

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

(IB)-2165 (ND) 2019

In the matter of

LAXMI DIA JEWEL PRIVATE LIMITED  
HAVING REGISTERED OFFICE AT:  
PLOT NO. 4, BMC INDUSTRIAL AREA, SAI NAGAR,  
KANDIWALI(W), MUMBAI-400067,  
MAHARASHTRA

.....Operational Creditor/Applicant

VERSUS

SHREE ASHTVINAYAK GEMS AND STONES  
PRIVATE LIMITED  
BALAJI PLAZA, IInd FLOOR,  
KUCHA MAHAJANI, CHANDNI CHOWK,  
NEW DELHI-110006

.....Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 10.12.2019

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Adv. Dhiraj A. Philip and Adv. Ahmad Ibrahim, Counsel for the Applicant

None present on behalf of Respondent



**ORDER**

**Per Ms. Sumita Purkayastha (Member Technical)**

1. The present petition has been filed invoking the provision of Section 9 of the Insolvency & Bankruptcy Code, 2016.
2. The operational Creditor sold and supplied gold jewellery to the Corporate Debtor as agreed between the parties. Pursuant thereto, Operational Creditor raised the following invoices:

Invoice Number	Invoice Date	Amount
117/16-17	10.01.2017	Rs. 19,12,575
118/16-17	12.01.2017	Rs. 91,06,929
125/16-17	02.02.2017	Rs. 63,78,441

The amount under the above mentioned three invoices aggregates to Rs. 1,73,97,945/-. The Corporate Debtor paid Rs. 1,15,98,630/- (Rs.57,99,315 on 22.06.2017 through cheque and Rs. 57,99,315 on 21.08.2017 through RTGS payment) on 22.06.2017 and 21.08.2017. The total amount outstanding as on 05.03.2019 is Rs. 57,99,315/-. The interest charges @18% p.a. on the principal amount of three invoices and the same aggregate to Rs. 20,04,860/-. Therefore, the total outstanding debt due from Corporate Debtor inclusive of the principal amount and interest is Rs. 78,04,175/-. Several reminders were made by the Operational Creditor requesting for the repayment of the outstanding amount. The Corporate Debtor failed and neglected to make remittances towards the amounts which were due and payable.



3. The Operational Creditor sent Demand Notice dated 08.03.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 upon the Corporate Debtor demanding payment of Rs. 57,99,315/- along with the interest at the rate of 18% per annum from the date when the debt became due and payable. The said notice was sent to the Corporate Debtor at all its addresses through speed post, however it could not be delivered as the shop was closed and was therefore returned back with the note "*shop closed long time*". Hence, the demand notice was sent to the Corporate Debtor through email dated 09.07.2019. The Corporate Debtor has neither replied to the said demand notice showing the existence of the dispute not paid the outstanding claim.
4. On 05.03.2019, an amount of Rs. 57,99,315/- was outstanding and payable by the corporate debtor to the Applicant. The said outstanding amount has been calculated taking interest @18% per annum with effect from date the debt became due and payable.
5. The Petitioner, therefore, filed this petition as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of Rs. 57,99,315/- along with the interest at the rate of 18% per annum.



6. The present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor the Affidavit under Section 9(3)(b) & 9(3)(c) of the Code has been complied with..
7. As per the averments of the Applicant, the Corporate Debtors did not make the payment against the default amount. None appeared on behalf of the Corporate Debtor to oppose the prayer made by the petitioner, hence they were proceeded ex-parte vide order dated 31.10.2019.
8. The present petition being filed in August, 2019 is within the limitation, being within three years from the date of the cause of action and has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor.
9. It has been observed that the demand notice was served to the whole time director of the Corporate Debtor at his respective address by courier. Considering the circumstances, this Tribunal is inclined to admit this petition and initiate CIRP against the Respondent. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*



*(b) transferring, encumbering, alienating or disposing of by the corporate debt or 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;*

*(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.*

Further:

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

*(3) 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. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*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 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."*

10. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Ashok Kumar Juneja, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00117/2017-18/10286, email- [ashokjuneja@gmail.com](mailto:ashokjuneja@gmail.com) duly empanelled with the IBBI as the IRP. He is directed to take such steps as are

mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

11. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

12. Petition is therefore admitted.

Sd/- Sd/-

SUMITA PURKAYASTHA  
Member (T)

ABNI RANJAN KUMAR SINHA  
Member (J)