

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No. 548/ND/2020

IN THE MATTER OF:

M/s. R.R. Distributers Private Limited

Having registered office at:

1826/18. New Amarnath Building, Bhagirath Palace

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

M/s. Knodia Technoplast Limited

CIN No. U74899DL1995PLC67544

HAVING ITS REGISTERED OFFICE AT:

A-54, Wazipur Industrial Area, New Delhi-110052

... RESPONDENT / CORPORATE DEBTOR

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on:. 08.03.2022

CORAM:

MR. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: Sh. DHARMINDER SINGH, MEMBER (JUDICIAL)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by, M/s R.R. Distributers Private Limited (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Kanodia Technoplast Limited (hereinafter, Respondent/Corporate Debtor).


8/3/22

2. As per averments made in the petition that the corporate debtor was purchasing goods from the applicant from time to time. The applicant was raising invoices and the corporate debtor was making payments time to time. It is the case of the applicant that the corporate debtor vide email on 15.02.2018 has admitted liability that a sum of Rs. 3,07,34,879 was due and payable to applicant by it.
3. It is further stated that the corporate debtor on 01.11.2019 issued total 16 cheques for payment of Rs. 2,12,01,446.32/-. Out of the said cheques two cheques amounting to Rs. 3,00,000/- were cleared and the corporate debtor also transferred Rs. 50,000/- through NEFT. The applicant further clarified that there was no understanding between the parties that the payment will be made in installments.
4. As per part-IV the corporate debtor is liable to pay as on 30.12.2019 Rs. 1,95,01,446/- is pending to be paid by corporate debtor to the applicant.
5. The applicant sent a demand notice under Section 8 of the Code at the registered office of the corporate debtor on 10.12.2019. Apparently, the corporate debtor replied the Demand Notice on 28.12.2019 admitting its liability to pay the dues of the applicant and further payments were also made by corporate debtor vide cheques and demand draft.
6. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:
 - a) It is submitted that the part claim of the applicant is barred by limitation as three invoices were issued in the year 2015 and 2016, hence these three invoices pertaining to amount of Rs. 97,63,977/-



are barred by limitation as on date of filing of the present petition. The corporate debtor further alleged that remaining claim of applicant is less than the threshold limit of Rs. 1 Crores hence the present petition is liable to be dismissed.

- b) The corporate debtor has also raised objection regarding interest claimed by the applicant as there was no agreement between the parties in respect of interest over the operational debt.
 - c) The corporate debtor has submitted that in November 2019, a meeting was held between the parties whereas it was decided that the payment of Rs. 2,12,01,446/- will be made in installments and 142 cheques were handed over to the applicant and thus there is no amount due and payable by corporate debtor after issuance of said cheques.
7. The petitioner has filed rejoinder to the reply of respondent and submitted as follows:
- i. It is submitted that the corporate debtor has sent a reply to the demand notice wherein no dispute of any nature was raised. On the contrary, the dues towards applicant were admitted. The applicant has filed affidavit in terms of Section 9 (30(b) of the Code alongwith the rejoinder.
 - ii. In respect of claim of interest the applicant clarified that the interest is payable as per market usage and practice. The transaction between the parties was commercial in nature and commercial rate of interest is payable by the corporate debtor.
 - iii. The applicant denied that the part claim is barred by limitation and 142 cheques were received by applicant. The applicant

further pointed out that the claim of applicant was admitted by corporate debtor vide emails dated 15.12.2018 and reply to demand notice dated 28.12.2019. The applicant further denied the fact of alleged mutual settlement.

8. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and written submissions filed by the parties. The corporate debtor has not filed any settlement agreement executed between the parties in respect of alleged mutual arrangements. The corporate debtor further has failed to demonstrate any pre-existing dispute between the parties regarding claim of the applicant.

9. As far as the limitation is concerned it is seen that there was a running account between the parties and the corporate debtor has not paid amounts in respect of individual invoices. In fact the corporate debtor has admitted its liability to pay the dues towards applicant vide reply to demand notice as well.

10. In the facts it is seen that the applicant clearly comes within the definition of Operational Creditor as the Corporate Debtor itself has admitted the fact of receiving goods supplied by the applicant. On a bare perusal of Form -5 filed under Section 9 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same.

11. An application under Section 9 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. In respect of applications filed before 24.03.2020 what is material is that the default is for at least Rs.1 Lakh. In view of Section 4 of the Code,

the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

12. In view of the aforesaid discussion, the corporate debtor has failed to demonstrate that any pre-existing dispute between the parties infact the corporate debtor has admitted its liability. Therefore, the present application deserves to be allowed.

13. The applicant has proposed the name of Mr. Navjit Singh. Mr. Navjit Singh has given its written consent in Form-2 dated 06.02.2020, declaring that there is no disciplinary proceeding pending against him. The written consent in Form-2 is annexed with the application. Therefore, Mr. Navjit Singh having registration number of the IRP being IBBI /IPA-001/ IP-N00314 /2017-18/ 10578 and email id-navjit92ca@gmail.com. IRP above named is appointed as Interim Resolution Professional for Corporate Debtor namely M/s Knodia Technoplast Limited subject to the condition that no disciplinary proceedings are pending against him.

14. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely, Mr. Navjit Singh to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the

Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

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

“(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.”

17. 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.
18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation

imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

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(SUMITA PURKAYASTHA)
MEMBER (T)

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(DHARMINDER SINGH)
MEMBER (J)