

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

C.P. (IB) 1916/2019

Under section 9 of the IBC, 2016

**In the matter of**

Payal Gold Private Limited

201, Shanti Plaza, 195/197,

Kalbadevi Road, Near Cotton

Exchange, Mumbai-400 002

.... Operational Creditor

v/s.

Goodwin Jewellers Private Limited

Unit Nos. 1, 2, 3, 4 & 5, 1<sup>st</sup> Floor,

Panhalgad, Shiv Market, Manpada

Road, Dombivli (East), Dombivli,

Thane 421 201

.... Corporate Debtor

**Order delivered on: 20.12.2019**

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

For the Petitioner: Sneha Vani i/b Saurabh Mehta, Advocate

For the Corporate Debtor: Vishal Jain, Chartered Accountant

***Per: Bhaskara Pantula Mohan, Member***

**ORDER**

1. This Company Petition is filed by Payal Gold Private Limited, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Goodwin Jewellers Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the petitioner in view of the goods supplied by them by invoking the provisions of Section 8 and 9 of Insolvency and

Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is a company incorporated under the provisions of the Companies Act, 1956 carrying on business of supplying gold jewelry and bearing Company Identification Number U52100MH2011PTC219166. The Corporate Debtor is a company incorporated on 13/01/2011 and bearing CIN U13204MH2011PTC212289 and having authorized share capital Rs. 25,00,00,000/- and paid up share capital of Rs. 17,00,00,000/-.
3. The counsel appearing on behalf of the Operational Creditor submitted that in the course of financial year 2018-2019, the Corporate Debtor had approached them on three distinct occasions for the procurement of gold jewelry. The first invoice was raised on 22/02/2019 bearing No. SG-5140 of Rs. 42,00,000/-. The second invoice was raised on 23/02/2019 bearing No. SG-5164 of Rs. 42,00,000/- and the third invoice raised was on 26/02/2019 bearing No. SG-5193 of Rs. 43,00,000/-. The counsel further mentioned that till date there was no payment received from the side of the Corporate Debtor for all the above mentioned three invoices.
4. The counsel for the Operational Creditor further mentioned that the goods described in all the three invoices were duly delivered to the Corporate Debtor from time to time pursuant to complete check regarding their grade and quality, yet there was no payment and therefore, the total amount due on the Corporate Debtor is Rs. 1,27,00,000/-.
5. The counsel appearing on behalf of the Operational Creditor also mentioned that the invoices were also duly delivered to the Corporate Debtor for which cheques were issued which got dishonored on the ground of insufficient balance.
6. The Operational Creditor stated about the reminders sent to the Corporate Debtor to clear the outstanding dues but on each occasion, there were excuses of financial crisis and requests for accommodation for clearing the dues at the earliest. The Operational Creditor also followed up with the Corporate Debtor to release the

entire outstanding amount with hopes of arriving at an amicable settlement but in vain.

7. The counsel for the Operational Creditor further stated that a demand notice dated 10/04/2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 was sent to the Corporate Debtor which was duly received on 13/04/2019 wherein a demand was made for payment of the unpaid operational debt due on the Corporate Debtor.
8. To this demand notice, the Corporate Debtor had replied vide letter dated 18/04/2019 wherein it was stated that three cheques were granted to the Operational Creditor as a security but was deposited by them without prior intimation and therefore, got dishonored. The Corporate Debtor also requested the Operational Creditor to grant more time of 6 to 8 months for making the payments.
9. The Operational Creditor has annexed the following documents in support of the contentions made by them:
  - i. True copy of the Corporate Debtor's Master data as available on the website of the Ministry of Corporate Affairs.
  - ii. Invoices dated 22/02/2019, 23/02/2019 and 26/02/2019.
  - iii. Copy of Cheques along with the receipt of Memorandum of Dishonor.
  - iv. Copy of the Demand Notice dated 10/04/2019 along with the tracking report of delivery.
  - v. Copy of reply made to the Demand Notice dated 18/04/2019.
10. The Corporate Debtor raised an objection on the Demand Notice dated 10/04/2019 sent by the Operational Creditor taking the ground that there is no Board Resolution authorizing anyone to issue and serve the notice. Also, no documents were attached with the notice which makes it incomplete, defective and not having any proof of the existence of the operational debt and the amount in default making it null and void ab-initio and also the petition infructuous.
11. Also, the professional appearing on behalf of the Corporate Debtor submitted that the invoices attached with the copy of the petition neither bears the sign of person authorized to sign the invoice on behalf of the Respondent nor does it bear the Respondent's stamp.

