

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No.(IB)- 442 (ND)/2022

**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. LOCOFAST ONLINE SERVICES PRIVATE LIMITED
.... APPLICANT/
OPERATIONAL CREDITOR**

VS.

**M/s. BEE K BEE PRINTS PRIVATE LIMITED
.... CORPORATE DEBTOR**

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Vaibhav Kumar, Adv.

For the Respondent : Mr. Zorawar Singh, Mr. Hitesh Mankar, Mr.
Shubham, Advs.

Order Delivered on:15.04.2024

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

The instant application is filed by M/s. Locofast Online Services Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Bee

K Bee Prints Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.1,08,75,847/- (Indian Rupees One Crores Eight Lakhs Seventy Five Thousand Eight Hundred and Forty Seven Only).

2. The Respondent Company M/s. Bee K Bee Prints Private Limited is a private limited Company bearing CIN: U74994DL1993PTC053687 and having its office situated at C-2, East of Kailash, New Delhi – 110065. Since the office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

AVERMENTS BY THE APPLICANT

3. Briefly stated, the facts of the present case as averred by the applicant are that the applicant is in the business of manufacturing textiles, including printing, dyeing, finishing etc. The Corporate Debtor in the month of August, 2021 had approached the Applicant to purchase significant amounts of fabric rolls. The Applicant on the goodwill of the Corporate Debtor in the market had agreed to provide the goods to the Corporate Debtor on credit basis. Consequently, the Corporate Debtor had issued three (3) purchase orders i.e., (i) PO No. 014 (dt. 20.09.2021), (ii) PO No. 015 (dt. 20.09.2021) and (iii) PO No. 018 (dt. 14.10.2021) to the Applicant for the supply of the goods.
4. The Applicant submitted that a part of the order was duly processed by the Applicant and the concerned invoice bearing No. LF/21-22-09/078 dt 21.09.2021 of amount Rs. 4,77,320/- was raised in the name of the Corporate Debtor and the same was paid by the Corporate Debtor. The

Applicant further made supply of goods under PO No.s 014, 015 and 018 to the Corporate Debtor and the receipt of goods was duly acknowledged by the Corporate Debtor. Pursuant to the delivery of goods, the Applicant had raised two invoices i.e., (i) Invoice No. LF/21-22-09/102 for an amount of Rs. 47,97,231/- for fabric rolls shipped to and duly received by the Corporate Debtor under PO NO.S014&015 and (ii) INVOICE NO. LF/21 -22-10/078 was raised by the Operational Creditor of an amount of Rs. 54,63,002/- for fabric rolls shipped to and duly received by the Corporate Debtor under PO No. 018.

5. Further, the Applicant submitted that as per the terms of the Invoice(s), the same was payable within 45 days after delivery, post which interest was chargeable @ 2% p.m. However, despite numerous reminders over Email, phone, in-person etc. the Corporate Debtor till date has failed to make the payments towards the invoices and interest thereupon. Each time the Corporate Debtor made excuses on some pretext or the other and made assurances to the Operational Creditor that they would be clearing the dues at the very earliest. Moreover, the cheques issued by the Corporate Debtor in this regard were dishonoured.
6. The Applicant issued the Demand Notice dated 30.03.2022, under Section 8 of the IBC, 2016 in Form 3 along with copies of the invoices and various documents, and the same were duly served on the Corporate Debtor via Email as well as Speed Post. The Corporate Debtor failed to make any payment in pursuance of the notice. In fact, the Corporate Debtor had failed to respond to the notice and has not disputed the outstanding amounts in any manner whatsoever. Accordingly, prays for the initiation of CIRP against the Corporate Debtor.

