

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V

C.P. (I.B) No. 390/MB/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules 2016)

In the matter of

Millenium Enterprise

Having registered office at:
A-503/504, Bhoomi Tower,
Nehru Road, Santacruz (E), Mumbai-
400055

.....Petitioner/Operational Creditor

Vs

Al-Rkayan Apparels and Exports Pvt. Ltd.

Having its registered office at:
16, Cama Industrial Estatewalbhat Road,
Goregaon East, Mumbai-400063.

.....Corporate Debtor

Order Reserved On: 06.11.2023

Order Pronounced On: 05.12.2023

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)

Ms. Madhu Sinha, Hon'ble Member(Technical)

Appearances:

For the Petitioner/Operational Creditor: Adv. Prakhar Tandon i/b

Niranjan Karmakar

For the Respondent/Corporate Debtor: None Present

ORDER

Per: Madhu Sinha Member (Technical)

This Company Petition is filed by **Millenium Enterprise** (hereinafter referred as “**the Petitioner/Operational Creditor**”) on **15.04.2023** seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Al-Rkayan Apparels and Exports Pvt. Ltd.** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**the Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for committing default in payment of an Operational Debt of **Rs. 1,65,24,002/- (Principal Amount only as interest not applicable).**

Brief Facts and Submission by the Operational Creditor:-

1. The Corporate Debtor engaged the Operational Creditor for buying steel and iron product for its running redevelopment project. In furtherance thereof, the Operational Creditor, on 26.09.2022, provided an invoice/quotation numbered 00104/2022-23 for an amount of Rs. 1,65,24,002/-.
2. In pursuance of the abovementioned Invoice/Quotation, on 05.10.2022, the Corporate Debtor issued the first Purchase Order numbered 0035/22-23 for Rs. 48,48,915/-. The Operational Creditor delivered the material successfully against this Purchase Order on 14.10.2022 and issued a Tax Invoice numbered Oct/22-23/056 dated 14.10.2022 for the amount of Rs. 48,48,915/-. The aforementioned Tax Invoice was received and acknowledged by the Corporate Debtor.
3. The Corporate Debtor, thereafter, issued the second Purchase order numbered 0041/22-23 for Rs. 53,61,974/- dated 09.12.2022 against which material was successfully delivered on 19.12.2022.

This successful delivery was followed by issuance of Tax Invoice numbered Dec/22-23/084 for an amount of Rs. 53,61,974/- on the same date, i.e. 19.12.2022 by the Operational Creditor. This Tax Invoice was received and acknowledged by the Corporate Debtor.

4. The Corporate Debtor thereafter issued the third Purchase Order numbered 0045/22-23 dated 12.12.2022 for an amount of Rs. 63,13,113/-. The material was delivered against this third Purchase Order on 26.12.2022. This successful delivery was followed by issuance of Tax Invoice numbered Dec/22-23/089 for an amount of Rs. 63,13,113/- on the same date, i.e. 26.12.2022 by the Operational Creditor. This Tax Invoice was received and acknowledged by the Corporate Debtor.
5. The Operational Creditor submitted that the due date of each Tax Invoice was after 30 days from the date of the corresponding Tax Invoice thereby the three Dates of Default were 13.11.2022, 18.01.2023 and 25.01.2023.
6. After 13.11.2022, reminder was sent to the Corporate Debtor to make the payment against the first Tax Invoice. However, the Corporate Debtor requested to transfer the whole payment after successful delivery of the material amounting to Rs. 1,65,24,002/-. Having regard to the trust developed between both the parties over a long time of business relationship, the Operational Creditor agreed for a cumulative payment as proposed by the Corporate Debtor.
7. In pursuance of this condition of cumulative payment, the Operational Creditor issued a reminder letter to the Corporate Debtor on 15.02.2023 to clear the entire outstanding amount of Rs. 1,65,24,002/-. The reply to the said letter was received on 20.02.2023, in which the Corporate Debtor expressly acknowledges the outstanding amount of Rs. 1,65,24,002/- and the recognition

of the abovementioned three Tax Invoices in its books of account. The Corporate Debtor stated that on account of stoppage of its business operations the total outstanding amount could not be cleared however an attempt will be made by it to clear the outstanding amount as soon as possible.

8. On 22.03.2023, after having waited for a long time, the Operational Creditor issued a final reminder letter to the Corporate Debtor on 22.03.2022, in order to receive the payment of the outstanding amount, before initiation of legal action against it, but in vain.
9. The Operational Creditor was thus compelled to enforce its legal rights and was constrained to issue Demand Notice dated 03.04.2023 under section 8 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for the amount of Rs. 1,65,24,002/-. The Corporate Debtor did not respond to the aforementioned Demand Notice and hence this Petition is filed by the Operational Creditor.

Findings

1. At the very outset, we mention that the Corporate Debtor neither represented himself either in person or through an advocate nor filed any reply to this Petition even though it had been served with the Court Notice on 27.05.2023. The service of the Court Notice is substantiated by the Track Report available on record of this Hon'ble Tribunal. Hence, in view of the peculiar facts of the case the Bench decided to proceed against the Corporate Debtor ex-parte vide its Daily Order dated 07.07.2023.
2. On close perusal of the Submission and Pleading of the Operational Creditor, and particularly in light of the three Tax Invoices which

were acknowledged by the Corporate Debtor, the existence of debt clearly stands established.

3. It is pertinent to note that the existence of debt and occurrence of default is further confirmed by the Corporate Debtor in its letter dated 20.02.2023, in which the Corporate Debtor expressly acknowledges the outstanding amount of Rs. 1,65,24,002/- and the recognition of the abovementioned three Tax Invoices in its books of account and has agreed to make the payment as soon as possible.
4. Since there is no reply filed by the Corporate Debtor other than the letter dated 20.02.2023 the question of existence of any pre-existing dispute does not arise.
5. The present petition has been filed well within limitation and is also within the pecuniary, subject-matter and territorial jurisdiction of this Hon'ble Tribunal.
6. In light of the above findings it can be clearly established that all the mandatory ingredients of Section 9 of the Code have been fully satisfied and hence we are of the considered view that this present petition deserves to be **admitted**.

ORDER

- a. In view of the aforesaid findings, the above Company Petition No. 390/IBC/MB/2023 is hereby **admitted** and thereby initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Al-Rkayan Apparels and Exports Pvt. Ltd.**
- b. As per the proposal for the name of Interim Resolution Professional by the Operational Creditor, Mr. Vishnu Kant Kabra having Registration Number IBBI/IPA- 001/IP-P-

02178/2021- 2022/13747 is appointed as the Interim Resolution Professional.

- c. The Operational Creditor shall deposit an amount of **Rs. 2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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.
- k. Accordingly, CP 390 of 2023 is **admitted**.

SD/-

MADHU SINHA

MEMBER (TECHNICAL)

SD/-

REETA KOHLI

MEMBER (JUDICIAL)