

(2022) 07 NCLT CK 0054

In the National Company Law Tribunal

Case No : IA No. 2417/2020 & IA No. 2649/2019 IN CP (IB) 2430/2018

Delta Electro Mechanical Pvt. Ltd

APPELLANT

Vs

Sahara Hospitality

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 5(21), 8, 9, 13, 14(1), 31(1)

Citation : (2022) 07 NCLT CK 0054

Hon'ble Judges : P.N. Deshmukh, Member (J); Shyam Babu Gautam Member (T)

Bench : Division Bench

Advocate : Shyam Kapadia, Sandeep Bajaj

Final Decision : Disposed Of

Judgement

P.N. Deshmukh, Member Judicial

1. The present Interlocutory Application has been filed seeking admission of the present Company Petition filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) against default of Rs. 51,77,97,495/- Principal Amount being Rs. 32,72,03,256 and Interest @ 18% Rs. 19,05,94,239/- due and payable by the Corporate Debtor. The said Application has been filed pursuant to breach of Consent terms between the parties.

2. The Operational Creditor and the Corporate Debtor agreed to settle the claim for an amount of Rs. 20 Crores to be paid in 14 monthly instalments. Accordingly, terms of Settlement dated 23.04.2019 were executed between the parties. The said terms of settlement were submitted to this bench and accordingly this Tribunal vide its Order dated 30.04.2021 disposed of the Company Petition No. 2430 of 2018 with a liberty to the Operational Creditor to approach the Tribunal in case of breach of the settlement terms.

3. Thereafter, the Operational Creditor filed MA 2649 of 2019 seeking revival of the Company Petition. Pursuant to the said MA this Tribunal vide Order dated

18.10.2019 passed stern observations and held that : " Learned Counsel appearing on behalf of the Operational Creditor has informed that the consent was recorded Vide Order of 13.04.2019 however there was default in payment as agreed upon. Therefore, the defaulter be punished under the provisions of the Code. All the directors of defaulter I.e. the Corporate Debtor is to be present in person on the next date of hearing so that the next course of consequence of default be communicated to them. Directed to be present in person in Court".

4. The Corporate Debtor approached the Operational Creditor only after this Order and requested the Operational Creditor to settle the matter by drawing a second terms of settlement among the parties. The second terms of settlement were drawn between the parties dated 21.11.2019. as per the second terms of settlement, the Corporate Debtor agreed that in an event of default of payment, the said default would be cured within a period of 10 days. The Corporate Debtor in case of default also agreed to pay the Operational Creditor remaining amount by way of single installment within 30 days of such default.

5. However, despite executing the second terms of settlement, the Corporate Debtor failed to make the payment and chose to shrug off its liability to pay to the Operational Creditor stating that the present Application is infructuous to file a fresh petition. The Corporate Debtor at the time of hearing submitted that the second terms of settlement dealt with the disbursement of dues towards 4 Companies and therefore IA 2417 of 2020 is not maintainable.

6. The Corporate Debtor has taken a ground in order to maintain good business relations with the Operational Creditor, the parties entered into a settlement agreement and thereafter the Company Petition was withdrawn and disposed of. The Corporate Debtor states that the settlement agreement failed and as the Company Petition is disposed of the same cannot be admitted without being a prayer of restoring.

Findings:

7. It is seen from the records that the Company Petition 2430/2018 was disposed of as withdrawn vide Order dated 30.04.2019 in view of the settlement terms as entered between the parties. The said Order also granted liberty to the Operational Creditor to mention the said CP in case of breach of the settlement terms. Further the Operational Creditor had sent demand notice dated 25.05.2018 under section 8 of the Code for unpaid amount of Rs. 32,72,03,256/-. The Corporate Debtor further in its written submissions dated 24.03.2022 have raised an issue that rental dues or dues under a leave and license agreement cannot be considered as an operational debt. A similar set of issue fell for consideration before Hon'ble NCLAT in the matter of "Anup Sushil Dubey Vs. National Agriculture Co-operative Marketing Federation of India Ltd. & Another Company Appeal (AT) (Insolvency) No. 229 of 2020" wherein it has held as follows :

"Therefore, keeping in view, the observations made by the Hon'ble Supreme

Court in Para 5.2.1 of Mobilox (Supra), and having regard to the facts of the instant case this Tribunal is of the earnest opinion that the subject lease rentals arising out of use and occupation of a cold storage unit which is for Commercial Purpose is an 'Operational Debt' as envisaged under Section 5 (21) of the Code. Further, in so far as the facts and attendant circumstances of the instant case on hand is concerned, the dues claimed by the First Respondent in the subject matter and issue, squarely falls within the ambit of the definition of 'Operational Debt' as defined under Section 5 (21) of the Code."

8. In view of the above facts and circumstances and breach of the settlement agreement by the Corporate Debtor further the existence of debt and default has been proved by the Operational Creditor and at the very outset the Corporate Debtor has accepted it's liability in view of its Settlement Agreement thereby acknowledging its liability which is due and payable against the facilities extended by the Operational Creditor.

9. Further the Corporate Debtor has also nothing stated on the merits of the case nor has denied the liability accrued with regards to the facilities extended. Hence it is clear that the liability to repay falls on the Corporate Debtor.

10. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -2430 (MB)/2018 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Sahara Hospitality Limited.

b. In view of the above IA 2417/2020 is allowed and disposed of. Further it is seen from the records similar IA No. 2649 of 2019 was filed by the Operational Creditor praying to revive the Company Petition and initiation of CIRP against the Corporate. Since the Company Petition is revived and admitted, IA No. 2649 of 2019 is also allowed and disposed of.

c. This Bench hereby appoints Ms. Mamta Binani, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00086/2017-2018/10227, having address at :- 2nd Floor, Nicco House, 2, Hare Street, Kolkata, West Bengal, 700001. having email as: - mamtabinani@gmail.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

d. The Operational Creditor shall deposit an amount of Rs. Five Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

e. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

h. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

i. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

j. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

k. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.