

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

C.P. No.1738/I&BP/2018

Under section 8 &9 of the IBC, 2016

In the matter of

Hubergroup India Private Limited,

Plot No.808/E, Phase-II, G.I.D.C.,

Vapi-396 195, Gujarat, India

....Petitioner

v/s.

Shreemataji Graphics Pvt. Ltd.,

B-801, Lakshchandi Apartment,

Krishnavatika Marg, Gokuldham,

Malad (East), Mumbai-400097

....Respondent

Order delivered on: 06.03.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Advocate Mr. Jakaria Joseph & Advocate Naman  
Kamdar i/b Khaitan & Co.

For the Respondent: Advocate Mr. Praveen Singh.

*Per: V. Nallasenapathy, Member (Technical)*

**ORDER**

1. This Company Petition is filed by Hubergroup India Private Limited, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Shreemataji Graphics Pvt. Ltd.(hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 05.06.2016 in making payment to the extent of Rs. 1,86,68,025/- plus interest @ 24% p.a. by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.
2. The Petitioner submits that goods were supplied to the Corporate Debtor from 06.04.2016 to 27.06.2016 to the extent of Rs.1,37,09,017/- by raising invoices on the Corporate Debtor. The

Petitioner issued the Demand Notice under Section 8 of the Code on 16.02.2018 whereby they demanded repayment of the dues to the extent of Rs.1,86,68,025/- along with interest @24% p.a. However, the Corporate Debtor neither replied to the Demand Notice nor repaid the dues.

3. The Petitioner enclosed the Certificate issued by ICICI Bank as required under Section 9(3)(c) of the Code and also filed Affidavit as required u/s 9(3)(b) of the Code stating that no reply has been received from the Corporate Debtor for the Demand Notice.
4. The Corporate Debtor filed reply to the Petition raising the following contentions:-
  - a. It is submitted that there is no cause of action for this Petition since the debt is not admitted, there is no debt and hence the question of default does not arise.
  - b. The Petitioner is liable to pay a sum of Rs.86,00,000/- towards commission to the Corporate Debtor, on account of direct material supply to various parties by the Petitioner wherein the Corporate Debtor acted as a facilitator for the last 5 years.
  - c. The Petitioner has filed a false case u/s 138 of the Negotiable Instrument Act, 1881 before the XXVIII<sup>th</sup> Metropolitan Magistrate Court, Esplanade, Mumbai, in C.C. No. 848/SS/2017.
  - d. The Claim amount of Rs. 1,86,68,025/- and the interest @ 24% p.a. claimed are absolutely false and concocted and it is not due and payable by the Corporate Debtor.
5. The above contention of the Corporate Debtor that there is no cause of action since the debt is not admitted is unacceptable in view of the fact that the invoices were raised and the statement of account produced by the Petitioner clearly reveals that the balance as claimed is due from the Corporate Debtor. Further, the pendency of proceedings u/s 138 of the Negotiable Instrument Act, 1881 initiated by the Petitioner against the Corporate Debtor also supports the contention of the Petitioner that the amount is due. In fact the Petitioner has received a sum of Rs.60,000,00/ from New India Assurance Company Ltd. as Insurance claim on account of non-payment of the corporate debtor which of course is repayable back to the said insurance company once

the amount is collected from the Corporate Debtor by the Petitioner. The contention of the Corporate Debtor that a sum of Rs. 86,000,00/- is payable by the Petitioner to the Corporate Debtor towards commission is not at all supported by any reliable document. This counter-claim is made after a period of 5 years. In view of this all the contentions by the Corporate Debtor fails and this bench is of the considered view that the debt and default are proved.

6. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring moratorium with the directions as mentioned below:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 06.03.2019 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.

- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
  - (f) That this Bench hereby appoints Mr. Vimal Kumar Agarwal, Office at Shop No. 11 and 12, Krishna Kunj Building, above HDFC Bank, 150 Feet Road, Bhayander (West), Mumbai – 401101 having Registration No. IBBI/IPA-001/IP-P00741/2017-2018/11247 as an interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
7. The Registry is hereby directed to communicate this order to both the parties and the IRP immediately.

SD/-  
V. NALLASENAPATHY  
Member (Technical)

SD/-  
BHASKARA PANTULA MOHAN  
Member (Judicial)