

IN THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH-I

CP (IB) 2711/MB/C-I/2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Anant Plastics Industries LLP

Seksaria Ind Estate, Gr. Floor, Gala No. 1 & 2, New
Complex, Chincholi Bunder Road, Mala D, Mumbai
City, Maharashtra 400064 India

...Operational Creditor/Applicant

Versus

Maxpro Homecare Products Private Limited

[CIN: U74999PN2013PTC148190]

G No. 465, Badalwadi, Tal-Maval Dist. Pune,
Maharashtra 410507 India.

...Corporate Debtor/Respondent

Order Delivered on: 25.07.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao
Hon'ble Member (Technical) : Ms. Anu Jagmohan Singh

Appearances:

For the Operational Creditor : Mr. P S Thakre, PCS
For the Corporate Debtor : None

ORDER

Per: H.V. Subba Rao, Member (Judicial)

1. This is a Company Petition filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Anant Plastics Industries LLP** (“**the Operational**

Creditor")), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Maxpro Homecare Products Private Limited ("the Corporate Debtor").**

Brief Facts of the case:

2. The instant Application is filed u/s 9 of Insolvency & Bankruptcy Code 2016 (IBC) by the Operational Creditor M/s Anant Plastics Industries and hereinafter referred to as "Operational Creditor" or "Applicant" in the matter of M/s. Maxpro Homecare Products Private Limited (CIN: U74999PN2013PTC148190) a company registered under Companies Act 1956 and hereinafter referred to as CORPORATE DEBTOR or RESPONDENT.
3. Financials Debt of Rs. 21,38,013/- plus interest at the rate of 18% per annum. Authorised Capital of the Corporate debtor is Rs.1,25,00,000/- and the paid-up capital is Rs. Rs. 1,25,00,000/-.
4. Registered Office of the Corporate Debtor is situated at G No. 465, Badalwadi, Tal-Maval Dist. Pune, Maharashtra 410507 India. Therefore, this bench has jurisdiction.

Details of Transaction:

5. Memorandum of Understanding (MOU) dated 22nd December 2016 was executed between the Operational Creditor and the Corporate Debtor agreeing on certain terms and conditions, more particularly as stated therein for transacting business amongst each other;

As per the MOU, Operational Creditor advanced monies on 26th December 2016 Rs. 14,52,000/- and 18th January 2017 for Rs.14,77,000/- aggregating to Rs.29,29,000/- to the Corporate Debtor and the Corporate Debtor was to purchase the necessary goods for its trade from a third party and Corporate Debtor was obligated to pay Rs. 3 per kg on 32,000kgs, as being "Commission" towards procurement services.

6. The Corporate Debtor was obliged to pay the said premium within 30 to 45 days, failing which a simple interest @ 18% p.a. would be payable; Copy of the MOU entered into between the parties is annexed to Additional Documents filed dated 05th May 2022.

In order to honour the aforesaid obligations, the Corporate Debtor issued 8 cheques in favour of Operational Creditor for Rs.10,00,000/- each. Details can be found in the said MOU.

7. The Corporate Debtor failed to clear the entire dues of Rs.29,29,000/- along with the procurement commission of Rs.3/kg on 32 metric tonnes which amounts to Rs. 96,000/- as procurement commission. The aggregate value stood at Rs. 30,25,000/- of which Rs. 17,62,000/- has been recovered as of 30th April 2019. Balance outstanding now stands at Rs. 21,38,013/- (including outstanding interest upto April 30, 2019).

Operational Creditor in lieu of its dues, attempted to deposit 3 cheques, which bounced back and therefore, the

Operational Creditor seeks its monies advanced as mentioned herein.

8. The debtor has delayed payments for last two years. The amount was originally payable latest by 3rd March 2017 against which the last payment was received on 27th April 2019 and the balance continues to be outstanding. The total amount in default is Rs.21,38,013/- plus interest at the rate of 18% simple interest till the date of receipt of claim amount.

