

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

**CP (IB) NO. 3530 OF 2019**

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE  
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER  
CHAPTER II OF PART II OF THE CODE.**

*(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**

**B.M. Agencies, A Proprietorship**

Concern having GST Registration  
No. 27AIUPB0530AIZU, PAN No.  
AIUPB530A and having its office  
At Godown No. 9 C, RLY. Comp,  
Hussain Patel Marg, Mazgaon, Near  
Dockyard railway station,  
Mumbai – 400010.

.... Operational Creditor

**Versus**

**Amita Art Printers Private Limited.**

A Company incorporated under  
Companies Act, 1956 having CIN  
U22219MH2008PTC188485 and  
Having its registered office at B/57,  
Giriraj Industrial Estate,  
Mahakali Caves Road, Andheri  
(East) Mumbai – 400093.

.... Corporate Debtor

**Order dated: 20.07.2021**

**Coram: Hon'ble H.V. Subba Rao, Member (Judicial)  
Hon'ble Chandra Bhan Singh, Member (Technical)**

**Appearance :**

**For the Petitioner :** Adv. Mr. Nitish Bangera

**For the respondent :** Adv. Ms. Prachi Wazalwar

***Per : Hon'ble H.V. Subba Rao, Member (Judicial)***

**ORDER**

1. The above company petition is filed by M/s B.M. Agencies (hereinafter called as applicant /'Operational Creditor') U/sec. 9 of the Insolvency and Bankruptcy Code, 2016, against M/s Amita Art Printers Private Limited (hereinafter called as respondent 'Corporate Debtor') for initiation of Corporate Insolvency Resolution Process against the corporate debtor.
2. The brief facts of the petition are stated hereinbelow :
  - a. The petitioner is into the business of trading paper products since 2008 and is having its office at at Godown no. 9, C, RLY. Comp, Hussain Patel Marg, Mazgaon, Near Dockyard Railway Station, Mumbai 400 010.
  - b. The operational creditor has continuous supply of art papers as per demand of corporate debtor from time to time under an agreement since 2016 for which he has raised the invoices of amount is of Rs 9,50,000/- against the invoice raised by Operational Creditor on the Corporate Debtor date of default on 06.08.2019.
  - c. The matter was listed on various dates and finally on 23.01.2019, the corporate Debtor agreed to settle the outstanding amount of Rs. 21,43,036/- at Rs. 13,99,896/- and handed over one pay order and 4 post dated cheques aggregating to Rs. 13,99,896/- Interest of Rs. 7,43,140/- was waived in view of the settlement.
  - d. In the hearing held on 24.01.2019 the Operational Creditor withdrawn the petition with liberty to file fresh application in case of default by corporate Debtor.

- e. First installment of Rs. 2,50,000/- (1,00,000/- vide demand draft no 004566 drawn on Bassein Catholic Bank dated 23.01.2019 and 1,50,000/- cheque no. 100267 drawn on Bassein Catholic Bank dated 23.01.2019) has cleared.
- f. The second installment of Rs. 2,50,000/- vide cheque no. 100268 drawn on Bassein Catholic Bank dated February 23,2019 has bounced.
- g. A request mail was sent to Corporate Debtor to clear the bounced cheque amount.
- h. As per Para 7 of settlement agreement if for any reason, any of the second, third or fourth cheque is not credited to the account of the Operational Creditor and the cheque being bounced and the same is not rectified through RTGS/IMPS within 14 days from the date of cheque bouce, there shall be no discount and the outstanding amount shall be Rs. 17,00,000/- and not Rs. 13,99,896/-.
- i. The Operational Creditor once again filed company application no. 2134/2019 dated 27.05.2019 before the Hon'ble NCLT Mumbai Bench under Section 9 of the Insolvency and Bankruptcy Code, 2016.
- j. The captioned matter was listed on various dates and finally listed on 26.07.2019, the corporate debtor agreed to settle the outstanding amount of Rs. 14,50,000/- and the Corporate Debtor handed over two pay orders aggregating to Rs. 5,00,000/- and one post dated cheque for Rs. 7,50,000/- No PDC received for balance Rs. 2,00,000/-.
- k. In the hearing held on 26.07.2019 the operational creditor request for withdrawal of petition with liberty to file fresh application in case of default by Corporate Debtor.

