IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II

CP (IB) 2979/MB/C-II/2018

Under section 9 of the Insolvency & Bankruptcy Code, 2016

In the matter of

Bhavi Jewellers,
a proprietorship firm represented by its proprietor
Mr. Haresh Susania.
...Operational Creditor

Versus

Tribhovandas Bhimji Zaveri & Sons Retail Private Limited
[CIN: U74999MH2015PTC263038**]**
...Corporate Debtor

Order Delivered on: 16.12.2019

Coram:

Mr. M.K. Shrawat	:	Hon'ble Member (Judicial)
Mr. Chandra Bhan Singh	:	Hon'ble Member (Technical)

Appearances:

For the Operational Creditor	:	Mr Rajeev Waglay, Advocate
For the Corporate Debtor	:	Ms Neha Pandya, Advocate

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by Bhavi Jewellers ("the Operational Creditor"), a proprietorship concern represented by its proprietor Mr. Haresh Susania, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Tribhovandas Bhimji Zaveri & Sons Retail Private Limited ("the Corporate Debtor"). The Corporate Debtor has furnished information in Form 5 under Rule 6 of the Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules 2016, in the capacity of Operational Creditor on 06.08.2018.

2. In the requisite Form, Under the Head Particulars of Operational Debt the total Debt is stated to be a sum of of Rs.6,10,42,439.00 (Rupees six crores ten lakh forty-two thousand four hundred thirty-nine only). The date of default was 09.05.2018.

3. The Corporate Debtor is a private company limited by shares and incorporated on 26.03.2015 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Pune. Its Corporate Identity Number (CIN) is U74999MH2015PTC263038. Its registered office is at Shop no. 2, Ground Floor, Nirmal Lifestyle, L B S Marg, Mulund (West), Mumbai - 400080. Therefore, this Bench has jurisdiction to deal with this petition.

4. **Submissions made by the Operational Creditor: -**

4.1 The Operational Creditor had sold, supplied and delivered Gold Bar, Diamond and Gold ornaments during the period from 02.11.2015 till 25.06.2018 under multiple invoices for an aggregating sum of Rs.12,41,93,725.00 which are accepted by Corporate Debtor. Copy of these invoices has been attached to the Petition.

4.2 Invoices have been placed on record which provides for terms of payment within 75 days. The total debt due and payable to the Operational Creditor is Rs.6,10,42,439.00 (Rupees six crores ten lakh forty-two thousand four hundred thirty-nine only), as mentioned in Confirmation of Accounts which is Confirmed by Corporate Debtor.

5. The Operational Creditor has also in its Petition enclosed a copy of the Demand Notice in Form 3 dated 31.03.2018 on the Corporate Debtor in terms of section 8 of the IBC, which has been duly served on the Corporate Debtor by Registered Post. After serving of Demand Notice, a payment of Rs.10,00,000/- received on

09.05.2018 which was duly adjusted towards total debt. This fact is also reflected in the copy of the Bank statement provided by the Operational Creditor in its submissions.

6. There was, however, no reply to the Demand Notice. Since the Corporate Debtor failed to make a payment exept on 09.05.2018, the Operational Creditor has filed this Petition on 06.08.2018 before this Adjudicating Authority.

7. As per section 9(3)(b) of the I&B Code, the Operational Creditor has stated on affidavit that in response to the Demand Notice the Corporate Debtor has neither made a payment towards the outstanding dues nor raised any dispute. Further, Operational Creditor states that there is no dispute in existence about the unpaid operational debt. This affidavit is placed on record forms part of the petition.

8. The copy of the Petition was served on the Corporate Debtor in advance and Learned Counsel appeared in behalf of Corporate Debtor. The Corporate Debtor has not filed a reply to the Petition.

9. **Submission by the Respondent/Corporate Debtor: -**

9.1 The Learned Counsel appearing on behalf of the Corporate Debtor on 31.07.2019 stated that there is a possibility of amicable settlement and sought time for same. The Learned Counsel again on 26.08.2019 requested extension of time for settlement. On 23.09.2019 Learned Counsel informed that till that date no settlement was carried out. Therefore, Corporate Debtor exhausted their settlement opportunity. Further Corporate Debtor was directed to file reply and serve a copy in advance on the Petitioner. However, till date 06.11.2019 Corporate Debtor did not file any reply.

10. This Bench heard the arguments of both sides and perused the records.

11. The Operational Creditor has raised several invoices between the period 02.11.2015 and 25.06.2018 amounting to Rs.12,41,93,725/- (Rupees twelve crores forty-one lakh ninety-three thousand seven hundred twenty-five only) for the supply of goods to the Corporate Debtor. Since the invoices remained unpaid, the Operational Creditor vide Demand Notice dated 31.03.2018 requested the Corporate Debtor to make the payment to which Corporate Debtor didn't reply. The payment received on 09.05.2018 was adjusted towards total outstanding amount, Current outstanding amount is Rs.6,10,42,439.00 (Rupees six crores ten lakh forty-two thousand four hundred thirty-nine only) as per confirmation of accounts attached to the Petition. As Corporate Debtor had given Confirmation of Accounts as on 01.07.2018 which proves acknowledgement of debt on part of Corporate Debtor.

12. There is no pre-existing dispute regarding the unpaid operational debt, being the principal amount of Rs.6,10,42,439.00 (Rupees six crores ten lakh forty-two thousand four hundred thirty-nine only). The invoices for the period of 02.11.2015 to 25.06.2018 were raised upon the Corporate Debtor on a running account basis, but the outstanding dues were not paid. Thus, the existence of debt and default is established.

13. The matter came up for hearing on 03.12.2018, 14.01.2019, 14.03.2019, 07.05.2019, 18.06.2019, 31.07.2019, 26.08.2019, 23.09.2019 and 06.11.2019 Several opportunities and extensions were given for Settlement of claims as demanded by Learned Counsel for Respondent but last till date of hearing no settlement come forward.

14. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under

section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

15. The petition bearing **CP (IB) 2979/MB/C-II/2018** filed by **Bhavi Jewellers,** the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Tribhovandas Bhimji Zaveri & Sons Retail Private Limited [CIN: U74999MH2015PTC263038],** the Corporate Debtor, is **admitted**.

16. There shall be a moratorium under section 14 of the IBC, in regard to the following:

i. 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;

ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;

iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

17. Notwithstanding the above, during the period of moratorium,-

i. 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;

ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

18. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

19. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. **Mr. Harshul Anilkant Shah**, Registration No.IBBI/IPA-002/IP-N-00131/2017-18/10347, having address at B-3/18, Scindia Society, Off Sir M.V. Road, Andheri (East), Mumbai – 400069, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.

21. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one

week from the date of receipt of this Order, in default of which coercive steps will follow.

22. The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

23. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

24. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

25. Ordered accordingly.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

M.K. SHRAWAT
Member (Judicial)

16.12.2019
SAM