

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 205
(IB)-162(ND)2024

IN THE MATTER OF:

M/s Grover Trading Co.

Reg. Office at:
1st Floor, SU-205, Pitampura
Delhi-110034

**... Applicant/
Operational Creditor**

Versus

M/s Supreme Fin-hold Pvt. Ltd.

Though its Directors
12/21 Shakti Nagar
Delhi-110007

**... Respondent/
Corporate Debtor**

Section: 9 of the IBC, 2016

Order delivered on: 01.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Rajat Srivastva

For the Respondent : Adv. Amit Dhall

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The Applicant herein before us is an Operation Creditor and as preferred the present application under Section 9 of IBC, 2016. He could draw our attention

to the acknowledgment dated 16.09.2022 issued by the Corporate Debtor, accepting its liability to repay the amount of Rs. 1,19,39,282.40 to the Corporate Debtor. The acknowledgment reads thus:



SUPREME FIN HOLD PVT. LTD.

011-45151222

Dated: 16.09.2022

To.
GROVER TRADING CO
1ST FLOOR, SU.- 205, PITAMPURA
DELHI - 110034

Confirmation/Acknowledgment of Outstanding

Confirmation of Outstanding Balance: We acknowledge and confirm that, based on the latest ledger statements, the outstanding balance on the account is Rs. 1,19,39,282.40 (One Crore Nineteen Thousand Thirty Nine Thousand Two Hundred Eighty Two and Forty Paise). This amount comprises all outstanding invoices and relevant financial transactions up to the specified date in the attached ledger. That there exist no dispute to the aforesaid amount and same has been matched with our books.

We recognize the importance of settling the outstanding balance promptly to ensure the smooth continuation of our business relationship.

For SUPREME FIN HOLD PVT LTD

[Signature]
Director

M/S SUPREME FIN-HOLD PVT LTD
12/21 SHAKTI NAGAR
DELHI - 110007

2. The Ld. Counsel appearing for the Applicant could also draw our attention to the affidavit filed under Section 9(3)(b) of IBC, 2016, to indicate that the CD never raised any dispute regarding its liability to pay the aforementioned amount, before issuance of demand notice dated 22.09.2022, which is placed on record at Annexure (E) of the application. The Applicant has also placed on record the ledger qua the Corporate D maintained by the OC as Annexure-H to the petition. The amount of debt and default in repayment of the same has been mentioned in part-IV of the application.

PART-IV

PARTICULARS OF OPERATIONAL DEBTS		
1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due.	<p>The total amount of debt for the financial year 2021-22 is Rs. 1,19,39,282.40 (One Crore Nineteen Thousand Thirty Nine Thousand Two Hundred Eighty Two and Forty Paise). as on 31.03.2022, vide due conformations received from time to time along with interest amounting to 18% P.A.</p> <p>As on 31.03.2022 the outstanding debt payable by the corporate debtor of the running business account was Rs. 1,19,39,282.40 (One Crore Nineteen Thousand Thirty Nine Thousand Two Hundred Eighty Two and Forty Paise). . The copy of the aforementioned most invoices Duly Deposited and raised by the OC. with respect to the total amount of debt is annexed herewith as ANNEXURE - D (colly).</p>
2.	Amount claimed to be in default and date on which the default occurred (attached the workings for computation of amounts and dates of default in tabular form)	<p>The total amount of debt for the financial year 2021-22 is Rs. Rs. 1,19,39,282.40 (One Crore Nineteen Thousand Thirty Nine Thousand Two Hundred Eighty Two and Forty Paise) as on 31.03.2021, vide due conformations received from time to time along with interest amounting to 18% P.A.</p> <p>The date of default occurs to be from as last invoice entered in the Bill against Products was effected towards the outstanding liability for the financial</p>
		<p>year: 2021-22 i.e. 28.03.2021 and thereafter no Products were supplied and no sales were made to the Corporate Debtor.</p> <p>No Payment has been made till date against the said invoices.</p> <p>Further, the Demand Notice dated 22.09.2022 was issued to M/S SUPREME FIN-HOLD PVT LTD and its officers, however, no payment has been made till date in respect of the same.</p>

3. While examining an application preferred under Section 9 of IBC, 2016, what this Tribunal need to see is as to whether the invoice raised by the

Applicant, demanding the defaulted amount, the certificate by the financial institution that the amount has not been received in the account of the Corporate Debtor and an affidavit under Section 9(3)(b) are available on record. What this Tribunal further need to satisfy itself about while considering the application for admission is whether the Corporate Debtor raised any dispute regarding the defaulted amount, by giving reply to the demand notice.

