

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-V**

**(IB) 1874 (ND)/2019**

**In the matter of:**

**M/S. ANURUTAN TEXTILES PRIVATE LIMITED**

**1092, SHREE MAHAVIR MARKET,**

**KUCHA NATWAN, CHANDNI CHOWK.**

**DELHI-110006**

**...OPERATIONAL CREDITOR**

**V/s**

**SARVESHWAR CREATIONS PRIVATE LIMITED**

**REGD. OFFICE AT:**

**CR-274, LALITA PARK,**

**LAXMI NAGAR, DELHI 110092**

**ALSO AT:**

**B-152, SECTOR 63,**

**NOIDA- UTTAR PRADESH**

**...CORPORATE DEBTOR**

**SECTION: U/S 9 of IBC, 2016**

**Order delivered on: 15.02.2020**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**MS. SAROJ RAJWARE, MEMBER (TECHNICAL)**

For the Petitioner: Mr. C.S. Gupta

For the Respondent: Mr. Prateek, Mr. Sachit, Ms. Manisha, Mr. Faizi, Ms.

Mihika, Mr. Yasharth

## ORDER

**Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)**

1. The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor on grounds of its inability to liquidate its operational debt.
  
2. As per averments made in the petition, the Corporate Debtor used to buy raw material goods from the Operational Creditor for which the Operational Creditor used to raise bills, invoices on the Corporate Debtor from time to time and it was maintaining running account as the payments were made from time to time. The Operational Creditor had been raising bills from time to time to the Corporate Debtor for preceding years and maintaining running account. The Corporate Debtor also used to make payments some time as per bills or sometimes ad-hoc payments since there was series of sale and payments. As per the statement of account maintained by the Operational creditor there is cumulative outstanding balance of Rs.18,02,043/- towards principal amount along with interest on unpaid amount of Rs.8,52,243/- which is due and outstanding against the Corporate Debtor along with interest on the outstanding balance.



3. The Operational Creditor/Applicant issued the Demand Notice on 06.06.2019 U/s 8 of the IBC, 2016 under the IBC, 2016. The Demand Notice was duly served to the Corporate Debtor through speed post to the Registered Office of the Corporate Debtor which was returned with remarks "Not Delivered No such person in the address" and to the other office address of the Corporate Debtor at Noida as mentioned at Page No. 3 under the Memo of Parties of the Application, which was delivered. No reply to the Demand Notice was received from the Corporate Debtor.
  
4. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed on 02.08.2019 in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case. Earlier in the application, the Operational Creditor had not proposed the name of the Interim Resolution Professional (IRP). Subsequently, the Operational Creditor proposed the name of the IRP by filing Form No. 2- Written Consent by the Proposed IRP dated 05.09.2019.
  
5. The Respondent/Corporate Debtor has filed its reply and has asserted the following contentions:
  - a. That whenever an invoice for products supplied was raised by applicant the same were duly stamped and signed by the Respondent in token of receipts of goods.



- b. That the entire amount raised on the invoices from time to time by Operational Creditor has always been duly paid by the Corporate Debtor. That the invoices issued by the Operational Creditor which are without any stamp are not admitted as there is no such goods received by the Corporate Debtor. Therefore, claim of Operational Creditor of Rs.18,93,189/- is illegal. A perusal of the claim submitted by the Applicant shows that there are several invoices mentioned and annexed with the claim which are neither stamped nor signed.
- c. That the following invoices have been duly received and stamped by the Operational Creditor:-

<b>S. No.</b>	<b>Date</b>	<b>Invoice Number</b>	<b>Amount (Rs.)</b>
1	23 <sup>rd</sup> June, 2016	2016-2017/15/187	6,060.00
2	23 <sup>rd</sup> June, 2016	2016-2017/15/192	5,680.00
3	24 <sup>th</sup> June, 2016	2016-2017/15/200	2,990.00
4	25 <sup>th</sup> June, 2016	2016-2017/15/213	2,200.00
5	30 <sup>th</sup> June, 2016	2016-2017/15/257	6,302.00
6	8 <sup>th</sup> July, 2016	2016-2017/16/064	7,140.00
		<b>Total Amount</b>	<b>30,372.00</b>

The only amount which is payable by Respondent/Corporate Debtor against the above mentioned stamped invoices is Rs.30,702/-. The Operational Creditor has raised a wrong claim of Rs.18,02,043/- with interest amount of Rs.8,52,243/-.

