

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-549/(ND)/2022

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

In the matter of:

M/s. Kumar Electronics

Through its Proprietor

Mr. Surender Bansal

Registered Office at: H-19/170, Sector - 7, Rohini,

New Delhi - 110085

...Applicant/Operational Creditor

Versus

M/s. Sargam India Electronics Private Limited

Registered Office at: Garg Trade Centre, Block No.1,

3rd Floor, Sector -11, Rohini,

New Delhi - 110085

...Respondent/Corporate Debtor

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Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Dhananjaya Sud

Counsel for Respondent: Mr. Chaitanya Bansal

ORDER

PER: P.S.N PRASAD, MEMBER (JUDICIAL)

Date: 29.11.2022

1. This is an application filed by the Applicant M/s. Kumar Electronics seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. Sargam India Electronics Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 3,52,34,840/- (Rupees Three Crore Fifty-Two Lakh Thirty-Four Thousand Eight Hundred and Forty) along with Interest of Rs. 76,40,098/- (Rupees Seventy-Six Lakh Forty Thousand and Ninety-Eight). The details of transactions

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leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

- i. That frequent business dealings took place between the Operational Creditor and the Corporate Debtor since the incorporation of the Corporate Debtor in the year 2010.
- ii. That the Operational Creditor maintained a running account of the Corporate Debtor qua the payments being received by the Operational Creditor in respect of the invoices issued by the Operational Creditor in favour of the Corporate Debtor. The Corporate Debtor used to clear the dues of the Operational Creditor within the period specified in the specific invoice issued by the Operational Creditor.
- iii. That the consideration for the sale executed between the Operational Creditor and the Corporate Debtor were to be made within a period of 7 days from the Date of Invoice, failing which interest was to be charged at a rate of 18% and 24% per annum.
- iv. That during the year 2020, on account of spread of Coronavirus in the country and complete lockdown

in the country, the Corporate Debtor expressed its inability to clear the dues of the Operational Creditor qua the invoices issued by the Operational Creditor. Accordingly, owing to the frequent dealings between the Operational Creditor and the Corporate Debtor, the Operational Creditor agreed to the aforesaid requests of the Corporate Debtor. However, as per the understanding between the parties, the Corporate Debtor was liable to continue to pay interest upon the unpaid amount to the Operational Creditor at a rate of 18% and 24% per annum respectively, as the case may be.

- v. That as per the requests of the Corporate Debtor, the Operational Creditor supplied materials/goods to the Corporate Debtor and duly raised invoices in favour of the Corporate Debtor, however, the Corporate Debtor failed to release payments which were due to the Operational Creditor against the said Invoices.
- vi. That the Corporate Debtor vide Letter dated 06.05.2022 issued to the Operational Creditor, had

even acknowledged its liability of Rs.2,39,31,920/- (Rupees Two Crore Thirty-Nine Lakh Thirty-One Thousand Nine Hundred and Twenty) as on 31.03.2022 and thereby assured the Operational Creditor that the payment against the outstanding dues shall be made to the Operational Creditor at the earliest.

- vii. That the Corporate Debtor always assured the Operational Creditor that the dues would be cleared, however, the Corporate Debtor failed to abide by its terms for the reasons best known to them.
- viii. That the Operational Creditor was constrained to issue a Demand Notice dated 13.05.2022 as per Form - 4 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the "Demand Notice"), upon the Corporate Debtor for the outstanding payment of Rs.3,52,34,840/- (Rupees Three Crore Fifty-Two Lakh Thirty-Four Thousand Eight Hundred and Forty Only) along with Interest of Rs.76,40,098/-

(Rupees Seventy-Six Lakh Forty Thousand and Ninety-Eight Only) due to the Operational Creditor on account of supply / delivery of goods / products.

ix. That the default on the part of the Corporate Debtor is recurring in nature as the payments are yet to be made to the Operational Creditor by the Corporate Debtor.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

i. That the Corporate Debtor, during the year 2013, had availed various Credit Facilities from the Union Bank of India (hereinafter referred to as the "Union Bank") which were subsequently renewed vide Sanction Letter dated 01.02.2021 qua a Guaranteed Emergency Credit Line (GECL) Facility of Rs.9.97 Crore and Sanction Letter dated 08.04.2021 qua a Cash Credit Facility of Rs.50 Crore availed by the Corporate Debtor from the Union Bank.

ii. That the Corporate Debtor further availed a loan facility from the ICICI Bank (hereinafter referred to

as the "ICICI") in the year 2020 to the tune of Rs.6 Crore and in view of the same, a Sanction Letter dated 16.06.2020 was issued by ICICI to the Corporate Debtor.

