

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

C.P. No. 3065/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Katyayan Mercantile and Trading Private
Limited

402, Corporate Annex, next to Udyog
Bhavan, Sonawala Lane, Goregaon (east),
Mumbai – 400 063

.... Petitioner

v/s

Anish Trading & Mercantile Private
Limited

Shop No. 6, Kanakia Park, A wing, opp.
Avenue Hotel, Thakur Complex, Kandivali
(east), Mumbai – 400 101

.... Corporate Debtor

Order delivered on: 08.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner : Ms. Bindu Bhatia, Advocate.

For the Corporate Debtor: None Present.

Per: V. Nallasenapathy, Member (T)

ORDER

1. This company Petition is filed by Katyayan Mercantile and Trading Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Anish Trading & Mercantile Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor

committed default on 15.04.2019 in making payment of Rs. 40,04,174/-, (plus interest @5% p.a.) by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that on 28.03.2019 as per the purchase order placed by the Corporate Debtor, the Petitioner supplied material and raised invoice for Rs. 39,52,200/-. On 04.04.2019, the Corporate Debtor has written to the Petitioner confirming that a sum of Rs. 39,52,200/- is due and legally payable by the Corporate Debtor to the Petitioner and the said confirmation of balance is enclosed with the petition at page no. 64 of the petition.

3. Thereafter, the Petitioner made several reminders to the Corporate Debtor regarding non-payment of the balance dues. On 20.07.2019, issued Demand Notice demanding a sum of Rs. 40,04,174/- including interest @5% p.a. under Section 8 of the Code. On 01.08.2019 Corporate Debtor replied to the said notice stating that

"We are aware that the payment has to be made within a period of 10 days from the date of receipt of demand notice, however due to financial crises faced by our company we are currently unable to pay the said outstanding balance."

4. 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.

5. 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. The matter was listed on 06.09.2019, 23.09.2019, and 14.10.2019 but there was no representation from the Corporate Debtor's side. On 14.10.2019 again the Corporate debtor failed to appear and the matter was reserved for orders.

6. The above discussion clearly shows that there is a clear debt and default as such the Corporate Debtor is liable to pay the amount of Rs. 40,04,174/- including interest @5% p.a. to the Petitioner.

7. One Ms. Rajshree Padia, office at office no. 17, 10th floor, Pinnacle Corporate Park, G Block, Bandra-Kurla Complex, Bandra (east), Mumbai – 400 051; having Registration No. IBBI/IPA-002/IP-N00119/2017-18/10288 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 08.11.2019 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 Ms. Rajshree Padia, office at office no. 17, 10th floor, Pinnacle Corporate Park, G Block, Bandra-Kurla Complex, Bandra (east), Mumbai – 400 051; having Registration No. IBBI/IPA-002/IP-N00119/2017-18/10288; as Interim Resolution Professional to carry the functions as mentioned under the Code.
9. 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)