

(2021) 12 NCLT CK 0083
In the National Company Law Tribunal
Case No : CP (IB) No.171/Chd/Pb/2019

M/s Pardeep Cycle Industries

APPELLANT

Vs

M/s Arpan International Limited

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Insolvency & Bankruptcy Code, 2016 — Section 9, 9(3)(b), 9(5), 13(1)(b), 16(5), 17, 18, 18(1)(f)
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 6
Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 6

Citation : (2021) 12 NCLT CK 0083

Hon'ble Judges : Harnam Singh Thakur, Member (J); Subrata Kumar Dash, Member (T)

Bench : Division Bench

Advocate : Harsh Garg, Pulkit Goyal

Final Decision : Disposed Of

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Pardeep Cycle Industries, a Proprietorship concern (for brevity 'Petitioner') through its Sole proprietor Sh. Pardeep Kumar with a prayer to initiate the Corporate Insolvency process against M/s Arpan International Limited, (for brevity 'Corporate Debtor').
2. The petitioner is a Proprietorship concern having its GST No. 03ACFPK8379K127 and having its registered office at C-66, Industrial Estate, Malerkotla - 148023. The petitioner is engaged in manufacturing & trading of

cycle parts.

3. The Corporate Debtor is a limited company, company limited by shares, incorporated under the provisions of Companies Act, 1956 on 3. 06.2013

bearing CIN U35929PB2013PLC037564 as per master data (Annexure-1 of the petition).

4. The petitioner has submitted that the various cycle parts were supplied to the Corporate Debtor and in pursuant to that invoice dated 25. 05.2017 to

16.12.2017 was raised on the corporate debtor totalling to Rs.13,88,969/-.

5. The petitioner has issued demand notice dated 31.01.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as

prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor. The said notice was

sent by Speed Post on the registered address of the corporate debtor available on the master data on the MCA website but corporate debtor refused

to accept demand notice, and was also sent by email dated 31.01.2019 which did not bounce back. Copy of speed post receipt with track report is

annexed as Annexure-7 of the petition. Corporate Debtor has neither raised any dispute through its reply to the aforesaid notice till date of filing this

petition nor made any payment towards the outstanding dues.

6. As claimed by the petitioner, the corporate debtor is liable to pay a principal amount of Rs.13,88,969/- (Rupees Thirteen Lakh Eighty Eight

Thousand Nine Hundred and Sixty Nine Only).

7. The petitioner filed present petition under Section 9 of IBC, 2016 and served the copy of this petition however, the same was returned back with

remarks "refused". The notice along with the paper book was sent on the registered e-mail id of Corporate Debtor available on master data on 2.

07.2019 and the same did not bounce back as per the affidavit of service filed by the petitioner.

8. It may be noted that in spite of several opportunities given none appeared on behalf of the corporate debtor nor any reply is filed and the right to file

reply had been forfeited vide order dated 13.02.2020. Thus, the matter has been heard ex parte.

9. The petitioner has filed its bank statement (Annexure-5) that the amount claimed or any part thereof, the petitioner has neither received nor had any

person, on its behalf who received in any manner the amount due towards

Corporate Debtor as required under Section 9(3)(c) of I & B Code nor received any notice of dispute raised by the corporate debtor under Section 9(3) (b) of the IBC, 2016.

10. The registered office of corporate debtor is situated in Ludhiana, Punjab and therefore, this Tribunal has jurisdiction to entertain and try this petition.

11. The default occurred from 25.05.2017 and the petition is filed on 1. 03.2019, hence the debt is not time barred and the petition is filed within the period of limitation.

12. In the given facts and circumstances, the present petition is complete and the petitioner is entitled to claim its dues, which remain uncontroverted

by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. In the backdrop of above facts and records, the

present petition is liable to admitted, in terms of Section 9(5) of IBC, 2016.

13. Since the petitioner has not named the Insolvency Resolution Professional, this Tribunal based on the list furnished by Insolvency and Bankruptcy

Board of India appoints Mr. Deepankur Sharma with registration No.IIBI/IPA-001/IP-P02236/2020-2021/13419, R/o House No.747, Sector 40-A,

Chandigarh, e-mail id: deepankursharma@yahoo.com, Mobile No.9988115806 as the Interim Resolution Professional subject to the condition that no

disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and his specific

consent is to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 in relation to

specifically the Respondent/Corporate Debtor and the Petitioner/Operational Creditor herein and make disclosures as required under IBBI (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order with the following directions:-

i.) The term of appointment of Mr. Deepankur Sharma shall be in accordance with the provisions of Section 16(5) of the Code;

ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the

management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall

report to the Interim Resolution Professional, who shall be enjoined to exercise

all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed there under by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

vii.) The Interim Resolution Professional is directed to send regular progress

report to this Tribunal every fortnight.

14. We direct the Operational Creditor to deposit a sum of ₹ 75,000/- (Rupees Seventy Five Thousand Only) with the Interim Resolution Professional

namely, Mr. Deepankur Sharma to meet out the expense 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 for

the date of receipt of this order by the operational Creditor. The amount however, 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.

15. In this context, a reference is made to the following observations of the Hon'ble Supreme Court in the case of MobiloX Innovations Private

Limited Vs. Kims a Software Private Limited, reported in MANU/SC/1196/2017: AIR 2017 SC 4532:

25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

16. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the Operational Creditor is

complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt

even after demand made by the Operational Creditor.

17. As a consequence of the petition 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 proviso (a) to (d) of the Code. However, during the pendency of the moratorium period,

terms of Section 14(2) to 14(4) of the Code shall come in vogue.

14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for

prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in

any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off 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

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.

1 [Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a

licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority,

sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of

insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right

during moratorium period;]

(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.

2[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and

preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services

shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such

supply during the moratorium period or in such circumstances

1 [(3) The provisions of sub-section (1) shall not apply to â?

2 [(a) such transactions, agreements or other arrangement as may be notified by
the Central Government in consultation with any financial sector regulator or
any other authority;]

(b) a surety in a contract of guarantee to a corporate debtor.]

(4) The order of moratorium shall have effect from the date of such 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.â??

18. A copy of the order shall be communicated to the Petitioner, Corporate
Debtor as well as to the IRP above named by the Registry. In addition, a

copy of the order shall also be forwarded to IBBI for its records. A copy of this
order be also sent to the RoC for updating the Master Data. The RoC

shall send compliance report to the Registrar, NCLT.