(2019) 01 NCLT CK 0009

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

Case No : Company Petition No. IB-1060/ND Of 2018

M/S Jaswant International Private Limited APPELLANT

Vs

M/S Callina Care Overseas Private Limited RESPONDENT

Date of Decision : 31-01-2019

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(3)(c), 9(5), 14(1), 14(2), 14(3), 15, 17, 18, 20, 21, 31(1), 33

Citation : (2019) 01 NCLT CK 0009

Hon'ble Judges : Dr. Deepti Mukesh, J

Bench : Single Bench

Advocate : Achin Goel

Judgement

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity â??IBC, 2016â??) read with Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity â??the Rulesâ??) by M/s Jaswant International Private

Limited (for brevity â??Applicantâ??) through Mr. Sandeep Mahajan, Ld. Chartered Accountant who is duly authorized vide Board resolution dated

17.07.2018 with a prayer to initiate the Corporate Insolvency process against M/s Callina Care Overseas Private Limited (for brevity â??The

Companyâ??).

2. The Applicant, the Operational Creditor namely M/s Jaswant International Private Limited is a company incorporated on 26.12.1994 under the

provisions of Companies Act, 1956 having CIN No. U74899DL1994PTC063791.

3. The company is having its registered office at 11/5B, First Floor, Pusa Road,

New Delhi- 110005.

4. The Respondent, the Corporate Debtor namely M/s Callina Care Overseas Private Limited is a company incorporated on 20.12.1999 under the

provisions of Companies Act, 1956 with CIN No. U74140DL1999PTC102884.

5. The company is having its registered office at C-21, First Floor, Hauz Khas, New Delhi- 110016.

6. The Authorised Share Capital of the respondent company is Rs. 50,00,000 /- and Paid Up Share Capital of the company is Rs. 49,99,810/- as per

Master Data of the company.

7. It is the case of the applicant that applicant company is engaged in the manufacture of multi-layer plastic films and has been a supplier to Callina

Care Overseas Pvt. Limited (Corporate Debtor) since 2006-2007.

8. It is further submitted by the applicant that they have supplied goods/ materials to the corporate debtor and performed all its obligations and has

accordingly raised various invoices against the supply of goods/materials made during the period from 31.01.2015 to 03.03.2016.

9. Out of the said invoices a sum of Rs. 25,86,982/- is outstanding till date. First bill in default was issued on 31.01.2015 and the last bill was issued on

03.03.2016 and on 19.12.2017 the last payment was received to the tune of Rs 50,000 [Amount arrived on basis of FIFO (First In First Out) basis of

bill payment and the balance payment against the same bill still remains unpaid to the tune of Rs. 1,47,061 along with fifteen other invoices amounting

to Rs 25,86,982, exclusive of interest, from the corporate debtor.

10. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 40,41,763/- which includes a principal

amount of Rs. 25,86,982/- on account of unpaid supplies and interest charged @18% p.a on unpaid bills from the date of default till the date of filing

demand notice amounting to Rs 14,54,781/.

11. Inspite of various requests made and reminders sent to the Corporate Debtor by the Applicant, the Company has neither paid nor responded to the

applicant.

12. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code was issued on 29.05.2018 to the

Corporate Debtor. The Corporate Debtor, through an undated letter delivered to the Operational Creditor on 30.06.2018 brought to notice a dispute

regarding quality aspects of material supplied, for the very first time, the same was based on a complaint received by Mr Elman Muradov, General

Director of MMC â??ARAZPLASTâ? who appears to be a buyer of the Corporate Debtor aggrieved with the quality of material supplied by the

Corporate Debtor and notifying a deduction of USD 80,000 from the outstanding amount to compensate for losses.

13. This Tribunal is constrained to proceed with the matter exparte as per order dated 14.12.2018 in relation to the Corporate Debtor since Corporate

Debtor has not appeared before this Honâ??ble Tribunal though Section 8 notice and the present application were duly served on the Corporate

Debtor and proof of service is filed by the applicant.

14. The Applicant has filed an affidavit affirming that neither the amount due to them is received nor has received any notice of dispute raised by the

corporate debtor under section 9(3)(b) of the IBC, 2016.

15. The applicant has attached the copy of bank statement of Oriental Bank of Commerce for the period of 28.05.2018 to 07.08.2018 in compliance

with the requirement of Section 9(3)(c) of the IBC 2016.

16. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

17. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in

payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code.

18. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section

14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:

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.

However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor 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 toâ?

a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(4)The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process, provided

that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-

section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the

date of such approval or liquidation order, as the case may be.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

19. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Piyush

Moona having registration no. IBBI/IPA-001/IP-P00990/2017-2018/11630 and email address piyushmoona@gmail.com as the IRP of the Corporate

Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the

Code.

20. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. Further the IRP

above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for

its records.

