

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB) 452 (ND)/2017

In the matter of:

Power2sme Pvt. Ltd.

..... Petitioner

V/s

JV Strips Ltd. & Ors.

.....

Respondents

SECTION: U/s 9 of IBC, 2016

Order delivered on 13.04.2018

Coram:

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

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

For the Petitioner: Mr. Hashmat Nabi and Ms. Kusum Pandey, Advocates

For the Respondent: Mr. Rajeev Aggarwal & Mr. Rajiv Aneja, Advocates

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

The Petitioner, by the present proceedings, prays for initiation of Corporation Insolvency Resolution process to be initiated against the Respondent Corporate Debtor invoking the provisions of Section 9 of Insolvency and Bankruptcy Code 2016, (hereinafter referred to as the "Code").



2. As per averments, the Operational Creditor had supplied goods to the Corporate Debtor between September 2015 to August 2017. On account of huge overdue amount and in a bid to reduce the existing liability, the parties hereto entered into a Memorandum of Understanding on 11.5.2017. The outstanding liability was clearly acknowledged by the Corporate Debtor in terms of the following:

(a)

(b)

(c) *the First Party was supplying raw materials to the Second Party on credit basis from time-to-time against their orders and the Second Party used to make payment to the First Party in accordance with mutually agreed terms. As on 30.04.2017 there is an outstanding balance (including delayed payment interest) of Rs.10,23,67,915/- (Rupees Ten Crore Twenty Three Lakhs Sixty Seven Thousand Nine Hundred and Fifteen) hereinafter referred as "Outstanding Amount" in the account of the Second Party, which amount is payable by the Second Party to the First Party as on date."*

3. In a bid to regularise the account within a time frame of three months, a schedule of repayment was annexed whereby the Operational Creditor agreed to supply material to the Corporate Debtor on a 90% credit, adjusting 10% towards the previous dues. It was also agreed that overdue amount would attract a penalty of 24% per annum. The said agreement was amended on 4.8.2017, whereby the validity of the period of compliance was extended till 15.10.2017. The second party had also tendered two cheques in the sum of Rs.5 crores and Rs.4.15 crores respectively.

4. The Operational Creditor submits that the aforesaid cheques on presentation returned dishonoured and in view of the failure of the Corporate Debtor to adhere to the repayment schedule as per the MOU, they terminated the said arrangement vide their letter dated 13.9.2017.

5. The Operational Creditor has complied with the other mandatory provisions under the Code as per Section 9(3)(b) and 9(3)(c) and has also proposed the name of the Interim Resolution Professional. The certificate eligibility of the proposed IRP and his consent certifying that there are no disciplinary proceedings pending against him, has been filed along with the petition. Demand notice under Section 8 of the Code was also issued in the required format. Though initially it was averred by the Operational Creditor that no reply had been received, subsequently an application was filed confirming the receipt of the reply and placing the same on record.

6. On entering appearance, the Corporate Debtor has raised various objections, inter alia, filing of a false affidavit deposing that reply had not been received to the Demand Notice under Section 8, the factum of interest being exorbitantly high in violation of the Usurious Loans Act, 1918. Interest having been levied several times, therefore disputing the amount claimed. Ld. Counsel appearing for the Corporate Debtor has submitted that the addendum dated 4.8.2017 to the agreement dated 11.5.2017 extended the validity till 15th October, 2017. Despite the said understanding, the Operational Creditor terminated the agreement prior

to the date agreed upon. As per the arrangement agreed upon, the time frame for liquidating the total outstanding balance was as under:-

- i. Rs.3 crores by 31.8.2017.
- ii. Rs.3 crores by 30.9.2017.
- iii. Entire balance including penalty by 15.10.2017.

7. It is submitted that by 15.9.2017, the Corporate Debtor had paid a sum of Rs.5.37 crores and there was no reason to terminate the said arrangement on 30.9.2017 itself.

8. It is also contended that the two cheques being Cheque No. 305520 and 305521 drawn on State Bank of Bikaner and Jaipur for Rs.5 crores and Rs. 4.15 crores were only given by way of security and therefore, presenting the same for encashment was against the terms of their understanding.