*aw*

*Y*



- d. That there are balance amount of Rs.3,19,640/- due and payable in the month of February, 2016 and the amount of Rs.30,372/- shown in the invoices, which are duly stamped by the Corporate Debtor with interest rate has been paid by the Corporate Debtor through a Demand Draft Number 77517 dated 23.10.2019 drawn on Union Bank of India, Noida amounting of Rs.6,00,000/- towards all pending liabilities till 23.10.2019 including the interest.
- e. That the attachment of the false and unstamped 29 invoices from 3<sup>rd</sup> March 2016 to 20<sup>th</sup> September, 2016 are for a total amount amounting to Rs. 18,93,189/- by the Operational Creditor which are not admitted.
6. During the course of arguments, it was contended by the Operational Creditor that during the hearing held on 24.10.2019, the Corporate Debtor appeared and handed over a Demand Draft dated 23.10.2019 for Rs. 6,00,000/- as upfront amount as part payment towards principal claim of Rs. 18,02,043/-[admitted to the extent Rs. 18,00,799/- and sought balance payments of Rs. 12,00,799/- in six monthly instalments]. The interest payment did not agree. The letter was circulated during hearing while making payment of Rs. 6,00,000/- through demand draft. Thereafter matter was kept for negotiation for settlement between the parties. Thus against principal dues of Rs. 18,02,043/- (admitted Rs. 18,00,799/-) out of which Rs. 6,00,000/- partly paid and balance amount still as default and due.



and due. The letter circulated is "ANNEXURE "A".The Corporate Debtor after handing over Demand Draft of Rs. 6,00,000/= sent email dated 14-11-2019 confirming balance amount of Rs. 12,00,799/= due to be paid to the Operational Creditor. The Email dated is enclosed as ANNEXURE "B". The Operational Creditor has claimed interest on outstanding balance also but Corporate Debtor offered to pay only principal amount in Six Monthly instalments which was not accepted by the Operational Creditor.

7. Further, during the course of arguments, it was contended by the Corporate Debtor that the claim made by the Operational Creditor is not valid as no purchase orders have been filed with the petition according to which the Operational Creditor is claiming a principal amount of Rs. 18,02,043/-. It was further submitted that out of 34 invoices attached with the petition from page no. 26 to 60, only 6 invoices on page 45 to 50 are served by the Operational Creditor which are acknowledged by the corporate Debtor by stamping the invoices.
8. We have gone through the application, reply and the documents filed by both the parties and heard the arguments and perused written submissions made by both the parties.
9. At this juncture, we would like to refer Section 8 of the Code and the same is quoted below:-



***“8. Insolvency resolution by operational creditor-***

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -*

*(a) existence of a dispute, 1[if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*

*(b) the 2[payment] of unpaid operational debt-*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation. – For the purposes of this section, a “demand notice” means a notice served by an*



*operational creditor to the corporate debtor demanding 3[payment] operational debt in respect of which the default has occurred.”*

Mere plain reading of the provision shows that the Corporate Debtor shall within a period of 10 days of the receipt of the demand notice of copy of invoices mentioned in Section 8(2), bring to the notice of the Operational Creditor existences of disputed if any or record of pendency of suit or arbitration proceeding filed by the receipt of such notice or invoice in relation to such dispute but admittedly this has not been done by the Corporate Debtor.

10. Now at this juncture, we would like to refer the decision of Hon'ble Supreme Court in **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353”**, in which the Apex Court analysed the meaning of dispute with respect to Operational Creditors and observed:

*“24. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set*





out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. ....”

**“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?***

*If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

11. In the light of above discussion, when we shall consider the case in hand then we find that admittedly no reply was sent to the Demand Notice and hence no dispute was raised under Section 8 sub Section 2 of the Code and the amount claimed by the Operational Creditor has not been paid by the Corporate Debtor and we have also noticed that the application is complete. We further find that the amount claimed by the Operational Creditor is more than Rs. 1 lakh which is the minimum threshold limit fixed under IBC, 2016 and the present petition being filed on 02.08.2019 is within limitation, being within



three years from the date of the cause of action. Therefore, under such circumstances, we have no option but to reject the contention of the Corporate Debtor that the application is not maintainable and it is liable to be rejected rather we are of the considered view that the Operational Creditor has succeeded to establish this fact that he raised the last invoice on 20.09.2016, the Corporate Debtor has defaulted in paying the dues and the present application is within limitation as it was filed on 02.08.2019.

12. Considering the aforesaid circumstances, this Adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Code is imposed forthwith in terms of the following:-

*“(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;*

*(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.*

- (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.*
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

13. The Operational Creditor has proposed the name of Mr. Manohar Lal Vij as the IRP. His details are as registration no. IBBI/IPA-001/IP-P01480/2018-19/12269, email: mlvij1956@gmail.com, Mob.: +919811029537. The consent of the Mr. Manohar Lal Vij is on record along with the copy of his certificate and there is no disciplinary proceeding pending against the proposed IRP. We accordingly confirm





his appointment 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.

14. 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 CIR costs.

15. Renotify this case for report of the IRP.

sd/-

**(SAROJ RAJWARE)**


**MEMBER (T)**

sd/-

**(ABNI RANJAN KUMAR SINHA)**

**MEMBER (J)**

Pronounced today under Rule 151 of the NCLT Rules 2016 as Mrs. Saroj Rajware, Hon'ble Member (T) is not holding court today.

  
13.02.2020  
**(PRABHAT KUMAR SHARMA)**

**COURT OFFICER**