REPLY FILED BY THE CORPORATE DEBTOR

7. The Respondent had filed its reply and submitted that in the present case there existed a dispute between the parties related to the payment and quality of goods being supplied by the Applicant to the Corporate Debtor. The Applicant had supplied the damaged/defective goods to the Corporate Debtor which has never been replaced by the Applicant till date despite several requests by the Corporate Debtor. It is submitted that due to non-replacement of the damaged/ defective goods, the Corporate Debtor had suffered a huge financial loss of approximately INR 30,00,000/- (Rupees Thirty Lakh Only) and the damaged goods are still kept in the manufacturing unit of the Respondent.
8. The Corporate Debtor submitted that the parties in the meeting dated 24.02.2022, had mutually agreed between the parties that part payment of INR 50,00,000/- (Rupees Fifty Lakh Only) would be released in 15 days upon the fulfilment of the condition that the consignment of damaged/defective goods delivered by the Applicant to Corporate Debtor would be replaced. However, the Applicant had failed to fulfil the abovementioned condition, due to which the Corporate Debtor was under no obligation to fulfil his part of the mutual understanding and hence, there exist a pre-existing dispute.
9. Further, the Corporate Debtor had claimed that the total outstanding amount allegedly in default by the Corporate Debtor for the invoices between the period 21.09.2021 till 26.10.2022 (total of 3 invoices) aggregates to INR 1,07,37,553/- (Rupees One Crore Seven Lakh Thirty-Seven Thousand Five Hundred Fifty-Three only). It is submitted that 1 invoice of INR 4,77,320/- (Rupees Four Lakh Seventy-Seven Thousand Three Hundred Twenty only) out of the said 3 invoices, was paid and settled as per the understanding between the parties, however, for

remaining payment, it was mutually agreed between the parties that the payment shall be made only upon delivery of goods as desired by the Corporate Debtor. Further, as far as the payment towards remaining 2 (two) invoices are concerned, the same has never become due and payable as the Applicant failed to fulfil its obligation to supply appropriate goods as per market standard to the Corporate Debtor, hence, as per the mutual understanding the Corporate Debtor can make payment towards the remaining 2 (two) invoices only upon the replacement of damaged/defective with appropriate goods as required. Therefore, it is submitted that the outstanding payment towards remaining 2 invoices have not become due and payable, as per mutual understanding between the parties.

REJOINDER BY THE APPLICANT

10. The Applicant has filed rejoinder to the reply filed by the Corporate Debtor, wherein the submissions of the Corporate Debtor are rebutted and the Applicant submitted that there is no pre-existing dispute and the alleged 'dispute' sought to be contended by the Corporate Debtor is a complete sham and is wholly spurious, hypothetical, illusory, misconceived and fabricated.
11. Further, the applicant submitted that there was no 'settlement agreement' arrived between the parties rather at that time the Applicant was diligently pursuing the large amount outstanding with the Corporate Debtor, it was the Corporate Debtor who agreed to release Rs. 50 lakhs from the outstanding within 15 days, which the Corporate Debtor failed to comply. Moreover, by any stretch of the law or imagination, it cannot be construed to imply that the due date of the debt or the date of default had changed from what is stated categorically in the relevant invoices.

12. Moreover, the Corporate Debtor had acknowledge the outstanding debt of Rs. 1,02,60,233/- based on the invoices raised by the Applicant. The Applicant denied that for such payment there was any mutual agreement, as alleged or at all, and "the payment shall be made only upon delivery of goods as desired by the Respondent." Accordingly, the invoices become due on the date of delivery of goods only.

ANALYSIS AND FINDING

13. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.

14. At this juncture, it is pertinent to mention that the Insolvency and Bankruptcy Code is a self-contained Code. It has made provision under Section 9 sub-section (5) of the Code for providing an opportunity to rectify the defects of application, and in any position, it cannot be denied. The provision of section 9 sub-section (5) of the code are reproduced hereunder:-

“9. Application for initiation of corporate insolvency resolution process by operational creditor.—

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) xxx

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

15. We are further strengthened by the Hon'ble Supreme Court dated **21.09.2017 in Civil Appeal No.9405/2017 in Mobilox Innovations Pvt Ltd V. Kirusa Software Pvt Ltd** at paragraph 25 it is observed as under:

“Adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed **before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?***

16. Adverting to factual matrix of the present case, it an admitted fact that the Applicant had supplied goods to the Corporate Debtor, pursuant to which the Applicant had raised three (3) invoices aggregating Rs. 1,07,37,553/-. The Corporate Debtor had made full payment of Rs. 4,77,320/- towards invoice No. LF/21-22-09-078 dated 21.09.2021. Accordingly, two (2) invoices i.e., Invoice No. LF/21-22-09-102 dated 28.09.2021 and Invoice No. LF/21-22-10-078 dated 26.10.2021 aggregating Principal amount of Rs. 1,02,60,233/-. The tabular representation of the Invoices raised by the Applicant and cleared by the Corporate Debtor is as follows:-

