

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3456/IBC/MB/2019

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

**Omega Corrugators Private
Limited**

(CIN: U21020MH2002PTC138251)
Having registered office at: Gala No. 1, Ground Floor, Building No.2, Shivalay Indl. Estate II, Chinchpada, Village Gokhiware Vasai Road East MH 402108

**.....Operational Creditor
Vs**

**Apex Consumer Appliances Private
Limited**

(CIN: U29307MH2010PTC203766)
Plot No. 29-P, Off Kanjur Village Road, Opp. Crescent Industrial Estate, Kanjur Marg East, Mumbai MH 400042

.....Corporate Debtor

Order delivered on: 29.07.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Kunal Kanungo, Advocate

For the Respondent: None appeared

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by *Omega Corrugators private limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Apex Consumer Appliances Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs. 64,54,046/- (Rupees Sixty-Four Lacs Fifty-Four Thousand and Forty-Six only) together with interest of Rs. 10,72,623/- @24% per annum aggregating to Rs. 75,26,669/-(Rupees Seventy-Five Lacs Twenty-Six Thousand Six Hundred and Sixty-Nine only).
3. The Submissions of the Operational Creditor are as follows:
 - a. The Operational Creditor is a private limited company incorporated under the Indian Companies Act, 1956 having its registered office address as mentioned in the cause title. The Operational Creditor is engaged in the business of manufacturing of paper boxes and paper products.
 - b. The Corporate Debtor is a Company incorporated under the Indian Companies Act, 1956 having its registered office address as mentioned in the cause title. The

Corporate Debtor is engaged in the business of Gas Stove, Double Gas Stove, Home Appliances etc.

- c. In the usual course of business transactions, several purchase orders were issued by the Corporate Debtor to the Operational Creditor pursuant to which the Operational Creditor provided the requisitioned material (hereinafter referred to as "the Said Materials") to the Corporate Debtor from time to time.
- d. The said Materials ordered by the Corporate Debtor were duly supplied and delivered to the Corporate Debtor at the desired destination at Kanjurmarg (East) as mentioned in the purchase orders.
- e. The Operational Creditor had supplied/delivered the said Materials to the Corporate Debtor as per the specification, terms and conditions of the purchase orders issued by the Corporate Debtor. The Corporate Debtor had received the said materials in good order and condition without any demur and protest and had acknowledged the delivery of the same.
- f. Accordingly, the Operational Creditor had raised various invoices against supply of the said materials which have not been paid by the Corporate Debtor and thus, remain outstanding.
- g. The Operational Creditor had provided the said Materials in all promptness, pursuant to which the said invoices were raised and were duly accepted by the Corporate Debtor without any dispute whatsoever. Therefore, making it clear that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices.

- h. Further, the Operational Creditor states that a total amount of Rs. 64,54,046/- (Rupees Sixty-Four Lakhs Fifty-Four Thousand and Forty-Six Only) together with interest of Rs. 10,72,623/- @24% per annum aggregating to Rs. 75,26,669/- (Rupees Seventy-Five Lacs Twenty-Six Thousand Six Hundred and Sixty Nine only) is due and payable by the Corporate Debtor to the Operational Creditor. The Operational Creditor has maintained the ledger of the running account of the Corporate Debtor wherein after giving credits to the amounts received by the Corporate Debtor, it can be seen that an amount of Rs. 64,54,046/- is still outstanding and payable to the Operational Creditor. Further in accordance with the interest clause mentioned in aforementioned invoices, said amount is added with interest @24%, calculated on the outstanding amount after deducting the maximum allowable credit period of 45 days.
- i. Thereafter, the Operational Creditor constantly followed up with the Corporate Debtor for the outstanding amount. Despite repeated assurances by the Corporate Debtor, the Corporate Debtor failed to make the payment of the outstanding amount. However, due to good business ethics and faith, the Operational Creditor patiently waited and kept reminding the Corporate Debtor to release the payment of the outstanding amount but each time the Corporate Debtor failed and neglected to keep up their promise. Therefore, the Operational Creditor vide its letters dated 18.08.2018, 10.09.2018, 09.10.2018, 30.11.2018, 17.12.2018, 24.12.2018, 31.12.2018, 18.02.2019, 15.07.2019

patiently approached and requested the Corporate Debtor to release the outstanding payments. The Corporate Debtor kept on orally assuring the Operational Creditor that payments will be processed soon but choose to not respond in writing. In addition to the same, the Operational Creditor sent the Corporate Debtor e-mails from time to time updating the Corporate Debtor with the summary of the outstanding invoices with an earnest request to clear the same.

- j. The Corporate Debtor has admitted the liability and acknowledged the debt which is evident from the confirmation of accounts issued by the Corporate Debtor for the period of 01.04.2017-31.03.2018, 01.04.2018-31.03.2019, 01.04.2019-19.07.2019 bearing a stamp and signature of the Authorized Representative of the Corporate Debtor.
- k. Hence, after sending several reminders to the Corporate Debtor for the payment of the admitted outstanding amount and upon not receiving any payment thereof and on realizing the mala fide intention of the Corporate Debtor for avoiding to pay, the Operational Creditor, issued a legal Demand Notice dated 13.08.2019 to the Corporate Debtor in Form-3 & Form 4 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for the payment of the outstanding amount, hence, calling upon the Corporate Debtor to pay the said outstanding amount of Rs. 75,26,669/- (Rupees Seventy-Five Lacs Twenty Six Thousand Six Hundred and Sixty Nine only) within 10 days from the date of receipt of the notice by the Corporate Debtor.