9. Ld. Counsel for the Corporate Debtor has also impugned the Statement of Account annexed with the petition which is claimed to be as per the Ledger maintained by the Operational Creditor in respect of the transactions between them. He disputes the same on grounds of multiple entries towards interest and submits that the outstanding reflected as Rs. 9 crores was inaccurate and should not more than Rs.7 crores.

10. Apart from the aforesaid objections, the Corporate Debtor submits that the reply to the Demand notice under section 8 had been received

by the Operational Creditor prior to the filing of the petition and the affidavit filed along with was false and misleading. It is submitted that the Petitioner had approached this forum with unclean hands is not entitled to any relief.

11. Having heard the arguments of both the parties, this Bench is of the opinion that disputes raised by the Corporate Debtor are not sufficient to reject the prayer made by the Operational Creditor. The Corporate Debtor has argued that the interest levied on the outstanding amount is exorbitantly high and against the provisions of the Usurious Loans Act, 1918. He has pointed out that the interest has been levied several times in a year and therefore the amount claimed is in dispute. Though submission of the Ld. Counsel for the Corporate Debtor may have merit that the petition failed to disclose that the reply to the section 8 notice had been received by the Operational Creditor by the time of filing the petition, the fact that the same was subsequently disclosed as having been received, shall not be sufficient to negate the Petitioner's prayer, moreso, since all objections taken are being duly considered by this Bench.

12. The factum of the Corporate Debtor having paid a sum of Rs.5.37 Crores during the pendency of the agreement and the dispute being raised with respect to termination of the said arrangement before time does not merit any consideration as in very clear and categorical terms, it had been agreed between the parties vide Clause 2(b) that :-

“2. *Terms*

(a)

(b) *Power2SME reserves the exclusive right to terminate this Agreement without any cause or notice to the other party.”*

13. Since the Operational Creditor reserved an unconditional right to terminate the agreement, the dispute being raised in this respect has no legs to stand upon.

14. It is further noticed that the outstanding liability has been acknowledged by the Corporate Debtor as Rs.10,23,67,915/- even in their MOU dated 11.5.2017. Though it is contended that interest has been levied several times during one year, Ld. Counsel for the Operational Creditor has explained that the same is on account of interest at the agreed rate being levied every month. As per the submission of the Corporate Debtor, the liability, though disputed as being Rs.9 crores, it is admitted and acknowledged to be in excess of Rs.7 crores. It is also pointed by the Ld. Counsel for the Operational Creditor that the aforementioned two cheques of Rs.9.15 crores were not given by way of security as the dates for presentation were duly mentioned on the face of the cheques. On their dishonour, notice was issued to the Corporate Debtor to liquidate the liability thereunder while terminating the MOU vide their letter dated 13.9.2017.

15. Given the aforesaid facts, this Bench is of the opinion that no real dispute has been raised by the Corporate Debtor to avoid initiation of the Insolvency Resolution Process against them. The agreed outstanding liability which they had undertaken to liquidate within a span of 3 months in a phased manner, still amounts to over Rs.7 crores even as per their own admissions. It is not for the Adjudicating Authority to go into the correctness of the amount outstanding. As long as it is more than Rs.1 lakh, the Operational Creditor is entitled to the relief claimed.

16. Accordingly, the petition succeeds and stands Admitted. A moratorium in terms of Section 14 shall come into effect forthwith, staying:

(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 :

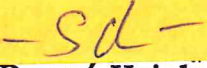
(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

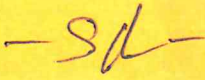
- (3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency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

17. The petitioner has proposed the name of Mr. Navneet Kumar Jain as the IRP in this case, he has consented being appointed as an IRP in this case.

18. We accordingly confirm the appointment of Mr. Navneet Kumar Jain, Regn. No. IBBI/IPA-003/IP-N00004/2016, 2017/10023, Email ID: navnestic@yahoo.com, mobile No.9810175020, as the IRP in this case. He shall take all such steps as required under the code, more respectively in terms of Sections 15, 17, 18, 19, 20 & 21 and file his report including the minutes of the convened COC meeting within 30 days.

19. To come up on 21st May. 2018.


(Deepa Krishan)
Member (T)


(Ina Malhotra)
Member (J)