

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 984/IB/MB/2020

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

Treasure Retail Private Limited

303, 3rd Floor, Supreme Business Park,
Hiranandani Gardens, Powai, Mumbai,
Maharashtra - 400076

**..... Operational Creditor/
Petitioner**

Vs

**Television Home Shopping Network
Limited**

514, B Wing 2015 Atrium, Behind
Courtyard Marriott Hotel, Andheri Kurla
Road, Andheri East, Mumbai,
Maharashtra – 400059.

..... Corporate Debtor

Order Pronounced On: 12.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri. Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Petitioner: Mr. Deepak Saxena, Advocate i/b Legal Prism

For the Respondent: None appeared

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Treasure Retail Private Limited** hereinafter called as the ("**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Television Home Shopping Network Limited** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 1,38,68,571/-.
2. The Operational Creditor is engaged in the business of distribution, marketing and sale of Home Appliances products. Over the years the Operational Creditor herein has built an exceptional reputation in respect of the services it provides.
3. The Corporate Debtor operates as an e-commerce marketplace in India under the brand name HomeShop18 which enables traders, manufacturers and distributors to demonstrate, market and sell their products to consumers across India.
4. The Operational Creditor entered into an arrangement with Corporate Debtor wherein Corporate Debtor has agreed to allow the Operational Creditor to demonstrate, market and sell their product(s) to Customers(s) through Corporate Debtor platform and obtain other associated services on the terms and conditions agreed upon.
5. The Operational Creditor supplied products to consumers across India who placed orders through an e-commerce platform of the Corporate Debtor (Television Home Shopping Network Limited). The Corporate Debtor collected payment from the said customers and the Operational Creditor had authorized the Corporate Debtor to deduct commission/fees and other agreed charges/amounts such as taxes, refunds, shipping charges, freight charges and

payment collection expense from the Purchase Price received from the Customer prior to remitting such payments to the Operational Creditor as per the arrangement agreed upon between the Operational Creditor & Corporate Debtor. Intermittently, the Corporate Debtor released payments on account basis which Operational Creditor has adjusted on FIFO basis. However, an amount of Rs. 1,38,68,571/-remained unpaid by the Corporate Debtor.

6. As a result, the Operational Creditor addressed a notice to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code 2016 demanding the unpaid operational debt within a period of 10 days from the date of receipt of the Notice. Neither any dispute has been raised nor any payment has been received by the Corporate Debtor to the Operational Creditor despite lapse of 10 days from the date of receipt of notice.

Reply filed by the Corporate Debtor:-

7. The Corporate Debtor denied each and every allegation, averment, contention and submission made by the Petitioner against the Respondent in the subject petition. Nothing contained and submitted in the subject Petition shall be deemed to have been admitted by the Respondent for want of specific non-traverse.
8. It is stated that the Petitioner and the Respondent had entered into an arrangement wherein the Respondent had agreed to allow the seller to demonstrate, market and sell its product(s) to customer(s) through the Respondent's platform and obtain other associated services on the terms and conditions laid out in the agreement.
9. As per the arrangement, the Respondent would receive orders from customers for products displayed on the Respondent's platform. The payment for these orders would be collected by the Respondent from the customers and it was upon the Petitioner to fulfill these orders.
10. As per the terms of the agreement, in consideration of the Respondent's services, the Petitioner had authorized the Respondent to deduct

commission/fees and other agreed charges/amounts such as taxes, refunds, shipping charges, freight charges and payment collection expense from the Purchase Price received from the customer prior to remitting such payments to the Petitioner.

11. It is stated that due to the unforeseen difficulties posed by the global pandemic Covid- 19, the Respondent faced various financial hardships which had a devastating effect on its operations and even impacted the Respondent's revenue generation. Hence, the Respondent was not able to clear the outstanding dues to the Operational Creditor, without any fault of its own and due to circumstances beyond its control.
12. It is admitted by the Respondent that a sum of Rs. 1,03,91,586.36/- remains unpaid. It is stated that the Respondent has the limited liability to the extent of the outstanding amount as mentioned hereinabove and not for any other amount as alleged by the Petitioner.
13. The Respondent further states that during the Pandemic, the operations of the Respondent were largely non-functional since its services did not categorize in essential services. Further, many of the officials of the Respondent have either left the organization due to which the Respondent has not been able to collate all the evidence and appropriate documents with respect to the present matter at hand and has relied upon whatever was available in the present conditions and circumstances with it for the purposes of the present Reply.
14. In light of the aforesaid, the Respondent submits and admits an amount of INR 1,03,91,586.36/- [INR One Crore Three Lakh Ninety-One Thousand Five Hundred Eighty-Six and Thirty-Six paise only] to be the outstanding amount payable to the Petitioner which the Respondent has not been able to clear despite its best efforts to adapt to the severe hardships and protracted economic effects caused by the Covid-19 pandemic.

Findings: -

15. We have heard the Counsel for the Petitioner whereas none was present on behalf of the Corporate Debtor though sufficient opportunity was afforded to the Corporate Debtor and for this purpose the matter is adjourned from 25.01.2023 to 22.02.2023 with a specific direction that if none appeared on behalf of the Corporate Debtor, the matter would be heard and decided on merits.
16. By way of this Petition, the Petitioner/Operational Creditor seeks initiation of CIRP against the Corporate Debtor under Section 9 of the Code for non-payment of a sum of Rs. 1,38,68,571/- along with interest of Rs. 26,59,470/-. It has been alleged that the Operational Creditor agreed to sell its products through the e-commerce of web portal of the Corporate Debtor and as per arrangement between the parties, the Corporate Debtor was to display the products on its e-commerce platform for sale and collect the payments from the customers. The Corporate Debtor was to deduct its commission and its fee and other charges and to remit the remaining amount to the Operational Creditor.
17. In the reply, the Respondent/Corporate Debtor has candidly admitted that a payment of Rs. 103,91,586.36/- is outstanding which is also reflected in the ledger account of the Petitioner/Operational Creditor in the books of account of the Corporate Debtor. The relevant extract is annexed as Annexure R1 with the reply. The Respondent has further claimed in the reply that during the pandemic its operations were largely non-functional, and many officials of the Respondent have either left the organization due to which some appropriate documents could not be collected for the purpose of filing the reply. This admission made in the reply clearly reveals that the Corporate Debtor has not effectively controverted the claim of the Operational Creditor that a sum of Rs. 1,38,68,571/- was outstanding.
18. No other points have been raised in the reply.

19. Even otherwise, from a perusal of the averments in the Petition and the documents relied upon by the Operational Creditor, it becomes evident that the Corporate Debtor has committed a default in respect of an Operational Debt of Rs. 1,38,68,571/-. It has also not been controverted that the default took place on 25.09.2019. The Petitioner has further placed on record a copy of the demand notice dated 10.07.2020 (Annexure-V) which was not responded to by the Corporate Debtor. Therefore, in our considered view, all the ingredients under Section 9 of the Code in terms of existence of an Operational Debt and a default committed by the Corporate Debtor stand proved on record.
20. As a result of the foregoing discussion, we are of the considered view that the Petition has been able to establish the existence of "**operational debt**" and "**default**" committed by the Corporate Debtor.
21. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- A. The above Company Petition No. (IB) 984 of 2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Television Home Shopping Network Limited**.
- B. Since the Operational Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench hereby appoints **Mr. Sandeep Goel**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00472/2017-18/10815, having Email id snathuramka@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) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above

amount only towards expenses and not towards his fee till his fee is decided by COC.

- 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.
- K. Accordingly, the C.P.(IB) 984 of 2020 is **admitted**.
- L. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)