1. Based on the documents placed on record the Corporate Debtor has failed in making the payment of outstanding amount as per the invoices against the rendered services. Therefore, the Operational Creditor is entitled to recover the amount due and payable by the Corporate Debtor.
4. The submissions of the Corporate Debtor are as follows:
 - a. The Corporate Debtor submits in its reply that the present Company Petition is nothing but an attempt of the Operational Creditor to put pressure on the Corporate Debtor to extract monies.
 - b. These invoices do not bear any sign or stamp of the Corporate Debtor neither there is any kind of acknowledgment on the said Invoices. The said Invoices are not certified by the Corporate Debtor. The authentication of the said invoices is doubtful and is disputed by the Corporate Debtor. The very few invoices bear some kind of stamp, but, in the column of "Checked by name", "Signature" and "Date" these rows are left blank. There is no mention of the date of delivery of the goods mentioned in the said invoices nor there is any substantial proof of acceptance of delivery as per the agreed terms and conditions and without any defects.
 - c. The value for which these alleged Invoices are raised is also disputed as the value for the which these invoices are raised for the goods alleged to be supplied are way more than the market rates.
 - d. The Corporate Debtor had to replace each and every rejected piece so supplied at its own costs which

resulted heavy losses to the business of the Corporate Debtor. The business of the Corporate Debtor also suffered bad image in the market and lost its valuable customers due to faulty packaging materials provided by the Operational Creditor. The Operational Creditor has not offered any explanation nor have adjusted any amounts whatsoever. This act of Operational Creditor has caused severe loss and damages to its business and its business operations were on hold.

- e. The delivery was delayed beyond the delivery dates given in the Purchase Orders resultantly leading to cancellation of orders and losses to the company. There are purchase orders which were not serviced by the vendor at all, and as the delay was beyond acceptance and we had to move this order to another vendor causing us delays and cancellation of orders by our customers and losses.
- f. The Corporate Debtor stated that in these circumstances, the present company petition be dismissed at the outset, with costs payable to the Corporate Debtor.

FINDINGS

1. The Corporate Debtor filed their affidavit in reply generally denying the claim of the Operational Creditor. The main contention of the Corporate Debtor in the reply is twofold:
 - i. The invoices are not certified by the Corporate Debtor and the prices quoted by the Operational Creditor in the invoices are more than the market rate.
 - ii. There is a defective quality in services.

2. In the light of the above, the following question that falls for consideration:
 - i. Whether there is a pre-existing dispute between the parties?
3. Heard the counsel appearing for the Operational Creditor and perused the record. Counsel appearing for the Operational Creditor invited the attention of this bench to the various invoices raised by them on the Corporate Debtor which bears the confirmation stamp of the receipt of goods etc. from the Corporate Debtor.
4. The counsel appearing for the Operational Creditor also invited the attention of this Bench to the demand notice and submits that the Corporate Debtor has not sent any reply nor cleared the amount demanded by them in the demand notice. The Operational Creditor also invited the attention of this Bench to the confirmation of accounts dated 29.07.2019 annexed at page no. 200 to the Company Petition whereunder the Corporate Debtor certified an amount of 64,48,456.82 due and payable to the Operational Creditor as per their own books of accounts and prayed for admission of the above company petition.
5. Let us examine the defence of the Corporate Debtor. Before deciding the above issue, it is important to mention here that the counsel appearing for the Corporate Debtor along with the counsel appearing for the Operational Creditor appeared before this bench on 12.02.2020 and represented that the settlement talks are going on between the parties and sought time to file consent terms. Subsequently, the Corporate Debtor failed to appear before this Bench on 06.04.2021 when the matter was listed. On 06.04.2021, this Bench specifically directed both the parties to argue

the matter without fail on 07.05.2021. Again, the matter was listed on board on 02.07.2021 on which date also the Corporate Debtor did not choose to appear. Again, this Bench on 02.07.2021 passed order that if the Corporate Debtor failed to address any arguments on the next date, the matter would be decided as per the material available on record and listed the matter to 23.07.2021. On 23.07.2021 also, none appeared for the Corporate Debtor nor addressed any arguments on their behalf.

6. As stated above, the Corporate Debtor did not issue any reply within the statutory period in response to the demand notice issued by the Operational Creditor nor raised any issues with regard to price or quality of service prior to issuing of the demand notice by the Operational Creditor as per law. As rightly contended by the Operational Creditor, the Corporate Debtor admitted the liability of 64,48,456.82/- as per their own books of accounts. Therefore, the above contentions raised by the Corporate Debtor in the reply will not stand to the test of legal scrutiny. Under these circumstances, this Bench is of the view that there is no pre-existing dispute between the parties and accordingly, the above issue is decided against the Corporate Debtor.
7. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and also proved that the claim is well within limitation. The Operational Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Hence this Bench has no option except to admit the above Company Petition since the above Company Petition satisfies all the

necessary legal requirements for admission under Section 9 of the Code.

8. For the foregoing reasons the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -3456(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Apex Consumer Appliances Private Limited.
- b. This Bench hereby appoints **Mr. Rajat Mukherjee**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00493/2017-18/11723 as the Interim Resolution Professional having registered office at 302 Daga Complex II, 103/5 B. K. Street, Uttarpara, Hooghly, West Bengal- 712258 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh 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 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.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**