

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

Company Petition No. (IB)-2484(ND)/2019

In the matter of:

Adecco India Pvt. Ltd.

.....Operational Creditor

AND

Aventura Components Private Limited

..... Corporate Debtor

Section of the Companies Act 9 of IBC, 2016

Judgment delivered on: 12.03.2021

Coram:

(Dr.)P.S.N PRASAD, HON'BLE MEMBER (J))

(DR. V.K. SUBBURAJ, HON'BLE MEMBER (T))



ORDER

PER: (Dr.) P.S.N PRASAD, HON'BLE MEMBER

1. Adecco India Pvt. Ltd., claiming as the operational creditor has filed this application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (for brevity 'the Rules') for initiation of Corporate Insolvency Resolution Process in respect of Respondent Company Aventura Components Private Limited claimed to be the Corporate Debtor.
2. The Respondent Aventura Components Private Limited against whom initiation of Corporate Insolvency Resolution Process has been prayed for, is a company incorporated on 22.09.1997 under the provisions of the Companies Act, 1956 having its registered office at office A-1/152, IGNOU Road, Neb Sarai, New Delhi. Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal having territorial jurisdiction over the place, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. The Operational creditor has submitted that the Corporate Debtor approached the Operational Creditor to engage the services of the

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Operational Creditor and to that effect executed an agreement dated 24.02.2015 effective from 01.02.2015, whereby it was agreed upon that the Operational Creditor would provide the Corporate Debtor with human resources services as per the request and requirement of the Corporate Debtor, in lieu whereof, the consideration being fees for the aforementioned services, shall have to be disbursed by the Corporate Debtor as per the arrangement recorded under the Agreement dated 24.02.2015.

4. It is further submitted by the operational creditor that it was mutually agreed vide the Agreement that the Corporate Debtor shall pay Operational Creditor service fees as per the Clause 3.2. of the Agreement. However, the Corporate Debtor defaulted in making the payment of salaries and bonuses to the Operational Creditor from period ranging from 28.09.2018 to 29.03.2019. The total outstanding amount of the salaries and bonuses is Rs. 2,983,870.95 excluding the pendente lite and future interest @18% per annum from the respective due dates of the said invoice.
5. Further the Operational Creditor has contended that vide Email Communication dated 13.02.2019, 14.03.2019 and 22.03.2019, the Operational Creditor brought to the attention of the Corporate Debtor that the payment status is pending from September,2018, but all went into vain.



6. The operational-creditor on 27.08.2019 sent a demand Notice to the Corporate-debtor to pay outstanding debt amount a sum of Rs.31,50,337.42. The Corporate-debtor has failed to file his reply to the demand notice which was sent by the Operational-creditor on 27.08.2019 within 10 days. On 11.09.2019 the Corporate debtor has filed its reply to the same.
7. Respondent company has filed its reply to the petition mainly with the contention that the Corporate Debtor is facing financial distress due to the outbreak of Coronavirus pandemic. There is an admission in the reply that balance outstanding claimed amount has remained unpaid as on date and the respondent is willing to pay the entire amount, but any commitment as to schedule of payments cannot be given.
8. It is pertinent to mention here that “*default*” is defined in Sec 3(12) in very wide terms as meaning non-payment of a debt once it becomes due & payable, which includes non-payment of even part thereof. Even part of the dues, once becomes payable comes within the meaning of debt and if not paid will amount to “*default*”.
9. In the present case it is seen that there is a clear admission of non-payment of balance part debt and therefore there has been occurrence of default in payment of the claimed debt by the respondent corporate debtor.



10. Needless to say, that the expressions “Operational Creditor” and “Operational debt” have been defined in Section 5 (20) and 5 (21) of the Code, which are reproduced below.

“5. In this part, unless the context otherwise requires, -

.....

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;”

11. From the definition of “operational creditor” and “operational debt”, it can be seen that the following persons can claim to be an “operational Creditor”.

- i. The person who has claim in respect of provisions of goods (supplied) to the corporate debtor.*
- ii. Persons who have provided service to the corporate debtor, including those who are in employment.*



iii. Central Govt., State Govt. and local authorities, who are entitled to claim debt in respect of dues arising under any law for time being in force.

12. It is thus seen that the unpaid petitioner, who rendered services to the Corporate Debtor, comes within the purview of 'Operational creditor'.

13. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the "Operational Creditor" is delineated under Section 9 of the Code. The present application filed by operational creditor, accordingly, has to be dealt with in terms of Section 9 of the Code.

14. Sub-section (1) of Section 9 mandates filing of the petition only after expiry of the period of 10 days from the date of delivery of notice or invoice demanding payment under sub-section (1) of Section 8.

15. In the present case admittedly the demand notice in Form-3 as per Section 8 of the Code was sent on 27.08.2019. It is thus seen that before filing the present application under Section 9 of the Code, requisite notice under Section 8 was duly served on the Respondent. In response to Section 8 notice, respondent corporate debtor has filed its reply acknowledging the outstanding amount and expressed its inability to pay the debt due to financial difficulty. In other words,



the corporate debtor had not disputed the claim in its reply given in terms of sub-section (2) of Section 8 of the Code.

16. The present application under Section 9 of the Code has been filed in requisite Form-5, wherein it was specifically mentioned that in the reply received from the corporate debtor there has been admission of debt and default and no dispute was raised against the claim of the applicant operational creditor. The application under Section 9 is thus complete and the required particulars have been furnished along with details of subsistence of default.

17. That apart in compliance of sub-section (3) (b) and (C) of Section 9 of the Code, the petitioner has affirmed that respondent corporate debtor has not raised any dispute in respect of the unpaid operational debt.

18. It is reiterated that in the present case the default committed by the corporate debtor is not denied. 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 applicant operational creditor. In fact, there is a clear admission of debt and default and therefore there is no need to comply with any additional requirement as provided in Clauses (d) and (e) of sub-section (3) of Section 9 of the Code.



19. Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited V. Kirusa Software Private Limited, reported in AIR 2017 SC 4532 has held that:

"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?"

20. In the present application all the aforesaid requirements have been satisfied. It is seen that the application preferred by applicant 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 applicant operational creditor. Respondent company also did not raise any dispute regarding the existence of operational debt. In fact,



the claim of default committed by the corporate debtor has not been denied. Once the application is complete and in the absence of any dispute and with the subsistence of default, the application is liable to be admitted.

21. Therefore, on fulfilment of requirements of Section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

22. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Satya Prakash Registration No. IBBI/IPA-002/IP-N00906/2-19-2020/12920 email--- cs.satyaprakash@gmail.com duly empanelled with the IBBI as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days.

23. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIRP costs.

24. In terms of sub-section (6) of Section 9 of the Code the Corporate Insolvency Resolution Process in respect of respondent corporate debtor shall commence from the date of this admission order.

25. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional



immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

26. We also declare moratorium in terms of Section 14 of the Code, which shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process as per sub-section (4) of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

27. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

28. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the




‘Corporate Debtor’. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

29. Let the copy of the order be communicated to the Operational Creditor and the Corporate Debtor in accordance with Section 9 (5) (i) of the Code. The office is also directed to communicate a copy of the order additionally to the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi and Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of ‘Corporate Debtor’ and specific mention regarding admission of this petition must be notified to the public at large.



DR. V.K. SUBBURAJ,

MEMBER (T)



Dr. P.S.N PRASAD,

MEMBER (J)