

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 3416/2023
IN
CP(IB)No. 398/MB-IV/2023

Under Section 9 of the I&B Code, 2016

In the matter of:

Saraswati Wire & Cable Industries

PAN: -AAKFS5821R

...Operational Creditor

V/s

Dhanlaxmi Electricals Private Limited

[CIN: U74900MH2015PTC261718]

...Corporate Debtor

Order pronounced on: 06.12.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner(s):

Mr. Devendra R. Dhanesha, Ld.
Advocate.

For the Respondent(s) :

No Representation

ORDER

1. This is an application being CP(IB) No.398/NCLT/MB/C-IV/2023 filed by **Saraswati Wire & Cable Industries**, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for

initiating Corporate Insolvency Resolution Process (CIRP) in the matter of **Dhanlaxmi Electricals Private Limited**, Corporate Debtor.

- 1.1. The Company Petition is filed on 17.02.2023 claiming the total amount of debt in default is Rs. 2,04,20,800/- (the principal amount defaulted is Rs. 1,79,93,691/- and the Interest Amount, as applicable on invoice due and payable was Rs. 85,27,110/- till 24.08.2021.). The date of default is 21.11.2019 (as specified in Annexure 5 of the petition).
2. The Operational Creditor issued demand notice in Form No. 3 dated 25.08.2021 to the Corporate Debtor. After issuance of Demand Notice an amount of Rs. 61,00,000/- was received by the Corporate Debtor which has been apportioned towards both outstanding principal and interest by the Operational Creditor.
3. The Corporate Debtor on 20.11.2021 replied to the said demand notice dated 25.08.2021 wherein he has raised certain frivolous dispute in relation to the goods supplied to them and regarding the two invoices dated 29.09.2019 and 06.10.2019.

Findings

4. The bench has heard the arguments of Learned Counsel for Operational Creditor
 - 4.1. This bench observed that vide order dated 10.07.2023, the Corporate Debtor was granted 2 weeks' time to file reply and also indicated that if the Corporate Debtor failed to file reply within the given time, the matter will be heard on merits. Thereafter, the matter was listed on 07.08.2023 and in the interest of justice the Corporate Debtor was again granted two weeks

to file reply. As no reply was filed after ample opportunity, right to file reply by the Corporate Debtor was *forfeited* by this bench vide order dated 11.09.2023. The matter was heard on merits and was Reserved for Orders vide its order dated 12.10.2023.

4.2. This bench observes that, the Operational Creditor has relied upon email dated 04.08.2021 received from the Corporate Debtor attaching the ledger account of the Operational Creditor in the books of the Corporate Debtor and confirming that an amount of Rs. 1,79,93,690/- is due and payable to the Operational Creditor. This itself shows that debt is established and there is an admission of liability on part of the Corporate Debtor. The Bench also notes that after issue of Demand Notice the Corporate Debtor has made payment of Rs. 61,00,000/- towards outstanding dues.

4.3. The Corporate Debtor through its reply to demand notice dated 20.11.2021 raised a dispute regarding only two Invoices dated 29.09.2019 and 06.10.2019 Invoice No. 203 and Invoice No. 205 totalling to Rs. 57,23,944/-. In the instant case, going by the aforesaid test of the 'pre-existence of dispute' it is clear that the Corporate Debtor has not raised any plausible contention nor there is a supporting document/evidence placed on record with reference to any pre-existing dispute on the above-mentioned invoices. In that view of the matter, this bench is of the considered view that plea raised by the Corporate Debtor has no substance; hence, the said submission cannot be taken into consideration.

5. As per the material on record this Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is

due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/s 9 of IBC,2016.

6. The applicant has filed IA No.3416/2023 has proposed the name of IRP for the Corporate Debtor. Accordingly, the **IA No. 3416/2023** in **CP No. 398/2023** is **allowed** and disposed of.
7. In view of the above, we find that the present case deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

8. The petition bearing CP (IB) No.398/MB-IV/2023 filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Saraswati Wire & Cable Industries**, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter of **Dhanlaxmi Electricals Private Limited**, Corporate Debtor is **Admitted**.

- I. That this Bench as a result of this prohibits:
 - 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 Operational 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints **Mr. Rajan Garg**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P-02397/2021-2022/13624** Email: **fcarajangarg@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- VII. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VIII. The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The

expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- IX. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- X. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.
- XI. Accordingly, the **IA No. 3416/2023** in **CP No. 398/2023** is **allowed and disposed of**.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.12.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)