

(2020) 10 NCLT CK 0020

National Company Law Tribunal New Delhi Bench

Case No: Company Petition No. (IB)-2721(ND) Of 2019

M/S Straight Edge Contracts Pvt.
Ltd.

APPELLANT

Vs

M/S Three C Shelters Pvt. Ltd.

RESPONDENT

Date of Decision: Oct. 16, 2020

Acts Referred:

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

Hon'ble Judges: DR. P.S.N Prasad, J; Sumita Purkayastha, Member (Technical)

Bench: Division Bench

Advocate: Aviral Kapoor, Nikhil Jain

Final Decision: Allowed

Judgement

Dr. P.S.N Prasad, J

1. Vide order dated 20.07.2020 the present petition was allowed. The present order shall be read along with order dated 20.07.2020 and order dated

14.10.2020. Further the Petitioner has filed an application for correction of typographical error of the order dated 20.07.2020. Before considering the

said application, an intervener, who is a petitioner before this Tribunal against the same Corporate Debtor under Section 7 of IBC proceedings, which

is a different matter has moved an application bearing Company. Application No.2970 Of 2020 In C.P. No. Ib - 2721(Nd)/2019 which is the main

petition before us. After adjudication of the said application (i.e. Company Application No.2970 Of 2020) another application IA NO. 3079 of 2020 for the correction of the typographical error of the order dated 20.07.2020 was taken for hearing and upon hearing the counsel appearing for the said application (i.e. IA NO. 3079 of 2020) was allowed. Hence, it resulted in passing the detailed order today.

2. M/S Straight Edge Contracts 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') or initiation of Corporate Insolvency Resolution Process in respect of Respondent. Company M/S Three C Shelters Pvt. Ltd

claimed to be the Corporate Debtor.

3. The Respondent M/S Three C Shelters Pvt. Ltd. against whom initiation of Corporate Insolvency Resolution Process has been prayed for. is a

company incorporated on 31.12.2010 under the provisions of the Companies Act, 1956 having its registered office at C-23 Greater kailash Enclave,

Part-1, New Delhi-110048. 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.

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

i. The Operational creditor was approached by the Corporate Debtor for construction of the balance construction work at their residential site, i.e.

Greenopolis, situated at Sector 89, Gurugram, Haryana.

ii. Subsequently, an agreement dated 28.11.2017 was entered into between the corporate Debtor and the Operational Creditor.

iii. At the aforementioned residential project, the Operational Creditor has complete construction work amounting to Rs. 33,08,46,411/- between

November, 2017 to August, 2018 Against the construction work, the Corporate Debtor has made partial payment amounting to Rs. 3,12,55,376/-, The

last payment was made on 17.03.2018, Thus, the total due pending against the Corporate Debtor with respect to construction of the said project

amount to Rs. 29,95,91,034/-

iv. The Operational Creditor has completed construction work amounting to Rs. 33,08,46,411/- out of which a partial payment of Rs. 3,12,55,376.78/-

has been made by the Corporate Debtor. Therefore, an amount of Rs. 29,95,91,034/- along with 24% interest is pending, against the Corporate

Debtor.

5. Since no total payment was received from Corporate Debtor, 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. Mr. Rajeev Baisoya, duly authorized on behalf of "M/S Three C Shelters Pvt. Ltd. Vide Board Resolution dated 24.06.2019 has filed an affidavit on 05.03.2020 along with e-mail dated 27.01.2020 sent by Mr. Girish Joshi one of the director of the respondent company, in which the respondent company has admitted the dues of the Operational Creditor and it has also been affirmed in the affidavit that the board and employees of company will extend full cooperation to the IRP/RP in smooth functioning of the CIR Process of Respondent Company.

7. 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.

8. The present application under Section 9 of the Code has been tiled 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.

9. 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.

10. 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) or Section 9 of the Code.

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

12. 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.

13. The Applicant has tiled the written communication in form 2 and the same is reflecting under in IB No. 2470 of 2020 which is for the early listing of the petition instead of disclosing the particulars in main petition i.e. IB 2721 of 2019. The Applicant has proposed the Name of Mr. Amarpal,

Registration No. IBBI/IPA-001/1P-P-01584/2018-2019/12411, resident of C-2, plot No. 50, Gyan Khand-2, Indirapuram, Ghaziabad, with email

id_amarpal@icai.org. Mr. Amarpal 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. Amarpal, Registration No. IBBI/IPA-001/1P-P-01584/2018-2019/12411

resident of C-2, plot No. 50, Gyan Khand-2, Indirapuram, Ghaziabad, with email id_amarpal@icai.org as an Interim Resolution Professional.

14. 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.

15. 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 or 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.;

16. It is made clear that the provisions of moratorium shall not apply to transaction which might be notified by 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 interrupt 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.

17. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Section 15, 17, 18, 20 & 21 of the Code and transact

proceeding with outmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear

that all the personal 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 extent 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 violence 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 or 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.

18. 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.