

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT
AHMEDABAD
Court 2**

(MP) CP(IB) 85 of 2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. VIRENDRA KUMAR GUPTA, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 22.04.2021**

Name of the Company: Mangalnayak Shoppers Pvt Ltd
V/s
Rvj Traders Pvt Ltd


Section 9 of the Insolvency and Bankruptcy code.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
--------------	-------------------------------	--------------------	-----------------------	------------------

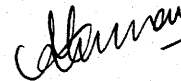
1.
2.

ORDER
(through video conferencing)

The Order is pronounced in the open court vide separate sheet.



VIRENDRA KUMAR GUPTA
MEMBER TECHNICAL
Dated this the 22nd day of April, 2021



MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD**

Court - 2

(MP) C.P. (I.B) No. 85 of 2020

In the matter of:

Mangalnayak Shoppers Private Limited
101, Sarat Pally, 1st Bye Lane,
South Baksara Village Road
Howrah 711 110
West Bengal

**: Petitioner
[Operational Creditor]**

Versus

RJVJ Traders Private Limited,
9/B Sanchar Nagar,
G-1, Shlok Enclave,
Indore,
Madhya Pradesh

**: Respondent
[Corporate Debtor]**

Order delivered on 22nd April, 202

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Virendra Kumar Gupta, Member (T)**

Appearance:

PCS Mr. Vinay Soni is present for the petitioner.
PCS Mr. Hardik Jetani for respondent.

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mr. Manohar Malviya, Director, being authorised signatory on behalf of **Mangalnayak Shoppers Private Limited** filed this petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"] as operational creditor/applicant.
2. The applicant/operational creditor is a private limited company incorporated on 17.06.2013, having identification No.

Manmai

U74900WB2013PTC194754 and having registered office at Howrah, West Bengal, whereas, the respondent/corporate debtor is a private limited company registered on 31.07.2013 having identification No. U74999MP2013PTC048860 and having registered office at Indore, Madhya Pradesh. Authorised/paid up share capital of the respondent company is Rs. 10,00,000/-.

3. The brief fact of the case is that, the applicant supplied goods to corporate debtor as credit sales and corporate debtor made part payments for the purchases made from operational creditor. That, till 01.04.2018, the operational creditor supplied fabric worth Rs. 9,18,92,315 to the corporate debtor. That, the operational creditor received payments from the respondent as part considerations except the amount of Rs. 3,18,27,826/- and as on 01.04.2019 the said amount is outstanding.
4. The operational creditor has further submitted that having failed to receive the outstanding payment from the respondent, the applicant was compelled to issue demand notice dated 01.07.2020 (page 33-39) in form 3 under Section 8 of the IB Code calling upon the respondent to pay a sum of **Rs. 3,18,27,826/- (Rupees three crores eighteen lacs twenty-seven thousand eight hundred twenty-six only)**. That, the corporate debtor vide letter dated 15.07.2020 replied the demand notice stating their inability to clear the outstanding dues, therefore, this petition.
5. Mr. Malsingh, Director of the respondent company filed affidavit in reply inter alia acknowledging the operational debt due and payable by the respondent company and showing their inability to pay the outstanding amount of Rs. 3,18,27,826/-.

Findings

6. Heard the learned counsels appearing for both the sides and perused the record and the documents annexed therein.



7. During the course of hearing, learned lawyer appearing on behalf of the corporate debtor submitted that he has filed an affidavit admitting the amount of debt.
8. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and the respondent has admitted the debt due and payable to the applicant. Therefore, the present application deserves to be admitted.
9. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.
10. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
11. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
12. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 I.B.J (JP) 2 SC** that while examining an application under Section 9 of the Act, will have to determine the following: -
 - (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?



and

- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

13. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.
14. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
15. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore,

it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

16. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
 - (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 Act, 2002 (54 of 2002);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

17. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

18. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.

19. The applicant/operational creditor has proposed the name of CA Neha Firoda, having registration No. IBBI/IPA-001/IP-P-01938/2020-2021/13093 and having address at G/H 164, Scheme No. 54, Vijaynagar, Indore, Madhya Pradesh 452 010 to

act as an interim resolution professional under Section 13 (1) (c) of the Code.

20. This Petition is accordingly admitted.
21. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
22. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.



Virendra Kumar Gupta
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

nair