(2020) 01 NCLT CK 0099

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

Case No : Company Petition No. IB-1608/ND Of 2019

M/s Monte Orleans Incorporation	APPELLANT
Vs	
M/s 02 Personal Care India Pvt Ltd.	RESPONDENT

Date of Decision : 07-01-2020

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(3)(c), 9(5), 14(1), 14(2), 14(3), 15, 17, 18, 20, 21
Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 — Regulation 6

Citation : (2020) 01 NCLT CK 0099

Hon'ble Judges : Dr. Deepti Mukesh, J;Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Sahiba Singh

Judgement

Hemant Kumar Sarangi, Member (T)

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

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity â??the Rulesâ??) by Mr. Sanjay Aggarwal (for brevity

â??Applicant); proprietor of M/s. Monte Orleans Incorporation, a sole proprietorship firm, with a prayer to initiate the Corporate Insolvency Resolution

Process (CIRP) against M/s. 02 Personal Care (India) Pvt. Ltd. (for brevity â??Respondent).

2. The Applicant, namely Mr. Sanjay Aggarwal, is the sole proprietor of M/s. Monte Orleans Incorporation, a sole proprietorship concern, having its

office at A-63, 2nd Floor, DSIIDC Complex, Narela, New Delhi-110040.

3. The Respondent, namely M/s 02 Personal Care (India) Private Limited, is a company incorporated on 24.03.2015 under the provisions of

Companies Act, 1956 with CIN No.U74140DL2015PTC78313, having its registered office at L-481, Saurabh Vihar, Hari Nagar Extension, PO

Badarpur, New Delhi 110044. The Authorised Share Capital of the respondent company is Rs.25,00,000/- and Paid Up Share Capital of the company

is Rs.1,00,000/2 as per Master Data of the company.

4. It is the case of the applicant, that it supplied goods worth Rs. 12,23,1.67/- to the Corporate Debtor, during the period of 29.08.2016 to 27.07.2017.

against the said supplies the Operational Creditor, has received a sum of Rs. 1,56,447/-(Rupees One Latch Fifty Six Thousand Four Hundred Forty

Seven), from the Corporate Debtor. Out of the said amount of Rs.1,56,447/-, a sum of Rs. 1,25,000/- was paid by the Corporate Debtor to the

Operational Creditor on 05.07.2016 as advance payment against the first invoice dated 29.08.2016 which forms a part of the present application.

5. Further, the remaining payment of Rs. 31,447/- was paid by the Corporate Debtor as an upfront payment against the supply of goods made in July

2017 against invoice voucher no. 009. The said last supply of July 2017 doesnâ??t constitute the part of the present claim as the payment against it

was made upfront by the Corporate Debtor.

6. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the

Respondent, the applicant sent a demand notice dated 17.09.2018, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent

asking them to make the entire payment of Rs. 13,00,548/ -(Rupees Thirteen Lakhs Eighty Five Hundred Forty Eight), towards unpaid invoices,

including interest amount of Rs.2,33,828/- (Rupees Two Lakhs Thirty Three Thousand Eight Hundred Twenty Eight), @ 12% per annum, upto the

date of the demand notice, within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution

process against the Respondent.

7. The applicant has filed affidavit of service, stating that the said demand notice has been served on the Corporate Debtor through email on the

registered email id of the Corporate Debtor and through speed post, the same has not been received back by him, the Applicant, has also annexed

postal receipt, the tracking report and the email communication in support of his claim. The applicant also claims to have sent the Demand Notice

through â??Whatsappâ?? on 18.09.2018 and annexed the screenshot of theâ?? same in support of his claim.

8. After the delivery of demand notice, sent under Section 8 of the Code, the Respondent has not filed its reply to the said notice, nor raised any

dispute by way of notice. As no payment was coming, hence this application, seeking to unfold the process of CIRP.

9. The applicant has stated that total debt due and payable is Rs. 13,00548/- (Rupees Thirteen Lakhs Eighty Five Hundred Forty Eight), towards

unpaid invoices, including interest amount of Rs.2,33,828/- (Rupees Two Lakhs Thirty Three Thousand Eight Hundred Twenty Eight), (a) 12% per

annum, as per the invoices. The default first took place on 13.09.2016 and the last date of default was 08.02.2017

10. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The Applicant has filed affidavit of service

wherein he states that the respondent has been served through speed post on 23.08.2019, and through email on 23.08.2019. The postal receipt,

tracking report and the copy of email communication has been annexed along with the application. The applicant further states that it attempted dasti

service, however, no one came forward to accept the service.

11. This Tribunal was constrained to proceed with the matter ex-parte against the Corporate Debtor as per order dated 20.09.2019, since the

Corporate Debtor has not appeared though Section 8 notice and the present application were duly served on the Respondent and proof of service is

filed by the applicant. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from Corporate Debtor is received.

12. The applicant has attached the copy of Bank statements and certificate issued by Yes Bank Ltd. in compliance with the requirement of Section

9(3)(c) of the IBC 2016.

13. In view of above, we are satisfied that the present application is complete and the Operational Creditor 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. Hence, the present application is admitted.

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

15. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Manohar Lal Vij,

having registration no. IBBI/IPA-001/IP-P-01480/2018-2019/12269, email address is mlvij1956@gmail.com and contact number is +91-9811029357,

as the IRP of the Respondent. 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.

16. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional, Mr. Manohar Lal Vij, to meet out the

expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the

Operational Creditor. 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.

17. 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) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However,

during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

18. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution

Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies

shall update their website by updating the status of â??Corporate Debtorâ?? and specific mention regarding the admission of this application must be

notified.

