IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,
KOLKATA

C.P (IB) No.1262/KB/2019

In the matter of
An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.
And
In the matter of:

Ashok Kumar Jhunjhunwala, having its office at A-201,Dhruv Height, Opp. Upper Govind Nagar, Malad (E) Mumbai- 400097.

… Operational Creditor

Versus

In the matter of:
Jain Shoppers Private Limited, a company incorporated under the Companies Act, 1956, having its Registered Office at 87, Diamond Harbour Road, Behala, Kolkata- 700038, West Bengal.

…Corporate Debtor

Date of hearing :07/02/2022
Order Pronounced on :17 /02/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms. Meenakshi Manot, Adv.] For Operational Creditor

1. Ms. Shreya Choudhary,Adv] For the Corporate Debtor

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under section 9 of the IBC has been filed by **Ashok Kumar Jhunjhunwala**, having its office at A-201,Dhruv Height, Opp. Upper Govind Nagar, Malad (E) Mumbai- 400097,(hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Jain Shoppers Private Limited** ,(CIN: U21014WB1978PLC031473)having its Registered Office at 87, Diamond Harbour Road, Behala, Kolkata- 700038, West Bengal (hereinafter referred as the Corporate Debtor).

3. It is submitted that the Operational Creditor had been providing consultancy services to the Corporate Debtor since April, 2018 and the total amount of their fees constituting operational debt was to the tune of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only), which the Operational Creditor has been demanding from the Corporate Debtor from time to time but till date no payment has been received. It is submitted that the Corporate Debtor has been writing letters to the Operational Creditor seeking further time to pay but it failed to clear its outstanding.

4. The Operational Creditor thereafter issued a demand notice dated 12th June, 2019 under section 8 of the Insolvency and Bankruptcy Code, read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016 and delivered it by hand but no payment was received even thereafter. The Operational Creditor has submitted that in spite of all efforts taken by the Operational Creditor, it

has remained unsuccessful in recovering the claim from the Corporate Debtor and therefore, was constraint to file the present proceeding.

5. It is submitted that the application has been filed within the prescribed period of limitation without any delay. The Operational Creditor has submitted that the Operational Creditor is a professional and was providing consultancy services in the area of Taxation, Company Law and Accounts etc. and the genuine claim of the fees of the Operational Creditor has not been satisfied by the Corporate Debtor, who has been deliberately ignoring all the reminders and requests of the Operational Creditor. It is submitted that since the Corporate Debtor has defaulted in making payment in spite of the notice under section 8 of the Code, the petition of the Operational Creditor deserves to be admitted.

6. It is submitted that the date of default of the outstanding debt of Rs.2,50,000/- is 29^{th} December, 2018.

7. Since there is no reply affidavit, there is no question of there being any pre-existing disputes having been brought to the notice of the Operational Creditor.

8. The Operational Creditor has filed various documents in support of its case, which are as under:-

    i. Form 5 as per Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the annexures;

    ii. Copy of the invoice/demand notice as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the Corporate Debtor;

    iii. Copy of Pan Card and Aadhaar Card of the Operational Creditor;

    iv. Copy of Master Data of Corporate Debtor as available at MCA portal;

v. Details of Transactions on account of which the debt fell due and the date from which such debt fell due;

vi. Copy of the amount claimed to be default and date on which the default occurred;

vii. Copy of Invoices in order to prove the existence of operational debt and the amount in default and correspondence thereon;

viii. Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational Creditor;

ix. Affidavit verifying non- receipt of amount in default from Corporate Debtor;

x. Affidavit in support of the application being filed with the main petition;

xi. Affidavit verifying the petition;

xii. Affidavit of service;

xiii. Affidavit under section 9(3) (b) of the Code;

xiv. Consent of IRP;

9. This Adjudicating Authority issued notice to this petition which was duly served on the Corporate Debtor.

10. The Operational Creditor proposed the name of **Mr. Kamal Prakash Singh,** to act as an IRP having Registration No.**IBBI/IPA-001/IP/P-01722/2019-2020/12653,** who has consented vide his affidavit and Form-2 and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

11. In Reply to the petition, the Corporate Debtor filed an affidavit of Mr. Arun Rai, one of the Directors of Jain Shoppers Private Limited i.e. Corporate Debtor who very candidly acknowledged and accepted the default in payment of the operational debt owed to the Operational Creditor as stated in Form-5 of the petition, but submitted that due to shortage of funds in the business, they were unable to pay the amount due to the Operational Creditor.

12. We have gone through the petition and all the documents annexed therewith.

13. In view of the averments mentioned in the petition and the reply affidavit, there is a clear case of admission of the liability and the petition of the Operational Creditor deserves to be admitted, we, therefore, pass the following orders: .

O R D E R S

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

a) 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;

b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

c) 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);

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) **Mr. Kamal Prakash Singh, IRP**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP/P-01722/2019-2020/12653**,and holding AFA under Regulation 7-A of the IBBI (Insolvency Professionals) Regulations, 2016, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xi) The Operational Creditor/Applicant is directed to deposit **Rs.50,000/- (Rupees Fifty Thousand only)** with the IRP appointed hereinabove within three days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

14. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

15. List the matter on **29/04/2022** for filing of **Progress Report**.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)	**(Rohit Kapoor)**
Member (Technical)	**Member (Judicial)**

Order signed on the 17th day of February, 2022

PJ.