

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**C.P. (IB) No. 2053/NCLT/MB/2018**

Under Section 9 of the I&B Code, 2016

In the matter of:

**Perfect Bite**

...Operational Creditor / Applicant

V/s

**Global Sourcing and Procurement  
Consolidation Limited**

...Corporate Debtor / Respondent

**Order Dated: 13<sup>th</sup> November 2019**

**Coram:** Hon'ble Member (Judicial): Mr Bhaskara Pantula Mohan

Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Applicant:** Advocate Yagnesh M. Vyaas

**For the Respondent:** None present

*Per: Bhaskara Pantula Mohan, Member (Judicial)*

**ORDER**

1. This is an Application being C.P. (IB) No. 2053/NCLT/MB/2018 filed by **Perfect Bite**, the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Global Sourcing and Procurement Consolidation Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Application is filed by Mr. Kiran M. Turakhia, authorised signatory of Operational Creditor, claiming a total default of USD 2,32,425/- (United States Dollar Two Lakh Thirty Two Thousand Four Hundred and Twenty Five Only) equivalent to ₹1,55,72,487/- (Rupees One Crore Fifty Five Lakh Seventy Two Thousand Four Hundred and Eighty Seven Only) including interest at 18% p.a. The working for particulars of claim amount is annexed to the Application.
3. The Applicant submitted that it supplied fresh apples to the Corporate Debtor between February 2017 to April 2017 and raised 11 (eleven) commercial invoices upon the Corporate Debtor. Copies of the said invoices are annexed to the Application.
4. The Applicant submitted that despite receiving the goods the Corporate Debtor failed to pay the due amount under the invoices. Therefore, the Applicant and Corporate Debtor entered into an Agreement for Payment dated 26.12.2017. Under the said Payment Agreement, the Corporate Debtor admitted and promised to pay the outstanding invoices amount to the Applicant and issued two Post Dated Cheques (PDCs). However, the said PCDs were returned unpaid upon presentation for the reason being cheques invalid and not drawn as per Banking Practice covered under Negotiable Instruments Act. The copy of Payment Agreement dated 26.12.2017 and PDCs along with Bank's letter are annexed to the Application.
5. The Applicant submitted that even after executing the Payment Agreement, the Corporate Debtor persistently defaulted in making payment of the outstanding invoices. Therefore, the Applicant issued Demand Notice dated 19.04.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of USD 2,32,425/-. The Corporate Debtor did not reply to the Demand Notice.
6. The Applicant submitted that the Corporate Debtor has admitted its liability towards outstanding amount vide its letter dated 10.12.2018.
7. The Applicant filed present Application on 07.06.2018. The Applicant was directed to serve the Court Notice to the Corporate

Debtor vide our Order dated 08.10.2018. The Applicant filed its Affidavit of Service of Notice on 10.12.2018. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor chose not to file any objections in its defence and has further admitted its liability vide its letter dated 10.12.2018.

8. There was no representation on behalf of the Corporate Debtor during hearing. We have heard the Applicant and perused the records.
9. On perusal of the documents submitted by the Applicant, it is clear that Applicant has supplied goods of worth more than ₹1,00,000/- (Rupees One Lakh Only) of which the Corporate Debtor has failed to make payment. Therefore, operational debt of more than Rupees One Lakh is due and payable by the Corporate Debtor which is also admitted by the Corporate Debtor vide the Payment Agreement dated 26.12.2017 and Letter dated 10.12.2018.
10. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.
11. The Application is complete and has been filed under proper form. Copy of the Demand Notice dated 19.04.2018 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 07.06.2018 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.
12. The Applicant has proposed the name of Mr Subodh Balkrishna Gokhale, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00317/2017-18/10922] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2, the proposed IRP has declared that there are no disciplinary proceedings pending against him.

13. The Application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

### **ORDER**

This Application filed under Section 9 of I&B Code, 2016, presented by **Perfect Bite**, Operational Creditor / Applicant against **Global Sourcing and Procurement Consolidation Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- 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 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 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 such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 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. That this Bench appoints **Subodh Balkrishna Gokhale**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00317/2017-18/10922]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**RAJESH SHARMA**

Member (Technical)

Sd/-

**BHASKARA PANTULA MOHAN**

Member (Judicial)

13<sup>th</sup> November 2019