

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP (IB) No. 245/KB of 2017

Coram:

Hon'ble Shri Vijai Pratap Singh, Member (Judicial)

In the matter of:

Section 9 of the Insolvency & Bankruptcy Code, 2016

And

In the matter of:

Shree Shyam Inorganic Pvt. Ltd. ... Operational Creditor

-Versus-

RHD Enterprises Private Limited ... Corporate Debtor

Counsels on Record:

1. Mr. Soumyajit Mishra, Advocate] For the Operational Creditor

1. Mr. Sarosij Dasgupta] For the Corporate Debtor

Date of pronouncing the order: 21st August 2017

ORDER

Operational Creditor, Shree Shyam Inorganic Pvt. Ltd. has filed this application under Section 9 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016 to initiate Corporate Insolvency Resolution Process against the HRD Enterprises Pvt. Ltd., a corporate Debtor.

The facts narrated by the applicant, in short, are the following. The Operational Creditor sold goods i.e. Phthalic Anhydride and Glycerine (chemicals) to the Corporate Debtor to the tune of Rs.28,90,388.00 (Rupees Twenty Eight Lakh Ninety Thousand Three Hundred Eighty-eight only). Out of which Rs.7,75,200.00 (Rupees Seven Lakh Seventy-Five Thousand Two Hundred only) has been paid by the Debtor and Rs.21,15,188.00 (Rupees Twenty One Lakh Fifteen Thousand One Hundred and Eighty-eight only) is due from the Debtor with interest @ 18% per annum from 22.01.2016 onwards till to-date i.e. 12.02.2017 by the Corporate Debtor. Irrespective of repeated demands respondent failed to make such payment to the petitioner.

The Director of the operational creditor at the instance of Board Resolution of Operational creditor issued demand notice in form No. 3 dated 14.02.2017 to the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 (in short IBC).

The petitioner claimed that Rs. **Rs.21,15,188.00** (Rupees Twenty One Lakh Fifteen Thousand One Hundred and Eighty-eight only) is the total amount due from Corporate Debtor and that interest to the tune of Rs. **5,33,244.00** Rupees Five Lakh Thirty-Three Thousand Two Hundred Forty Four only) is due as interest and the total amount in default come to Rs. **26,48,412/-** (Rupees Twenty Six Lakh Forth Eight Thousand Four Hundred and Twelve only) with interest. A Computation Statement of total debt due is shown at page No. 8. The statement is annexed to the petition as Exhibit – C. As per the Computation Statement, total debt is an amount of **Rs. 26,48,412.00** (Rupees Twenty Six Lakh Forth Eight Thousand Four Hundred and Twelve only) is due from the Corporate Debtor as on 12.02.2017.

The Corporate Debtor RHD Enterprises Pvt. Ltd. Identification No. U51900WB2009PTC131918.

The petitioner has annexed following documents along with the petition :

- a. Exhibit copy of Board Resolution dated 07.02.2017
- b. Vakalatnama dated 28.04.2017
- c. A Statement of Computation that due with interest till 12.02.2017.
- d. Copy of Kotak Mahindra Bank A/c Statement between 7.12.2016 to 7.12.2016
- e. Copies of the purchase order to the Corporate Creditor by the Corporate Debtor dated 8.12.2015, 25.1.2016 and 17.2.2016.
- f. Copies of the tax-cum-excise invoice dated 8.12.2015, 25.1.2016 and 17.2.2016.

- g. Copies of cheques issued by the Corporate Debtor in the name of Corporate Creditor dated 16.12.2016.(six in nos.) along with the dishonored memos dated 08..12.2016 (six memos)

When the petition came up for consideration on 18.05.2017, Ld. Counsel for the petitioner pointed out that there are certain defects in the petition and sought permission for curing the defects. Leave granted to the petitioner for rectifying the defects and the petitioner filed supplementary affidavits along with documents described below and cured the defects. The documents annexed to the supplementary affidavits are the following:

1. Demand Notice in Form No. 3 demanding the payment of an unpaid operational debt due from the debtor.
2. Copy of general affidavit verifying the petition dated 28.06.2017
3. An affidavit under section 9(3)(b) of IBC Code 2016 dated 28.06.2017.
4. Bank statement duly certified by the Bank.
5. A copy of the Affidavit of competency dated 28.06.2017.
6. Photocopy of the letter dated 29.06.2017 along with the postal receipts and the track report dated 29.06.2017.

