IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 743/IBC/MB/2020

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

In the matter of

M/s SVG FASHIONS LIMITED.

(CIN: U99999DN1994PLC000067)

Agarwal Golden Chambers, 3rd Floor, A/13 Veera Desai Industrial Estate, Veera Desai Road, 3rd Floor, Andheri (West), Mumbai

……**Operational Creditor**

Vs

M/s TULIPS AMBBIENCE PRIVATE LTD.

(CIN: U51311PN2001PTC016441)

Registered office at: 1025-A Vora Kothari Building Sadashiv Peth Pune Maharashtra 411030

…….Corporate Debtor

Order delivered on: 07.10.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Ajay Yadav, Advocate

For the Respondent:Mr. Sandeep Chilana, Advocate

Per: Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company petition is filed by *M/s SVG Fashions Limited* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Tulips Ambbience Private Limited* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 23,29,160/-

SUBMISSIONS OF THE OPERATIONAL CREDITOR

2. The Operational Creditor being M/s SVG Fashions Ltd has supplied Furnishing fabrics to Corporate Debtor being Ms/s Tulips Ambbience Private Ltd. under different invoices.
3. The Operational Creditor submits that the payment against invoices raised were required to be made by Corporate Debtor within a period of 35 days from receipt of respective invoices. Each of the invoices fell due on different dates which are more particularly mentioned in the particulars of Operational Debt.
4. Further, inspite of various follow-ups made by the Operational Creditor, Corporate Debtor failed to pay the outstanding amounts which were due and payable against the invoices raised.
5. As Corporate Debtor did not pay the above mentioned outstanding amount, operational Creditor issued Demand Notice dated 16.10.2019 as contemplated under Section 8 of the Code along with the Invoices thereby demanding payment of an unpaid operational debt due which was received by the Corporate Debtor on 22.10.2019.

6. The Corporate Debtor did not reply to the Demand Notice in Form-3 neither has specified existence of any Suit/Dispute or arbitration proceeding before the receipt of the Notice in form-3. Hence, the Operational Creditor filed this petition.

SUBMISSIONS OF THE CORPORATE DEBTOR

7. The Corporate Debtor submitted that the Operational Creditor had sent a demand notice dated 16.10.2019 in Form 3 under Section 8 of the Code along with certain invoices/bill on the basis of which the Operation Creditor had allegedly claimed a total sum of Rs. 23, 29,160.00/- from the Corporate Debtor.

8. At the outset, the Corporate Debtor repudiates the contents of the petition and denied all the averments made in the petition filed on behalf of the Operational Creditor to the extent that that they are factually incorrect, false, deceptive and contrary to the provision of law. Nothing contained in the petitioner should be deemed to have admitted.

9. The Corporate Debtor submitted that no amount is due and payable to the Operational Creditor after adjustments towards additional amount which was required to be spent by the Corporate Debtor on account of failure of the Operational Creditor to undertake its obligations under the contract.

10. The Corporate Debtor on various occasions has shared the reconciliation of outstanding amount towards additional spends made by Corporate Debtor, however, despite such bonafide act by the Corporate Debtor, the Operational Creditor has pursued the present petition against the Corporate Debtor under Section 9 of the Code to mislead this Tribunal and with a sole motive to cause undue harassment to the Corporate Debtor.

11. Consequently, filling of the said application under Section 9 of the code was intimated to the Corporate Debtor through an

advance service dated 18.02.2020 which was acknowledged by the Corporate Debtor through an email correspondence dated 22.02.2020 wherein the Corporate Debtor being a bonafide citizen again made a commitment and showed its intention to pay its eligible outstanding dues provided such additional costs incurred by the Corporate Debtor were adjustment from the dues. The Corporate Debtor also requested for a meeting to reconcile the amounts and discuss to resolve the matter amicably, however, till date no response from the Operational Creditor has been received.

12. The Corporate Debtor further submitted that vide an email dated 23.02.2020, the Corporate Debtor informed the Operational Creditor that it was facing working capital issues, however, it is still committed to pay its outstanding debt legally payable after necessary adjustments.

13. The Corporate Debtor had to incurred additional expenditure on account of defaults of Operational Creditor which ought to be adjusted from the outstanding dues payable to the Operational Creditor. The Corporate Debtor made several requests to set-off the expense incurred with the outstanding dues legally payable, however, all the requests and proposals of the Corporate Debtor fell on deaf ears of the Operational Creditor.

14. The Corporate Debtor submitted that the Operational Creditor is unnecessarily aggravating corporate Debtor's agony by pursuing this present petition despite having offered to pay its dues legally payable provided the Operational Creditor agreed to bear the cost of additional spends due to delays on part of Operational Creditor. The Operational Creditor is trying to use this Tribunal as a recovery forum, as against amicably settling / co-operating and by not approaching for arbitration/ civil

court etc. it has been time and again laid down by various judicial forum that IBC is not a substitute for a recovery forum and other proper routes shall be adopted for recovery of dues.

FINDINGS

1. This Company petition is filed on 24.02.2020 by *M/s SVG Fashions Ltd..* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Tulips Ambbience Pvt. Ltd.* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a total amount of Rs. 23,29,160/-(Rupees Twenty Three Lac Twenty Nine Thousand One hundred and Sixty only).
2. The Bench notes that the Operational Creditor supplied Furnishing Fabrics to Corporate Debtor under the different invoices which are annexed to the petition.
3. The Operational Creditor issued Demand Notice dated 16.10.2019 along with certain invoices/bill on the basis of which the Operational Creditor had claimed a total sum of Rs. 23,29,160.00/- as contemplated under Section 8 of the Code along with the Invoices thereby demanding payment of an unpaid operational debt due, which was received by the Corporate Debtor on 22.10.2019. The Corporate Debtor did not reply to the Demand Notice in Form-3 neither has specified existence of any Suit/Dispute or arbitration proceeding before the receipt of the Notice in form-3.
4. On perusal of the documents submitted by the parties, the Bench notes that the Operational Creditor had supplied Furnishing Fabrics which the Corporate Debtor had duly

received. It is also observed that the contentions raised by the Corporate Debtor with respect to discrepancy and incorrect debt amount are not supported by any documentary evidence. The Bench further notes that the Corporate Debtor vide its reply has also admitted that it was facing working capital issues, however, it is still committed to pay its outstanding debts legally payable after necessary adjustments which amounts to admission of debt and default by Corporate Debtor. Further, the Corporate Debtor also failed to reply to the Demand Notice within statutory period and has not raised any disputes before the filing of Reply to the present application. Therefore, no credence can be given to the contentions raised by the Corporate Debtor in the reply filed in this Company Petition.

5. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. The Operational Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary requirements for admission.
6. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -743(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Tulips Ambbience Private Limited.

b. This Bench hereby appoints **Mr. Arun Bagaria** (ashishvyas2006@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-01520/2018-2019/12267 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.2 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.

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 admitted.

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

Sd/-	**Sd/-**
CHANDRA BHAN SINGH **MEMBER (TECHNICAL)**	**H.V. SUBBA RAO** **MEMBER (JUDICIAL)**