(2020) 02 NCLT CK 0065

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

Case No : (IB) No. 3254(ND) Of 2019

Burda Druck India Private Limited APPELLANT

Vs

Snab Publishers Private Limited RESPONDENT

Date of Decision : 20-02-2020

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6

Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(5), 14, 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(b), 15, 17, 18, 20, 21

Citation : (2020) 02 NCLT CK 0065

Hon'ble Judges : Ina Malhotra, J;L.N. Gupta, Member (Technical)

Bench : Division Bench

Advocate : Rajeev Kumar, Ashish Nigam

Judgement

L.N. Gupta, Member (T)

1. The present petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. Burda Druck India Pvt. Ltd. through its Authorized Representative Mr. Manish Kumar Singhal (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Snab Publishers Private Limited (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s. Burda Druck India Pvt. Ltd. is a Company incorporated under the provisions of Companies Act, 1956 with CIN No. U74120DL2008PLC181208, having its registered office at B-1, LGF, Geetanjali Enclave, New Delhi-110017.

3. The Corporate Debtor namely, M/s. Snab Publishers Pvt. Ltd. is a Company incorporated on 02.12.1994 under the provisions of Companies Act, 1956 with CIN No U74899DL1994PTC063174, having its registered Office at 3A/3 Asaf Ali

Road New Delhi-110002.

4. The Authorized Share Capital of the Corporate Debtor is Rs. 1,00,000 and its Paid-up Share Capital is Rs. 1,00,000 as per the Master Data of the Company annexed.

5. The Operational Creditor has submitted that the Corporate Debtor used to place purchase orders and accordingly, the Operational Creditor used to supply goods against various invoices. The case of the Operational Creditor is that on receipt of specific purchase orders, it had supplied IFB Microwave Books after printing to the Corporate Debtor.

6. The details of the transaction between the Parties are reproduced below :

Invoice Date

Invoice Number

Amount (Rs)

21.09.2016

BDIPL/16-17/DOM/022

3,45,000

30.08.2016

BDIPL/16-17/DOM/024

4,14,000

10.09.2016

BDIPL/16-17/DOM/025

11,50,000

Total

Rs. 19,09,000

7. It is submitted by the Operational Creditor that the Corporate Debtor had made total part payment of Rs. 3,00,000 so far, of which the last tranche of Rs. 50,000 was received on 30.07.2018 vide Cheque No. 001333 drawn on the HDFC Bank.

8. It is stated by the Operational Creditor that the Principal amount of debt against the Corporate Debtor comes to Rs. 16,09,000, for which it had sent a Demand Notice to the Corporate Debtor under Section 8 of IBC 2016 vide speed post on 06.08.2019. It is further submitted by the Operational Creditor that the Corporate Debtor has not replied to the Demand Notice as averred in its Affidavit filed under Section 9(3)(b) of IBC, 2016.

9. As none appeared on behalf of the Corporate Debtor during the proceedings, it was proceeded ex-parte vide Order dated 08.01.2020 passed by this Tribunal.

10. In the given facts and circumstances, the present Petition being complete and having established the default in payment of the Operational Debt beyond doubt, the Operational Creditor is entitled to claim its dues. The amount of default being above Rs. 1,00,000 for the unpaid invoice, the Petition is admitted in terms of Section 9(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry :

"(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."

11. As proposed by the Operational Creditor, this Bench appoints Sh. Amar Nath, as an IRP having IBBI Registration No. IBBI/IPA-001/IP-P01639/2019-20/12530 (email id- attorneyar@gmail.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

12. The Operational Creditor is directed to deposit Rs. 2,00,000 (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will 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.

13. In terms of the above, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to immediate effect. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above by the Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their records.

