

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.669/Chd/Pb/2019
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Major Brands (India) Pvt. Ltd.

B-907, 9th Floor, Mittal Commercial,
Near Mittal Industrial Estate, Asanpada,
Marol, Andheri East, Mumbai, Maharashtra-400059
CIN: U18101MH2001PTC131895

...Petitioner-Operational Creditor

Vs.

No Exit Clothing Private Limited

No.9, Madan Mohan Malviya Road
Amritsar, District Amritsar, Punjab
CIN: U18101PB1995PTC016665

...Respondent/Corporate Debtor

Judgement delivered on: 21.04.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : Surbhi Grover proxy counsel for
Mr. Nikhil Jangid, Advocate

For the Respondent-Corporate Debtor : Mr. Rohit Suri with
Mr. Karan Gaba, Advocates

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Major Brands (India) Pvt. Ltd.** through its Territory Manager, Mr. Aniruddha Maheshwarkar

(for brevity '**Operational Creditor**' / '**Petitioner**'), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **No Exit Clothing Private Limited** (for brevity '**Corporate Debtor**' / '**Respondent**').

2. The Corporate Debtor, namely, **No Exit Clothing Private Limited**, is a Company incorporated on 27.06.1995 under the provisions of the Companies Act, 1956 with CIN No. U18101PB1995PTC016665 with its registered office at No.9, Madan Mohan Malviya Road, Amritsar, District Amritsar, Punjab. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A-2.

3. The facts of the case, briefly, as stated in the petition are that both parties executed a shop-in-shop agreement dated 01.06.2012 whereby it was agreed that operational creditor will supply goods to the corporate debtor on terms and conditions stipulated in the agreement under invoicing system to respondent on sale or return basis. The payment was supposed to be made for sold quantities on monthly basis and unsold stocks were to be returned back. The respondent was to make payment by 10th of next month after deduction of agreed margins and taxes failing which an interest @ 2% p.m. was to be charged on outstanding amount. The agreement expired on 31.05.2015 and last payment was made on 04.10.2016. Some of the unsold stocks were returned to petitioner in June, 2017. Rs. 1,38,72,116 (Rupees One Crore Thirty Eight Lakhs Seventy Two Thousand One Hundred and Sixteen only) is outstanding and stands admitted, the petitioner vide its email dated 06.08.2015 requested respondent to provide balance

confirmation up to 31st March 2015. The respondent reverted with an email dated 21.08.2015 with the outstanding balance confirmation of Rs. 2,33,60,381/-. However, despite the repeated request, the respondent did not pay the amount.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,38,72,116 (Rupees One Crore Thirty Eight Lakhs Seventy Two Thousand One Hundred and Sixteen only) along with 24% interest i.e. Rs. 99,51,437/-, totalling to Rs. 2,38,23,553 (Rupees Two Crores Thirty Eight Lakhs Twenty Three Thousand Five Hundred and Fifty Three Only). The default occurred on 04.10.2016 i.e. last payment was received vide Cheque No. 008367 amounting to Rs. 2,24,522. Copy of Shop in Shop Agreement (Annexure A-4), invoices (Annexure A-5), emails issued by the corporate debtor (Annexure A-6), emails exchanged between the parties (Annexure A-7), ledger accounts (Annexure A-9), computation (Annexure A-13), statement of accounts (Annexure A-14), balance sheets (Annexure A-15), are attached with the main petition.

5. A demand notice dated 26.07.2019 is stated to be issued by the operational creditor by email and through registered post. The same has been delivered to the corporate debtor as the postal receipts and the tracking report is attached at Annexure A-16 of the petition. The corporate debtor gave a reply dated 05.08.2019 to demand notice wherein it is stated that the payment demanded for the invoices from 24.02.2015 to 10.09.2015 are barred by limitation. The payments were made and left out the balance/unsold stock was returned. There is a pre-existing dispute between the parties regarding the outstanding amount. The accounts were not

reconciled and amount is in dispute. The entries of the stock are manipulated. The rejoinder dated 03.09.2019 to the reply was made.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy Nos. 00344/01 dated 21.01.2021 and 00344/2 dated 08.02.2021. The corporate debtor has filed a reply vide diary No.00366/6 dated 22.11.2021, wherein it is stated that the agreement between the parties was for the period 01.06.2012 to 31.05.2015 and the profit was to be divided as per "Commercials" stated in the agreement. There is no liability due and outstanding against the respondent. The entire transaction between parties pertaining towards the sale or return basis. The complete amount has been paid and the corporate debtor on reconciliation of accounts has to recover amounts on account of difference in DR/CR note for EOSS discount, purchase return, additional mark down and adjustment of value added taxes, CST, Service Tax and CESS which was required to be borne by the supplier and was not added to retailer margin in purchase invoices generated by petitioner. For the invoices stated, no goods were actually delivered, There is a difference of approximately 23 lakhs in balance confirmation issued by the corporate debtor on 30.06.2015. There is an existing dispute regarding the outstanding amount as the corporate debtor requested an email dated 23.10.2015 for the supply of account for confirming the outstanding amount. Accounts were not reconciled an outstanding amount is in dispute. The corporate debtor requested the supply of information that was never supplied by the petitioner. During 08.01.2016 and 16.01.2016 stock was returned for the sum of Rs. 1,11,04,138/- and on

