(2021) 02 NCLT CK 0117

In the National Company Law Tribunal

Case No : Company Petition (IB) No. 2783 Of 2019

Jawaria Enterprises Private Limited APPELLANT

Vs

Vashistha Mercantile & Trading Pvt. Ltd. RESPONDENT

Date of Decision : 03-02-2021

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 13, 14(1), 31(1), 33

Citation : (2021) 02 NCLT CK 0117

Hon'ble Judges : H.V. Subba Rao, J;Shyam Babu Gautam, Member (Technical)

Bench : Division Bench

Advocate : Bindu Bhatia

Final Decision : Allowed

Judgement

1. This Company Petition is filed by Jawaria Enterprises Private Limited, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Vashistha Mercantile 7 Trading Pvt. Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is had supplied goods to the corporate debtor, however the corporate debtor has defaulted in the payment of 37, 87, 37, 330/- (Rupees thirty seven crore eighty seven lakhs thirty seven thousand three hundred and thirty only), principal amount being Rs. 37, 52, 28, 500/- (Rupees Thirty Seven Crore Fifty Two Lakhs Twenty Eight Thousand and five Hundred only) plus interest 5% p.a. charged on the outstanding balance i.e. Rs. 35, 08, 830/- (Rupees Thirty Five Lakhs Eight Thousand Eight Hundred and Thirty only)

calculated from the due date i.e. 16.04.2019 uptill 20.06.2019 towards goods supplied by the operational creditor 2019 along with interest @ of 5% p.a. from 21.006.2019 till the date of realization.

3. By the letter dated 03.04.2019 the corporate debtor confirming the outstanding balance of Rs. 48,91, 85,000/- as on 31.03.2019. Further, letter dated 08.04.2019 was issued by the operational creditor demanding payment of outstanding balance of Rs. 48,91,85,000/- (Rupees Forty Eight Crore Ninety One Lakh Eighty Five Thousand only) from the Corporate Debtor in respect of the goods sold in the month of March, 2019.

4. The operational creditor has received an amount of Rs. 4, 17, 45, 000/- (Rupees Four Crore Seventeen Lakhs Forty Five Thousand only) from the corporate debtor till 22.04.2019. letter dated 23.04.2019 was sent by the operational creditor to the corporate debtor for payment of the unpaid balance of Rs. 44,83,79,945/- (Rupees Forty Four Crore Eighty Three Lakhs Seventy Nine Thousand Nine Hundred and Forty five only) which includes interest @ 5% p.a. on the balance amount.

5. The operational creditor has received an amount of Rs. 11,39,56,500/- (Rupees Eleven Crores thirty nine lakhs Fifty Six Thousand and five Hundred only) from the corporate debtor till 30.04.2019. The operational creditor vide its letter dated 01.05.2019 demanded a sum of Rs. 37, 61, 15, 870/- which includes interest @ 5% p.a. on the balance amount as payable by the corporate debtor.

6. Demand notice dated 20.06.2019 was sent by the Operational Creditor to the Corporate Debtor demanding a sum of Rs. 37, 87, 37, 330/- principal amount Rs. 37, 52, 28, 500/- including interest @ of 5% p.a. i.e. Rs. 35, 08, 830/- from the due date i.e. 16th April, 2019 uptill 20.06.2019 towards materials supplied by the Operational Creditor.

7. Reply to demand notice dated 20.06.2019: The Corporate Debtor through its reply dated 01.07.2019 has accepted to pay Rs. 37, 87, 37, 330/- (Rupees thirty Seven Crore Eighty Seven Lakhs Thirty Seven Thousand three Hundred and Thirty only) and the corporate debtor has sought time for the repayment of outstanding balance of Rs. 37, 87, 37, 330/- however no payment has been received till date from the corporate debtor. Hence this application.

8. In spite of the above, the Corporate Debtor has failed to repay the outstanding amounts due to the Applicant and hence, the Applicant is constrained to file the present Application for triggering Corporate Insolvency Resolution Process of the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016. Since the Registered office of the Corporate Debtor is situated in Mumbai, this Hon'ble Tribunal has territorial jurisdiction to entertain the present Application.

9. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file its reply but also failed to make representation before this Bench.

Therefore, the Corporate Debtor was set ex-parte vide an order of this Bench dated 18.02.2020. Later the constitution of the Bench was changed and the Corporate Debtor again was given an opportunity to be present before this Bench and make representation if any on their behalf and the corporate debtor did not chose to appear. Heard the counsel appearing for the Operational Creditor and perused the documents submitted by him. The counsel for the Operational Creditor successfully demonstrated and proved the existence of debt and default. The Operational Creditor also mentioned the name Mr. Ankur Kumar as IRP and enclosed the consent letter given by the proposed IRP in Form-2. The debt is within limitation. Thus, this Company Petition satisfies all the requirements for admission. Since the Corporate Debtor remained ex-parte even without filing any reply, the claim of the applicant remained unchallenged. This Tribunal upon considering the arguments of the petitioner and the documents, pass the following:

ORDER

(a) The above Company Petition No. (IB) -2783(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Vashistha Mercantile & Trading Pvt. Ltd.

(b) This Bench hereby appoints Mr. Ankur Kumar Insolvency Professional, Registration No: IBBI/IPA-002/IP- N00113/2017-18/10283 having office at 18, 10TH florr, pinnacle corporate park, G Block, Bandra Kurla Complex, Bandra East, Mumbai-400051, as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) The Operational Creditor shall deposit an amount of Rs.1 Lakh 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.

(d) 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 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; 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) 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.

(f) 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.

(g) 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.

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

(i) 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.

(j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

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

