

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB) 123/KB/2023

A petition 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:

Prism Flexible Solutions Private Limited [CIN: U25203MH2012PTC233493]

..... *Operational Creditor/ Petitioner*

-versus-

Raftech Multitraders Private Limited [CIN: U74999WB2012PTC179901]

..... *Corporate Debtor/ Respondent*

Date of Pronouncement of the order: 04.04.2024

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

Ms. Sanu jain,C.A] *For the Operational Creditor*

Ms. Utsa Podder, Adv.] *For the Corporate Debtor*

ORDER

Rohit kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Prism Flexible Solutions Private Limited**, hereinafter referred to as “*Operational Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Raftech Multitraders Private Limited**, hereinafter referred to as “*Corporate Debtor*”.

3. The Corporate Debtor is a private limited company incorporated on 10.04.2012. The authorized share-capital of the company ₹10,00,000/- and the paid-up share capital of the company is ₹1,00,000/-.
4. The total amount claimed to be in default by the Financial Creditor, is Rs. 4,03,54,992/-.The date of default is mentioned as 20.03.2020.
5. The Operational Creditor has relied on the various documents in support of its claims, including:
 - a) Tax invoices issued by the Operational Creditor, annexed as Exhibit “F”;
 - b) Confirmation letter issued by the Corporate Debtor, annexed as Exhibit “G”;
 - c) Report from National E-Governance Services Ltd., annexed as **Exhibit “I”**;
 - d) Demand Notice dated 19.01.2022, annexed as **Exhibit “J”**;
 - e) Reply to the demand notice dated 04.03.2022, annexed as **Exhibit “K”**.

6. Submissions on behalf of the Operational Creditor:

- 6.1 The Operational Creditor, in the ordinary course of Business, sold fabric to the Corporate Debtor on terms as accepted and agreed by both parties. Tax invoices¹ to this effect were raised by the Operational Creditor. As agreed between both the parties, the Corporate Debtor is obliged to make the payment of invoices immediately on dispatch of fabric by the Operational Creditor.
- 6.2 During the period between 02.03.2020 and 20.03.2020 the Operational Creditor had sold fabric amounting to Rs. 4,48,54,992/- (Four Crores Forty Eight Lakhs Fifty Four Thousand Nine Hundred Ninety Two) in total.
- 6.3 The Corporate Debtor failed to make payment of the outstanding and due amount of Rs. 4,48,54,992/- being amount payable against the supply of fabric to the Operational Creditor as on 20.03.2020.
- 6.4 After default on 20.03.2020, the Operational Creditor stopped supply of fabric and followed up for the amount outstanding and due. The Corporate Debtor paid Rs.

¹Annexure “F”

45,00,000/- till 14.07.2020 and no payment was made thereafter. The total amount outstanding is Rs. 4,03,54,992/-.

6.5 The Operational Creditor tried to recover outstanding amount from the Corporate Debtor but having failed to recover the amount, gave notice for initiating insolvency proceedings against the Corporate Debtor on 19.01.2022/20.01.2022 by sending notice u/s 8 of IBC 2016 in form 3 through speed post. The said notice has been received by corporate debtor on 14.02.2022. The above notice in form 3 has also been sent to corporate debtor through mail on 19.01.2022.

6.6 The Corporate Debtor neither paid the outstanding amount nor brought into knowledge of the Operational Creditor any pre existing dispute within 10 days of receipt of notice i.e. till 24.02.2022 as provided u/s 8 of the IBC 2016. MSPL has not paid any amount till the date of this petition. In such circumstances this petition for Corporate Insolvency Resolution Process against the corporate debtor has been filed by the Operational creditor.

7 Submissions on behalf of the Corporate Debtor:

7.1 The Corporate Debtor is engaged in the business of trading of fabric. The Corporate Debtor in the ordinary course of Business, purchased fabric from the Operational Creditor on credit terms as accepted and agreed by both parties. Later on, the Corporate Debtor failed to make payment of the Fabric outstanding amount of Rs. 4,03,54,992/- being amount payable against the supply of fabrics as on 14.07.2020. The Corporate Debtor was approached by the Operational Creditor for payment of outstanding amount on various occasions against which the Corporate Debtor requested for more time to make the balance payment.

