-
MEMBER KRISHAN)
MEMBER (TECHNICAL)

Sd/-
09/05/2019
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D.Mehta/K

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