

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB)/96/MB/2024

Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

SUNSTAR INDUSTRIES,

Through its Partner Mr. Tarrush Gupta
Regd. Office: E-1 /18, First Floor,
Model Town-2,
Delhi- 110009.

..... Applicant/ Operational Creditor

Versus

SYSKA LED LIGHTS PRIVATE LIMITED, having its registered office at :-
'SYSKA House, office No. S-2, 2nd Floor,
Sakorenagar, New Airport Road, Near
Anand Residency, Pune
Maharashtra- 411014

.....Corporate Debtor

Order Delivered on :- 08.10.2024

Coram:

ANIL RAJ CHELLAN

KULDIP KUMAR KAREER

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Appearances:

For the Operational Creditor: Adv. Rohit Gupta a/w Adv. Nipun
Gautam

For the Corporate Debtor: Adv. Aman Kacheria a/w Adv. Darshan
Suvarna

ORDER

Per: - Mr. Kuldeep Kumar Kareer (Judicial)

1. This Company petition is filed by M/s. Sunstar Industries, a Partnership firm (hereinafter referred to as "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Syska Led Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read

with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Company Petition was filed on 28.12.2023 claiming an amount of Rs.7,70,95,748/- (Rupees Seven Crores, Seventy lakhs, Ninety-Five Thousand, Seven Hundred and Forty-Eight) out of which the principal outstanding is INR 7,19,45,494/-and interest on the principal outstanding is INR 51,50,254/-.
3. The details of the transactions leading to the filing of this Application as averred by the Operational Creditor in the application are as follows:
 - a) M/s Sunstar Industries is involved in the business of manufacturing, designing, fabricating, importing, exporting of all kinds of electrical home appliances. During the course of its business, in and around the year 2017-18, M/s Syska Led Lights Pvt. Ltd. and the Operational Creditor began business with the understanding that supply of goods was to be made by the Operation Creditor and timely payments to be made by the Corporate Debtor. The Operational Creditor agreed, as a goodwill gesture, for a 60-day credit period from the date of supply for making payments.
 - b) Upon completion of each supply, the Operational Creditor duly raised invoices upon the Corporate Debtor, which were never disputed. While initially the payment terms were duly adhered to by the Corporate Debtor, however, the Corporate Debtor has committed substantial default as on date of the Demand Notice.

- c) As on the date of issuance of Demand Notice, the Corporate Debtor continues to be in default of a total of 25 invoices raised between March 2023 to July 2023.
- d) The Corporate Debtor has on multiple occasions, acknowledged the amount of debt towards the operational creditor by way of multiple emails and post-dated cheques.
- e) After multiple reminders, the Corporate Debtor issued fresh cheques dated September 2023 to November 2023 amounting to 7,00,00,000/-. In the emails, it accepted the default and promised to pay the same by or before 30.10.2023. However, the Corporate Debtor failed to honour its commitment. Also the cheques issued by corporate Debtor in September were dishonoured when presented to the bank for encashment.
- f) The date of default of the present principle debt is as follows: -

Date	Amount
02.12.2023	6,89,99,999/-
05.09.2023	10,00,001/-
30.10.2023	19,45,493/-
Total	7,19,45,493/-

- g) It is, therefore, clear that the Corporate Debtor has intentionally defaulted in its payments and has showed no real intention of clearing the dues.

4. Reply by the Respondent:

- a. The Respondent has submitted that the present Company Petition is filed based on falsehoods, deliberate misstatements and suppression of material facts. At paragraph 1(4) of the Part IV of the Company Petition, the Petitioner has falsely stated that -- "*At no point during such supply was any dispute or demur raised by the Corporate Debtor as regards the material supplied by the Operational Creditor*". As more particularly set out herein below, this statement could not be farther from the truth. There are scores of emails exchanged between the Petitioner and the Corporate Debtor whereby the Corporate Debtor has raised disputes pertaining to the defective goods supplied by the Petitioner. Due to such defects, the Corporate Debtor was constrained to return these goods to the Petitioner and became entitled to a refund in lieu thereof. In this regard, various debit notes were raised by the Corporate Debtor, and accepted by the Petitioner. None of these debit notes have been accounted for while arriving at the purported debt amount in the Company Petition. The emails, the debit notes and the fact of there being a persistent dispute pertaining to the goods supplied by the Petitioner, has been deliberately suppressed in the Company Petition. For this reason alone, the Company Petition deserves to be dismissed with

exemplary costs and strict action ought to be taken against the Petitioner under Section 76 of the IB Code.

