

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1974 (ND) 2019

In the matter of

RAJAT MITRA
PROPRIETOR
M/S CALDRON GRAPHICS
HAVING OFFICE AT:
F-3/13, OKHLA INDUSTRIAL AREA,
PHASE-I, NEW DELHI-110020.

.....Operational Creditor

VERSUS

PERFACT COLOR DIGITAL PRINTS PVT. LTD.
HAVING REGISTERED OFFICE AT:
SHOP NO. 2, PREM NAGAR MARKET,
TYAGRAJ NAGAR,
NEW DELHI-110003

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 09.12.2019

CORAM:

JUSTICE (RETD.) RAJESH DAYAL KHARE, MEMBER (JUDICIAL)
MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv. S. K. Sharma, Advocate for the Petitioner

None present on behalf of Respondent



ORDER

Per Ms. Sumita Purkayastha (Member Technical)

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The operational Creditor is a proprietorship firm engaged in the business of import and supply of Solvent printers & Inks etc. The Corporate Debtor is a company incorporated under the Indian Companies Act, 1956. On 29.07.2015, the Corporate Debtor approached the operational Creditor for purchase of HP Latex 360 Printer along with ONYX RIP Software Version 11 for the total consideration of Rs. 14,89,200/- vide invoice bearing no. R-00183.
3. The Corporate debtor issued an account payee cheque of Rs. 13,89,200/- bearing no. 714609 drawn on Oriental Bank of Commerce, Sector-10-A, Khandsa, Gurgaon, in favour of Operational Creditor to make the part payment of said printer and software.
4. The Operational Creditor deposited the above mentioned cheque bearing no. 714609 for encashment with his banker i.e. HDFC Bank Ltd., Defence Colony, New Delhi on 30.07.2016. The above mentioned cheque was dishonoured and returned unpaid with mark "Insufficient Funds" vide returning memo dated 16.08.2016. The Corporate Debtor had failed to make the payment as demanded under section 138(b) of the Negotiable Instrument Act, 1881, the Operational Creditor filed a complaint under Section 138 of Negotiable Instrument Act, 1881 against the Corporate debtor and its directors. The same is pending for trial.



5. The total amount of debt claimed in the present application is Rs. 14,89,200/- as principal amount and Rs. 10,83,980/- as interest @18% per annum from 29.07.2019-12.08.2019.
6. The Operational Creditor issued a demand notice dated 27.07.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding to repay the unpaid operational debt of Rs. 25,60,680/- with ten days from the receipt of the notice. The Operational Creditor has neither received payment nor notice of dispute from the Corporate Debtor even after the expiry of the period of ten days from the date of delivery of the notice dispatched by the Operational Creditor.
7. The Petitioner, therefore, filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 14,89,200/- being principal amount and Rs. 10,83,980/- being interest @18% per annum from 29.07.2015-12.08.2019.
8. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.
9. As per the averments of the Petitioner, the Corporate Debtors did not make the payment against the default amount. None appeared on behalf of the Corporate Debtor to oppose the prayer made by the petitioner, hence they were proceeded ex-parte. The present petition being filed in August, 2019 is within the limitation, being within three years from the date of the cause of action.



Considering the circumstances this Tribunal 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:-

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation 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.*

Further:

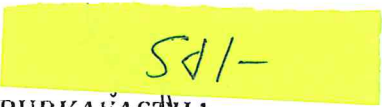
(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.


(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an

order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

10. The Operational Creditor has proposed the name of any IRP. Accordingly, we appoint Mr. Shashi Bhushan, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00676/2018-19/12114 email- shashibpd@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
11. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
12. Petition is therefore admitted.


SUMITA PURKAYASTHA
Member (T)


JUSTICE RAJESH DAYAL KHARE
Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.


(PRABHAT KUMAR SHARMA)

COURT OFFICER