4. As has been noted hereinabove, the affidavit under Section 9(3)(b) is on record, the Applicant also served a notice under Section 8(1) of IBC, 2016 upon the Respondent, demanding the defaulted amount. Though the Applicant has not filed any certificate from the financial institution maintaining accounts of the Operational Creditor confirming that there is no payment of unpaid operational debt by the CD. Nevertheless, the Applicant has placed on record an acknowledgment dated 16.09.2022 issued by the CD, accepting liability to pay the defaulted amount. Even in the reply filed on behalf of the CD, it has not been indicated that the amount of default has been repaid by the CD. In the wake, having due deference to the provisions of Section 9(3)(e) of IBC, 2016, we ignore the non-availability of the certificate required to be issued by the financial institution regarding non-payment of the defaulted amount by the CD. As could be pointed out by the Ld. Counsel for the Applicant, along with the affidavit dated 07.05.2024 filed by him, the RP proposed by the Applicant has declared that no legal proceedings are pending against him. In view of the aforementioned, we are satisfied that the present application fulfils the requirement of Section 9(3) & (5)

of IBC, 2016, read with Regulation 2(d) of IBBI (Resolution Process for Corporate Persons) Regulations, 2016. Thus, we are left with no option but to admit the application and direct commencement of CIRP qua the Corporate Debtor.

The Petition stands admitted in terms of the provisions Section 9(5) of the IBC, 2016. Resultantly, moratorium in terms of the provision of Section 13 for the purposes referred to in Section 14 of the IBC, 2016 is declared. As the Operational Creditor has proposed the name of Insolvency Professional to be appointed as IRP, in terms of the provisions of Section 13(1)(c) read with Section 16(3)(a) of the IBC, 2016, the Insolvency Professional namely, Mr. Dev Vrat Rana, having IBBI Registration No. IBBI/IPA-001/IP-P-02567/2021-22/13936, email id: cadevrana@gmail.com is appointed as IRP in the matter. The Court Officer/Registrar of this Tribunal/Adjudicating Authority is directed to inform the IRP about confirmation of his appointment forthwith. The term of the Interim Resolution Professional shall continue till the date of appointment of the Resolution Professional under Section 22 of the IBC, 2016 or the development if any under Section 12A of the Code or otherwise, whichever is earlier. The IRP is directed to act in terms of the provisions 13(1)(b) and Section 13(2) read with Section 15 of the IBC, 2016 immediately. In other words, the IRP shall cause a public announcement of initiation of Corporate Insolvency Process be made qua the Corporate Debtor and call for submission of claim under Section 15 immediately. The public announcement shall contain the information stipulated in Section 15(1) of the IBC, 2016. We are sanguine that the IRP shall act in due

deference to the provisions of IBC, 2016, particularly Section 12,15,17,18, 20 & 21 thereof as also Regulation 6, 6A, 12A, 13, 14, 16A and 17 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 inter alia. It goes without saying that in the wake of the moratorium, there shall be prohibition of all the following: -

- (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 off 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.

6. Nevertheless, it is made clear that a license, permit, registration, quota, concession, clearance or similar grant or right (if any) given by the Central Government, State Government, Local Authority, Sectoral Regulator or any Authority constituted under any other law for the time being in force shall not be suspended or terminated qua the Corporate Debtor on the ground of Insolvency, subject to the conditions that there is no default in payment of

current dues arising for the use of continuation of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Besides, the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, except where the Corporate Debtor does not pay the dues arising from such supply during the moratorium period or any other explainable situation.

7. The Operational Creditor shall deposit an amount of Rs. 2,00,000/- with the IRP to enable him to meet the expenses to be incurred at the initial stage of the CIRP. The expenses shall be reimbursed by the Committee of Creditors, to the extent the same are ratified by it. The amount of expenses ratified by the Committee of Creditors shall be treated as CIRP cost. It goes without saying that in terms of Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the CoC shall fix the expenses to be incurred by the IRP/ RP and the expenses shall constitute IRP cost.

8. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Adjudicating Authority. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

UPASANA/TARUN