

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

C.P. No. 3885/I&BP/2018

Under Section 8 & 9 of the IBC, 2016

In the matter of

Savino Del Bene Freight Forwarders India  
Pvt. Ltd.

704, C & B Square, Andheri Kurla Road,  
Andheri (E), Mumbai-400059.

.... Petitioner

V/s.

Olive Tree Trading Private Limited

403, Aditi Commerce Centre 2406, East  
Street, Pune-411001.

.... Corporate Debtor

Order delivered on: 17.09.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Shivangi Vengurlekar i/b Mallarr Law Associates LLP.

For the Corporate Debtor: None Present.

*Per: V. Nallasenapathy Member (Technical)*

**ORDER**

1. This company Petition is filed by Savino Del Bene Freight Forwarders India Pvt. Ltd. (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Olive Tree Trading Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 10,12,101/- (Ten Lakh Twelve Thousand One Hundred and One) with interest @ 18% p.a., by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Operational Creditor is engaged in the business of freight forwarding of cargo consignments. On January 2018 Corporate Debtor approached the Petitioner and placed orders for

transportation of 8 pallets of olive oil weighing 8514 Kgs by air. The Petitioner delivered the products to the customer of the Corporate Debtor and raised an invoice amounting to Rs. 10,12,101/- on the Corporate Debtor.

3. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues, on 16.08.2018 the Petitioner issued Demand Notice demanding a sum of Rs. 10,12,101/- plus interest @18% per annum under Section 8 of the Code. However, there was no reply from the Corporate Debtor for the Demand Notice and the Petitioner has filed affidavit as required under Section 9(3)(b) of the Code stating that there was no notice of dispute given by the Corporate Debtor.

4. The Counsel for the Petitioner submitted that the petition was served on the Corporate Debtor and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the Corporate Debtor. On 11.09.2019, counsel for the petitioner was present and there was no representation from the side of the Corporate Debtor despite service of the petition and intimation of the date of hearing. Thus, matter is reserved for order.

5. The Petitioner produced an email dated 02.08.2018 sent by the Corporate Debtor to the Petitioner which reads as below:

*"We once again apologies for the unreasonable delay in payment and failure to pay the dues in time.*

*As mentioned in our previous emails, we once again reiterate our intention to clear your dues entirely, along with interest fir delay payment.*

*Out of the two invoices of February 2018, we have already paid 1 invoice. We have also paid interest on delayed payments of ₹40,000 up to 22<sup>nd</sup> June 2018, including interest on the unpaid invoice- clearly indicating our intent to pay your dues in full.*

*As explained over many emails and phone calls, the delay is only due to delay in receipt of our large PE growth funds, which we were expecting in July 2018. Now, as per final confirmation from our investor and other involved offices, we expect to realize the funds within the following week. It is therefore, our humble request to consider this as our last extension.*

*Alternatively, we request you to allow us to pay in weekly installments, till we realize our growth funds.*

*We once again request you to not opt for long legal processes, which will wastage of additional time, money and energy for both our companies."*

6. On hearing the counsel of the petitioner and upon perusal of the documents produced by the petitioner this bench is of the firm view that the Corporate debtor is liable to pay the amount to the petitioner as claimed in the petition and committed default.

7. One, Asha Manjit Ghoshal, residing at 301, Arenja Corner Plot No. 71, Sector-17, Vashi, Navi Mumbai-400705; having Registration No. IBBI/IPA-001/IP-P-01601/2019-2020/12482 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

8. This Bench having been satisfied with the application filed by the Operational Creditor which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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.
- (b) 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.
- (c) 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.
- (d) that the order of moratorium shall have effect from 17.09.2019 till the completion of the CIRP 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.

- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Asha Manjit Ghoshal, residing at 301, Arenja Corner Plot No. 71, Sector-17, Vashi, Navi Mumbai-400705; having Registration No. IBBI/IPA-001/IP-P-01601/2019-2020/12482 as Interim Resolution Professional to carry the functions as mentioned under the Code.
9. Accordingly, this Petition is admitted.
10. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-

V. Nallasenapathy  
Member (Technical)

Sd/-

Suchitra Kanuparthi  
Member (Judicial)