
(2022) 08 NCLT CK 0022
In the National Company Law Tribunal
Case No : CP (IB) No. 531/Chd/Hry/2019

Redhex IT Solutions Private Limited

APPELLANT

Vs

SNS Laboratories Limited

RESPONDENT

Date of Decision : 11-08-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 9, 9(3)(b), 9(5)(i), 13(1)(b), 14(1), 14(3), 15, 16(5), 17, 18, 18(1)(f), 31(1), 33
Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 — Regulation 4(2), 6

Citation : (2022) 08 NCLT CK 0022

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

Bench : Division Bench

Advocate : Mateen Ahmad, S.P. Singh

Final Decision : Allowed

Judgement

Harnam Singh Thakur, Member (Judicial)

1. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by Redhex IT Solutions Private Limited (for brevity 'Operational Creditor' / 'Petitioner'), represented by its Director Mr. Ashwani Kumar, with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of SNS Laboratories Limited (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, SNS Laboratories Limited, is a Company incorporated on 18.09.1985 under the provisions of Companies Act, 1956 with CIN No. L85110HR1985PLC022029 with its registered office at Office No. 332, 3RD Floor , S.S. Plaza Commercial Complex, Mayfield Garden, Sector -47 Gurgaon HR 122001 IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for supply of payroll software and invoices were raised which were duly received and acknowledged.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 6,49,000/- (i.e. total amount of Rs. 6,68,470/-which is inclusive of 12% interest p.a. from the date of default till date) and the default occurred on 16.06.2019. Copy of ledger statement as maintained in the books of petitioner is attached with the main petition and marked as Annexure-E. Copy of Balance sheet for the year ending 31.03.2019 is also attached with the main petition and marked as Annexure-G.

5. A demand notice in Form 4 is stated to be issued by the operational creditor by speed post on 29.10.2019 and the same has been delivered to the corporate debtor.

6. In Part-III of Form No. 5, the proposed IRP has become ineligible due to the fact that the AFA has expired, subsequently through supplementary affidavit vide diary No. 004321/4 dated 04.10.2021 Mr. Mohd Nazim Khan, Registration No. IBBI/IPA-002/IP-N00076/2017-2018/10207 has been proposed as Interim Resolution Professional (IRP) by the petitioner. Form No. 2 dated 19.08.2021 submitted by the proposed IRP is also enclosed with the affidavit. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professionals of ICAI.

7. Accordingly, order dated 15.10.2019 notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. The corporate debtor has filed reply vide diary No.00232/3 dated 31.08.2021 through its Director, Mr. Ram Sunder, whereby it states that the corporate debtor is not in a financial position to pay back the claimed amount.

8. The petitioner operational creditor submitted in its rejoinder vide Diary No. 00232/6 dated 18.11.2021 that the corporate debtor has never been in a position to pay the defaulting amount claimed by the petitioner.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 4 dated 29.10.2019 was properly served. The demand notice was received as per tracking report mentioned at Annexure-F of the main petition. In view of the same, it is held that the demand notice has been duly served. However, no reply was filed to the demand notice.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is pleaded by the petitioner that there is no dispute of unpaid operational debt pending between the parties in any court of law or any other authority. The same has been inferred from the affidavit in terms of Section 9(3)(b) of I&B Code, 2016. The affidavit is attached with the main

petition. It implies that there is no pre-existing dispute in relation to the debt claimed as per Part IV of Form 5. Moreover, the corporate debtor in its reply stated that the amount claimed is not denied and the company is unable to pay any of the amount due and the corporate debtor has become financially unviable. Therefore it is evident from above that the present petition is of admitted liability.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 29.10.2019 in Form 4 attached as Annexure-F was duly served on the corporate debtor through speed post. It is observed that neither any reply from the corporate debtor has been filed in lieu of the above stated demand notice nor any payment has been made. Therefore, the period of limitation would begin from the date of default i.e. 16.05.2019. This application was filed on 01.10.2019 vide Diary No. 5283. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹ 6,68,470/- with interest. The operational creditor has supplied payroll software to the corporate debtor and raised invoices attached as Annexure-D. Ledger accounts maintained by the operational creditor have been attached at Annexure-E. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the above mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

16. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. 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 petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, SNS Laboratories Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

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 Operational 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.

18. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till 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.

20. The Registry of this Tribunal has checked the credentials of Mr. Mohd Nazim Khan and there is nothing adverse against him. In view of the above, we appoint Mr. Mohd Nazim Khan , Registration No.IBBI/IPA-002/IP-N00076/2017-2018/10207,E-mail:nazim@mnkassociates. com,Mobile No. 9818156340 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Mohd Nazim Khan 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 thereunder 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.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The RP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.

vii.) 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

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

21. The petitioner is directed to deposit an amount of ₹ 40,000/- (Rupees Forty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

22. This petition is accordingly allowed and admitted.

23. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.