- b. It is submitted that the Petitioner is part of a group known as the Shree Khatuji Industries ("SKI Group") and is in the business of manufacturing home appliances including inter alia irons etc. The Petitioner used to supply irons to the Corporate Debtor, which the Corporate Debtor would then sell under its brand name. As per the terms agreed between the parties, the goods supplied by the Petitioner were to have a minimum of 2-year warranty, within which period the Petitioner were to accept return of any defective goods provided by it and refund its cost to the Corporate Debtor.
- c. The respondent has submitted that due to the stretched out two-year warranty period (within which time the goods could be returned against full refund), the settlement of dues in accounts between the Petitioner and the Corporate Debtor was always an ongoing process. It is for this reason that the Invoices issued by the Petitioner do not specify any terms of payments as no fixed timeline for payment was ever agreed between the parties.
- d. The parties have always been at odds with each other, due to the high volume of defective goods provided by the Petitioner, which is much higher than the industry average. There were issues with soleplate coatings, cord flexibility, finishing of heat shield plate, handle and handle cover, moulding parts etc. These issues and defects had been accepted by the Petitioner as well. Such defects

resulted in the Corporate Debtor time and again seeking refund of the monies paid against such goods, and issuing debit notes from time to time.

- e. It is further submitted that Petitioner has initiated various proceedings against the Corporate Debtor before the Ld. MSEFC Council, District (North) in New Delhi, through its partner Mr. Tarntsh Gupta ("MSEFC Proceedings") and even a complaint under S. 138 of the Negotiable Instruments Act, 1881 was filed. Pertinently, the amount claimed to be due in the said MSEFC Proceedings do not match with the amounts claimed in the present Company Petition. Even on this count, and on account of the fact that the MSEFC Proceedings are still pending, the present Company Petition ought not to be entertained.
- f. It is thus denied that the amounts as claimed in the Company Petition are due and payable to the Petitioner. It is denied that the interest as claimed by the Petitioner can be levied on the purported outstanding amounts (if any). It is denied that the Petitioner is registered under the MSME Act for the relevant products it supplied to the Corporate Debtor. Assuming (whilst denying) that it is so registered, it never intimated the Corporate Debtor of such registration. Nor did it inform the Corporate Debtor that any interest will be levied on the amounts payable to it. There is no stipulation as to interest in the invoices. Payment of interest was never agreed between the parties.

- g. In the end, the Corporate Debtor has prayed for the dismissal of the Company Petition

ANALYSIS AND FINDINGS

5. We have heard the Counsel for the Applicant-Operational Creditor and the Respondent-Corporate Debtor. We have also gone through the pleadings and the records.
6. During the course of the argument the counsel for the applicant has argued that the existence of the operational debt stands proved on record on the basis of the invoices vide which goods were supplied to the Corporate debtor between 31.03.2023 and 31.07.2023 for a total sum of INR 7,19,45,494/-. According to the counsel for the applicant, no payment was made by the corporate debtor against the said invoices. Though post dated cheques were issued by the corporate debtor but on presentation the same were dishonoured. Counsel for the applicant has further referred to the emails dated 22.11.2023 (Annexure 9) whereby the corporate debtor requested the applicant not to present the cheques. The counsel for the applicant has further referred to another email of the same date (Annexure 10) whereby also the corporate debtor promised that the amount in question would be cleared soon and in the meanwhile no legal action be taken by the applicant. The counsel for the applicant has further referred to another email dated 04.03.2024 annexed with the rejoinder as Annexure A/1 whereby also the corporate debtor promised to clear the over due amount by 30.03.2024. The counsel for the applicant has further contended that no dispute was

raised by the corporate debtor at any point of time and therefore it is a fit case for admission under Section 9 of the IB Code.