- iii. That in the interim, due to the prevailing pandemic in the country, the Corporate Debtor in the year 2020, hypothecated its goods in favour of the Union Bank vide a Composite Hypothecation Deed dated 28.07.2020 and further availed a Covid Emergency Line of Credit Facility to the tune of Rs.5 Crore.
- iv. That the Corporate Debtor, during the year 2021, yet again availed a financial assistance from the State Bank of India to the tune of Rs.25.65 Crore. In furtherance of the same, the State Bank of India issued a Sanction Letter dated 17.03.2021 in favour of the Corporate Debtor and thereby, an Agreement of Loan-cum Hypothecation dated 05.06.2021 was executed between the State Bank of India and the Corporate Debtor.
- v. That the Corporate Debtor during the year 2021 availed a Working Capital Credit Facility to the tune

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of Rs.29,01,00,000/- (Rupees Twenty-Nine Crore One Lakh Only) from the HDFC Bank and further the HDFC Bank issued a Sanction Letter dated 12.10.2021 in favour of the Corporate Debtor.

- vi. That during such rough times, the Corporate Debtor was making every possible endeavour to revive its brand and business operations by way of infusion of money taken on loan from its promoters, senior staff as well as support from vendors amongst the others.
- vii. That in the above backdrop, the first wave of Covid19 Pandemic spread in India like Tsunami, whereby the Government of India imposed a nationwide lockdown from 25.03.2020 till June 2020 extended till October 2020 in many states in the country. That the said Covid-19 was associated with numerous uncertainties and thereby the business operations of the Corporate Debtor were severely affected, resulting in loss of revenue and substantial shares in the market. The Corporate Debtor faced huge losses which initiated a chain

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reaction, leading to shutting down of its stores and inability to repay loans and debts.

- viii. That due to major crunch of Cash Flow in the Corporate Debtor, the Corporate Debtor failed to honour its obligations qua the Credit Facilities availed by the Corporate Debtor.
- ix. That whilst the Corporate Debtor was limping on its foot to restore its business operations, it came as a shock when the account of the Corporate Debtor was declared as a Non-Performing Asset by the State Bank of India on 19.03.2022, thus, multiplying the miseries of the Corporate Debtor in repaying the loans and debt amounts.
- x. That thereafter, on account of default on the part of the Corporate Debtor to clear the dues of the State Bank of India, the State Bank of India issued a Notice dated 05.05.2022 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act, 2002"), to the Corporate Debtor, to clear the

outstanding dues of the State Bank of India to the tune of Rs.22,15,27,885.40/- (Rupees Twenty-Two Crore Fifteen Lakh Twenty-Seven Thousand Eight Hundred and Eighty-Five and Forty Paise Only) within 60 days from the receipt of the aforesaid Notice.

- xi. That subsequently, the State Bank of India through its Counsel, issued a Notice dated 12.05.2022 to the Corporate Debtor to repay its outstanding dues within a period of 15 days from the receipt of the aforesaid Notice.
- xii. That it is significant to submit that the Union Bank issued Letters dated 17.05.2022 and 07.06.2022 to the Corporate Debtor directing the Corporate Debtor to pay its dues on an urgent basis, as the same has not been paid since 31.03.2022 and thereby provide the information regarding the hypothecation of goods of the Corporate Debtor to the Union Bank.
- xiii. That on account of default on the part of the Corporate Debtor to clear the dues of the Union Bank, the Union Bank issued a Notice dated

05.07.2022 under Section 13 (2) of the SARFAESI Act, 2002, to the Corporate Debtor, to clear its outstanding dues to the tune of Rs.62,04,25,306.36/- (Rupees Sixty-Two Crore Four Lakh Twenty-Five Thousand Three Hundred and Six and Thirty-Six Paise Only) within 60 days from the receipt of the aforesaid Notice. The account of the Corporate Debtor was declared as a Non-Performing Asset by the Union Bank on 28.06.2022.

- xiv. That in the meantime, upon failure of the Corporate Debtor to clear the dues of the ICICI Bank, the ICICI Bank issued a Notice dated 18.06.2022 to the Corporate Debtor to clear its dues to the tune of Rs.5,33,44,739.05/- (Rupees Five Crore Thirty-Three Lakh Forty-Four Thousand Seven Hundred and Thirty-Nine and Five Paise Only) as on 02.06.2022.
- xv. That as the Corporate Debtor was again making utmost efforts to bring itself out of distress and maintain the customer's faith in its brand, the second wave of Covid-19 pandemic once again

struck around India, thereby affecting the business operations of the Corporate Debtor.

xvi. That in light of the above circumstances, it is submitted that the Corporate Debtor, despite of making innumerable attempts to bring back its business operations, became incapable to repay the debts as well as the loan amounts. The Corporate Debtor is ready and has all good intentions to repay the creditors including the Operational Creditor herein in due course of time. The Corporate Debtor is presently being faced with multiple litigations which has increased the overhead cost and with the accounts of the Corporate Debtor being freezed, there has been no cash flow in the Corporate Debtor.

