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THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH,
Court-V

Company Petition No. (IB)- 889 (ND)/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Mr. Sonal Anand

..... Applicant

Versus

M/S International Trenching Pvt. Ltd.

.....Respondent

Judgment delivered on: 08.08.2019

CORAM:

Hon'ble Mr Justice (Rtd.) Rajesh Dayal Khare, Member Judicial

Hon'ble Ms Sumita Purkayastha, Member Technical

Present:

For Applicant: Mr. Aayush Sai, Advocate with Operational Creditor in person.

For Respondent: Mr. Shashwat Bhardwaj, Advoacte for Ms. Anjali Sharma,
Advocate.



ORDER

(Per: Mr Justice (Retd.) Rajesh Dayal Khare, Member Judicial)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The Respondent, M/S International Trenching Pvt. Ltd is a company incorporated on 17.05.2002 under the Companies Act, 1956 having its registered office at 301 & 309, Third Floor, Vardhman Plaza- I, J Block, Rajouri Garden, New Delhi- 110027 . Since the registered office of the respondent corporate debtor is in Delhi, this Tribunal having territorial jurisdiction over the place is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is the case of the applicant that in March, 2017, the Directors of the Corporate Debtor approached the applicant for general advisory services



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for which, an agreement dated 03.04.2017 was executed between the Corporate Debtor and Operational Creditor. The copy of the same agreement is also annexed with the petition as Annexure A-1/2.

4. It is further submitted by the applicant that the said Agreement recorded that the Corporate Debtor shall avail services of the Operational Creditor, for a period of 18 months, w.e.f. 01.04.2017 for a fee of Rs. 2,00,000/- per month. It was further agreed by the parties that the Operational Creditor shall bill the Corporate Debtor at the end of the said period of 18 months @ Rs. 2,00,000/- per month, which came out to be as Rs. 36,00,000/- .

5. It is also argued by the applicant that vide letter dated 11.10.2018, the Corporate Debtor acknowledged the amount of Rs. 36,00,000/- stating that a part payment of Rs. 3,00,000/- stands paid thus Rs. 33,00,000/- is due and payable.

6. Further the Operational Creditor has contended that the corporate Debtor sought time till 30.06.2019 which was not agreed by the Operational Creditor in writing thus making the amount of Rs. 33,00,000 as due and payable immediately.

7. It is also the case of the applicant that despite receiving the services of the Operational Creditor the corporate debtor yet failed to pay the outstanding amount despite the constant follow up by the Operational Creditor and further the applicant also came to know that the Corporate



Debtor is attempting to dispose of his assets in order to defraud the various creditors.

8. Further, the Applicant issued a demand notice dated 29.01.2019 under the Bankruptcy and Insolvency Code, 2016, to the Corporate Debtor, therein making a demand of Rs. 33,00,000/- along with the interest w.e.f. 01.10.2018 towards the part principal outstanding amount. However, the Corporate Debtor has deliberately and consciously failed to make the payment of above said unpaid part principal outstanding amount of Rs. 33,00,000/- despite receipt of above said demand notice. No reply to the said demand notice has been filed by the Respondent.

9. An affidavit dated 27.03.2019 verifying that the applicant has not received any letter of dispute from the corporate debtor towards the unpaid amount of debt under Section 9 (3) (b) of the Code, has been filed along with the application.

10. Respondent has filed its reply dated 09.07.2019 before this Tribunal, mainly with the contention that the alleged services that the applicant was to provide, were not actually provided; and even the communication issued by the respondent in October, 2018, which the applicant has annexed as Annexure A-1/4, records that the payment, if any, would be made by it in June, 2019. Hence, as on date, no payments whatsoever are owing by the respondent to the applicant.



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11. It is further submitted by the respondent that had the applicant's statement been correct, and had any amount actually been owing to the applicant in October, 2018, itself, as contended by him, he would not have waited through the months of October, November, and December, 2018, and January, 2019, before staking a claim for the same.