The petitioner has filed the certificate from Postal Department wherein it is stated that registered letter, EW750552368IN, was delivered on 01.07.2017. The petitioner has also filed a copy of Board Resolution dated 07.02.2017, whereby Mr. Rama Kant Pansari, Director of the Operational Creditor, was

authorized to file any proceedings before appropriate forum against RHD Enterprises Pvt. Ltd. Extract of the Minutes of the Meeting of the Board of Directors of M/s Shree Shyam Inorganic Pvt. Ltd. held on 07.02.2017 is annexed with the application as Exhibit A at page No. 5. The Petitioner has also attached the copy of the bank account statement which is from page 39 to 163 of the petition. Shri Rama Kant Pansari has filed affidavits to certify the contents of the petition Annexure-C at page 35 and original of an affidavit was produced along with the application. The petitioner has also filed Vakalatnama issued in favor of Advocate, Mr. Soumyajit Mishra, to perform all acts connecting the insolvency proceedings. The petitioner has also filed an affidavit in compliance with the statutory provision of section 9(3)(b) of the I&B Code 2016 certifying that no notice has been given by the Corporate Debtor RHD Enterprises Pvt. Ltd, relating to a dispute of the unpaid operational debt. The petitioner has also filed the copy of the postal receipts along with track report showing that notice has given to the Corporate Debtor.

Upon hearing the learned counsel for the petitioner and on a careful scrutiny of the petition it is understood that operational creditor served Demand Notice in Form 3 which was delivered to the corporate debtor only on 01.07.2017.

In the instant case, petitioner served the copy of Petition along with all the documents through speed post and also filed an affidavit of service in compliance with sub-rule (2) of Rule 6 of the Adjudicating Authority Rules.

Petitioner has also sent the information regarding date of hearing in NCLT on the corporate debtor through speed post which is clear on the basis of the affidavit of service filed by petitioner along with the copy of notice and receipt. It

is pertinent to mention that after service of the notice, corporate debtor's advocate appeared in the Court and also put his signature in the file. The learned advocate for the corporate debtor further informed that he will file vakalatnama in the office by the end of the day but it has not been filed. Thus it is clear that purpose of limited notice has been served by sending registered notice of information regarding date of hearing. The corporate debtor has not filed any objection even after getting an opportunity of hearing even though he was having full information of the petition firstly by getting the copy of the petition through speed post and again on receiving notice of information regarding date of hearing.

The requirement of sub clause (b) of Sec 9(3) of I&B Code, 2016 seems to be complied by the Operational Creditor, an affidavit to that effect has been filed by the Operational Creditor.

On a perusal of bank statement, it appears that bank statement of the certified by the Bank has been filed which is annexed as Annexure E with the supplementary affidavit. There is no bank certificate as required u/s 9 (3) (c) to the effect that there is no payment of unpaid operational debt by Corporate Debtor. On perusal of the certified copy of bank statement, it appears that in the bank account of operational creditor there is no any credit entry of unpaid operational debt. Learned counsel for the petitioner has contended that bank only gives the copy of bank statement and bank authorities have refused to certify that corporate debtor has not paid the unpaid debt. It is important to point out that under I&B Code no provision is relating to the direction to banks, on which basis bank can be asked to certify that no payment of unpaid operation debt has been made. The argument advanced by the learned counsel for the petitioner is not without any

basis. I can take judicial notice of the fact that bank in case of need only provides a certified copy of the statement of bank account and that certified Copy of bank statement is admissible in evidence.

Thus it is clear that corporate debtor failed to make the outstanding payment of Rs 26,48, 412 even after receipt of the demand notice. Application filed by Operational Creditor for initiation of corporate Insolvency Resolution process is complete. There is no repayment of unpaid operational debt. Notice in prescribed Form 3 along with the copy of invoices was delivered on the corporate debtor. Petitioner has also filed an affidavit that no notice of dispute has been received by the operational creditor. Petitioner has also filed an affidavit in support of the application. Therefore petition deserves to be admitted. Petitioner has not proposed the name of any Interim Resolution Professional, therefore, reference is being made to Insolvency and Bankruptcy Board of India for the appointment.

Order

The petition for initiation of Corporate Insolvency Process under section 9 of the Insolvency & Bankruptcy Code is admitted.

Since petitioner has not recommended the name of any Interim Resolution Professional, so under Section 16(3) of Insolvency & Bankruptcy Code 2016, reference is being made to the Insolvency & Bankruptcy Board of India for the appointment of Interim Resolution Professional.

Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply. Necessary public announcement as per section 15 of I&B Code may be made.

List the case on 31st August for the appointment of IRP. Let the certified copy of the order be issued to Operational creditor & Corporate Debtor. Registrar is also directed to send the copy of the order to Insolvency & Bankruptcy Board of India through email as well as by speed post for the appointment of Interim Resolution Professional.

(V P Singh)
Member (Judicial)
Kolkata

Signed and pronounced on 21st day August 2017.

(V P Singh)
Member (Judicial)
Kolkata