

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (IB) No.155/Chd/Hry/2018

Under Section 9 of IBC, 2016.

In the matter of:

M/s Hind Tradex Limited
having its registered office at
B-8/195, First Floor,
Sector-3, Rohini,
New Delhi -110085

...Petitioner-Operational Creditor

Vs.

M/s Lakshmi Precision Screws Limited,
having its registered office at
46/1 Mile Stone,
Hissar Road,
Rohtak, Haryana -124001

...Respondent-Corporate Debtor

Judgment delivered on 18.07.2018.

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioner : 1. Mr. G.S.Sarin, Practising Company Secretary

For the Respondent : 1. Mr.Manish Jain, Advocate.
2. Mr. Shekhar Raj Sharma, Advocate.
3. Ms.Divya Sharma, Advocate

Per: R.P.Nagrath, Member(Judicial)

Judgment (Oral)

This petition has been filed by M/s Hind Tradex Limited, Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the Code) for initiating insolvency resolution process against the respondent-corporate debtor, a company registered under the Companies Act, 1956. The corporate debtor was

incorporated on 27.12.1968 and has its registered office at Rohtak in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

2. The petitioner has filed application in Form 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules) furnishing necessary particulars. The petitioner company has also passed resolution dated 05.03.2018 to initiate the proceedings against the corporate debtor under the Code taking notice of various transactions entered into between the parties and relevant invoices. The resolution further authorises Mr.Anuj Goyal, Director of the company to file petition before this Tribunal to sign, follow and to do all the necessary acts in the progress of the case.

3. It is stated that the corporate debtor has the authorised share capital of ₹25 crores divided into 2,50,00,000 equity shares of ₹10/- each and paid-up share capital of ₹10,94,16,670/- divided into 1,09,41,667 equity shares of ₹10/- each.

4. The version of the petitioner is that there were business transactions between the parties and iron and steel products were supplied to the corporate debtor as per the request made by the corporate debtor vide various purchase orders. The petitioner company supplied the material vide invoices ranging from 19.03.2015 to 26.03.2015 for a total sum of ₹4,90,76,653/-. The due date of payment of the last invoice is 24.06.2015. It is further stated that the corporate debtor defaulted in making the payment despite having received material and there were exchange of communications between the parties in that regard. Annexure-II(F) is the copy of the ledger account of the respondent being

maintained by the petitioner, from which it is evident that payment of these invoices has not been made. It is contended that the petition was filed in this Tribunal on 16.05.2018 and therefore, claim has been made in this petition within the limitation period. The summary of the transactions has been stated in the document at page 80 of the paper book.

5. The petitioner sent Demand Notice under Section 8 of the Code to the respondent-corporate debtor in Form 3 as prescribed in Rule 5(1) of the Rules giving details of all the transactions and along with this demand notice, copies of the invoices were also sent along with other documents, tax invoices, payment reminders/communications and copy of Form VAT-C4. It was sent by registered post as well as at the e-mail address of the corporate debtor available on the master data. The notice is said to have been dispatched on 15.03.2018 and delivered to the corporate debtor on 17.03.2018.

6. The contents of the petition are supported by affidavit of Mr. Anuj Goyal, the authorised representative of the company which is attached at Annexure –IV of the paper book. It is stated in the affidavit that the petitioner has not received any notice of dispute from the corporate debtor nor payment in terms of Section 8(2) of the Code has been received. On filing of this petition, copy of the petition was sent to the corporate debtor by speed post on 16.05.2018 in order to comply with the requirement of Rule 6(2) of the Rules.

7. Notice of this petition was issued to the respondent to show cause as to why this petition be not admitted. Mr. Manish Jain, Advocate accepted notice on behalf of the respondent and filed Power of Attorney with Board resolution with CA No.249/2018 which was an application filed by the corporate

debtor for preponing the hearing of this case, but that application was withdrawn on 11.07.2018.

8. Learned counsel for the respondent submits that the corporate debtor is not to file any reply/objection to the admission of the instant petition. It is submitted on instructions that the corporate debtor had received notice from the financial creditors under Section 13(2) of SARFAESI Act, 2002.

9. We have heard authorised representative of the petitioner and learned counsel for the respondent and perused the record.

10. Notice of Demand was delivered to the corporate debtor on 17.03.2018 and this petition has been filed on 16.05.2018, i.e. after the expiry of 10 days from the date of service of the notice in terms of requirement of Section 9(4) of the Code. The application has also been filed in the prescribed form in order to comply with requirement of Section 9(2) of the Code. The petitioner also complied with the requirement of Section 9(3)(b) of the Code by filing affidavit stating that the petitioner has not received any notice of dispute and this statement of fact has not been disputed. The petitioner further complied with the requirement of Section 9(3)(c) of the Code by filing certificate of Canara Bank where the petitioner is maintaining its account and it is certified by the Bank that since 25.06.2015, no amount has been credited by way of transfer of cheque/NEFT/RTGS/Clearing from M/s Lakshmi Precision Screws Limited, the corporate debtor.

11. The fact that the respondent is in debt is supported by various invoices Annexure-II(D) (colly) by which goods were supplied to the corporate debtor. This is further fortified with the ledger account of the respondent corporate debtor maintained by the petitioner regularly and that ledger account is

at Annexure-II(F)(colly), reference to which has already been made. As per the ledger account, the closing balance as on 31.03.2015 was carried forward in the accounts books for the years 2015-16, 2016-17 and 2017-18. The petitioner has also claimed interest towards the amount due @24% p.a., though no amount of interest was stipulated in the invoices, nor was interest calculated in the books of account of the petitioner-operational creditor. However, being commercial transactions, we permit the operational creditor simple interest @10% from 01.04.2016 onwards. If the petitioner has any claim of interest over and above 10% per annum, it may avail remedy before the Civil Court. With the above discussion, the petitioner has been able to establish that all the requirements of sub-section (3) of Section 9 of the Code are met.

12. Sub-section (5) of Section 9 of the Code reads as under:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.”

13. We find that the application submitted by the operational creditor is complete in all respects and there is no defect pointed out by the corporate debtor. It is also proved that payment of the unpaid operational debt has not been made.

14. In this case the petitioner has also proposed the name of Resolution Professional to be appointed as Interim Resolution Professional in Part-III of the application in Form 5. Though the operational creditor is not obliged to propose the name of the Resolution Professional, it proposed the name of Mr.Deepak Thukral, registered Resolution Professional with IBBI having Regn.No.IBBI/IPA-002/IP-N00182/2017-18/10453. It is certified by the authorised representative of the petitioner in Form 5 that to the best of his knowledge, Mr.Deepak Thukral is fully qualified and permitted to act as Insolvency Resolution Professional. Mr.Deepak Thukral has also furnished his written communication in Form 2 (Annexure-V of the petition) disclosing all the necessary particulars certifying that there are no disciplinary proceedings

pending against him with IBBI or the ICSI Insolvency Professionals Agency and he is not serving as an interim resolution professional/resolution professional/liquidator in any proceedings. Having perused the form, we find the same in order.

15. In view of the above, the instant petition deserves to be admitted. The petition, therefore, is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended:-

- 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.

16. It is further directed 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. The moratorium shall however not apply to

such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section(1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

18. The matter be listed on 24.07.2018 for passing formal order to appoint Interim Resolution Professional with further directions.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

July 18, 2018
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