IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
Company Petition (IB)No.451/ALD/2019

In the matter of:
The Insolvency and Bankruptcy Code,2016

AND
In the matter of:
Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

AND
In the matter of :

Khard Enterprises

.....Operational Creditor/ Applicant.

VERSUS

Ramnath Developers Pvt. Ltd

.....Corporate Debtor/Respondent.

ORDER RESERVED ON : 07.01.2020
ORDER DELIVERED ON : 23.01.2020

CORAM:
Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Mr. Anil Kumar, PCS
For the Respondent/ Corporate Debtor: Mr.Shubham Agarwal , Adv.

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

Order

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016 by the Applicant/ operational creditor, i.e. **"M/s Khard Enterprises"** for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company **"M/S Ramnath Developers".**

2. As per averments made in the petition , the operational creditor received several work order from the corporate debtor for providing the facility management services at the township of the corporate debtor namely Ramnath City, Mouza Bokhara koradi Rd. Nagpur-441111, pursuant to the execution of agreement for facility management dated 28.01.2018 but the

corporate debtor failed to adhere with the terms and conditions of the agreement.

3. Subsequently, opertaional creditor raised invoices for each quarter ending for the financial year 2018-2019 for an amount of Rs.12,24,000 which is contended as amount in default to which the corporate debtor failed to make payments and thereafter the operational creditor issued demand notice Under Section 8 of the IBC,2016 dated 05.08.2019 demanding a total sum of Rs. 13,40,397/-which was duly recevied by the respondent ***(The Copy of demand notice along with the delivery report is annexed as Annexure A1 of the application)*** and despite demand notice being delivered to the Corporate debtor, neither any reply nor any payment of of the due amount has been made till the date of application. The respondent has therefore filed this petition as an operational creditor in the required format praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate the claim.Affidavit in compliance under Sec 9(3)(b) and Sec 9(3)(c) of code are on record to corroborate the same.

4. The corporate Debtor has been duly served by speed post as well as by e-mail . Pursuant to the court notice issued to the Corporate Debtor which has been delivered the corporate debtor had put in appearance.

5. It is a matter of record vide order dated 07.01.2020 that the learned counsel appearing for the Corporate Debtor submitted that they have admitted the liablity dues of Rs.13,40,397/- but they are unable to pay the same on account of financial crunch. Thus, oral arguments were heard and order was reserved.

6. I have gone through the documents filed by the parties and heard the arguments by both the counsels.This Adjudicating Authority has observed that:

i. The operational creditor has provided all the necessary documents required for proving that the debt has been defaulted. While going through invoices attached and the bank account statement of the operational creditor where deposits are made or credits received by the operational creditor in respect of the debt of the corporate debtor , it was observed that it an admitted fact that there is work relation between the Operational Creditor and the Corporate Debtor whereby operational creditor provided service to the corporate debtor and no payment was made for the same. The Corporate Debtor has not disputed or denied this fact.

ii. Further the default of the debt has been admitted by the corporate debtor as stated that due to financial crunch they are unable to pay the due amount. Further the amount claimed in default is Rs. 13,40,397/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corpoarte Debtor.

iii. A perusal of the documents shows that the application is filed well within limitation to trigger the CIRP in respect of corporate debtor. Therefore, the Petitioner succeeded in proving its debt and the Corporate Debtor failed to discharge its payment liability towards services provided to the corporate debtor . The Corporate Debtor has not paid the outstanding debt owed to operational creditor despite demand notice delivered upon him under Sec 8 of the Code. Therefore, the amount and default on the side of the Operational Creditor stand proved in the present case. Therefore, petitioner is found entitled to initiate corporate insolvency resolution process as against the Corporate Debtor.

7. The Petitioner, in the present IB petition, has complied with Section 9 (3) (b) and 9(3) (c) by filing supporting affidavit. As the petitioner fulfils the requirement for invoking CIRP in terms of Section 9 of the Code, the present

application is found complete and the default of debts is established. Hence, the present petition deserves admission.

8. Considering the facts and circumstances of this case, this Adjudicating Authority is inclined to admit this petition and initiate CIRP of the respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

(i) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall by order declare a moratorium on prohibiting all of the following, namely: —

(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 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 possession of the corporate debtor.

Further:

(ii) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(iii) 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.

— Sd —

(iv) The order of moratorium shall have effect from the date of such order till the completion of the corporate Insolvency Resolution Process .

9. The Operational Creditor has proposed the name of ***Mr.Ganga Ram Agarwal, Registration Number IBBI/IPA-002/IP-N00874/2019-20/12777*** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statue, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

10. The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and to IRP.

11. Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

12. List on 13.02.2020 for the filing of the progress report.

Sd

JUSTICE RAJESH DAYAL KHARE

MEMBER (J)

Date: 23.01.2020

Swati Gupta
(LRA)