

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1260/IBC/NCLT/MB/MAH/2017

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

M/s. Sai Trading Company
..... Operational Creditor
(Petitioner)

V.

M/s. Padmavati Wire and Cables Private
Limited
..... Corporate Debtor
(Respondent)

Order delivered on: 05.09.2017

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

1. Mr. Nithish Bangera, Practicing Company Secretary – Authorised Representative for the Petitioner
2. Mr. Mehul Gandhi – Director of Padmavati Wire and Cables Pvt. Ltd.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in the capacity of "Operational Creditor" on 31st July, 2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code.
2. In the requisite Form, under the Head "Particulars of Operational Debt" the total Principal amount in default is stated to be ₹ 1,94,453/.

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3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. Padmavati Wire and Cables Private Limited having Registered office at, 207/B, Veena Apartments, Shejal Park, Near Oshiwara Bus Depot, Goregaon West, Mumbai 400102.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the Corporate creditor had supplied Aluminium Miler and plastic for Cables.
5. Further it is submitted that, the Operational Creditor has raised various Invoices, in all 12, payment of which is Outstanding, are attached to the Petition.
6. The operational creditor issued sales invoices in favour of the corporate debtor aggregating to Rs. 2,24,799/- through 12 invoices, out of which the Corporate Debtor paid Rs. 30,346. After 6th August, 2016 no payment has been received by the Operational Creditor form the Corporate Debtor till date.
7. Hence, on account of non-payment, the Petitioner has issued a Demand Notice under section 8 on prescribed Form No. 3 on 11th July, 2017 by hand to the Registered Address, Corporate Office Address of Corporate Debtor. And the said notice was served on Corporate Office Address of the Corporate Debtor. The acknowledgement to this effect, is attached to the Application/Petition.
8. It is submitted that, the Corporate Debtor has not raised any dispute/objection to the Demand Notice of the Operational Creditor till the filing of this Application under I&B Code, 2016.
9. The statement of bank account of the Operational Creditor stating that, in the account of the Operational Creditor no payment has been received by the Corporate Debtor from 6th August, 2016 till date of the certificate i.e. 31st July 2017.
10. One of the Director of Debtor Company in person is present in the Court. The debt and default is admitted by the Director.
11. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the

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goods to be supplied and invoices were raised to claim the amount but there was non-payment of Debt on the part of the Corporate Debtor.

12. We have perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and if the Respondent wanted to place on record evidence of 'dispute' then he could have raised the objection within 10 days as prescribed under section 8(2) of The Code which had also lapsed now.
13. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner we are of the conscientious view that this Petition deserves '**Admission**'.
14. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Amit Gupta, having address at, A/701, Gundecha Symphony, Veera Desai Road, Andheri West, Mumbai -400053 having Registration no. IBBI/IPA-001/IP-P00016/2016-17/10040 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process. Consent of IRP i.e. Form No. 2 is attached to the Application/Petition.
15. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
16. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
17. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.

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18. The IRP so appointed shall also comply the other provisions of the Code including section 15 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
19. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

BHASKAR PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 05.09.2017