12. We have heard the parties and perused the case records.

13. It is pertinent to mention here that as per the order dated 31.07.2019 of this tribunal it is noted that the Corporate Debtor is not in a position to clear the debt that due presently. Hence this tribunal vide the order dated 31.07.2019 direct the Corporate Debtor to file an affidavit in relation to the admission of claim.

14. In compliance with the order dated 31.07.2019 of this tribunal an affidavit dated 01.08.2019 has been filed by "Guneet Basin" one of the director on the board of the Corporate debtor stating that the Respondent is not in the position to honour the debt owed to the Operational Creditor, and to other creditor. It is further stated in the same affidavit that upon admission of Insolvency application filed against the Corporate debtor, and commencement of Corporate insolvency resolution process in this case he shall cooperate fully with the Insolvency Resolution Professional and the



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committee of Creditors and provide all the information and records of the Corporate Debtor to them for the smooth conduct of the process.

15. Hence from the bare perusal of the affidavit dated 01.08.2019 it can be seen that there is a clear admission of debt in default by the Corporate Debtor.

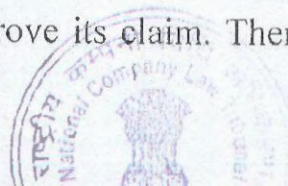
16. "Operational debt" has been defined under Section 5 (21) of the Code as follows:

"Operational Debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

Operational creditor has also been defined at section 5(20) as follows:

"Operation Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred".

17. From the definition of "Operational creditor" and "Operational Debt", it can be seen that the applicant has provided services to the respondent and has placed sufficient evidence to prove its claim. There was a default in



payment of claimed amount, and the respondent failed to establish the fact that there is a pending dispute between the parties in respect of the amount claimed. Moreover, the respondent has also filed an affidavit in which it has been submitted that that the Respondent is not in the position to honour the debt owed to the Operational Creditor, and to other creditor. It is further stated in the same affidavit that upon admission of Insolvency application filed against the Corporate debtor, and commencement of Corporate insolvency resolution process in this case he shall cooperate fully with the Insolvency Resolution Professional and the committee of Creditors and provide all the information and records of the Corporate Debtor to them for the smooth conduct of the process. In light of the same, such application deserves to be admitted for triggering Corporate Insolvency Resolution Process against the respondent corporate debtor. Besides, the respondent had not issued any notice of dispute after receiving demand notice in terms of Section 8 of the Code.

18. In the aforesaid background we are satisfied that the present petition is complete and there has been default in payment of dues by the respondent. Therefore, on fulfilment of the requirements of section 9 (5) (i) (a) to (d) of the Code, the present petition warrants admission.

19. The petitioner has proposed the name of Mr. Mohd Nazim Khan for appointment as an IRP in the Part-III of the application.



Accordingly, we appoint Mr. Mohd Nazim Khan as an Interim Resolution Professional. His registration number is IBBI/IPA-002/IP-N00076/2017-18/10207, Email ID: nazim@mnkassociates@gmail.com. The aforesaid Interim Resolution Professional has no disciplinary proceeding pending against him nor has anything else been pointed out with regard to his antecedents. The Interim Resolution Professional has filed necessary declaration in accordance with the IBBI Regulations and the provisions of the Code.

20. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 9 of the Code.

21. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

“(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.”

22. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor and may



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be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

23. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions



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strictly in accordance with the provisions of the Code, Rules and Regulations.

24. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest possible but not later than seven days from today.

25. Before parting we must notice the complaint made against Operational Creditors, in the form of discrepancies in the statement of account. We cannot determine the amount due. This function is required to be performed by the Information Utility. However, this institution is not fully functional as yet. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Operational Creditor as it is only fair to do so.

26. The petitioner is directed to pay a sum of Rupees two lakhs to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.



Let the copy of the order be supplied to the parties including the

Board.

Sdr

(JUSTICE (RTD.) RAJESH DAYAL KHARE)

MEMBER (II)

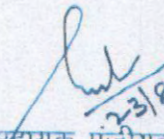


Sd

(MS.SUMITA PURKAYASTHA)

MEMBER (I)

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23/07/18
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
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