

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

**CP (IB) 4736/MB/C-IV/2018**

Under section 9 of the Insolvency &  
Bankruptcy Code, 2016

*In the matter of*

**Velji Dosabhai and Sons Private Limited  
[U63090MH1994PTC082465]**

...Operational Creditor

Versus

**Trimurti Foodtech Private Limited  
[CIN: U51220MH2004PTC148269]**

... Corporate Debtor

**Order pronounced on 01.01.2020**

***Coram:***

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

***Appearances:***

For the Operational Creditor : Mr. Shreyas Hingmire, i/b Vis  
Legis Law Practice, Advocates  
For the Corporate Debtor : None

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**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (“**IBC**”) by Velji Dosabhai and Sons Private Limited (“**the Operational Creditor**”), a Company within the meaning of section 2(20) of the Companies Act, 2013, having CIN U63090MH1945PTC082465, and represented by its Senior Accounts-Executive, Mr. Nilesh Dolatrai Kansara, on the basis of Board Resolution dated 28.09.2018 seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Trimurti Foodtech Private Limited (“**the Corporate Debtor**”). A copy of the Board Resolution has been placed at **Annexure ‘A’** at pp.12-13 of the Petition.
2. The Corporate Debtor is a private company limited by shares and incorporated on 24.07.2015 under the Companies Act, 2013, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U51220MH2004PLC148269. Its registered office is at Plot No.A-5, MIDC Area, Railway Station, Aurangabad 431 005, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of ₹6,67,151.00 (Rupees six lakh sixty-seven

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thousand one hundred and fifty-one only) as the principal amount and ₹1,28,673.00 (Rupees one lakh twenty-eight thousand six hundred and seventy-three only) as interest till 10.02.2018. This is the amount claimed as per p.3 of the petition. The Statement of Computation of Default is at p.23.

4. The case of the Operational Creditor is as follows: -

(a) The Operational Creditor provided freight and customs clearance services to the Corporate Debtor. As per the service provided by Operational Creditor, the Operational Creditor raised five invoices as follows (at page 28-37 of the Petition):

(1) Invoice No.012409 dated 09.03.2017 for a sum of ₹1,99,046.16. Invoice copy is at p.28;

(2) Invoice No.013051 dated 25.03.2017 for ₹2,56,884.24  
Invoice copy is at p.32;

(3) Invoice No.013174 dated 29.03.2017 for ₹2,04,141.52  
Invoice copy is at p.32;

(4) Invoice No.1118-71100003081 dated 11.10.2017 for ₹3,540.00. Invoice copy is at p.34;

(5) Invoice No.1118-71100004140 dated 31.10.2017 for ₹3,540.00. Invoice copy is at p.34;

(b) The date of default is stated to be 01.10.2017.

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- (c) The Corporate Debtor issued three cheques – bearing No.469108 dated 23.06.2017 for ₹1,99,026/-, No.469109 dated 03.06.2017 for ₹2,56,858/- and No.469110 dated 13.06.2017 for ₹2,04,122/- – towards payments of outstanding amount. But all these three cheques were dishonoured on 30.06.2017. Proof of the same are placed at pp. 24-27 of the Petition.
5. Invoices have been placed on record as **Exhibit 'A'** at pp.28-37. The invoices provide for interest at the rate 24% per annum in case of delayed payments. Bank Statements are not attached to the Petition. The total debt due and payable to the Operational Creditor is ₹7,95,825.00 (Rupees seven lakh ninety-five thousand eight hundred and twenty-five only), as mentioned at page 3 of the Petition.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 27.02.2018 to the Corporate Debtor (**Annexure 'B'**, pp.14-22) in terms of section 8 of the IBC. The said Demand Notice was served on the Corporate Debtor by Speed Post on 02.04.2019. The Corporate Debtor has not replied to the said Demand Notice.
7. The Operational Creditor has filed an affidavit under section 9(3)(b) of the IBC to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Further, the Operational Creditor stated that there is no

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dispute with respect to operational debt (at pp.38-39 of the Petition).

8. The copy of the Petition was served on the Corporate Debtor on 20.12.2018 and again on 14.10.2019. Necessary affidavits of service in this regard have been placed on record.
9. In compliance with various orders of this Tribunal, the Operational Creditor has, *vide* letters dated 28.02.2019, 24.06.2019, 05.10.2019 and 12.01.2019, intimated the dates of hearing to the Corporate Debtor. Necessary Affidavit in this regard has been placed on record by the Operational Creditor.
10. Considering the non-appearance in spite of serving the Notices of next date to the Corporate Debtor, and that there is no reply either to Demand Notice or to the Petition, it can be safely presumed that the Corporate Debtor does not want to contest the matter and accepts the liability.
11. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.
12. It is observed that the Operational Creditor has submitted three cheques issued by the Corporate Debtor and the same have been dishonoured is at p.24 of the Petition and the proof of dishonour of cheques is at p.25 of the Petition.

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13. In terms of section 139 of the Negotiable Instruments Act, 1881, there is a presumption that the holder of a cheque received the cheque for the discharge, in whole or in part, of any debt or other liability. While this is no doubt a rebuttable presumption, the presumption stands unless the contrary is proved. Thus, the cheques given by the Corporate Debtor proves the admission of liability on the part Corporate Debtor.
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 Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
16. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing **CP(IB) 4736/MB-IV/2018** filed by **Velji Dosabhai and Sons Private Limited**, 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 **Trimurti Foodtech Private Limited [CIN: U51220MH2004PTC148269]**, the Corporate Debtor, is **admitted**.

- (b) 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 Operational 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.

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- (c) 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;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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.
- (e) 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.
- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars

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and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) 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.
- (h) The Operational Creditor shall deposit a sum of ₹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).
- (i) 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.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall

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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.

**Sd/-**  
**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

01.01.2020

**Sd/-**  
**RAJASEKHAR V.K.**  
**Member (Judicial)**