

(2020) 02 NCLT CK 0070

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

Case No : (IB) No. 1155/(ND) Of 2019

Mukesh Jain (Prop.) Of Paras Traders

APPELLANT

Vs

Vardaan Contracts Private Limited

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 8, 9, 9(3)(b), 9(3)(c), 9(5), 13(2), 14, 14(1), 15, 17, 18, 19, 20

Citation : (2020) 02 NCLT CK 0070

Hon'ble Judges : Ch. Mohd. Sharief Tariq, J; Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Gautam Singhal, Rajat Chaudhary

Final Decision : Allowed

Judgement

1. The matter was taken up in the morning session and passed over for passing the Order after hearing the parties. However, when the matter is taken up to again. There is no representation on behalf of the Corporate Debtor.
2. It is noted that in the morning session, it has been submitted by the Ld. Counsel for the Corporate Debtor that the Company is not in a position to make payment of the outstanding amount as claimed by the Operational Creditor. It appears that the Corporate Debtor is not interested to pursue the matter. Therefore, the Corporate Debtor is proceeded Ex Parte.
3. Under adjudication is an Application IB-1155/(ND)/2019 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") with the prayers to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against the Corporate Debtor viz. M/s. Vardaan Contracts Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as "IRP").

4. It is submitted by the Ld. Counsel for the Operational Creditor that the Operational Creditor is in the business of diverse range of merchandise in various categories of electrical goods. It is submitted in the Application that the Corporate Debtor approached the Operational Creditor through its Director/ authorized representative for supply of electrical goods with the assurance that full payment of the respective orders be made on time. In view (of it, the Operational Creditor has supplied the material to the Corporate Debtor on various dates and has raised invoices, which are placed at pages 46 to 72 of the typed set filed with the Petition. It is further submitted that on raising invoices, the Corporate Debtor has issued ten cheques, copies of which are placed on record, which have been dishonored on presentation before the concerned bank.

5. On 12.10.2018 the Operational Creditor has sent notice under Section 8 of the IBC, 2016, copy of which is placed on the record and which was delivered through speed post and e-mail to the Corporate Debtor but no reply was given by the Corporate Debtor.

6. The Operational Creditor has also fulfilled the requirements under Section 9(3) (b)&(c) by placing on record an affidavit stating that no notice of dispute has been given by the Corporate Debtor relating to the unpaid operational debt. The Statement Of Account has also been placed on record and the calculation sheet containing the details of the invoices, invoice date and amount paid are given. The claim amounting to Rs. 8,57,705/- has not been paid by the Corporate Debtor which was due and payable. It is further noted that no reply has been filed by the Corporate Debtor.

7. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. Therefore, Application is admitted in terms of Section 9(5) of the IBC, 2016 and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall be completed within 180 days, reckoning from the day this order is passed.

8. The moratorium is declared which shall have effect from the date of this Order until the completion of CIRP, for the purposes referred to in Section 14 of the IBC, 2016. It is ordered to prohibit 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 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 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.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. The Operational Creditor has proposed the name of Mr. Rajesh Jangra to be appointed as an IRP. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within 3 (three) days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed. The details of IRP are as under:

Name: Mr. Rajesh Jangra

Registration number: IBBI/IPA-003/IP-N00181/2018-19/12298

E-mail: jangraadvocate@gmail.com

Mobile: 9958726491

11. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of IBC, 2016. The Directors of the Corporate Debtor, its Promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the IBC, 2016.

12. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of IBC, 2016.

13. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor with immediate effect.

14. The Order is pronounced in the open court.