

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

**CP (IB) 1972/MB/C-IV/2019**

Under section 9 of the Insolvency &  
Bankruptcy Code, 2016

*In the matter of*

**The Shop**, a registered partnership firm  
represented by its Partner,

Mr. Dharamsi Nanji Patel

...Operational Creditor

Versus

**Carbontree Industries Private Limited**  
**[CIN: U74140MH2009PTC192683]**

...Corporate Debtor

**Order Delivered on 03.12.2019**

***Coram:***

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

***Appearances:***

For the Operational Creditor : Ms Poonam Teddu i/b Mr Mahesh  
A. Mahadgut, Advocate.  
For the Corporate Debtor : No representation

**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **The Shop** ("the Operational Creditor"), a registered partnership firm represented by its Partner, Mr Dharamsi Nanji Patel, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Carbondtree Industries Private Limited ("the Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares and incorporated on 26.05.2009 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U74140MH2009PTC192683. Its registered office is at No.192, 19<sup>th</sup> Floor, Yugdharma, Link Road, Goregaon (West), Mumbai 400 062. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 27.05.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.6,53,000.00 (Rupees six lakh fifty-three thousand only) as principal as on 01.07.2016, which is stated to be the date of default, along with interest. The petition has, therefore, been filed within the period of limitation.
4. The case of the Operational Creditor is as follows: -

- (a) The Operational Creditor is engaged in the business of dealing, distributing and supplying as resellers of wide range of audio-video systems and allied products. In the course of business, the Corporate Debtor approached the Operational Creditor for supply of audio-video systems and allied goods, and placed an order on 02.05.2016 by making an advance payment of ₹50,000/- (para 1 of Part IV at page 5 of the Petition);
- (b) The Operational Creditor supplied the said goods on credit basis and raised corresponding invoices and challans during the period from 03.05.2016 to 31.08.2016. The Corporate Debtor also accepted the challans, thus acknowledging receipt of the goods supplied (para 1 of Part IV at page 5 of the Petition);
- (c) The Operational Creditor raised the following invoices on the Corporate Debtor: –
- (1) Invoice dated 03.05.2016 for ₹39,936/- [invoice at p.157, delivery challan at p.158];
  - (2) Invoice dated 07.06.2016 for ₹22,500/- [invoice at p.159, delivery challan at p.160];
  - (3) Invoice dated 14.06.2016 for ₹64,795/- [invoice at p.161, delivery challan at p.162];
  - (4) Invoice dated 17.06.2016 for ₹4,860/- [invoice at p.163, delivery challan at p.164];

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- (5) Invoice dated 28.07.2016 for ₹3,74,470/- [invoice at pp.165-166, delivery challan at p.167];
- (6) Invoice dated 18.08.2016 for ₹4,56,973/- [invoice at p.168, delivery challan at p.169];
- (7) Invoice dated 19.08.2016 for ₹1,86,000/- [invoice at p.170, delivery challan at p.171];and
- (8) Invoice dated 31.08.2016 for ₹53,466/- [invoice at p.172, no delivery challan since the description of goods says “Installation Charges”].

The total sum involved in the invoices is ₹12,03,000/-.

- (d) The Corporate Debtor made two payments - of ₹1,50,000/- on 20.05.2016 and ₹3,50,000/- on 27.06.2016 (para 1 of Part IV at page 6 of the Petition).
5. The eight Invoices have been placed on record as **Exhibit 'F'** at pp.157-172. The invoices do not provide for interest in case of delayed payments. Bank statements are also attached as **Exhibit 'C' and 'C-1'** at pages 14-151. The total debt due and payable to the Operational Creditor is ₹6,53,000.00 (Rupees six lakh fifty-three thousand only), as mentioned at p.196 of the Petition.
6. It is seen from the record that Copy of the petition have been served on the Corporate Debtor on 20.05.2019. Court Notice has also been served on the Corporate Debtor on 13.09.2019 on

registered e-mail ID. Necessary affidavits of services in this regard have been placed on record.

7. The Operational Creditor had served a Demand Notice in Form 3 dated 21.01.2019 to the Corporate Debtor (**Exhibit 'D'**, pp.152-172) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the Demand Notice. Necessary affidavit as per section 9(b)(ii) of the IBC has been placed on record **Exhibit 'I'** at pp.201-205.
8. The Corporate Debtor has remained unrepresented throughout the proceedings. It has also not submitted any reply in the matter.
9. We have heard the arguments of the Learned Counsel for the Operational Creditor and perused the records.
10. The Corporate Debtor has not replied to the Demand Notice. It has also not taken steps either to represent itself in the matter before this Adjudicating Authority or file a reply. It is observed from the documents placed on record that the Operational Creditor supplied of goods *vide* the eight invoices mentioned in para 4(c) *supra* is not in question. The delivery challans annexed along with each invoice attest to delivery of the goods to, and its receipt by, the Corporate Debtor. In pursuance thereof, two payments have also been made by the Corporate Debtor in favour of the Operational Creditor. As seen from the Ledger Account placed at **Exhibit 'G'** of the petition, the first of the payments is dated 20.05.2016 for ₹1,50,000/- and the other on 27.06.2016 for

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₹3,50,000/-. The Petition has also been filed within the period of Limitation.

11. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
12. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
13. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing **CP(IB) 1972/MB/C-IV/2019** filed by **The Shop**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Carbontree Industries Private Limited [CIN: U74140MH2009PTC192683]**, the Corporate Debtor, is **admitted**.
  - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- (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 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.
- (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) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP 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 her functions as contemplated by sections 15, 17, 18, 19, 20 and 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

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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.1,00,000/- (Rupees one 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/-**

**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

03.12.2019

**Sd/-**

**RAJASEKHAR V.K.**  
**Member (Judicial)**