IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, COURT -V

C.P. (I.B) No.252 /MB/2024

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

SILVEROAK HOME APPLIANCES PRIVATE LTD.

Having its registered address- Row House No.6, Pratap Nagar, Osmanpura, Aurangabad, Maharashtra-431005

...Operational Creditor/Petitioner

Vs

INDIAN REFRIGERATOR COMPANY LTD.

Having its registered address at Auto Cars Compound, Adalat Road, Aurangabad, Maharashtra-431005

...Corporate Debtor/Respondent

Order Dated:14.08.2024

Coram

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member (Technical)

Appearances: (Physical)

For the Operational Creditor: CS Rishabh Sonkeshariya (VC)

For the Corporate Debtor: Harsh Kesharia (VC)

ORDER

1. This Company Petition is filed by Silveroak Home Appliances Pvt. Ltd. (hereinafter referred as "the Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against Indian Refrigerator Company Ltd. (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of Rs.3,03,09,574/- (principal+interest). Demand Notice dated 06.11.2023 was sent via speed post and the same was delivered on 23.11.2023, the Corporate Debtor replied to the said demand notice merely seeking time to make payment.

Brief facts:

- 2. It is the case of the Operational Creditor that it has supplied goods to the Corporate Debtor between 8th April 2021 to 3rd January 2022 from time to time as per the Purchase Order(s) and raised Invoices respectively but the Corporate Debtor did not make the payments to the operational creditors for long time.
- 3. Further the Operational Creditor was regularly following up with the Corporate Debtor for the due and acknowledged payments but no concrete replies were received and nor any payments were being made by the

Corporate Debtor. After follow up for the dues and not receiving any concrete replies from the Corporate Debtor and only getting some hollow promises to pay the outstanding debt and simply seeking more and more time to make the payment, the Operational Creditor finally decided to send the demand notice to the Corporate Debtor under section 8 of the Insolvency & Bankruptcy Code, 2016 ("IBC").

- **4.** The Operational Creditor has sent demand notice under section 8 of IBC dated 06.11.2023 by way of email to the registered email id of the Corporate Debtor as mentioned on MCA website as well as by the speed post.
- **5.** The said demand notice got delivered to the Corporate Debtor by the way of speed post on 24.11.2023. Also, the demand notice was delivered by way of email i.e. by electronics means dt. 23.11. 2023.
- 6. The Corporate Debtor has replied on email to the Operational Creditor as a reply to the demand notice 29.11.2023 and merely sought time to make the payment. Thus it is the case of the Operational Creditor since there is no payment by the Corporate Debtor after repeatedly asking for the same. The matter is squarely covered under section 9 of the IBC and it deserved to be admitted for commencing the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor.
- **7.** The case of the Operational Creditor is that the dues are above Rs. 1 crore which are duly admitted by the Corporate Debtor in its reply to the Operational Creditor's demand notice and previously as well.
- **8.** They have received the Record of Default by the concerned authority on 3rd February, 2024. The relevant documents to prove the existence of debt is annexed to the petition.
- **9.** At the outset the respondent denies each and every statement and allegations made by the petitioner in the petition under reply. It is the case of the Corporate Debtor that there is a lot of repetition in the present

petition. The respondent received the copy of the petition on email as well as by speed post from the counsel of the petitioner.

- **10.** It is submitted by the Operational Creditor that the petitioner had supplied goods to the respondent as stated in the petition but in some consignments, there was problems which was brought to the knowledge of the petitioner from time to time.
- 11. It is true that the petitioner has subsequently rectified the said problems but the respondent had informed to the petitioner that the making of payments as per the invoices raised shall be made but it shall take some time and the payments cannot be made instantly at all.
- 12. It is submitted by the Corporate Debtor that the petitioner agreed to wait for a reasonable time to receive the payments for the goods supplied as per the communication between the parties, but it came as a shock to the Corporate Debtor that the petitioner has all of a sudden sent the demand notice under section 8 of IBC and demanded the full amount of funds even though the respondent had specifically informed the petitioner that the respondent needed some more time to make the payments.
- 13. It is submitted that the respondent company in not in a position to make the payments at this juncture and the same was conveyed to the petitioner and also the settlement proposal was given to the petitioner in the matter. It is submitted that the respondent is functional company and are willing to settle the dues of the petitioner given a reasonable time to work out the settlement between the parties.
- **14.** The Corporate Debtor asserts that after receiving the demand notice, they communicated with the petitioner, requesting that the case not be filed before the NCLT and proposing an amicable settlement between the parties instead.
- **15.** It is submitted that, given the settlement proposal previously offered by the respondent to the petitioner, even before the demand notice and the filing of

this petition, this petition should be dismissed. The Hon'ble Bench is requested to grant an opportunity for the parties to settle the matter and dismiss the petition accordingly.

