# IN THE NATIONAL COMPANY LAW TRIBUNAL
## MUMBAI BENCH : C-IV

**CP(IB)-1131/MB/2021**

Under Section **9** of the IBC, 2016

*In the matter of*
**Saccharine Infrastructure Private Limited**
…Operational Creditor

v/s.

**Murad Mercantile Private Limited**
…Corporate Debtor

Order Pronounced on: **17.03.2023**

*Coram:*

| | |
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| Mr. Prabhat Kumar<br>Hon'ble Member (Technical) | Mr. Kishore Vemulapalli<br>Hon'ble Member (Judicial) |

*Appearances (via videoconferencing):*

For the Petitioner: Mr. Yash Jain a/w Mr. Halai, Advocates

For the Respondent: Ms. Aditi Anand, Advocate.

**O R D E R**

*Per: Prabhat Kumar, Member (Technical)*

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Saccharine Infrastructure Private Limited**, ("the Operational Creditor") on 19.07.2021 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Murad**

**Mercantile Private Limited** [CIN: U51101MH2012PTC235640] ("the Corporate Debtor") for the amount payable to the Operational Creditor.

1.1. The Corporate Debtor is a company incorporated on 12.09.2012 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai having its registered office at Off. No. 307, Maker Chamber V, Nariman Point, Mumbai – 400 021, Maharashtra. Therefore, this Bench has jurisdiction to deal with the present petition.

2. The present petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹5,97,29,658/- (Rupees Five crore Ninety-seven lakh Twenty-nine thousand six hundred and Fifty-eight only). The date of default is not stated in Part-IV of the Application.

2.1 The Operational Creditor had placed the purchase order bearing number MM/18-19/0221 for ₹5,97,29,658/- (Exclusive of GST) for supply of electronic goods and paid a sum of ₹5,23,38,000/- during April and May 2019. However, the Corporate Debtor didn't supply any goods against this order. Prior to this, the Operational Creditor had supplied textile fabric vide various invoices raised from 01.06.2018 to 12.12.2018 for a value of aggregating to ₹7471658 and also paid ₹20 lakhs on three occasions i.e. July 2018, October 2018 and March 2019 as per ledger account of the Operational Creditor in the books of Corporate Debtor annexed to the Application. The goods are stated to be supplied to Delhi from Mumbai.

2.2 Corporate Debtor has also admitted their liability by acknowledging the confirmation of accounts submitted by the Operational Creditor. Operational Creditor states that Ledger account of the Corporate Debtor states that an amount of ₹5,97,29,658/- is still due and outstanding against the Operational Creditor.

2.3 Operational Creditor with no other option left issued Demand Notice dated 12.02.2021 in Form 3 as per Insolvency and Bankruptcy Code upon the Corporate Debtor though Registered Post. The said Demand Notice (Form 3) was also served upon the Corporate Debtor through Hand Delivery and the same was received by the Corporate Debtor on 17th February 2021.

2.4 The Corporate Debtor has not replied to the Demand Notice Demanding payment and has not raised any dispute.

2.5 The date from which such debt fell due 20.05.2019 and the same has also been confirmed by the statement of confirmation of Accounts issued by Corporate Debtor for the year 2017-18, 2018-19, 2019-20 annexed to the Application.

3 The Corporate Debtor has not filed any reply to the present application and has also not attended the hearings after 06.07.2022. The Corporate Debtor's right to file reply was forfeited by the Bench vide order dated 19.09.2022. Thereafter, the Corporate Debtor was not represented on 28.11.2022 and finally on 30.01.2023.

4 We have heard the Counsel for Operational Creditor and perused the material available on record.

5. While going through the documents annexed to the Application, it is noticed that the applicant has given an advance of ₹5,23,38,000/- towards supply of goods and the Corporate Debtor failed to supply the goods against that advance. Upon such failure, the Corporate Debtor further failed to refund the amount paid by the Operational Creditor.

6. The Hon'ble Apex Court has held that advance paid against supply of goods partake the character of operational debt in the case of *"Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited" [Civil Appeal No 2839 of 2020].* In view of this, the Applicant is an Operational Creditor and eligible to file an application under Section 9 of the Code. The amount of debt claimed to be due and in default is more than ₹1 Crore i.e. the threshold limit prescribed under Section 4 of the Code.

7. Since, the Corporate Debtor has neither filed any reply nor disputed the facts stated in this Application, the Bench is of the opinion that this Application deserves to be admitted under Section 9 of the Code.

8. The Operational Creditor has not proposed any Resolution Professional. Therefore, this Tribunal is to appoint any Resolution Professional from the panel approved by the IBBI.

9. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB)-1131/MB/2021** filed by **Saccharine Infrastructure Private Limited**, 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 **Murad Mercantile Private Limited [CIN: U51101MH2012PTC235640],** the Corporate Debtor, is hereby **admitted**.

(b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

(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 Tribunal 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) Mr. Kumar Raghavan, having registration No. IBBI/IPA-001/IP-P01433/2018-2019/12336, (email: rkumar56.ip@gmail.com mob.: 8459350412), is hereby appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 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 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 ₹5,00,000/- (Rupees five 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/- Sd/-

**PRABHAT KUMAR**
**MEMBER (TECHNICAL)**

**KISHORE VEMULAPALLI**
**MEMBER (JUDICIAL)**

17.03.2023/pvs