

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III

C.P. (IB) – 1085(ND)/2019

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. V. CHIRANJIV & CO.

Having Its Registered Office at:
11, Oza Market, B.P.T. Rly. Siding,
Darukhana, Mumbai - 400010

Through Its Authorized Representative
Mr.Chiranjiv P. Mehta

..... Operational Creditor

VERSUS

M/s. WILTAN TELMAG (INDIA) PVT. LTD.

Having Its Registered Office at:
Flat No-305, Sahyog Building, 58,
Nehru Place, New Delhi, Delhi-110019

Also at:
M/s. Wiltan Telmag (India) Pvt. Ltd.
Director, Mr. Pradeep Gill, R/o
002, Meditech Apartment Sector-56,
Gurgaon, Haryana - 122011

.... Corporate Debtor

Order Pronounced On: 04.07.2024

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Ms. Shankari Mishra, Advocate.

ORDER
PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. V. Chiranjiv & Co ('Operational Creditor'), against the Corporate Debtor for the purpose of initiating Corporate Insolvency Resolution Process ('CIRP') against M/s. Wiltan Telmag (India) Pvt. Ltd. ('Corporate Debtor').
2. The Applicant namely M/s. V. Chiranjiv & Co. (Operational Creditor) is a partnership firm registered under Section 59 of the Indian Partnership Act, 1932, having its registered office at 11, Oza Market, B.P.T. Rly. Siding, Darukhana, Mumbai - 400010. The Respondent Company namely M/s. Wiltan Telmag(India) Pvt. Ltd. (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U27104DL2005PTC133105], having its registered office at Flat No-305, Sahyog Building, 58, Nehru Place, New Delhi, Delhi- 110019. The Corporate Debtor has Authorised Capital of Rs. 61,00,000.00 and Paid-up Capital of Rs. 60,51,200.00/-.
3. The present application was filed on 16.04.2019 before this Adjudicating Authority. The total amount due as on 24.02.2016 is Rs. 68,43,509.25/- (Rupees Sixty-Eight Lakhs Forty-Three Thousand Five Hundred Nine and Twenty-Five Paise Only).
4. The Operational Creditor started supplying CRGO Coil, CRGO Slit Coil, Prime CRGO ES Coil, Prime HGO Coil, Prime Go Coil, CRGO Lamination and other materials to the Corporate Debtor. The above mentioned material was supplied between 2011-2016 against Sales Tax Invoices, and Excise Invoices which have been maintained by the Applicant. The Corporate Debtor has also supplied Form "C's" issued by Govt. of Haryana for various consignments supplied. However, the Corporate Debtor has not made full payments against

the material supplied by the Applicant and an amount of Rs. 68,43,509.25/ is still payable.

5. The Corporate Debtor vide an email dated 29.06.2015 sent a Confirmation of Accounts dated 01.04.2015 to the Applicant. In the said email, it has been clearly admitted that as per their accounts, an amount of Rs. 68,17,467.00/- remains due to be paid by the Corporate Debtor to the Applicant as on 31.03.2015. After 31.03.2015, the Applicant further supplied materials worth Rs. 27,77,167/- to the Corporate Debtor.
6. Goods were supplied by the Operational Creditor worth Rs. 3,39,125.00/- on the assurance of payment of all dues from the Corporate Debtor. Some payments were received by the Operational Creditor from the Corporate Debtor against the outstanding amounts. The last payment was received from the Corporate Debtor on 24.02.2016.
7. The details of the invoices issued by the Operational Creditor to the Corporate Debtor are given below: -

Invoice No.	Date	Amount
247	22.01.2014	5,35,232.25 (as against the total invoice value of 7,86,664)
248	22.01.2014	1,02,318.00
320	28.03.2014	6,92,139.00
321	28.03.2014	2,14,031.00
40	15.05.2014	7,61,201.00
334	22.12.2014	5,77,061.00
374	16.01.2015	3,55,375.00
375	16.01.2015	2,38,238.00
393	04.02.2015	5,90,747.00
7	10.04.2015	4,53,586.00
8	10.04.2015	2,26,998.00
33	30.04.2015	7,30,199.00
71	26.05.2015	3,59,385.00
95	16.06.2015	6,67,874.00
370	13.01.2016	3,39,125.00

8. The Operational Creditor had sent a legal notice to the registered office of the Corporate Debtor in accordance with Section 434 of the Companies Act, calling upon the Corporate Debtor to discharge its liability along with interest at the rate of 18% per annum for the entire defaulting period, failing which, it would be presumed that it is "unable to pay its debts" and the Applicant would be constrained to file a petition for winding up under clause (e) of Sec 433 of the Companies Act before the Delhi High Court.
9. The Operational Creditor filed a winding up petition against the Corporate Debtor at the Hon'ble High Court of Delhi, whereby notices to the Corporate Debtor by the Hon'ble High Court was issued on 11.03.2016.
10. The Operational Creditor withdrew the petition seeking liberty to file an application before this Adjudicating Authority. The Hon'ble High Court vide Order dated 21.12.2017 was pleased to allow the Applicant to withdraw the Petition with the aforesaid liberty.
11. A certificate of default was issued by the Information Utility after documents establishing the default in payment were uploaded with the said Information Utility and attempts were made by the Information Utility to give notice of default to the directors of the Corporate Debtor.
12. A demand notice in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was attempted to be delivered to the Corporate Debtor at its registered address as recorded with the Registrar of Companies by speed post with A.D. card. However, the demand notice was not received by anyone.
13. The Applicant accordingly filed the instant application under section 9 of the Code before this Adjudicating Authority on 12.03.2018. The Adjudicating Authority vide judgment dated 28.08.2018 dismissed the application of the

Applicant on the ground that notice under Section 8 of the Code is required to be actually delivered to the Corporate Debtor and it cannot be deemed to have been delivered.

