

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB) 137 (ND)/2018

In the matter of:

Power2SME Pvt. Ltd.

..... **Petitioner**

V/s

Uttam Strips Ltd.

..... **Respondents**

SECTION: U/s 9 of IBC, 2016

Order delivered on 09.04.2018

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)

SMT. DEEPA KRISHAN, HON' BLE MEMBER (T)

For the Petitioner: Mr. Pankaj Bhagat, Advocate

For the Respondent: Mr. Arvind Kumar Gupta, Ms. Henna George and
Ms. Shruti Munjal, Advocates

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The petitioner, as an operational creditor, has filed the present petition under Section 9 of the IBC (herein after referred to as "Code") praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate its financial debts.

2. As per averments, the Operational Creditor had supplied goods from time to time to the Corporate Debtor under various purchase orders. The

Operational Creditor maintained a running account and submits that a sum of Rs. 17,61,98,341/- is due and payable by the Corporate Debtor. The Corporate Debtor had confirmed and admitted its liability being more than Rs. 16.21 crores vide its emails dated 27.03.2017 and 22nd July, 2017. However, no steps were taken by them to liquidate the outstanding liability on account of which the Operational Creditor has been constrained to invoke the provisions of the Code vide the present petition. It is stated that the Corporate Debtor issued various cheques in acknowledgement of the outstanding liability but the same were returned dishonoured with the memo "Exceeds Arrangements".

3. The present petition has been filed in the required format through its duly authorised signatory and has complied with the mandatory requirements under the Code including issuance of a demand notice to which no reply was given. The copies of the invoices have also been annexed.

4. On being served the Corporate Debtor put in its appearance through their advocate and made a categorical statement that they admit the outstanding liability but are unable to repay the same. The demand notice under Section 8 was also issued prior to the filing of the present petition and no dispute was raised in respect of the same.

5. In view of the admitted liability of a financial debt towards the Operational Creditor, the prayer of the Petitioner merits consideration. The petition is therefore Admitted.

A moratorium in terms of Section 14 is accordingly forthwith imposed staying:-

"14. (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.

Further:-

(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:*

6. Though initially the Operational Creditor had left the appointment of the IRP to the Adjudicating Authority, they subsequently filed an application proposing the name of Shri Navneet Kumar Jain having Registration No. IBBI/IPA-003/IP-N00004/2016-17/10023 as the IRP. The consent and eligibility certificate of the proposed IRP has also been filed. There is no impediment in proposing the name of the IRP at this stage as it is within the discretion of the Operational Creditor to propose the name of the IRP, although it should have been done in the initial stage itself. This Bench therefore confirms the appointment of Shri Navneet Kumar Jain as the IRP in this case. He is directed to take all such further steps that is required under the statute most specifically being under Section 15, 17, 18, 20 & 21 of the Code.

7. The IRP shall file his report within the statutory period. Be listed for the same on 14th May, 2018.

8. Copy of the order be served to both the parties as well as to the IRP.

— Sd —

(Deepa Krishan)
Member (T)

— Sd —

(Ina Malhotra)
Member (J)