

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) NO. 3994 OF 2019

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER
THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(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

**VANDANA ENTERPRISES PRIVATE
LIMITED**

H No. 321/A, Juni Oli, ZAL Compound,
Residency Road Sadar Nagpur,
Maharashtra 440001

.... Operational Creditor

Versus

VARUN SACKS PRIVATE LIMITED.

D-40, Industrial Area MIDC, BUTIBORI
Nagpur Maharashtra 441122

.... 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)**

Appearance:

For the Petitioner: Mr. P.S. Thakre, Practicing Company
Secretary

Per: Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company Petition is filed by *Vandana Enterprises Pvt. Ltd.*, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against *Varun Sacks Pvt. Ltd.* (hereinafter called "Corporate Debtor") alleging

that the Corporate Debtor committed default in making payment to the Operational Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called the “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 a sum of Rs. 30,72,120/- (Rupees Thirty Lakhs Seventy Two Thousand and One Hundred Twenty Only), (Principal amount of Rs. 25,26,621/- plus interest amount of Rs. 5,45,499/-at the rate of 18% per annum).

The submissions of the Operational Creditor are as follows:

- a. The Operational Creditor supplied goods in the nature of some forms of chemicals to the Corporate Debtor company from time to time.
- b. The Corporate Debtor has made the payment of certain invoices out of the invoices raised for the supply of goods from time to time on running account basis.
- c. The Corporate Debtor has made the payment on running account basis to the Operational Creditor but has failed to honour the payment of certain invoices amounting to Rs. 25,26,621/-.
- d. The Operational Creditor has sent the demand notice dated 14.08.2019 on 20.08.2019 to the Corporate Debtor under Insolvency & Bankruptcy Code for making the due payment of acknowledged debt.
- e. The Demand Notice has been sent by registered post acknowledgment on the address of the director as well

as to the address of the Company. Both the parcels have come back undelivered.

- f. Demand notice has also been sent on the email ID of the Corporate Debtor i.e. varunpipes@yahoo.com.
 - g. The Operational Creditor has not received any reply from the Corporate Debtor nor received the due payment as per demand notice served upon them.
3. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Not only the Corporate Debtor failed to file reply but also failed to make representation before this Bench. Therefore, the Corporate Debtor was set ex-parte vide order dated 05.04.2021 by this Bench and the matter was posted for final hearing on 10.05.2021.
4. Heard the counsel appearing for the Operational Creditor and perused the documents submitted by him. The counsel appearing for the Operational Creditor successfully demonstrated and proved the existence of debt and default. The debt is within limitation. Thus, this Company Petition satisfies all the necessary requirements for admission. Since the Corporate Debtor remained ex-parte even without filing any reply, the claim of the applicant remained unchallenged. This Tribunal upon considering the arguments of the petitioner and the documents, pass the following:

ORDER

- (a) The above Company Petition No. (IB) -3994(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Varun Sacks Pvt. Ltd.*

- (b) Since the applicant has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Pramod Kumar Dokania** (ippramod.dokania@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001-IP-P01994/2020-2021/13062 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 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favor 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 allowed.

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)