
(2020) 02 NCLT CK 0024

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : (IB) No. 1930/(ND) Of 2019

Anil Kumar Gupta

APPELLANT

Vs

Air Movement And Control System Pvt. Ltd

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 8(1), 9, 14, 15, 17, 18

Citation : (2020) 02 NCLT CK 0024

Hon'ble Judges : Abni Ranjan Kumar Sinha, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Gunjan Mittal, Anurag Sharma

Judgement

1. This is an application filed by the Applicant Anil Kumar, proprietor of Kay Pee Steels seeking to initiate corporate insolvency resolution process ("CIRP") of the Respondent Air Movement & Control System Private Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code") for the alleged default on the part of the Respondent for an amount of Rs. 9,09,672/- along with interest @ 18% per annum amounting to Rs. 10,27,310/-. The details of the transactions leading to the filing of the application as averred by the Applicant are as follows:

i. During the year 2018, the Respondent was keen and desirous of purchasing the goods being supplied by the Applicant and approached the Applicant for supply of the same. After negotiating the terms of business and after being satisfied with the price and quality of the goods, the Respondent agreed to purchase the goods from the Applicant and has been placing written purchase orders for the goods.

ii. Based upon the understanding as arrived between both the parties, during the period 20.07.2018 to 10.10.2018, upon receipt of written purchase orders, the Applicant supplied the goods amounting to Rs. 30,83,660/- against which the Respondent made a part payment of Rs. 21,73,988/- which has been duly

accounted for in the running ledger account maintained by the Applicant. After adjusting the above received amount against the running account, the closing balance amount of Rs. 9,09,672/- is still lying outstanding and remains unpaid till date.

iii. The Respondent against the aforesaid admitted liability amounting to Rs. 9,09,672/- issued two postdated cheques bearing Nos. 284500 dated 19.02.2019 amounting to Rs. 3,00,000/- and 284534 dated 18.04.2019 amounting to Rs. 1,50,000/- both drawn on Yes Bank as part payment and handed over the same to the authorized person from the accounts department of the Applicant at its office. However, to the utter surprise of the Applicant the aforesaid postdated cheques were dishonored and returned by the banker of the Respondent with the remark "insufficient balance".

iv. The running ledger accounts as maintained by the Applicant reflects that as on 30.03.2019 balance principle amount of Rs. 9,09,672/- is due and payable by the Respondent against the supplied goods.

v. The Respondent while admitting its liability issued confirmation of accounts dated 01.04.2019 to the Applicant admitted an outstanding amount of Rs. 9,09,672/- due to be payable to the Applicant.

vi. The Applicant sent the demand notice in Form 3 on 01.07.2019 in compliance of Section 8(1) of the Code seeking principle amount of Rs. 9,09,672/- along with interest @ 18% per annum amounting to Rs. 1,17,638/- total amounting to Rs. 10,27,310/- at the registered office address of the Respondent as well as the director of the Respondent. The notice sent at the registered office of the Respondent was returned with the remark "insufficient address" and the notice sent to the director's address was duly received by the Respondent. The Applicant also served the aforesaid demand notice at the valid email address of the Respondent on 16.07.2019 which is mentioned in the master data of MCA and the same did not return or bounce back. Upon receipt of notice through an email dated 16.07.2019 no reply has been furnished by the Respondent.

vii. In view of the agreed terms of the invoices as issued to the Respondent it is submitted that upon failing to clear the payment as raised through generated invoices on the date of presentation of invoice, the other party should be liable to pay interest @ 18% per annum in respect of the said outstanding invoice. Hence the Applicant is entitled to receive interest amounting to Rs. 1,17,672/-.

2. Despite issue of notices by the Tribunal as well as by the Applicant, the Respondent was not present and the Respondent was set ex-parte on 24.01.2020. The Applicant has filed the unpaid invoices and a confirmation of accounts by the Respondent showing that the amount claimed is due from the Respondent to the Applicant. In view of the above reasons this Tribunal initiates CIRP on the Respondent with immediate effect.

3. A moratorium in terms of Section 14 of the Code is imposed forthwith in

following terms:

"(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent 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."

4. The interim resolution professional ("IRP"), named in the list provided by the IBBI, is Mr. Pankaj Narang, email id: pankajnarangca@gmail.com, and being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

5. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.