



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 204
(IB)-556/ND/2023

IN THE MATTER OF:

Praveen Kumar Garg Proprietor

Reg. Office at: WZ-14D, Manohar Park,
New Delhi-110026

**... Applicant/
Operational Creditor**

Versus

APS Infra Engineers Pvt. Ltd.

Reg. Office at: Dwarka Bhawan, 207,
Jeewan Nagar,
New Delhi – 110014

**... Respondent/
Corporate Debtor**

Section: 9 of the IBC, 2016

Order delivered on: 09.08.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Manish Raghav, Adv Abhishek Aggarwal,
Adv Jugnu Bhati, Adv Monika Singh

For the Respondent : None

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

There is no appearance on behalf of the Corporate Debtor. No reply in terms of the order dated 29.07.2024 has been filed. We heard the Ld. Counsel for the Petitioner. Ld. Counsel submitted that the Petitioner supplied fuel oil to the Corporate Debtor for the period from 25.05.2022 to 03.09.2022. The invoice raised by the Petitioner upon the Corporate Debtor are placed on



record at Annexure P-2 (page Nos. 33 to 54.) The Petitioner demanded the defaulted amount from the Corporate Debtor in terms of the demand notice dated 28.06.2023 placed on record as Annexure P-4. The reply to demand notice is on record as Annexure P-5 to the petition. The Petitioner has filed affidavit in terms of the provisions of the Section 9(3)(b) of IBC, 2016 declaring that the Corporate Debtor did not dispute the amount payable by it to the Petitioner.

2. On being asked, as to whether a certificate in terms of the provisions of Section 9(3)(c) has been filed, the Ld. Counsel for the Petitioner specifically stated that no certificate has been placed on record. Nevertheless, he submitted that the default was reported to NeSL and the NeSL report could be placed on record vide diary No. 0710102073682023. We made efforts to find out the document on DMS but the same is not available on DMS/e-portal of this Tribunal. However, the Section 9(3)(c) & (d) provides that the copy of certificate issued by financial institution maintaining accounts of the Corporate Debtor confirming that there is no payment of unpaid operational debt as also the copy of report from information utility should be placed on record, if available. Section 9(3)(e) of the IBC, 2016 specify that the Operational Creditor can rely upon any other document/evidence confirming that there is no payment of unpaid debt to the operational debt by the Corporate Debtor or such other information as may be prescribed.

3. As can be seen from Section 9(5) of IBC, 2016 this Adjudicating Authority may admit the application if the same is complete;- there is no payment of the unpaid operational debt; the invoice or notice for payment to



the Corporate Debtor has been delivered by the Operational Creditor; no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility and there is no disciplinary proceeding pending against any resolution professional proposed under Section 4, if any. Section 9(5)(i) of IBC, 2016 reads thus:

“9. Application for initiation of corporate insolvency resolution process by operational creditor. –

- (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 3 [payment] 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.”*

4. It is revealed from the record that the invoice and notice for payment could be served by the creditor upon the Corporate Debtor. As has been noted hereinabove, the affidavit in terms of the provisions of the Section 9(3)(b) has also been filed. The IP whose name has been proposed by the Petitioner to be appointed as RP has given a declaration that no legal proceedings is pending against him. The relevant excerpt of the declaration reads thus:



- (iv) certify that there are no disciplinary proceedings pending against me with the Board or Insolvency Professional Agency of Institute of Cost Accountants of India;
- (v) affirm that I am eligible to be appointed as a resolution professional in respect of the corporate debtor in accordance with the provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016;
- (vi) make the following disclosures in accordance with the code of conduct for insolvency professionals as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016;
 - (a) That based upon the available information I have no pecuniary or personal relationship with any of the stakeholders, at present, entitled to distribution under sections 53 or 178 of the Code.
 - (b) I am empaneled with Applicant as Insolvency Professional.
 - (c) That I was not in any employee of applicant or of the corporate debtor; however the disclosure shall be made as soon as such information comes to the knowledge of the IRP/RP with respect to any other stakeholder(s).
 - (d) That I shall disclose the fee payable to me.
 - (e) That I shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing my remuneration.
 - (f) That I shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders after my appointment as IRP/RP.
 - (g) Any other disclosure which is required to be made in my role as IRP/RP