9. **Date of Default:**

The debtor has defaulted in payments for last two years. The amount of Rs 29,29,000/- was originally payable latest by March 3, 2017 against which the last payment was received on 27th April 2019 and Rs. 21,38,013/- continues to be outstanding.

10. Further it is submitted that subsequent to the settlement, the Corporate Debtor paid Rs. 3,00,000/- (Three Lakhs Rupees only) out of the total amount of Rs. 18,00,000/- (Eighteen Lakhs Rupees only) and committed default in payment of remaining amount of Rs. 15,00,000/- (Fifteen Lakh Rupees Only) and the post-dated cheques issued for the remaining amounts dishonored due to lack of funds. Reiterating the above facts they have also filed an affidavit dated 13.04.2023.

11. List of documents attached to this application to prove the existence of operational debt and the amount in default:

- i. Copy of the Demand Notice (Form3) Dt. 15th May 2019.
- ii. Copy of Demand Notice (Form 3) Dt. 05th April 2019.

- iii. Copy of Memorandum of Understanding Dated. 22nd December 2016.
- iv. Statement reflecting Computation of amount claimed to be in default along with dates of default.
- v. Ledger account of Corporate Debtor in the books of Operational Creditor.
- vi. Bank statement for the relevant period reflecting advance payments made to Corporate Debtor.
- vii. Various email correspondence where the Corporate Debtor has confirmed on outstanding debt due to Operational Creditor
- viii. Cheques received from the Corporate Debtor along with Cheque return memo stating that the said cheques have been returned due to insufficient funds.
- ix. Copies of Reply received from Maxpro Homecare Products Private Limited.
- x. Settlement Agreement dated 24th March, 2022.

Findings:

12. We have heard the submissions of the Counsel appearing for the Operational Creditor.
13. It is noted that the matter has previously been settled between the parties under an agreement of settlement and accordingly a withdrawal memo was filed on 02.05.2022 withdrawing the Company Petition along with consent terms. According to clause 4.1 of the Consent Term it was agreed that in event of default of repayment the Petitioner can revive the present Petition.

14. NCLAT, Delhi, by the judgement passed in the matter of **IDBI Trusteeship Services Limited vs. Nirmal Lifestyle Limited Company Appeal (AT) (Insolvency) No.117 of 2023 dated 15.05.2023**, wherein while discussing this issue, it was observed that when the consent terms itself contains clause for revival, non-giving liberty specifically for revival by the Adjudicating authority is inconsequential:

“...when the consent term itself contemplates a clause for revival in event of default and default having been committed by the Corporate Debtor, rejection of revival is to deny the Financial Creditor rightful remedy. Non-mention of specific liberty in the Order is inconsequential in view of the clear terms in the settlement which was the basis of withdrawal of Company Petition.”

15. Considering the admitted debt by the Corporate Debtor and being unable to pay off the debt, being due for long time the Petition for insolvency be revived by this Tribunal in the present matter.
16. The amount outstanding is above Rs. 1 lakh and since the present petition was filed before the amendment increasing threshold limit, the present petition is in compliance with section 4(1).
17. 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 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.

18. The petition bearing **CP (IB) 2711/MB/C-I/2019** filed by **Anant Plastics Industries LLP**, 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 **Maxpro Homecare Products Private Limited [CIN: U74999PN2013PTC148190]**, the Corporate Debtor, is **admitted**.
19. 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.
20. 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;
21. 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.
22. 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.
23. The Tribunal hereby appoints **Mr. Girish Siriram Juneja**, Registration No. IBBI/IPA-001/IP-P00999/2017-2018/11646, Address at 22 Dignity Apartments, Bon Bon Lane, 7 Bunglows,

Versova, Andheri (West), Mumbai City, Maharashtra 400053, 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.

24. 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.
25. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees three 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).
26. 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.
27. 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.

28. Ordered accordingly.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)
25.07.2023
SAM

Sd/-
H. V. SUBBA RAO
Member (Judicial)