It was also submitted that the invoices are not yet due for payment as they neither bear any payment terms nor mention the credit period and that the debt is due.

12. The counsel for the Corporate Debtor also raised an objection that the application is not signed by Deepak Sharma, authorized person as per the Board Resolution dated 02/05/2019. It was further stated that the Demand Notice was signed by Mr. Arshil Ajay Shah whereas the Board Resolution authorizes Mr. Deepak Sharma and therefore, this petition cannot be admitted.
13. The counsel for the Corporate Debtor also mentioned that Section 9(3)(c) is mandatory and requires to be complied with strictly or else this petition is to be dismissed at the threshold. The Operational Creditor has neither attached copy of the certificate from the financial institutions maintaining accounts of them confirming that there is no payment of an operational debt under the said provision nor the bank statement attached supports the certificate. This code being an extremely draconian piece of legislation must be construed strictly and therefore, this petition deserves to be dismissed.
14. Later, the professional representing the Corporate Debtor on the day of final hearing i.e. on 19/11/2019 accepted the liability by expressing his inability to pay the debts. Accordingly, the following order is hereby passed:

**ORDER**

15. We have heard both the parties and after perusal of all the documents submitted by them, there remains no doubt that three invoices dated 22/02/2019, 23/02/2019 and 26/02/2019 of Rs. 42,00,000/-, 42,00,000/- and 43,00,000/- respectively were raised in favor of the Corporate Debtor. Also, the goods were accordingly delivered. The Corporate Debtor issued three cheques in view of the same in favor of the Operational Creditor which got dishonored on the ground of insufficient balance.
16. Demand Notice dated 10/04/2019 was also duly served on the Corporate Debtor which was received by them on 13/04/2019. The Corporate Debtor also replied to this notice vide a letter dated

18/04/2019 wherein request was made for grant of time for making the payments within 6 to 8 months thus accepting their liability.

17. There have been several contentions raised by the counsel for the Corporate Debtor stating the reasons as to how the petition deserves to be dismissed. The very first contention is that the board resolution authorizes Mr. Deepak Sharma whereas the Demand Notice has been sent by another person Mr. Arshil Ajay Shah. But here it is to be noted that the Demand Notice was sent prior to the passing of the Board Resolution. Also, Section 8 of the Code does not mention that a Board Resolution is to be passed before issuance of Demand Notice. The only requisite condition is that the Demand Notice duly be served upon the Corporate Debtor and in the present matter, it is to be noted that the Demand Notice was duly served and received upon and by the Corporate Debtor.
18. Also, the contentions made by the Corporate Debtor that neither the invoices nor the Demand Notice contain any details of the debt and the date of making the due payment cannot be relied upon because in the reply to the Demand Notice, no such thing has been mentioned by the Corporate Debtor rather they have sought 6 to 8 months of time for making the payment thus admitting the fact that they are bound to pay the Operational Creditor.
19. And later, on the date of final hearing i.e. on 19/11/2019, the professional representing the Corporate Debtor appeared before this Bench and himself accepted the liability by stating in open court that the respondent company is unable to pay the debt and therefore defaulted in making the payments.
20. Therefore, it can be concluded that it is an admitted liability and also that the documents submitted by the Operational Creditor are enough to establish the debt upon the Corporate Debtor and hence the contentions made by them cannot be relied. Also, they defaulted in repaying the debt which they themselves have admitted. Also, the amount of debt is much above the minimum required amount of Rs.1,00,000/- Hence, all the requisite conditions for admission of a petition under Section 9 have been found to be fulfilled and therefore, this petition deserves to be admitted.

21. Therefore, this Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this petition 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 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.
- (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 20.12.2019 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.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Pankaj Ramandas Majithia, having his registered office at Suit No: 301-304, Metro Avenue, near Magicbricks W.E.H. Metro Station, Andheri East, Mumbai-400099 and having Registration

No: IBBI/IPA-001/IP-P00452/2017-18/10795 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

22. Accordingly, this Petition is allowed.

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

**Sd/-**

**SHYAM BABU GAUTAM**  
**Member (Technical)**

**Sd/-**

**BHASKARA PANTULA MOHAN**  
**Member (Judicial)**