7.2 The Corporate Debtor received notice for initiating insolvency from the Operational Creditor on 14.02.2022 u/s 8 of IBC proceeding 2016 in form 3. The Corporate Debtor replied vide their letter dated 04.03.2022 stating that the Corporate Debtor is unable to pay outstanding amount of Rs. 4,03,54,992/- and requested for more time for repayment.

7.3 The Corporate Debtor is into trading business, so the cashflows of company are linked with timely receipt from our buyers. In past few years company had faced

liquidity crunch in the business, due to increase in the prices & due to market conditions. The company's shareholders & directors were also unable to contribute funds and has shown their inability to contribute capital. The networth of the company is negative for more than 5 years. In these circumstances, it is states that the company is unable to pay its obligations.

8 Analysis and Findings:

- 8.1 Heard the Ld. Counsels on behalf of the parties and perused the records.
- 8.2 It is seen that the Corporate Debtor had filed a reply affidavit without annexing therein the board Resolution whereby Mr. Devendra Singh Chouhan was authorised to filed such reply on behalf of the Corporate Debtor. As such, on 18.09.2023, this Adjudicating Authority had directed the Corporate Debtor to file a Board Resolution to that effect. In compliance of the said direction, the Corporate Debtor has filed an affidavit notarized on 09.10.2023, thereby placing on record the board resolution passed at the meeting of board of directors held on 25.07.2022, whereby Mr. Devendra Singh Chouhan has been authorised to represent the Corporate Debtor before this Adjudicating Authority.
- 8.3 The invoices² attached to the petition make it clear that in March 2020, goods were purchased by the Corporate Debtor from the Operational Creditor. The said stand is also clear from the confirmation letter³ issued by the Corporate Debtor on 25.04.2022, thereby confirming its outstanding dues to the tune of Rs. 4,03,54,992/-. The Corporate Debtor has also admitted in its reply affidavit that it had purchased goods from the Operational Creditor and was unable to make payment for the same.
- 8.4 The Corporate Debtor has further confirmed in its reply affidavit that it has received a demand notice⁴ under section 8 of the Code on 14.02.2022 and issued a reply⁵ thereto on 04.03.2022 whereby the Corporate Debtor had requested for more time for repayment. No dispute as to the quality of the goods was raised by the Corporate debtor in the said reply. It is evident from the Reply-Affidavit that the Corporate

²Annexuer "F"

³Annexure "G"

⁴Annexure "J"

⁵Annexure "K"

Debtor is facing liquidity crunch and is unable to pay its dues to the Operational Creditor.

8.5 It is clear that a debt exists and has been defaulted upon by the Corporate Debtor. The Corporate Debtor is in no position to pay the same. The date of default is 20.03.2020, indicating that the limitation for filing the instant petition would end on 20.03.2023. Further, in light of the confirmation letter dated 25.04.2022, the limitation period will be extended upto 25.04.2025 by virtue of section 18 of the Limitation Act, 1963. As such, the instant petition filed on 21.04.2023 is within limitation. Further, the amount in default i.e Rs.4,03,54,992/- is above the minimum pecuniary threshold i.e One Crore Rupees, under section 4 of the Code. The instant petition is complete in all respects. In light of the same, we are of the considered opinion that the Corporate Debtor should be admitted into CIRP.

8.6 It is, accordingly, hereby ordered as follows:-

- i. The application bearing **CP (IB) No. 123/KB/2023** filed by **Prism Flexible Solutions Private Limited** (*Operational Creditor*), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Raftech Multitraders Private Limited** (CIN:U74999WB2012PTC179901), the Corporate Debtor, is *admitted*.
- ii. There shall be a moratorium under section 14 of the IBC.
- iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency &

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- v. **Mr. Avishek Gupta**, having registration number IBBI/IPA- 003/IP-N000135/2017- 2018/11499, email: avishek@optimusresolution.net is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Operational Creditor shall initially deposit a sum of ₹**300000/- (Rupees three 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

C.P (IB) 123/KB/2023

- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means 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.

8.7 **CP (IB) No. 123/KB/2023** to come up on **09-05-2024** for filing the progress report.

8.8 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 4th day of April, 2024

SM(LRA)