NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

10. C.P.(IB)-846(MB)/2022

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
SMT ANURADHA SANJAY BHATIA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **22.11.2022**

NAME OF THE PARTIES: MR. VIKRAM RATHOR PROPRIETOR OF VISHNU ENTERPRISES

V/s.

BELLA JEWELRY PRIVATE LIMITED

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. PCS Vinodkumar S Shah, counsel appearing for the Petitioner, Mr. Tabrez Malawat, Mr. Hitesh Mankar and Mr. Syed Hamza counsel appearing for the Corporate Debtor are present through virtual hearing.

C.P.(IB)-846(MB)/2022

Heard the arguments on both sides. The above Company Petition is admitted and Mr. Sanjay Samudra, appointed as IRP. Detail order will follow.

Sd/-	Sd/-
ANURADHA SANJAY BHATIA	H. V. SUBBA RAO
Member (Technical)	Member (Judicial)

//Vitthal//

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT III

CP (IB) NO. 846 OF 2022

(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

Mr. Vikram Rathor, Proprietor of Vishnu Enterprises Lata Kunj, Nr. Sister Chawl, Sahara Airport, Church Pakahdi Road No.21 Vile Parle (E), Mumbai 400099
E-mail: vishnuenterprises7@gmail.com
PAN: AEVPR4383Q

……**Operational Creditor**

Vs.

M/s Bella Jewelry Private Limited
Unit N. 504 SEEPZ ++ Block II
SEEPZ Jogeshwari Link Road
Andheri East, Mumbai 400096
E-mail: bellajewellery@gmail.com
CIN: U27205MH2006PTC163163

…….**Corporate Debtor**

Order Dated: 22.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner : Mr. PCS Vinodkumar S Shah Adv.

For the Respondent: Mr. Tabrez Malawat, Mr. Hitesh Mankar and Mr. Syed Hamza Adv.

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by **Mr. Vikram Rathor, Proprietor of Vishnu Enterprises**, (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) **against M/s Bella Jewelry Private Limited** (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an Operational Debt of Rs. 1,32,43,677/- with interest.

- **The submissions of the Financial Creditor are as follows: -**

2. The Petitioner submitted that the Operational Creditor is in the business of job work related to diamond studded Gold Jewellery. The Corporate Debtor is in the business of production and sale of Diamond studded Gold, Silver and platinum Jewellery.
3. On 14.11.2013 the Corporate Debtor and Operational Creditor entered into a Job Work Agreement.
4. The Operational Creditor stated that as per the Job Work Agreement services were provided to the Corporate Debtor and various invoices were raised. The Petitioner further stated that, the Corporate Debtor still failed to make payment of 37 invoices issued during the period from 10.10.2018 to 07.03.2019 amounting to Rs. 1,07,71,936/-. Pursuant to the Job Work Agreement, the Corporate Debtor required to make payment of invoices within 10 days failing which interest to be levied @ 18% p.a. Therefore, the Corporate Debtor is liable to make payment of Rs.1,32,43,677/- including interest of Rs. 24,71,741/- up to 24.03.2020.

5. The Operational Creditor made several attempts through phone calls and personal meetings regarding the payment of outstanding dues to the Corporate Debtor.
6. The Petitioner further stated that the Corporate Debtor has not even raised any dispute regarding the quality of the goods supplied by the Operational Creditor before the date of demand notice or thereafter.
7. The Petitioner in his submissions stated that the Operational Creditor has issued a Demand notice on 11.05.2022 by speed post to the Corporate Debtor. However, as per the track report, post was undelivered and hence Operational Creditor has delivered copy of Demand Notice to one of the Director of Corporate Debtor Mr. Sharadkumar Dauji Johari on 25.05.2022 at the address known.

   Demand notice sent by the Operational Creditor to the Corporate Debtor demanding a sum of Rs. 1,32,43,677/- (Principal Rs. 1,07,71,936 & Interest Rs. 24,71,741/- as on 24.03.2020.

