

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

CP 1333 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Machhar Polymer Private Limited

...Operational Creditor

v/s.

Sabre Helmets Private Limited

...Corporate Debtor

Order Delivered on 22.02.2019

Coram: Hon'ble Mr. V.P. Singh, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Mr Vaibhav Achwal, Advocate and Mr. Abhineet Pange,
Advocate

For the Respondent: None Present.

Per Ravikumar Duraisamy, Member

ORDER

1. It is a Company Petition filed under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) by Machhar Polymer Pvt. Ltd, the Operational Creditor against the Sabre Helmets Pvt. Ltd., the Corporate Debtor on the ground that the Petitioner raised invoices dated 31.07.2014 for an amount of ₹2,49,184/- and another invoice dated 16.09.2014 for an amount of ₹3,57,160/- towards the goods namely polymers supplied to the Corporate Debtor.
2. The Petitioner sent a demand notice under section 8 of I&B Code, dated 10.06.2017 to the Corporate Debtor stating the total amount of debt as ₹9,33,769/- including interest at 18% p.a. from 31.07.2014. As per the demand notice the principal amount of ₹6,06,344/- is the aggregate of the total amount of two invoices dated 31.07.2014 for ₹2,49,184/- and 16.09.2014 for ₹3,57,160/-. The said Demand Notice was delivered to the Corporate Debtor on 13.06.2017 as per the annexed track report. The Petitioner has also annexed the Delivery Note for the said invoices, along with the Petition. The Petitioner filed this petition on 22.08.2017 under section 9 of I&B Code as it did not receive the aforesaid due amount.



3. The Respondent has not replied to the Demand Notice of the Petitioner dated 10.06.2017 that was duly served upon Corporate Debtor.
4. The Petitioner has annexed a certificate issued by the State Bank of India stating that it has not received the amount in the account of the Petitioner Company from the Corporate Debtor during the period from 31.07.2014 to 31.07.2017.
5. The Petitioner has annexed copy of the board resolution dated 20.05.2017 of the Petitioner Company authorising Mr. Suyog Machhar, Director of the Company to initiate the insolvency proceedings under I&B Code.
6. We have heard the arguments of the Petitioner and perused the records.
7. It is noted that the Corporate Debtor was served due notice of the proceedings before this bench, however, even after the notice the Corporate Debtor chose not to reply/appear in the proceedings before this bench.
8. When a Section 9 Petition is filed before this Tribunal, we have to admit the application if the application is complete in all respects; there is no payment of unpaid operational debt; the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor; no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4) of section 9, if any.
9. The copy of the board resolution dated 20.05.2017 of the Petitioner Company authorising Mr. Suyog Machhar, Director of the Company to initiate the insolvency proceedings under I&B Code is annexed. The Petition is verified by Mr. Suyog Machhar.
10. The certificate issued by the State Bank of India stating that it has not received the amount in the account of the Petitioner Company from the Corporate Debtor during the period from 31.07.2014 to 31.07.2017 is annexed to the petition.
11. The demand notice under section 8 of I&B Code, dated 10.06.2017 mentioning the total amount of debt as ₹9,33,769/- including interest at

18% p.a. from 31.07.2014 was delivered to the Corporate Debtor on 13.06.2017 as per the annexed track report. The Petitioner has annexed the Delivery Note for the said invoices, along with the Petition. The Petitioner filed this petition on 22.08.2017 under section 9 of I&B Code as it did not receive the aforesaid due amount.

12. The Petitioner has submitted Affidavit in support of the Application stating that the Corporate Debtor has neither brought any existing dispute to the notice of the Petitioner nor has it filed any proof of payment of the debt. The Corporate Debtor has not replied to the Demand Notice under section 8 of I&B Code.
13. It is a settled position that at the stage of admission the Adjudicating Authority have to only ascertain if there is any debt for an amount more than ₹1,00,000/- due and payable and in default.
14. From the perusal of the records submitted, it is clear that the Petitioner has supplied goods and raised invoices for the same in the name of the Corporate Debtor. The invoices have been delivered to the Corporate Debtor who is liable to pay an amount of more than ₹1,00,000/- to the Petitioner and the same has not been paid yet. The Corporate Debtor has chose not to appear before this Tribunal to raise objections, if any, to the admission of this petition.
15. This Tribunal, at this point, do not have to adjudicate upon the quantum of debt. All that the Tribunal, at this stage has to see is if there is debt of more than ₹1,00,000/- which is due and payable, as prescribed under section 4 of I&B Code. There is no dispute raised by the Corporate Debtor.
16. Therefore, there is a clear default on the part of the Corporate Debtor in payment of outstanding amount to the petitioner, and there was no existing dispute regarding the same. The petition is complete in all respects.
17. We have not adjudicated upon the amount of debt due to the Petitioner but only that an amount more than ₹1,00,000/- is due and payable by the Corporate Debtor. The RP has to collect and verify the claims as per the records available with him.

18. The Petitioner has not proposed name of any resolution professional to be appointed as Interim Resolution Professional.
19. The application made by the Petitioner is complete in all respects as required by law and it clearly shows that the operational debt has not been paid by the Corporate Debtor.

ORDER

The petition filed under Section 9 of Insolvency and Bankruptcy Code, 2016 is admitted. We further declare moratorium U/S 14 of the I & B Code with consequential directions as mentioned below:

I. That this Bench at this moment 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 the possession of the corporate debtor.

II. It is further made clear that:

- a. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- b. 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.



- c. That the order of moratorium shall have effect from the date of receipt 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 liquidation of corporate debtor under section 33 of I&B CODE, as the case may be.
 - d. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B CODE.
 - e. That this Bench hereby appoints Mr. Mukesh Khathuria having registration number IBBI/IPA-001/IP-P01216/2018-19/11925 as Interim Resolution Professional to carry the functions as mentioned under I&B CODE. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.
20. 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 e-mail or whatsapp.

RAVIKUMAR DURAISAMY
Member (Technical)

V.P. SINGH
Member (Judicial)

22nd February, 2019