IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.302/MB-IV/2021
Under Section 9 of the I&B Code, 2016

In the matter of:

Pradhvi Multitrade Private Limited
[CIN: U51101MH2011PTC214077]
…Financial Creditor/Applicant

V/s

Nano Minpro Private Limited
[CIN: U74999MH2006PTC164025]
...Corporate Debtor/Respondent

Order Dated: 12.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Manoj Kumar Mishra, Advocate.
For the Respondent(s)	:	None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 302/MB-IV/2021 filed by Pradhvi Multitrade Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution

Process (CIRP) against Nano Minpro Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Rajpal Singh Daudhar, Authorised Signatory of the Operational Creditor, duly Authorised vide Board Resolution dated 23.12.2020, passed by Board of Directors of Operational Creditor, claiming total outstanding amount of Rs.12,86,28,078/- (Rupees twelve crore eighty-six lakh twenty-eight thousand seventy-eight only), comprising of Principal of Rs. 11,26,72,294/- and interest on delayed payment of Rs. 1,59,55,784.29.

3. The Date of Default is stated to be 20.03.2020 in Part-IV of the Petition. The Petition is filed on 12.03.2021 which is within the period of three years from the Date of Default.

4. The case of the Operational Creditor is that:

4.1 The Corporate Debtor has issued Purchase Order dated 02.03.2020 on the Operational Creditor, for supply of fabrics of various descriptions. Pursuant to the said Work Order, the Operational Creditor supplied the material to the Corporate Debtor from 02.03.2020 till 05.03.2020 and the invoices were raised by the Operational Creditor upon the Corporate Debtor.

4.2 The quality of the material was never objected by the Corporate Debtor. The materials were supplied with the payment terms of 15 days as mentioned in the Purchase Order dated 02.03.2020.

4.3 The Operational Creditor had made total sale of Rs.75,19,52,767/- during the period from 01.04.2019 till 05.03.2020 to the Corporate Debtor. The Corporate Debtor had made payment of Rs.1,07,48,688 and Rs.70,95,79,800/- was adjusted through Tri-Party Agreement between Operational Creditor, Corporate Debtor and third party against the sales made during the year and opening outstanding balance. At present Principal amount of Rs.11,26,72,294/- is outstanding.

4.4 The Operational Creditor issued Demand Notice dated 30.12.2020 in Form-3 upon the Corporate Debtor claiming total outstanding of Rs.12,86,28,078/- (Rupees twelve crore eighty-six lakh twenty-eight thousand seventy-eight only). The Operational Creditor has filed the Bank Statements of Axis Bank for period from 01.04.2020 to 31.01.2021, which has no transaction. The Operational Creditor has also filed Ledger Accounts of the Corporate Debtor for the period from 01.04.2019 to 31.03.2020.

5. The Corporate Debtor has neither filed any reply to the Demand Notice nor to the present Application. Vide order dated 24.08.2021, Court Notice was issued upon the Corporate Debtor to appear before us. On 20.10.2021, 30.03.2022 and 13.06.2022 Mr. Girish Joshi, Ld. Counsel appeared on behalf of the Corporate Debtor. Thereafter, on 24.01.2022, 03.11.2022, 03.01.2023 and 23.02.2023 Corporate Debtor did not appear and file its reply in the matter.

Findings:

6. We have heard the arguments of the Learned Counsel for Operational Creditor.

6.1 After perusal of the material on record, this Bench observes that the Operational Creditor had supplied fabrics of various descriptions pursuant the Purchase Order dated 02.03.2020. The Operational Creditor had raised various Invoices for the said supply and the amount of those Invoices are also reflected in the Ledger Accounts Corporate Debtor filed by the Operational Creditor, but no proof of receipt of goods by the corporate debtor has been filed before us. Also, no document evidencing acknowledgement of any liability arising from supply of goods has been filed so as to corroborate whether any goods were supplied? The whole transaction is claimed on basis of a Purchase Order and copy of invoices, issued by the applicant. Further, the ledger account of the corporate debtor in the books of applicant shows that there was an adjustment of Rs. Rs.70,95,79,800/- by way of book entry on basis of an agreement and only a sum of Rs. 1,07,48,688 was paid through bank.

6.2 The Corporate Debtor has failed to appear in the matter after giving several opportunities and has also not filed the reply. However, the Corporate Debtor was represented by a counsel on three occasion and has not disputed the existence of debt, though no written submission has been filed so far.

6.3 On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. The application has been filed within 3 years from the date of occurrence of default.

6.4 We find no objection on record against the application filed for initiation of CIRP against the corporate debtor, however, upon perusal of Audited Financial Statement[1] of the Operational

[1] www.mca.gov.in

Creditor for the year ended 31.03.2020, it is noticed that total sales as per profit and loss accounts is Rs. 53,16,11,314/- whereas the Operational Creditor has stated in Part-IV, Clause-1, that the Operational Creditor had made total sale of Rs.75,19,52,767/- during the period from 01.04.2019 till 05.03.2020 to the Corporate Debtor. We find the statement in Part-IV unreliable. Further, it is noticed from the Audited Financial Statement[2] of the Corporate Debtor for the year ended 31.03.2019 that the Corporate Debtor is engaged in business of Wholesale Trade Services and own tangible assets of Rs.15,712/-. We feel that the Resolution of Corporate Debtor as contemplated under Code is not possible considering the business and asset profile of the Corporate Debtor. Nonetheless, we find that this application is maintainable under section 9 of the Code and we feel that the Appointed Insolvency Professional shall take appropriate decision in relation to future course of action.

6.5 The application is complete and has been filed under the proper form and default of the Corporate Debtor has been established. On perusal of the material on record, this Bench is of considered view that the this is fit case for admission under section 9 of the Code to initiate the CIRP against the Corporate Debtor.

7. The Operational Creditor had proposed Mr. Rakesh Kumar Relan as Interim Resolution Professional in the Application, however, the Applicant filed an Interlocutory Application 748/2023 praying for substitution of Mr. Navin Khandelwal (IBBI/IPA-001/IP-P00703/2017-18/11301) and the same was allowed vide order dated 01.03.2023.

[2] www.mca.gov.in

ORDER

8. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP (IB) 302/MB-IV/2021 filed by Pradhvi Multitrade Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Nano Minpro Private Limited, 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 Financial 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.

(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) Mr. Navin Khandelwal (IBBI/IPA-001/IP-P00703/2017-18/11301); is appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 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 Rs.5,00,000/- (Rupees five 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 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/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemulapalli
Member (Judicial)

12.04.2023