16. It is submitted that the proposal to make the payment of INR 1.50 crores as a full and final settlement against the total dues of the petition of INR 3.03 crores to be paid in 30 equal instalments of INR 5 lakhs starting from 30th January 2025 to 30th June 2027. Accordingly, the present petition filed by the petitioner should be dismissed and this Hon'ble Bench may provide an opportunity to settle the matter between the parties.

Findings/Conclusion

- **17.** We have heard the Ld. Counsels for the parties and perused the documents available on the record with their able assistance.
- 18. From the perusal of the documents on record it is evident that the Corporate Debtor has raised purchase orders and Operational Creditor has issued invoices for the goods supplied between 8th April 2021 to 3rd January 2022 which remains unpaid till date. The Operational Creditor has been repeatedly requesting the release of the payments of the amount due which have been already admitted by the Corporate Debtor.
- 19. It is evident that the Corporate Debtor in its reply to the Demand notice via mail dated 29.11.2023 has acknowledged the debt and has confirmed that they will be making the payment shortly. The said mail is reproduced below-

Wed 29/11/2023 5:46 PM
Indian Refrigerator Company Limited <ircl.secretarial@gmail.com>
Re: Demand Notice
To Shankar Sakhare

Dear Sir

We have received your demand notice, we here by confirm that will make payment shortly.

Kindly bear with us

Thanking you

Kesharmal Gandhi

Director

On Thu, Nov 23, 2023 at 3:42 PM Shankar Sakhare <purchase2@silveroakmail.in> wrote:

Dear Sir/Madam

This is reference to our outstanding of Rs. 3,03,09,574/-, Please find attached herewith following documents

- 1) Demand Notice FORM-3
- 2) Notice with Invoice copies -FORM-4
- 20. The Bench observed that even after giving the above assurance the Corporate Debtor has not cleared the payment of the said invoices. Thereafter it is also observed that vide letter dated 05.04.2022, 31.07.2022 and 13.11.2022 the Corporate Debtor has disputed the quality of goods supplied to them and non-compliances of the Purchase Order Terms by the Operational Creditor but the Corporate Debtor in its reply to the petition has accepted the fact that the above issues were subsequently rectified by the Operational Creditor.
- 21. It is observed that the Corporate Debtor in the reply to the present petition has categorically stated that it shall take some time for them to make the payments and thus has proposed a settlement and has asked for some time to clear the said debt in the proposed instalments, thus indicating bad financial health of the Company.

- **22.** In our considered view, Corporate Debtor is unable to pay its debt as there is a clear admission of debt as evident from the reply of the Corporate Debtor and there is nothing on record to show otherwise.
- 23. Therefore, after considering and perusing the facts and circumstances and after pursuing the documents placed on record of the present case, we are of the considered view that the Operational Creditor has been able to establish that there is an existence of "operational debt" which was due & payable and there is a "default" committed by the Corporate Debtor.
- **24.** Accordingly, the above Company Petition is 'admitted' with the following:

ORDER

- **a.** The above Company Petition No. 252/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered **Silveroak Home Appliances Private Limited.**
- b. Mrs. Neha Punit Agrawal having registration No. IBBI/IPA-002/IP-N01130/2021-2022/13728 having email address nehapagrawal@gmail.com hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- **c.** The Operational Creditor shall deposit an amount of Rs.2,00,000/-towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- **d.** That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the

corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- **e.** 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.
- **f.** That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- **g.** That the order of moratorium shall have effect from the date of pronouncement 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.
- **h.** That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- **j.** Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- **k.** Accordingly, CP 252 of 2024 is **admitted**.

SD/-

Madhu Sinha

Member (Judicial)

Reeta Kohli

Member (Technical) /Aakansha/