S.No.	Date of Invoice	Invoice No	Amount of goods supplied (INR)
1.	21.09.2021	LF/21-22-09-078	4,77,320/-
2.	28.09.2021	LF/21-22-09-102	47,97,231/-
3.	26.10.2021	LF/21-22-10-078	54,63,002/-
Total Amount			1,07,37,553/-
Amount Paid			(4,77,320)

(Tabular Representation of the Invoice(s) raised by the Applicant)

17. Further, on perusal of the Corporate Debtor's Reply to the present application, we observe that in this reply a mere statement was made by the Corporate Debtor that the goods were defective because of which the invoices were not cleared by the Corporate Debtor. However, the Corporate Debtor had not placed on record any correspondence or document to substantiate their defence of pre-existing dispute. The Corporate Debtor had placed on record the (i) Photos of the damaged goods supplied by the Applicant and (ii) the copy of the mutual understanding/settlement agreed between the Applicant and the Respondent on 24.02.2022.
18. However, on perusal of the said documents, upon which the Corporate Debtor had placed reliance, it is observed that from the mere photographs of the goods supplied, it cannot be ascertained whether the goods are defective or not. Further, the copy of the mutual understanding/settlement dated 24.02.2022 agreed between the Applicant and the Respondent as relied upon by the Corporate Debtor, is a handwritten note with some scribbling on it, which is nor self-explanatory nor signed by neither of the Parties. Therefore, certainly does not document any kind of settlement between the parties and cannot be

relied upon. Therefore, the contention of the pre-existing dispute attempted to be raised by the corporate debtor is a feeble one, unsupported by any evidence, is nothing but a moonshine which cannot be held to be a valid ground of rejection of the instant application.

19. As regards the contention of the Corporate Debtor that the payment towards remaining 2 (two) invoices will be done upon the replacement of damaged/defective with appropriate goods as required. This Adjudicating Authority observed that as per the Covenants of invoice dated 28.09.2021 and Invoice dated 26.10.2021, the same was payable within 45 days and 60 days respectively after delivery, post which interest was chargeable @ 2% p.m.. The Corporate Debtor had failed to bring on record any document, correspondence to show that the parties had mutually agreed to revise the date of payment as mentioned in the invoices. Therefore, the contention of the Corporate Debtor that the amount is not due and payable cannot be sustained.

20. Considering the conspectus of facts and circumstances of the present case, this Adjudicating Authority is satisfied that present application under Section 9 of the Code is complete as per the provisions of Code, 2016 read with rules made thereunder, outstanding operational debt amounting Rs.1,08,75,847/- which includes outstanding Principal amount of Rs.1,02,60,233/- and interest amount of Rs. 6,15,614/- only as claimed in part IV of Form-5 of the application arising out of the Invoice No. LF/21-22-09-102 and Invoice No. LF/21-22-10-078, which are above the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016 and duly supported by the Invoices and Purchase order(s). Therefore, the requirements as envisaged under Section 9(5)(i)(a), 9(5)(i)(b) and 9(5)(i)(c) of the Code, 2016 are satisfied. Resultantly, the present company application **(C.P. No. (IB)-**

442/(ND)/2022) stands admitted and the CIRP is hereby commenced against M/s. Bee K Bee Prints Private Limited.

21. The Applicant has not proposed the name of any IRP in Part-III of the application. Therefore, based on the list provided by the Insolvency and Bankruptcy Board of India (IBBI) for January 01st, 2024 to June 31st, 2024, Mr. Vikas Garg having Registration Number IBBI/IPA-001/IP-P01050/2017-2018/11733, Email: vikas@vamindia.in is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of Form AA, Disclosure and a valid Authorization for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
22. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Vikas Garg 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
23. 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.

(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances 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, 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, concessions, clearances or a similar grant or right during the moratorium period.

24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.

25. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the 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'.

26. 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 appropriate orders. 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.
27. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Accordingly, the instant application filed under Section 9 of the Code, 2016 bearing **C.P.(IB)/442/2022 stands admitted.**

Sd/-

**(DR.SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**