23.06.2017, the stock was returned for Rs. 36,39,425/- which has been acknowledged in the ledger by the petitioner. The difference in invoices and accounts is proven by a notice issued by the Excise and Taxation Department, Punjab on 29.04.2016 as it is concluded by the department that the return filed for Rs. 1,95,54,583/- of the corporate debtor do not tally with the return filed of sale of Rs. 90,44,817/- for the operational creditor of the Year 2014-15. The operational creditor had reported the sale figure made to the corporate debtor by Rs. 1,05,09,766/-. The department had asked the operational creditor to pay the difference amount of Rs. 10,86,492/- and the matter is still pending before the department. The present payment are barred by limitation. The last payment was made on 05.10.2016 whereas the petition was filed on 27.11.2019. The return of goods in June 2017 will not extend the limitation period.

7. The rejoinder was filed vide Diary No.00344/9 dated 14.12.2021, wherein it is stated that the dispute is regarding the settlement of accounts an amount was duly recoverable from the respondent. The petitioner requested the respondent for an amicable resolution, but the respondent ignored the request. After the expiry of the agreement both parties with mutual understanding continued to conduct business with each other in good faith and the last payment was made on 04.10.2016. The ledger account shared with the petitioner pertains to Planet Retail Holding Pvt. Ltd. and not the petitioner itself. On 01.06.2012, the petitioner took over the entire business from planet retail and started conducting business with the respondent. The respondent incorrectly calculated margins on sale value without deducting VAT, respondent has claimed excess margin. Contention

with respect to a pre-existing dispute regarding the outstanding amount has been prepared on totally wrong and manipulated figures. Form C were not required to be supplied as all invoices were local from Ludhiana to Amritsar and Jalandhar. The issuance of notice by the Excise and Taxation Department, Punjab is a mala fide intention of the respondent and petitioner with an intention to assist respondent-issued certificate on their request for their VAT assessment. The present petition is not barred by limitation as the date of issue of the debit note i.e. 23.06.2017 by the respondent-corporate debtor may be considered as the actual date of default, whereby vide application IA No. 85/2020 allowed the application vide order dated 19.02.2020. The debit note itself amounts to a de facto admission of the outstanding liability.

8. The short written submissions have been filed by the petitioner vide Diary No.00344/10 dated 14.06.2022 and by respondent-corporate debtor vide diary No.00344/11 dated 07.09.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice dated 26.07.2019 is stated to be issued by the operational creditor by email and through registered post. The same has been delivered to the corporate debtor as the postal receipts and the tracking report is attached at Annexure A-16 of the petition. The corporate debtor gave a reply dated 05.08.2019 to demand notice. Therefore, a demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by

operational creditor that no payments have been made by the respondent/Corporate Debtor despite receipt of the demand notice. It is further deposed that despite repeated requests, the bankers of the Operational Creditor have not provided the certificate as required under Section 9(3)(c) of the Code. No dispute of unpaid operational debt is pending between the parties in any Court of law or authorities as on the day. It may be noted that a debit note dated 23.06.2017 was issued by the respondent-Corporate Debtor which also amounts to an admission of its outstanding liability. Even if, a debit note of Rs.36,39,425/- (Thirty six lakhs Thirty nine thousand four hundred twenty five only) is issued then also amount claimed is more than the threshold limit. Therefore, there is no pre-existing dispute between the parties.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 26.07.2019 attached as (Annexure A-10) was duly served on the corporate debtor. Therefore, the period of limitation would begin from the date of default i.e. 04.10.2016 i.e. last payment was received vide Cheque No. 008367 amounting to Rs. 2,24,522. This application was filed vide Diary No. 6657 on 22.11.2019 and was re-filed on 27.11.2019. Moreso, vide order dated 19.02.2020, it is already held by this Adjudicating Authority that it is within limitation. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 1,38,72,116 (Rupees One

Crore Thirty Eight Lakhs Seventy Two Thousand One Hundred and Sixteen only) along with 24% interest i.e. Rs. 99,51,437/-, totalling to Rs. 2,38,23,553 (Rupees Two Crores Thirty Eight Lakhs Twenty Three Thousand Five Hundred and Fifty Three Only) is still pending which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of Shop in Shop Agreement (Annexure A-4), invoices (Annexure A-5), emails issued by the corporate debtor (Annexure A-6), emails exchanged between the parties (Annexure A-7), ledger accounts (Annexure A-9), computation (Annexure A-13), statement of accounts (Annexure A-14), balance sheets (Annexure A-15), are attached with the main petition. Although, respondent-Corporate Debtor has raised objections of the settlement of accounts no cogent evidence has been brought forth in support of its claim. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent

committed a default in payment of the claimed operational debt even after the demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **No Exit Clothing Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mrs. Sapna Gupta and there is nothing adverse against him. In view of the above, we appoint Mrs. Sapna Gupta, Registration No. IBBI/IPA-001/IPP01324/2018-2019/12056, E-mail:sapnaarun.ca@gmail.com, Mobile No. +91-9316117883, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mrs. Sapna Gupta shall be in accordance with the provisions of Section 16(5) of the Code; subject to her written consent to be filed within 7 days of this order;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the

duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and

extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may

take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor

constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. The order of moratorium shall have effect from the date of this order till 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.

20. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to

send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

April 21, 2023

PRF/TB