14. Further, aggrieved by the said judgment dated 28.08.2018, the Applicant filed an appeal under section 61 of the Code before the Hon'ble National Company Law Appellate Tribunal (NCLAT) being Company Appeal (AT) Insolvency No. 627 of 2018.
15. The Hon'ble NCLAT directed the Applicant to publish the notice in two newspapers i.e. Times of India and Hindustan, New Delhi, Edition since the notice issued to the Respondent by speed post was returned unserved.
16. The Hon'ble NCLAT in its order dated 31.01.2019 held that the Demand Notice as was issued u/s 8(1) on 13.01.2018, it would be deemed to have been served in view of substituted service undertaken. In the circumstances, the Hon'ble NCLAT permitted the 'Corporate Debtor' to file reply u/s 8(1) in terms of section 8(2) within 10 days i.e. by 11th February, 2019 and held that pursuant to the said date, it would be open to the Applicant to file fresh application u/s 9 in Form 5, if the matter is not settled.
17. The Operational Creditor has not received any payment from the Corporate Debtor or notice of any dispute under Section 8(2) of the Code. Hence, the Operational Creditor is constrained to file this Application before this Adjudicating Authority for initiating corporate insolvency resolution process of the Corporate Debtor.
18. It is submitted that since the Order was not pronounced by the Adjudicating Authority and the composition of bench was changed, the Petitioner moved an Application for rehearing. This Adjudicating Authority vide Order dated

22.02.2024 was pleased to issue fresh notice to Respondent, but the Corporate Debtor did not appear.

19. Hence, this application.

20. **ANALYSIS & FINDINGS**

- i. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and perused the documents on record.
- ii. Ms. Shankari Mishra, Ld. Counsel appearing for Applicant has submitted that the Applicant supplied CRGO Coil, CRGO Slit Coil, Prime CRGO ES Coil, Prime HGO Coil, Prime Go Coil, CRGO Lamination and other materials to the Corporate Debtor against Sales Tax Invoices and Excise Invoices. The Corporate Debtor furnished Form "C's" issued by Government of Haryana in support of various consignments. However, the Corporate Debtor failed to make full payments against the material supplied by the Applicant and an amount of Rs. 68,43,509.25/ is still payable. Thus, there is an existence of debt.
- iii. Ms. Mishra, Ld. Counsel also submitted that the date of default is 24.02.2016. The Corporate Debtor made a statement before this Adjudicating Authority admitting the debt owed to the Applicant, which has been recorded in the order dated 06.08.2019. She further submitted that the Applicant has filed a certificate in terms of Section 9(3)(c) of the Code confirming that no payment of unpaid operational debt by the Corporate Debtor has been made. Further the Corporate Debtor vide Email dated 29.06.2015 gave the Applicant a confirmation of accounts dated 01.04.2015 and the Corporate Debtor clearly admitted that an amount of Rs. 68,17,467.00/- remained due to be paid by the Corporate Debtor to the Applicant as on 31.03.2015. Therefore, the Corporate Debtor has defaulted in making the payment.

- iv. Ms. Mishra, Ld. Counsel, therefore has submitted that the debt and default have been proved by the Applicant. In this regard, she has relied upon a Judgement passed by Hon'ble Supreme Court of India in the case of **"M. Suresh Kumar Reddy vs. Canara Bank and Ors.- (2023) 8 SCC 387"** wherein it has been held that:

"11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section (12) of Section 3 IBC which reads thus:

*Definitions. —In this Code, unless the context otherwise requires—
*** (12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"*

Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application."

(Emphasis Supplied)

- v. We find force in the arguments of Ms. Mishra, Ld. Counsel and hold that the Corporate Debtor has defaulted in making the payments due to the Operational Creditor.
- vi. Pertinently in view of the confirmation of account dated 01.04.2015 wherein the Corporate Debtor has admitted that an amount of Rs. 68,17,467.00/- is due to be paid to the Operational Creditor

vii. In our considered view, the Applicant has been able to comply with all the parameters as laid down by the Hon'ble Supreme Court in the case of ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited reported in (2018) 1 SCC 353.***

21. The Application bearing **IB-1085/ND/2019** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.

i. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (i) "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;*
- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) 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;*
- (iv) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation. -For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession,

clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

- ii. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.
- iii. Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints **Mr. Ranjan Chakraborti**, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI. The registration number of the IRP is **IBBI/IPA-002/IP-N00541/2017-2018/11618**, the e-mail id of the IRP is **ranjanns@gmail.com** and the contact no of the IRP is **9811703727**.

Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, **Mr. Ranjan Chakraborti** is appointed as IRP.

- iv. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vi. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- ix. In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.

- x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.

No order as to costs.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)