



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.866/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

Avinash Deviprasad Singh

PAN: AZXPS8569A

...Operational Creditor

v/s.

Agrasen Trade Merchants Pvt. Ltd.

[CIN: U5190MH2010PTC206067]

...Corporate Debtor

Order Delivered on: 29.03.2023.

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. Priyanka Jain, Ld.

For the Respondent:

None.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 IBC Mr. Avinash Deviprasad Singh M/s. Shri. Bajarang Financial Services, ("the Operational Creditor"), seeking initiation



of Corporate Insolvency Resolution Process (CIRP) against Agrasen Trade Merchants Pvt. Ltd., (“the Corporate Debtor”).

1.1. The petition is filed on 05.03.2020 claiming an amount of Rs.3,45,418/- is due. The date of default as specified in Part IV of the petition is 04.07.2018 determined from the date of invoice after allowing 60 days credit period.

2. The Operational Creditor is providing financial services in the name of M/s. Shri.Bajrang Financial Services wherein hundis are discounted from various banks and commission is charged for the same.

2.1. The Operational Creditor states that, the Corporate Debtor requested the Operational Creditor for supply of wrist watches vide various Purchase Orders dated 1st May, 2016 and 17th July, 2016.

2.2. The Operational Creditor states that, the Corporate Debtor approached in reference to bill discounting of some hundis/bills/invoices through banks dated 18.11.2016 and the Operational Creditor has provided the same and charged commission on the amount discounted at the agreed rate.

2.3. The Corporate debtor has made last payment dated 26.07.2018 for all the services provided till Financial Year 2018-19. But for Financial Year 2019-2020 no bill amount was received except TDS deduction and payment there off.

2.4. The Corporate Debtor failed and neglected to release the payment, consequently, a Statutory Demand notice dated 10.02.2020 (which was delivered on 14.02.2020) in form 3 was issued u/s 8 of the IBC,2016 and the same was not replied by the Corporate Debtor.



3. The Corporate Debtor is in the business of trading of steel had been availing the financial services of discounting of Bills/ Hundies from the Operational Creditor on the basis of commission as a charge/ fees of the Operational Creditor for providing the Bill discounting services.

3.1. That the Corporate Debtor received such financial services from the operational creditor during the financial year 2018-19, on which the Operational Creditor has charged the commission at the agreed rate amounting to Rupees 3,60,705/- (Rupees Three Lakh Sixty Thousand Seven Hundred and Five Only).

3.2. The Corporate Debtor submits that on 20.08.2019, the Corporate Debtor entered into an MOU with the M/s. Mabi Alluplast Pvt. Ltd. to purchase the running factory premises consisting of land & building. Plant & Machinery, at Pardi Taluka, Valsad Dist., for aluminium extrusion for the aggregate consideration amount of Rs. 6,00,00,000/- (Rupees Six Crores only) in order to expand its business into aluminium production and sale.

3.3. The Advance of Rs. 1,00,00,000/- (Rupees One Crore Only) was paid by the Corporate Debtor to the said seller. The Corporate Debtor also invested Rs. 1.40 cr. into the material at the factory. However, after taking possession and before starting the extrusion of aluminum, Covid- 19 pandemic was declared resulting to surrender the factory along with materials back to M/s. Mabi Alluplast Pvt. Ltd. The said advance and amount so invested into material could not be recovered as M/s. Mabi Alluplast Pvt. Ltd. contested to adjust the advance against the rent of the factory for the time it was under the possession of the Corporate Debtor and vide another MOU agreed to make payment of Rs. 1.80 cr. in next six



months' time. Later M/s. Mabi Alluplast Pvt. Ltd. expressed the inability make the payment due to Covid-19. Due to this the working capital of the Corporate Debtor got stuck and business of the Corporate Debtor came to stand still.

Findings

4. We have heard the submissions made by the counsel representing the both sides and perused the records.
5. This bench notices that as per the above narrated facts and material placed on record that no dispute has been raised with regards to the existence of Debt due to the Operational Creditor.
 - 5.1. The Corporate Debtor never denied the default on its part but has booked the invoices received from the Operational Creditor and the provision for the TDS was made accordingly and TDS returns were filed with the Income Tax authority.
 - 5.2. It is clear from the material on records that the Corporate Debtor has time and again acknowledged the debt and has unequivocally admitted his liability in its reply.
6. On perusal of the documents submitted by the Applicant, it is clear that Operational Debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational



Creditor and that there is a Debt due & payable by the Corporate Debtor. Therefore, the Application filed by the Operational Creditor is liable to be admitted.

7. The Operational Creditor has proposed the Interim Resolution Professional (IRP) in the matter.

ORDER

8. The petition bearing CP (IB) No.866/MB-IV/2020 filed by Mr. Avinash Deviprasad Singh (“the Operational Creditor”), under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Agrasen Trade Merchants Pvt. Ltd., (“the Corporate Debtor”) is **Admitted**.

I. That this Bench as a result of this prohibits:

- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) 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 Operational Assets and Enforcement of Security Interest Act, 2002;



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- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. The bench hereby appoints Mr. Hitesh Kothari, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-002/IP-N00324/2017-2018/10929 Email: hiteshkotharics@gmail.com Mb No 9702246060. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in



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this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- VII. 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.
- VIII. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (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).
- IX. 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.
- X. 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)
29.03.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)