

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) 3208/IBC/MB/2019

Under Section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Raunak Mercantile and Trading Pvt. Ltd.

[CIN: U51909MH2016PTC283353]

Shop No. 6, Kanakia Park, A Wing, Opp.

Avenue Hotel, Thakur Complex, Kandivali

East, Mumbai-400101

...Operational Creditor

V/s.

Alankrit Mercantile Pvt. Ltd.

[CIN: U51909MH2016PTC288386]

402, Corporate Annex, Next to Udhyog

Bhavan, Sonawala Lane Goregaon (E)

Mumbai-400063

Order Pronounced on: 04.12.2020

Coram:

Shri. H. V. Subba Rao, Member (Judicial)

Shri. Shyam Babu Gautam, Member (Technical)

For the Petitioner: Ms. Ravina Soni, Practicing Company Secretary

For the Respondent: None appeared

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

ORDER

1. This Company Petition is filed by Mr. Pulkit Agarwal, Director of Raunak Mercantile and Trading Private Limited (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Alankrit Mercantile Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the petitioner in view of the materials supplied by them by invoking the provisions of Section 8 and 9 of Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016.

2. The Operational Creditor had supplied materials to the Corporate Debtor. However, the Corporate Debtor has defaulted in the payment of Rs. 21,26,533/- (Rupees Twenty One Lakhs Twenty Six Thousand Five Hundred and Thirty Three Only), the principal amount being Rs. 20,94,400/- (Rupees Twenty Lakhs Ninety Four Thousand and Four Hundred Only) and interest @ 5% per annum i.e. Rs. 32,133/- (Rupees Thirty Two Thousands One Hundred and Thirty Three Only) calculated from the due date i.e. 15th April 2019 to 5th August, 2019 towards materials supplied by the Operational Creditor in the month of March, 2019 pursuant to the purchase order dated 19th March, 2019 alongwith further interest @5% p.a. from 6th August, 2019 till the date of realization. The Corporate Debtor is a company incorporated on 13.12.2016 bearing CIN: U51909MH2016PTC288386 and having authorized share capital Rs. 1,00,000/- and paid up share capital of Rs. 1,00,000/-.
3. The present petition was filed on 27.08.2019 before this Adjudication Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 20,94,400/- (Rupees Twenty Lakhs Ninety Four Thousand and Four Hundred Only) as on 15.04.2019 which is the date of default.
4. Invoice dated 25.03.2019 has been raised on the Corporate Debtor (Invoice No. 91 and Purchase Order No 16 dated 19.03.2019). The invoice has been placed on record as part of Exhibit 'D' at page 54. Bank statements are also attached as Exhibit 'E' (colly) at pp 56-65.
5. The Operational Creditor had served a Demand Notice in Form 3 dated 05.08.2019 to the Corporate Debtor (Exhibit 'L', pp. 72-83) by hand delivery in terms of section 8 of the IBC.
6. Notice in the Company Petition was served on the Respondent/Corporate Debtor. However, the Respondent/Corporate Debtor remained absent and therefore the Corporate Debtor was set *ex-parte* vide order dated 06.12.2019. Therefore, the matter was adjourned from time to time till 06.03.2020 and was not listed subsequently from 06.03.2020 due to lockdown. The matter was again listed on 22.09.2020 through an urgent application filed by the Operational Creditor and the same was listed on 07.10.2020. On 07.10.2020, this Tribunal once again directed the Registry to issue notice to the Respondent/Corporate Debtor through speed post and ordered listing of the matter on 13.11.2020. Accordingly, the Registry has dispatched notice to the

Respondent/Corporate Debtor through speed post on 20.10.2020 and the same was received by Respondent/Corporate Debtor on 22.10.2020 as per the Speed Post Consignment Tracking Report. It is very clear from the above conduct of the Corporate Debtor that the Corporate Debtor is not interested in contesting the above case.

7. *Ex-Parte* arguments of the Petitioner were heard on 13.11.2020 by this Tribunal and the matter was reserved for orders.
8. The Applicant has sent demand notices on the Corporate Debtor demanding the outstanding amount, for which the Corporate Debtor sent replies to the Operational Creditor on 15.04.2019 and 10.06.2019, expressing apology for the delay in making the payment to the Operational Creditor. The record filed by the Operational Creditor proves the existence of debt and default. The record also proves that the claim of the Operational Creditor is within three years from the date of default. The Applicant also suggested the name of Ms. Rajshree Padia having Registration No: IBBI/IPA-002/N00119/2017-18/10288 as the Interim Resolution Professional and also filed her consent letter and there are no disciplinary proceeding pending against the proposed Interim Resolution Professional as mentioned in her consent letter.
9. In view of establishment of the above legal ingredients necessary for admitting an application under section 9 of the Code, this Tribunal has no option except to admit the above Company Petition. Accordingly, the above Company Petition is admitted by passing the following.

ORDER

- a) The above Company Petition No. 3208/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Alankrit Mercantile Private Limited.
- b) This Bench hereby appoints Ms. Rajshree Padia, Insolvency Professional, having her office at office no. 17, 10th floor, Pinnacle Corporate Park, G Block, Bandra Kurla Registration No: IBBI/IPA-02/N0019/2017-18/10288 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

- c) The Applicant is hereby directed to pay Rs. 1,00,000/- directly to the IRP by way of a demand draft towards initial expenses for commencing Insolvency Resolution Process and shall intimate the same to this Bench.
- d) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f) That the provisions of sub-section (1) of section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g) That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their possession and furnish every information in their knowledge to the IRP/RP.
- j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

10. Accordingly, this Petition is allowed.

11. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

Sd/-

H. V. SUBBA RAO
Member (Judicial)