IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 428/ND/2019

[*Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*]

IN THE MATTER OF:

M/S ETERNITY FOOTWEAR LIMITED

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S MAYOR SPORTS PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 11.04.2022

CORAM:
MR. DHARMINDER SINGH
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

ORDER

Per- Smt. Sumita Purkayastha, Member (Technical)

This is an application filed by M/s. Eternity Footwear Limited the applicant/operational creditor seeking (for brevity Operational Creditor) to initiate CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s Mayor Sports Private Limited., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 31,08,473/- on account of supplying footwears to the corporate debtor. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-

a. The Operational creditor is involved in the business of manufacturing of footwears.

b. Further it is stated that for the goods supplied, invoices were raised by operational creditor bearing Invoice Nos. 1141,1151 and 1178 for an amount of Rs. 8,22,150/-, Rs. 9,37,251/- and Rs.1,42,506/- respectively.

c. It is submitted that there were various emails in which the payment status and payment was demanded by the operational creditor and till date the corporate debtor has failed to pay the outstanding debt. Copy of the emails exchanged between the parties have been annexed.

d. Further it is submitted that the statement of accounts and ledger of the corporate debtor maintained by the operational creditor for the period of 01.04.2018 have been placed on record.

e. It is submitted that the Bank statements of the operational creditor for the months December 2018 and January, 2019 wherein deposits are made or credits received by the operational creditor in relation to the business dealings with the corporate debtor has been placed on record.

f. Further despite several requests made by the operational creditor to make payment of the said unpaid operational debt, the corporate debtor failed to make any payment.

g. It is submitted that payments under the respective invoices were raised and were supposed to be cleared immediately on such date which are as follows:-

S.No	Invoice No.	Date	Description of Goods	Amount
1.	1141	09.01.2014	MELBOURNE (SZRO2801)	334030
2.	1151	12.01.2014	MELBOURNE (SZRO2801)	937251
3.	1178	23.01.2014	MELBOURNE (SZRO2801)	142506

h. The applicant sent demand notice under Section 8 of the code on 24.12.2018 calling upon the corporate debtor to pay the total amount of Rs. 31,08,473/-. The applicant submits that the notice had been duly served on the corporate debtor. The Copy of demand notice along with postal receipts and the tracking reports has been annexed.

i. After receiving the reply from the corporate debtor of notice u/s 8 of the code, the applicant filed application under Section 9 of the I & B code to initiate the CIRP. As per Form V, the total debt outstanding is Rs. Rs. 31,08,473/- as per terms of the invoices for the entire period of delay in payment and the bank charges.

2. The Corporate Debtor in its reply to the application submits that:

a. The goods and products which are supplied by the operational creditor were having defects like stitching issues, bad material, holes etc. Further in the event of any defective/ inferior quality supplied by the operational creditor leads to the low revenue from the respondent customer.

b. It is submitted that despite the regular follow-up and alerts by the respondents not a single effective step was ever taken by the operational creditor to maintain the product quality or replacement of the products.

c. It is submitted that the respondent paid Rs. 5,00,000/- through DD no. 621201 drawn on Punjab National Bank dated 22.03.2019 to the operational creditor con 25.03.2019 before Ld. MM, Hon'ble District Court, Tiz Hazari in order to settle its previous balance of good quality products received.

d. Further the dispute had already been raised by the corporate debtor much before the date of issuance of the demand notice dated 24.12.2018 and also the same dispute was once again reiterated in the reply to the demand notice dated 03.01.2019.

3. In this regard, the applicant has denied the allegations made in the reply of the corporate debtor and further submitted in rejoinder that:

   a. That the corporate debtor has not furnished any proof about the intimation of inferior quality of goods anytime during the course of their business relationship.

   b. It is submitted that the corporate debtor issued security cheques and the said cheques were given for the repayment of the debts amount. However all said cheques issued by the corporate debtor got dishonored and the cases of which are still pending before the Ld. MM, Tiz Hazari Court, New Delhi.

4. Heard the parties and perused the case records.

5. The case of respondent is that dispute was raised about quality of the goods supplied by the operational creditor. However, it is seen that the corporate debtor has even paid partly by settling before Ld. MM, Tiz Hazari. Therefore, the contention of corporate debtor regarding disputes cannot be considered.

6. Considering the documents on records and submissions made, it is clearly established that the default in payment of the operational debt has occurred by the corporate debtor. Though the corporate debtor has raised dispute with regards the defective goods, but has not placed on record any document which proves the invoices were disputed. In view of the cheques issued and amount

paid by corporate debtor. There is no merit in the so-called dispute raised by the corporate debtor as mere reply filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature.

7. This leaves no doubt that the default has occurred for the payment of the operational debt to the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down in "*Mobilox Innovative Private Limited vs. Kirusa Software Private Limited*", the Hon'ble Supreme Court observed:

> ***"It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor*** *or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster."*

8. Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. The present application is admitted.
9. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Chetan Gupta as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01168/2020-21/13950 and email id. chetan.gupta@apacandassociaties.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
10. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Chetan Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
11. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of

the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

12. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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SUMITA PURKAYSATHA
MEMBER (T)

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DHARMINDER SINGH
MEMBER (J)