

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1370/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. SmartSoft India Solutions Pvt. Ltd.
..... Operational Creditor
V.
M/s. TVC Retail Ltd.
..... Corporate Debtor

Order delivered on: 23.01.2018

Coram :

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

For the Petitioner :

Adv. Sankalp Anantwar a/w Disha Ponda i/b India Law, Advocate for Petitioner.

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 7th September, 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 Rs. 21,36,033/- (Rupees Twenty-One Lakh Thirty-Six Thousand Thirty-Three only).
3. Further under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as M/s. TVC Retail Limited having Registered office at, B/202, TVC House, Khandwala Centre, Daftary Road, Malad East, Mumbai – 400097, Maharashtra.
4. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, Petitioner company carrying on the business of developing software and providing customized software solutions.
5. Alongwith the petition the Petitioner has annexed a copy of the Award, wherein it is described that by an Award of Hon'ble High court dated 20.12.2014 in Arbitration Application no. 256 of 2014 is the sole arbitrator has appointed who has passed an Award on 05.01.2016.
- 5.1 Further it is worth to refer that a rectification was made in the said order of Award which was dated 30.07.2016, however it was noticed that there was no change in the amount of claim awarded.

July

6. On account of non-payment of amount i.e. Rs. 21,36,033/- (Rupees Twenty-One Lakh Thirty-Six Thousand Thirty-Three only), the Petitioner has issued a Demand Notice under Rule 5 of the Insolvency and Bankruptcy Code, 2016 on 27th February, 2017 to the Registered Address, Corporate Office Address of Corporate Debtor. The acknowledgement to this effect, is attached to the Application/Petition.
7. 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.
8. 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 till date.
9. **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 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.
10. We have perused the notice sent under Section 8 (2) dated 27th February, 2017 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.
11. 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**'.
12. The Operational Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Operational Creditor, Mr. Rajeev Mannadiar, having address at, 33, Kamer Building, 5th floor, 38, Cawasji Patel Street, Fort, Mumbai - 400001 having Registration no. IBBI/IPA-001/IP-P00212/2017-18/10412 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
- 12.1 In Form No. 2 dated 22nd August, 2017, the Insolvency Resolution Professional has conveyed his willingness to accept his appointment in the above case. He has also given the necessary certificates/affirmation from his side to this Tribunal in this regard.
13. 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.

14. 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.
15. 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.
16. 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.
17. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

Bhaskara Pantula Mohan
Member (J)

Sd/-

M. K. Shrawat
Member (J)

January
Dated : 23rd ~~November~~, 2017