(Signature of the Insolvency Professional)


SUMIT SHUKLA

5. It is noted that on 31.01.2024, on instruction from his client, Mr. Arun Saxena, Ld. Counsel for the Corporate Debtor could take a stand that an amount of Rs. 1,40,76,950/- is payable by the Corporate Debtor to the Operational Creditor and committed to pay the same on 24.06.2024. The order dated 31.01.2024 reads thus:-

“The captioned petition has been preferred by Mr. Praveen Kumar Garg, proprietor of GSV Products seeking initiation of CIRP qua the CD viz., APS Infra Engineers Pvt. Ltd. According to the Applicant, the CD has defaulted to pay an amount of Rs.1,40,76,950 plus interest at the rate of 24 %.

As can be gathered from the Part-IV of the application, the operational creditor namely; Mr. Praveen Kumar Garg had been engaged in supply of fuel oil to the corporate debtor. In the course



of the business, the operational creditor delivered fuel oil at various sites/offices of the corporate debtor. For such supply it was generating tax invoices.

The total amount became payable to the operational creditor as consideration for supply of the fuel oil was Rs.1,85,69,310, out of which the corporate debtor made the payment of Rs.44,92,360. The amount defaulted to be paid by the corporate debtor is Rs.1,40,76,950 plus interest thereon at the rate of 24% per annum. Para 4 of the application reads thus:-

“4. It is further stated that the Corporate Debtor has not paid any amount towards the default amount outstanding against the Operational Creditor.”

Mr. Manish Raghav Ld. Counsel appearing for the Applicant/Financial Creditor referred to the report of default given by the any SL, to espouse that there is no dispute or quarrel regarding the default made by the corporate debtor in paying the defaulted amount to the Applicant. He could also make reference to the affidavit filed in terms of the provisions of Section 9(3)(b) of the IBC, 2016.

During the course of hearing, when we had started dictating the order as above, Mr. Arun Saxena Ld. Counsel for the corporate debtor could take instruction from his client and submitted that the corporate debtor is prepared to pay principal defaulted amount of Rs. 1,40,76,950 to the Applicant(OC) in 5 instalments. The proposal is accepted by Mr. Manish Raghav Ld. Counsel appearing for the Applicant. Mr. Arun Saxena could undertake that one of the equal instalments of the principal amount would be paid by the corporate debtor to Applicant on 24.02.2024 and the subsequently instalments would be paid on 25th of every ensuing months, till the total principal amount is paid. In view of the settlement arrived by the counsels for the parties on instruction from their clients, the present petition is disposed of. It is made clear that in the event of



there being default on the part of the corporate debtor in paying the amount of any of the instalments the Applicant would be entitled to seek revival of the present petition.”

6. In RA-60/2024, the Petitioner could espouse that the payment has committed to be made in terms of the order dated 31.01.2024 has not been made to the Corporate Debtor. On 29.07.2024, the Ld. Counsel for the Corporate Debtor sought an opportunity to file reply to the petition but neither any reply to the Petition has been filed nor there is any appearance on behalf of the Corporate Debtor. From the order dated 31.01.2024, itself, it is apparent that the Corporate Debtor has liability to pay an amount of Rs. one crore to the Petitioner and has defaulted to pay the same. **In the wake, the petition deserves to be admitted.**

Ordered accordingly.

7. In the backdrop, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

8. As proposed by the Petitioner, Mr. Sumit Shukla having IBBI Registration No. IBBI/IPA-003/IP-N00064/2017-2018/10550 and Email ID Sumit_shukla@rediffmail.com is appointed as IRP, subject to the condition that there is no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

9. It is further ordered that Mr. Sumit Shukla having IBBI Registration No. IBBI/IPA-003/IP-N00064/2017-2018/10550, shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

10. The Petitioner is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.



11. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner/Operational Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

12. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal to IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

UPASANA