7. On the other hand, the counsel for the corporate debtor has pointed out that OTS proposal was made to the applicant by the corporate debtor on 25.08.2024 which was not accepted and in reply to the OTS proposal the applicant responded that he was not willing to forego the interest part of the claim. The counsel for the Corporate Debtor has further argued that the applicant is using the present application as a recovery mechanism which is not permissible under the law. It has also been pointed out that the applicant has also initiated proceedings under MSMED against the Corporate Debtor and the filing of the present application is nothing but a gross abuse of the process of law.
8. The counsel for the corporate debtor has further argued that there is a pre-existing dispute between the parties with regard to the quality of the goods supplied by the applicant and on that account also, application is liable to be dismissed.
9. We have considered the contentions raised by the counsel for the parties and have carefully gone through the record.
10. It has not been disputed by the Corporate Debtor that the goods worth INR 7,19,45,494/- were supplied by the applicant between 31.04.2023 and 31.04.2023 through invoices detail of which has been given in Annexure A annexed with the application. In the emails dated 22.11.2023, the corporate debtor in a way acknowledged its liability to repay the outstanding amount as it requested the applicant not to

deposit the post dated cheques. In one of the emails (Annexure 10), it has candidly admitted by the corporate debtor that the due amount is INR 7,19,45,494/- excluding interest as on 12.10.2023. Thus the factum of supply of goods and non-payment of the due amount has been candidly admitted by the corporate debtor. Therefore, the existence of operational debt and its default stands cogently proved on record.

11. Merely because the applicant refused to accept the OTS proposal put forth by the corporate debtor cannot be a ground to reject the application under Section 9. Similarly, if the applicant had initiated some proceedings under the MSMED Act, 2006 for the recovery of the outstanding dues, it does not debar the applicant in any way from the filing the application under Section 9 of the IB Code, 2016.
12. Though it has been claimed by the counsel for the corporate debtor that there exists a dispute between the parties with regard to quality of goods supplied by the applicant, in our considered view, from the facts and circumstances of the case no such dispute appears to be in existence. Had there been any genuine dispute with regard to the quality of goods, the corporate debtor would not have acknowledged its liability to pay the outstanding amount from time to time through the emails, as set out in the foregoing part of this order whereby time and again the corporate debtor kept asking for more time to make the payment. Even in the reply dated 26.12.2023 sent by the corporate debtor in response to the demand notice, no such plea with regard to the quality of goods has been raised which amply proves that the defence of pre-existing dispute is nothing but a moonshine one and deserves to be rejected.

13. No other points have been raised on behalf of the corporate debtor.
14. As a result of above discussion, we are of the considered view that the applicant has been able to establish the existence of operational debt and its default on the part of the corporate debtor and further that the application has been filed within the period of limitation and also there is no pre-existing dispute between the parties with regard to the transaction in question. Accordingly, we hold that it is a fit case for admission under Section 9 of the Code.
15. The **Company Petition no. 96/2024** is hereby **admitted**. However, there shall be no order as to costs. It is ordered accordingly in the following terms: -

ORDER

- a. **The above Company Petition No. (IB) 96 (MB)/2024 is hereby admitted** and initiation of Corporate Insolvency Resolution -Process (CIRP) is ordered **against M/s. SYSKA LED PRIVATE LIMITED;**
- b. This Bench hereby appoints **Mr. Debashis Nanda**, Insolvency Resolution Professional, having Registration No: **IBBI/ IPA-003/ IPN00040/2017-**

2018/10316 having registered address as Flat No C S -14, C-Floor, Ansal Plaza, Vaishali, Ghaziabad, Uttar Pradesh, 201010 and email id as dnanda.cma@gmail.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of **Rs.2,00,000/- (Rupees Two Lakh Only)** towards the initial CIRP cost by way of a Demand Draft drawn in favour 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 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 concerned Registrar of Companies, Pune for updating the Master Data of the Corporate Debtor.
16. Accordingly, **this Petition is admitted.**
17. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
MEMBER TECHNICAL

Sd/-

KULDIP KUMAR KAREER
MEMBER JUDICIAL