1. First installment of Rs. 5,00,000/- has cleared; however second installment of Rs. 7,50,000/- vide cheque no. 100170 drawn on Bassein Catholic Bank dated 06.08.2019 has bounced.
- m. On 06.09.2019 demand notice sent to corporate debtor to clear the outstanding amount of Rs. 9,50,000/- (Rs. 14,50,000/- less Rs 5,00,000/- received) is still not paid. Hence, the present company petition under Section 9 of the Insolvency and Bankruptcy Code, 2016.
3. The respondent filed written submissions dated 18.12.2020 contending inter alia that the respondent has already paid the operational creditor an amount of Rs. 6,00,000/- towards the invoices relied upon, by way of cash and respondent was in the due possession of the vouchers. However as the staff member of the respondent who had issued the said vouchers is no more associated with the respondent, and the respondent is making all the possible attempts to procure the said vouchers from the said person, the respondent at moment is not in the possession of the said Vouchers. The respondent shall put the said vouchers on record, upon recovering the same.
4. The respondent submitted that, the he had lodged a complaint with MIDC Police Station on 03.01.2019, against the previous accountant Mr. Ankit Gupta. It is to be noted that Mr. Ankit is the same person who was responsible to keep the cash voucher safely.
5. The respondent submitted that, as the said proof of payment of Rs. 6,00,000/- was not available and hence the corporate debtor was forced to enter into settlement terms dated 23<sup>rd</sup> January, 2019 with the operational creditor for an amount of Rs. 13,99,896/-

6. The respondent submitted that, till date the operational creditor has made a payment of Rs. 7,50,00/- to the corporate debtor.
7. The respondent submitted that, Mr. Ankit had been interrogated on various occasions by the MIDC Police Station in the meanwhile. Somewhere in the month of November we have been informed that the vouchers have been kept in the files which he used to maintain. After an extensive search, fortunately we have found the original cash vouchers intact. It pertinent to note that Mr. Mahavir who is owner of B.M. Agencies has signed the said cash vouchers and thus it is evident that even after knowing and accepting the cash Mr. Mahavir has deliberately lied on oath and has merely taken advantage of the situation where we had no proof and receipt of the payments made.
8. The respondent submitted that, out of the total outstanding as per the settlement terms now only an amount of Rs. 50,000/- is left which we are ready to pay. In the light of the new facts we urge that this matter shall be dismissed on the ground of complete payments made towards the debt.
9. On 02.07.2021 when the matter was finally listed for hearing, Ms. Prachi Wazalwar, counsel appearing for the respondent was present and once again reiterated that the corporate debtor has made certain payments for which corporate debtor has no proof and the Corporate Debtor Company is being run by a first generation lady entrepreneur and if the Corporate Debtor was pushed into CIRP it would cause great prejudice to the promoter of the company.
10. As observed from the petition averments and the submissions on both sides, the above company petition is nothing but a 3<sup>rd</sup> round of litigation. The earlier two company petitions were withdrawn by the petitioner on account of settlement between the parties and

also on account of issuing post dated cheques by corporate debtor. Now in the present company petition the corporate debtor has come out with the theory of misplacing of cash vouchers under which the alleged amount of Rs. 6,00,000/- was said to have been made by the corporate debtor and further alleged that the corporate debtor has filed a criminal complaint against their staff member Mr. Ankit Gupta with MIDC, Police Station. The corporate debtor did not place any FIR before this tribunal to show that the said police report against the said Ankit Gupta was acted upon by police. Even otherwise the Operational Creditor is not responsible for the said acts of the staff member of the corporate debtor as the corporate debtor alone is vicariously liable as a master for the acts of it's employees/servants. Even otherwise the Operational creditor issued demand notice for a balance amount of Rs. 9,50,000/- and even if the alleged discharge of Rs. 6,00,000/- is accepted assuming for a moment without admitting for argument sake, the Corporate Debtor still owes Rs. 3,50,000/- (which is more than 1,00,000/-) which is enough for admission of the company petition. Therefore, it is not legally correct to accept the contentions of the corporate debtor. Keeping in mind its previous conduct coupled with the absence of evidence with regard to the discharge of Rs. 6,00,000/-.

11. For the reason stated above there are no warranting grounds to dismissed the above company petition and accordingly, the above company petition is admitted by passing the following order.

**ORDER**

- (a) The above Company Petition No. (IB) -3530(MB)/2019 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against the corporate debtor i.e. M/s Amita Art Printers Private Limited.

- (b) Since the applicant has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list of Insolvency Professionals as furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints Mr. Jagdish Ratanlal Ahuja (pcsjrahuja@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00401/2017-2018/11175 as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016
- (c) The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (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 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.

Accordingly, this Petition is admitted.

<sup>o</sup>  
The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**CHANDRA BHAN SING**  
**Member (Technical)**

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