

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

Company Petition (IB) No.473/KB/2017

In the matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

Trilok Infracon (India) Pvt. Ltd.

.... Operational Creditor

Versus

Forbesgunj food Processing Pvt. Ltd.

.... Respondent/Corporate Debtor

Order Delivered on 9th November 2017

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Operational Creditor

: 1. Mr. Kuldip Mallik, Advocate
2. Ms. Labanyasree Sinha, Advocate

ORDER

Per Jinan K.R., Member (J)

The applicant Trilok Infracon (India) Private Limited filed this application under section 9 of the insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) rules, 2016 for initiation of corporate insolvency resolution process against the corporate debtor, M/s Forbesgunj Food Processing Private Limited (Corporate Debtor).

2. The brief facts of the case, as given in Part-IV Form-5, that the operational creditor and the corporate debtor had entered into an agreement by virtue of a letter dated 4th January 2013 for the construction of a warehouse on the said land measuring upto 8800sq.ft. However, in pursuance of the terms and conditions of the agreement, the operational creditor commenced work at the site. On the basis of the agreement advance payment of 50% of total consideration of the quoted sum of Rs.57,18,810/- to be made. However, an advance payment of Rs.10,00,000/- received by Cheque no. 82752 dated 28th February 2013. That sum of Rs.43,06,187/- (Forty-Three Lacs Six Thousand One Hundred Seven Only) is the amount due as given in Form 5 Part V. It is the amount due for which the operational creditor has filed this application.

3. The petitioner has stated that on

- On 22nd July, 2013 the corporate debtor had issued a cheque of Rs.10,00,000/- bearing No. 82764 which subsequently got dishonoured on 24th July 2013.
- On 24th August 2013 another cheque was issued of Rs.10,00,000/- bearing cheque No. 82763 which stood dishonoured as on 26th August 2013.

4. However, at a later date the operational creditor had come to an agreement to construct the warehouse measuring upto 13, 250 sq. ft. and a consideration was agreed upon for the sum amount and accordingly on 31st March another invoice was raised for the work done. A default of Rs.59,66,475/- committed by the corporate debtor.

5. On 17th April, 2014 a payment of Rs.10,000/- through RTGS was made by the Operational debtor (Forbesgunj Food Processing Pvt. Ltd.)

Sd

Sd

On 17th May 2015 and 19th January 2016 invoices were raised by the Operational creditor for the due amount. But, no payments were made so far.

6. On 25th August 2015 a letter by Operational creditor was issued demanding for outstanding amount pending against the operational creditor as per the agreement. However, no such reply was given to the letter issued.

7. On 4th march, 2016 a balance confirmation was raised through a Chartered Accountant vide a letter that the total outstanding due is Rs.43,06,187.80 and a reply within 14 days by the Corporate Debtor to confirm the same amount to be due and acknowledging the default.

8. On 5th may, 2017 a Demand Notice under Form 3 of the Insolvency and bankruptcy code, 2016 for the outstanding amount of Rs.43,06,187.80 raised against the corporate debtor within 10 days from the date of the receipt of the demand notice.

9. On 24th July 2017 a fresh notice was issued under section 9 of the Insolvency and Bankruptcy Code, 2017. The same letter was received by the corporate debtor on 27th July 2017.

10. The petitioner in support of this case has annexed the following documents to raise a bona fide claim against the corporate debtor as per the due compliance under section 9 of the Insolvency and Bankruptcy Code, 2016 :-

- (i) Letter of 4th January along with annexure- I and II quoting the construction of pre-fabricated structure of warehouse Structure at Forbesgunj, Bihar. Annexed at (P. 16-25).
- (ii) Copies of the Bank statement (P.26,29, 30,76,77-94)), Ledger Account annexed at (P. 59-60).
- (iii) Copies of the Invoices annexed at (P.31-57).

- (iv) A letter issued by a Chartered Accountant dated 4th March, 2016 showing the outstanding due amount till 31st March, 2015 of Rs. 43,06,187.80/- by post along annexed at (P.58) along with proof of delivery annexed at (P.61,62)
- (v) Demand Notice dated 24/07/2017 along with the proof of delivery annexed at (P. 63-75).
- (vi) Affidavit Form – 2 under rule 9 sub-rule dated 7th September 2017 seeking the appointment and confirmation of the IRP Mr. Partha Kamal Sen; IP Reg. No: IBBI/IPA-002/IP-N00022/2016-2017/10049. (Supplementary Affidavit dated 11/9/2017).
- (vii) Affidavit under Form -5 sub-rule (1) of Rule 6 Insolvency Bankruptcy (Application to Adjudicating Authority) Rules.
- (viii) Copy of the Bank certificate under section 9(3) (c) of the Code. (Supplementary affidavit dated 11/9/2017).
- (ix) Affidavit of Proof of service of notice issued by the Tribunal upon the Corporate debtor. (Supplementary Affidavit dated 26/9/2017).
- (x) Affidavit of the petition under Sec.9(3)(b) of the I & B Code, 2016 dated 26/9/2017). [page 95].
- (xi) Board resolution proving authority of the petitioner to file this petition. [page 1(a)]

11. Perusing the documents annexed with the application, the petitioner has duly complied to the provisions of the section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of corporate insolvency against the corporate debtor. However, looking into the facts and circumstances of the case and on the perusal of the documents annexed along with the application it is observed that despite service of notice respondent did not turn up nor filed any reply.

