
(2020) 06 NCLT CK 0034

National Company Law Tribunal New Delhi Bench

Case No: Company Petition No. (IB)-88(ND) Of 2020

Adonis Electronics Pvt. Ltd

APPELLANT

Vs

Saka Ltd

RESPONDENT

Date of Decision: June 8, 2020

Acts Referred:

- Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 - Rule 6, 9(1)
- Insolvency And Bankruptcy Code, 2016 - Section 3(12), 4, 5(20), 5(21), 7(3)(b), 8, 9, 9(1), 9(3)(b), 9(3)(c), 9(3)(d), 9(3)(e), 9(4), 9(5), 9(5)(i), 9(5)(i)(a), 9(5)(i)(b), 9(5)(i)(c), 9(5)(i)(d), 9(6), 13(2), 14, 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(d), 14(4), 14(3)(b), 15, 17, 18, 19, 20, 21, 60(1)
- Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 - Regulation 6(1)

Hon'ble Judges: P.S.N. Prasad, J; Dr. V.K. Subburaj, Member (Technical)

Bench: Division Bench

Advocate: Zeshan Ali

Judgement

P.S.N. Prasad, J

1. M/s. Adonis Electronics Pvt. Ltd, claiming as the operational creditor has filed this application 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) Rule, 2016 (for brevity

'the Rules') for initiation of Corporate Insolvency Resolution Process in respect of Respondent Company M/s. Saka Ltd. claimed to be the Corporate

Debtor.

2. The Respondent M/s. Saka Ltd. Limited against whom initiation of Corporate Insolvency Resolution Process has been prayed for, is a company

incorporated on 25.11.1981 under the provisions of the Companies Act, 1956 having its registered office at office Shop No 21, C/O Ashiyaana

Residency Chaudhary Dharambir Market, Near Sebel Cinema Badarpur South Delhi, New Delhi. 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. Mr. Akhilesh Gusain is a person who is duly authorized to submit the application on the behalf of ""M/S Adonis Electronics Pvt. Ltd.

4. The pleaded case of the Operational Creditor is as under:

i. From April 6,2018 to June 30, 2018, Corporate Debtor placed a purchase order with the Operational Creditor for split AC and Window AC.

ii. From April 10, 2018 to September 25, 2018, sales Invoice raised by Operational Creditor on Corporate Debtor for supply of Air Conditioner

aggregating to Rs. 13,30,662/-

iii. Since no payment was received from Corporate Debtor, the Operational Creditor sent first reminder to Corporate Debtor for payment on July 12,

2019.

iv. On September 3, 2019, Operational Creditor sent second reminder to Corporate Debtor for payment.

v. On September 18, 2019, the Corporate Debtor acknowledged receipt of invoice stated above and said they will make payment shortly.

vi. On April 1, 2019, Corporate Debtor confirmed the balance outstanding payable to Operational Creditor.

5. The operational-creditor on 09.10.2019 sent a demand Notice to the Corporate-debtor to pay outstanding debt amount a sum of Rs. 13,30,662/-. The

Corporate-debtor has failed to file his reply to the demand notice which was sent by the Operational-creditor on 09.10.2019.

6. Respondent company has filed its reply to the petition on 23.01.2020 mainly with the contention that the Corporate Debtor is facing financial distress

due to some abnormal losses in their business strategy in last few years. There is an admission in the reply that balance outstanding claimed amount

has remained unpaid as on date and the respondent is willing to pay the entire amount, but any commitment as to schedule of payments cannot be given. The statement of the corporate debtor that he is not denying the outstanding amount and he is ready to pay all dues to the petitioner is also recorded in the order dated 11.03.2020 of this Tribunal.

7. It is pertinent to mention here that ""default"" is defined in Sec 3(12) in very wide terms as meaning non-payment of a debt once it becomes due &

payable, which includes non-payment of even part thereof. Even part of the dues, once becomes payable comes within the meaning of debt and if not

paid will amount to ""default"".

8. In the present case it is seen that there is a clear admission of nonpayment of balance part debt and therefore there has been occurrence of default

in payment of the claimed debt by the respondent corporate debtor.

9. Needless to say, that the expressions ""Operational Creditor"" and ""Operational debt"" have been defined in Section 5(20) and 5(21) of the Code,

which are reproduced below.

5. In this part, unless the context otherwise requires, -

... ..

(20) ""operational 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;

(21) ""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;

10. From the definition of ""operational creditor"" and ""operational debt"", it can be seen that the following persons can claim to be an ""operational Creditor"".

i. The person who has claim in respect of provisions of goods (supplied) to the corporate debtor.

ii. Persons who have provided service to the corporate debtor, including those who are in employment.

iii. Central Govt., State Govt. and local authorities, who are entitled to claim debt in respect of dues arising under any law for time being in force.

11. It is thus seen that the unpaid petitioner, who rendered services to the Corporate Debtor, comes within the purview of 'Operational creditor'.

12. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the ""Operational Creditor"" is delineated under Section 9

of the Code. The present application filed by operational creditor, accordingly, has to be dealt with in terms of Section 9 of the Code.

13. Sub-section (1) of Section 9 mandates filing of the petition only after expiry of the period of 10 days from the date of delivery of notice or invoice

demanding payment under sub-section (1) of Section 8.

14. In the present case admittedly the demand notice in Form-3 as per Section 8 of the Code was sent on 09.10.2019. It is thus seen that before filing

the present application under Section 9 of the Code, requisite notice under Section 8 was duly served on the Respondent. In response to Section 8

notice, respondent corporate debtor has filed its reply acknowledging the outstanding amount and expressed its inability to pay the debt due to financial

difficulty. In other words, the corporate debtor had not disputed the claim in its reply given in terms of sub-section (2) of Section 8 of the Code.

15. The present application under Section 9 of the Code has been filed in requisite Form-5, wherein it was specifically mentioned that in the reply

received from the corporate debtor there has been admission of debt and default and no dispute was raised against the claim of the applicant

operational creditor. The application under Section 9 is thus complete and the required particulars have been furnished along with details of

subsistence of default.

16. That apart in compliance of sub-section (3) (b) and (C) of Section 9 of the Code, the petitioner has affirmed that respondent corporate debtor has

not raised any dispute in respect of the unpaid operational debt.

17. It is reiterated that in the present case the default committed by the corporate debtor is not denied. The material on record clearly goes to show

that the respondent committed default in payment of the claimed operational debt even after demand made by the applicant operational creditor. In

fact, there is a clear admission of debt and default and therefore there is no need to comply with any additional requirement as provided in Clauses (d)

and (e) of sub-section (3) of Section 9 of the Code.

18. In terms of sub-section (4) of Section 9 of the Code the Petitioner Operational Creditor has proposed the name of Shri. Manish Aggarwal, for

appointment as Interim Resolution Professional. There is a declaration made by him that no disciplinary proceedings are pending against him in

Insolvency and Bankruptcy Board of India or elsewhere.

19. It is also pertinent to note that the default of operational debt clearly exceeds the ceiling of Rs. 1 lakh, as provided in Section 4 of the Code. The

corporate debtor has also not raised any dispute in respect of the claims of the applicant operational creditor. Rather the respondent has sought time to

repay the balance outstanding claim debt. It is thus seen that the application preferred by the operational creditor is complete in all respect and there is

default committed by corporate debtor in making payment of the operational debt.

20. Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited V. Kirusa Software Private Limited, reported in AIR 2017 SC 4532

has held that:

25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the

receipt of the demand notice of the unpaid operational debt in relation to such dispute?

21. In the present application all the aforesaid requirements have been satisfied. It is seen that the application preferred by applicant operational

creditor is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed

operational debt even after demand made by the applicant operational creditor. Respondent company also did not raise any dispute regarding the

existence of operational debt. In fact, the claim of default committed by the corporate debtor has not been denied. Once the application is complete

and in the absence of any dispute and with the subsistence of default, the application is liable to be admitted.

22. Therefore, on fulfilment of requirements of Section 9(5)(i) (a) to (d) of the Code, the present application is admitted.

23. In terms of sub-section (6) of Section 9 of the Code the Corporate Insolvency Resolution Process in respect of respondent corporate debtor shall commence from the date of this admission order.

24. The Applicant has proposed the name of Mr. Sanjay Kumar Singh, Registration No. IBBI/IPA-002/IP-N00188/2017-18/10505 resident of 003

Windsor, Grand Forte, Plot No. 76, Sigma-IV, Greater Noida, U.P. Mr. Sanjay Kumar Singh 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. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy

Board of India or elsewhere. Accordingly, he satisfies the requirement of Section 7(3)(b) of the Code. Accordingly, we appoint Mr. Sanjay Kumar

Singh, Registration No. IBBI/IPA-002/IP-N00188/2017-18/10505 resident of 003 Windsor, Grand Forte, Plot No. 76, Sigma-IV, Greater Noida, U.P

as an Interim Resolution Professional.

25. 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 Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of

the Insolvency & Bankruptcy Code, 2016.

26. We also declare moratorium in terms of Section 14 of the Code, which shall have effect from the date of this order till the completion of Corporate

Insolvency Resolution Process as per sub-section (4) 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) of the Code. 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 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 corporate debtor.

27. 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 as may 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) Act, 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.

28. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 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 committed by the

ex-management or any tainted/illegal transaction by ex-directors or anyone else, 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 strictly in accordance with the provisions of the Code, Rules and Regulations.

29. Let the copy of the order be communicated to the Operational Creditor and the Corporate Debtor in accordance with Section 9(5)(i) of the Code.

The office is also directed to communicate a copy of the order additionally to the Interim Resolution Professional and the Registrar of Companies,

NCT of Delhi and 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.