

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH III
SPECIAL BENCH

(IB) 114 (ND) 2018

In the matter of

M/s SRS LIMITED

..... Petitioner

V/s

M/s Saubhagya Ornaments Pvt. Ltd.

..... Respondent

SECTION: 9 of IBC, 2016

Order delivered on 13.03.2019

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

For the Petitioner (s) : Mr. Samaksh Goyal, Advocate

For the Respondents (s): Mr. Aditya Gupta, Advocate

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner, as an Operational Creditor, has prayed for initiation of Corporate Insolvency Process of the Respondent company/Corporate Debtor. As per the averments, the Operational Creditor is engaged in the business of Gold Jewellery and had supplied the same to the Corporate Debtor on mutually accepted terms as per their agreement dated

03.06.2009. Various invoices were raised for which the Operational Creditor maintained a running account. The Corporate Debtor made only part payment despite Operational Creditors request to make the complete payments. The Corporate Debtor made the last payment on 29.11.2017 leaving the outstanding liability as Rs.66,19,17,188/- exclusive of interest.

2. In view of the failure on the part of the Corporate Debtor, to liquidate the outstanding liability, the Applicant/Operational Creditor issued a notice dated 28.12.2017 under section 8 of the Code. This was not replied to. Thereafter, the Operational Creditor has followed it up by filing the present petition. The petition has been filed in the required format, along with the supporting affidavit that no notice of dispute has been raised. Compliance of the provision of Section 9(3)(c) is also on record.

3. In the reply filed on behalf of the Corporate Debtor, the Operational Debt is not disputed. Mr. Aditya Gupta, Advocate who appeared on their behalf admitted the outstanding liability but expressed financial difficulties in extinguishing the claim.

4. The Corporate Debtor has accepted that a default in payment has occurred. The prayer made by the Operational Creditor therefore merits consideration. Accordingly, a moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith, stating:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement,

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 Securitisation 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.

Further:-

(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. (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.”

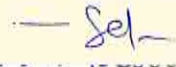
5. The Operational Creditor has not proposed the name of Insolvency Resolution Professional.

6. Accordingly, Ms. Shalu Khanna Registration No. IBBI/IPA-001/IP-P00917/2017-18/11523 Email ID: skhanna@iilca.net is appointed as the IRP from the panel of eligible Resolution Professionals as submitted by IBBI. She is directed to take all steps as are statutorily required by her under the Code, specifically u/s 15, 17 & 18, 20 & 21 and shall file her report before the Adjudicating Authority at the end of her tenure as an IRP.

7. The Operational Creditor is directed to deposit a sum of Rs. 2 Lakhs to meet the immediate expenses required for the Resolution Process to be duly accounted by the IRP, and shall be reimbursed to the Operational Creditor by the COC, and recovered as cost of the CIR process.

8. Copy of the order be given/emailed to the Operational Creditor & the Corporate Debtor.

9. To come up for the report on 22nd April, 2019 for an Interim Report.


(Ina Malhotra)
Member (J)