12. Heard the learned counsel for the petitioner. Perused the records.

13. The petitioner filed this petition in Form 5 read with sub-rule (1) of Rule 6 Insolvency Bankruptcy (Application to Adjudicating Authority) Rules with all the required documents and affidavits as provided under section 9 (3) (a), (b) and (c) of the Code and as provided under sub-section (4) of Sec.9 of the Code.

14. The petition being filed in Form 5 along with copy of demand notice with invoices, affidavit to the effect that there is no notice given by the corporate debtor/respondent relating a dispute and a certificate from two banks where the petitioner is maintaining accounts certifying that there is no payment of an unpaid operational debt by the respondent the petition filed by the petitioner is found complete as per section 9(5) (i) (a) of the Code. Thus, the next is whether petitioner succeeded in proving default on the side of the respondent as stated in the petition. Amount claimed to be in default is Rs.43,06,187.80 (Forty Three Lac six Thousand One Hundred and Eighty Seven and eighty paise only). To prove that above said amount is due to the petitioner a computation statement (Page 93) with details of invoices issued to the respondent is produced along with the petition.

15. The petitioner allegedly entered into an agreement with the respondent for construction of pre-fabricated structure of portable warehouse in the property of the respondent. To substantiate the said contention petitioner, produced letter dated 4th January, 2013 referred above send to the respondent and accepted by the respondent. It shows acceptance of the offer made by the respondent. Thus, petitioner established execution of an agreement with the respondent for construction of pre-fabricated structure at the property of the respondent in Bihar. A copy of balance confirmation statement indicating the total outstanding amount of Rs.4306187.80 (Forty-Three Lac six Thousand One Hundred and Eighty Seven and paise eighty only) admitted by the respondent also produced by the petitioner in this case. Thus, petitioner succeeded in establishing a valid debt is due to the petitioner from the respondent.

16. Despite repeated demands as evidence from the letters issued by the petitioner produced in this case and referred above, respondent failed to repay the entire debt as demanded. The bank certificate also strengthens the claim of the petitioner that the above said amount is due to the petitioner from the respondent. Thus, we are satisfied that there is no repayment of the unpaid operational debt by the respondent despite issuing Form 3 notice.

17. Here in this case as stated earlier all the copies of invoices were send to the respondent. We are also satisfied that the copies of invoices send to the respondent were delivered to the respondent. In spite of the receipt of the notice respondent did not reply nor did they issue any notice of dispute to the petitioner. It is evident as per the affidavit submitted by the petitioner. Being found that there is unpaid debt due to the petitioner and that the respondent did not raise any dispute regarding the claim the petition is liable to be admitted.

18. The petitioner also produced Form 2, a written communication by proposed interim resolution professional Shri. Partha Kamal Sen. The insolvency professional certified that there are no disciplinary proceedings pending against him. To prove that petitioner has authority to file this application, produced copy of resolution along with the petition, but not given any marking or assigned page number. Hence, for convenience we have assigned page number 1(a) for its identification.

19. Taking into consideration of all the above we are inclined to admit this petition under section 9 of I&B, Code. Being found this petition is liable to be admitted we hereby appoint the insolvency professional Shri. Partha Kamal Sen as interim resolution professional. Accordingly, we hereby admit this petition for initiating insolvency resolution process and declaring moratorium for the purposes referred to in section 14 of the I&B Code with following directions:

- a) That subject to provisions of sub sections (1) of section 14 of the Code, hereby prohibits:
- b) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, Tribunal, arbitration panel or other authority;
- c) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- d) 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 and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- e) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f) That 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.
- g) That the order of moratorium shall have effect from the date of admission of this petition till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.
- h) That we hereby direct to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.
- i) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

Sd


Sd

20. Having admitted the petition, we hereby pronounce the commencement of the corporate insolvency resolution process effective from the date of this order.

21. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities.

22. Since, the respondent did not enter appearance, registry is directed to communicate the order to the corporate debtor as per section 9(5) (i) of the Code.


Vijai Pratap Singh,
Member (J)


Jinan K.R.
Member (J)

Signed on 9th November 2017