

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT V**

C.P. No. 661/MB/2021

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of **M/s. Superways Enterprises Private Limited** having registered office at 1 Pearl Mansion , 91 Maharashi Karve Road, Mumbai: 400020.
.....Petitioner / Operational Creditor

V/s.

M/s. Zenil Traders Private Limited having its registered office at Office no:6, 3rd Floor, Shahviri Building, 37/41, R.S. Sapre Marg, Kalbadevi, Mumbai: 400002.
.....Corporate Debtor

Order Reserved On: 12.09.2022

Order Pronounced On: 06.10.2022

Coram: Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Smt. Anuradha Sanjay Bhatia (Technical)

Appearances (*Via Videoconferencing*):

For the Petitioner: Advocates, Mr. Neerav Merchant a/w Nadeem Sharma i/b Thakordas & Madgavkar

For the Corporate Debtor: Ayush J Rajani, PCA

Per: Smt. Anuradha Sanjay Bhatia

ORDER

1. This Company Petition is filed by M/s. Superways Enterprises Private Limited (hereinafter called as “Petitioner”) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. Zenil Traders Private Limited (hereinafter referred as “Corporate Debtor”) by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called “Code” read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for seeking a Resolution of Operational Debt of Rs. 10,09,60,000/-.

M/s. Superways Enterprises Private Limited, the Petitioner is a Company incorporated under the Companies Act, 1956 engaged in business of dealing in trading and supply of steel and allied materials. Zenil Traders Private Limited, the Corporate Debtor is a Private Company incorporated under the Companies Act,2013 engaged in business of steel trading.

Petitioner’s Submission:

5. The Petitioner requested for supply of material viz. HR coils, vide letter dated 15.09.2020, to the Corporate Debtor. Accordingly, an advance of Rs. 9.53 Crores was remitted to the account of the Corporate Debtor. The same was accepted by the Corporate Debtor, vide letter dated 18.09.2020 and further requested to issue a Purchase Order. Thereafter, on 21.10.2020, a Purchase order was raised by Petitioner on the Corporate Debtor for Rs. 9.04 Crores (EX-GST). The

abovementioned supply was to be supplied within a span of 6 months i.e. till April 2021.

6. The Petitioner submits that, the Corporate Debtor on 20.12.2020, cited reasons of volatility in the market and requested for an enhancement in the rate per MT & handling charges. Pursuant to which, a Revised Purchased Order was raised by the Petitioner to Corporate Debtor on 01.01.2021 for Rs.10.08 Crores (approx.) plus 0.80 lakhs with delivery for over a period of 90 days. Thereafter, the Petitioner made an advance payment of Rs.10,09,60,000/- against the supply of material wherein the last tranche of payment was made on 08.01.2021.
7. The Petitioner submits that the Corporate Debtor vide letters dated 31.03.2021 and 30.04.2021, requested time till July 2021 to supply material, citing reasons of Covid Pandemic and its inability to supply the same.
8. Due to multiple delay and failures, the Petitioner issued a Demand Letter dated 10.05.2021 to the Corporate Debtor for the recovery of advance money paid.
9. After multiple reminders and repeated follow ups, with no choice left, the Petitioner issued a Demand Notice dated 07.06.2021 under the Rule 5 of the Insolvency & Bankruptcy Rules 2016 to Corporate Debtor for repayment of advance payment.
10. However, till date no payment is made by the Corporate Debtor even after defaulting on the stipulating date and also no material has been supplied. As a result, the Petitioner was

constrained to file the Petition under section 9 of the Insolvency and Bankruptcy code, 2016.

Reply Filed By The Corporate Debtor:

11. The Corporate Debtor in its reply submits that as it is only 4 years old company; it was difficult to operate the business due to high volatility in the market. The Covid Pandemic has wrecked the finance of the Company.
12. The Corporate Debtor submits that as it is a new Company, it has been burdensome for a company to purchase material on credit and fulfil its current orders.
13. The Corporate Debtor further submits that since there are no Financial Creditors, the Company was depending solely on trading income and had to book huge losses due to fluctuations in rates and non-ability to fulfil orders due to late payment from Creditors.
14. Therefore, the Corporate Debtor submits that due to the unhealthy financial conditions of the Company, it is not in the position to repay debt to the Petitioner.

Hence, the Corporate Debtor admits the debt owed to the Petitioner.

Findings:

15. Heard the arguments on both the sides and perused the material on record. It is established that the Petitioner had approached the Corporate Debtor for a supply of materials against which an advance payment was done to the Corporate Debtor of Rs. 10,09,60,000/-. Pursuant to above, the Corporate Debtor had admitted the liability and further categorically stated that it has no source of funds to repay the

same. Therefore, it is established beyond doubt that there is **debt** and **default**.

16. Considering the above facts, we come to conclusion that the nature of Debt is a “Operational Debt” as defined under section 5 (21) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 9 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
17. On-going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced, which are placed on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 9 of the I&B Code.
18. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves **‘Admission’**.

Accordingly, the above Company Petition is admitted by passing the following:

ORDER

19. The above Company Petition C.P. No. 661/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against Zenil Traders Private Limited.

20. Since the Petitioner has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints Mr. Pranav J. Damania, Insolvency Professional, E-mail id: pranav@winadvisors.co.in Contact no: 9820469825, Registration No: IBBI/IPA-001/IP-P00079/2017-18/10164 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
21. The Petitioner shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
22. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.
23. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

24. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
25. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
26. In view of the above, the Bench “**Allows**” the Company Petition C.P.(IB) 661/MB/2021 u/s. 9 initiating CIRP against the Corporate Debtor i.e M/s. Zenil Traders Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
27. Ordered Accordingly.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V SUBBA RAO
MEMBER (JUDICIAL)