   Dues are on account of labour charges towards casting, Metal setting, filling, polishing etc. and supply of labour to the unit of Corporate Debtor in ordinary course of business. The transaction took place with the Corporate Debtor during the period from 2011 to 2019. The Corporate Debtor was making payment on adhoc basis and as such the last payment was made on 12.06.2019. The Corporate Debtor failed to make the payment of invoices issued during the period of 10.10.2018 to 07.03.2019.
8. In the reply filed by the Corporate Debtor to the Demand notice submits that the claim raised by the Operational Creditor in the present Petition of Rs. 1,32,43,677/- is denied as the same is exaggerated and has never been acknowledged by the Respondent Company.
9. Corporate Debtor submits that the Respondent Company is presently going through severe financial constraints and liquidity

crunch due to the post Covid-19 economic crisis and is unable to discharge the liability owed to the Operational Creditor at the moment and the same had been duly communicated to the Operational Creditor by the Respondent Company.

10. Corporate Debtor through its Reply dated 02.11.2022 denies the Operational Debt Rs.1,32,43,677/- as the same is exaggerated and has never been acknowledged by the Corporate Debtor.

Corporate Debtor submits that the Respondent Company is presently going through severe financial constraints and liquidity crunch due to the post Covid-19 economic crisis and is unable to discharge the liability owed to the Operational Creditor at the moment and the same had been duly communicated to the Operational Creditor by the Respondent.

11. The respondent submitted that, they are willing to pay an outstanding amount of Rs. 1,21,21,936/- to the Operational Creditor However, only on receipt it owes from the list of sundry debtors as provided in the Reply.

12. The Corporate Debtor further submitted that, since they are not in a financial position to make the payment of the Invoices to the Operational Creditor and also that the liability owed to the Operational Creditor is duly recorded in the Respondent Companies Financial Books and would be repaid once the payment is received from the Debtor.

Findings and Observations

Heard Mr. PCS Vinodkumar S Shah, appearing for the Operational Creditor and Mr. Mr. Tabrez a/w Hitesh Mankar and Mr. Syed Hazma, counsel appearing for the Corporate Debtor. The counsel appearing for the Financial Creditor invited the attention of this bench to the relevant invoices under which the above Company Petition has been filed and also demand notice dated 11.05.2022 got issued by the Operational Creditor to the Corporate Debtor which was received by Corporate

Debtor on 25.05.2022. The Counsel further submits that the Corporate Debtor has failed to sent any reply nor raise any dispute in response to the demand notice. He has also invited the attention to this Tribunal to the reply filed by the Corporate Debtor in the main Company Petition where under he has admitted the outstanding amount of Rs. 1,21,21,936/- due and payable to the Operational Creditor and further mentioned that the Corporate Debtor could not pay the same to the Operational Creditor due to cash crunch due to Covid-19. Thus, he prayed for admission of the Company Petition.

The learned Counsel for the Corporate Debtor did not raise any substantial legal plea in opposing the above Company Petition both at the time of final arguments as well as in their reply. The only contention of the Corporate Debtor is that the Corporate Debtor owes only an amount of Rs. 1,21,21,936/- and not Rs. 1,32,43,667/- as claimed by the Operational Creditor. Except the above plea, the Corporate Debtor did not raise any other legal issue. Since crystallisation of the claim is beyond the scope of Section 9 Petition and since, the amount claimed by the Operational Creditor meets the threshold limit for filing an application under Section 9 of the Code, the above contention of the Corporate Debtor is legally liable to be rejected.

Since, the Corporate Debtor himself is admitting the "debt" and "default" and the Operational Creditor has suggested the name of Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2, the above Petition satisfies all the requirements and is liable to be admitted.

Accordingly, the above Company Petition is admitted by passing the following:

ORDER

(a) The above Company Petition No. (IB) -846(MB)/2022 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against M/s Bella Jewelry Private Limited.

(b) This Bench hereby appoints **Mr. Sanjay Samudra,** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-P02325/2021-2022/13607 having office at D/511, Kanakia Zillion, Junction of LBS Road and CST Road, BKC Annexe, Near Wquinox, Kalina/Kurla (West), Mumbai-400070, as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) The Operational Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards fee till his fee is decided by COC.

(d) That this Bench hereby prohibits 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; 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.

(e) 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.

(f) 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.

(g) That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

(h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

(i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

(j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)