

(2020) 03 NCLT CK 0094

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

Case No : (IB) No. 2375/(ND) Of 2019

Crown Art Printers

APPELLANT

Vs

Francis Remedy (India) Pvt. Ltd

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 8, 8(2), 9, 14, 15, 17, 18

Citation : (2020) 03 NCLT CK 0094

Hon'ble Judges : Dr. P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Balwinder S. Kalsi, S.P. Singh Chawla

Judgement

Dr. P.S.N. Prasad, J

1. This is an application filed by M/s. Crown Art Printers to initiate corporate insolvency resolution process ("CIRP") against Francis Remedies (India) Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 1,40,56,873 /- (Rs. 80,68,273/- being the Principle Amount + Rs. 59,88,600/- as interest) towards the goods supplied by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

i. The Applicant is a partnership concern which is engaged in the business of Hi-Tek Printing of packaging material and allied printing services i.e. cartons, labels, insert lamitube, allied printing goods and packaging goods etc.

ii. The applicant states that the Respondent approached the Applicant for supply of goods and the applicant had supplied the quality goods as per the requirements and to the entire satisfaction of the Respondent. The Respondent further states that no dispute was ever raised by the Respondent.

iii. The applicant submitted that the total outstanding amount for the goods supplied by the Applicant in the financial year 2012-13 to 2018-19 after all

adjustments and payments stands at Rs. 1,40,56,873/- (Rupees one Crore Forty Lakhs Fifty Six Thousand eight Hundred and Seventy Three only). Rs. 80,68,273 being the principle amount + Rs. 59,88,600/- as interest) which is inclusive of the component of Interest @15% per annum and tax agreed terms and conditions.

iv. The Applicant submitted that various E-mails in which payment status and payment was demanded by the applicant, However, till date the Respondent has failed to pay the outstanding amount due and payable to the applicant and has been trying to delay and shrug off from the liability to pay.

v. The applicant submitted that the payments under the respective invoices became due on the expiry of 90 days from the dates of invoices of goods, failing which the interest @15% per month would be charged by the applicant.

vi. The applicant served a demand notice dated 15.03.2019, dispatched on 18.03.2019, under section 8 of the code which was duly received by the Respondent at its registered office address and at the other address of the Respondent i.e. P-1/3, Ground Floor, South Extension II, Delhi.

vii. The Applicant submitted that till date no reply has been received by the applicant. The Respondent has, therefore not brought to the notice of the applicant the existence a pending dispute before the receipt of the notice, within the statutory timeline of 10 days under section 8(2) of the code.

2. Since the application filed by the Applicant fulfilled all the conditions required under Section 9 of the Code, this Tribunal ordered issue of notice to the Respondent by all modes. However, the Applicant during the hearing on 27.11.2019 contended that the affidavit of service has been filed, No one has represented on behalf of the Respondent. However, despite service of notice by all modes, none appeared on behalf of the Respondent and as a result the Respondent was proceeded ex-parte on 10.01.2020.

3. The Respondent was absent even on the hearing on 28.01.2020 and we heard the arguments made by the Applicant. We have heard the arguments made by the counsel for the Applicant and perused the documents filed by him. The Applicant has established the existence of debt and default on the part of the Respondent and the Respondent has not availed the opportunities provided by this Tribunal to defend the arguments made by the Applicant. In view of the above situation, this Tribunal admits this petition and initiates CIRP on the Respondent with immediate effect.

4. 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."

5. The interim resolution professional ("IRP") proposed by the Applicant is Mr. Naveen Singal, Address: 302, Tower-5, Valley View Estate, Gawal Pahari, Faridabad Road, Gurgaon, Haryana- 122003, (Email Naveen.singal@yahoo.co.in), Reg. No: IBBI/IPA-001/IP-P01650/2019-2020/12520 and is 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.