3. The Operational Creditor has filed rejoinder to the reply of the Corporate Debtor stating that:

i. That as per the requests of the Corporate Debtor, the Operational Creditor supplied materials/goods to the Corporate Debtor and duly raised invoices in favour of the Corporate Debtor, however, the Corporate Debtor failed to release payments which

were due to the Operational Creditor against the said Invoices.

- ii. That the Corporate Debtor has failed in its duties to clear the debts of the other financial institutions as well from where it had availed certain credit facilities to run its business.
- iii. That the Corporate Debtor has failed and defaulted to repay the agreed loan amounts to the aforesaid other financial institutions as stated by the Corporate Debtor itself.
- iv. That the accounts of the Corporate Debtor have been declared as Non-Performing Asset and the Corporate Debtor in its Reply has duly acknowledged its inability to repay the amounts of the Operational Creditor herein and is undergoing huge financial crunch.

4. We have heard the Ld. Counsels for the Operational Creditor and Corporate Debtor and perused the averments made in the application as well as the documents enclosed with the application.

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5. In compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 09.06.2022 stating that no notice of any pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt.
6. The Corporate Debtor has accepted his liability towards the Applicant in his letter dated 06.05.2022 which is reproduced below:

Date:06-May-2022

To,
Accounts Manager
Kumar Electronics
H-19/170, SECTOR – 7
Delhi-110085

Dear Sir,

Sub: Balance confirmation as on 31st March 2022 as required by internal audit department.

With reference to the above subject, our books of account show a credit balance in your account of Rs 2,39,31,920./- as on 31st March 2022.

Please sign the confirmation slip below and forward this to us in the enclosed postage pre-paid envelope.

In case you need any further assistance including statement of account to reconcile the differences if any please do write to us.

We would be grateful if you would give this request your earliest attention.

Yours faithfully,

For Sargam India Electronics Pvt Ltd



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7. Further, in the daily order dated 29.09.2022, it was noted as follows, "Counsel for the Corporate Debtor has submitted that settlement has failed and they duly acknowledged the debt. Counsel for the Corporate Debtor on instructions from his client has also submitted that they have no objection if CIRP is initiated against them ."

8. Per Section 10A of the IBC, 2016 and the MCA Notifications dated 24.09.2020 and 22.12.2020, no application for CIRP may be filed for defaults occurring between 25.03.2020 to 24.03.2021. Per the statement of the Invoices attached to the Application and the calculation sheet for default amount, provided in Annexure-3 and Annexure-4 of the Petition filed by the Applicant, the maturity date of the transactions recorded up to Invoice No. 2020-21/4313 (due date 23.03.2021) would fall within the dates notified by the MCA. As such amounts were due between 25.03.2020 to 24.03.2021, they cannot be admitted as grounds for initiation of CIRP against the Respondent Company. However, the remaining invoices from Invoice No. 2020-

21/4620 to 2021-22/4566 which are well above the threshold limit of Rs. 1 Crore u/s 4 of IBC, 2016 do not fall within the dates notified by MCA and are outside the purview of Section 10A of IBC, 2016.

9. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the learned counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the Corporate Debtor and the Corporate Debtor has defaulted in making payment of the amount due and accepted the said default. The Corporate Debtor has accepted the debt and its default. Therefore, in the absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect:

1. The interim resolution professional (“IRP”) proposed by the Applicant, Mr. Ankit Goel, (Email Id-

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ankitgoel@aaainsolvency.in), Reg. No: IBBI/IPA-001/IP-P-02671/2022-23/14088 is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench. Mr. Ankit Goel has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 30.05.2022.

2. Section 16(3)(b) of the Code mandate that the Resolution Professional proposed by the Operational Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a

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declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Ankit Goyal has submitted the declaration in Form 2 dated 30.05.2022.

3. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under

the Securitization 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 Respondent.

4. The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

5. 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.

6. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under Section 31(1) or passes an order for liquidation of corporate debtor under Section 33, the moratorium shall cease to have effect from the

date of such approval or liquidation order, as the case may be.

7. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

10. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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MEMBER (TECHNICAL)

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