



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 128/MB/2020

Under Section 9 of the Insolvency
and Bankruptcy Code, 2016

In the matter of

Sparktime Logistics Pvt. Ltd.

[CIN:

U63090MH2016PTC281057]

...Operational Creditor/Applicant

Versus

MSH Sarees Pvt. Ltd.

[CIN: P51310MH2002PTC137332]

...Corporate Debtor/Respondent

Order Pronounced on 09.01.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Inayat Ali Qureshi,
Advocate.

For the Corporate Debtor : None.

ORDER

Per: Justice V. G. Bisht (Retd.)

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Sparktime Logistics Pvt.**

Ltd ("the Operational Creditor hereinafter referred to as Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against MSH Sarees Pvt. Ltd ("the Corporate Debtor hereafter referred to as Respondent").

2. The Respondent was incorporated on 24.09.2002 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is P51310MH2002PTC137332. Its registered office is at 207, Crystal Centre, Tunga Village, Raheja Vihar, Andheri (East), Mumbai-400073. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

Brief Facts:

3. The Operational Creditor is a Small & Medium Enterprise, registered under the provisions of the Small, Medium and Micro Enterprises Development Act, 2006.
4. The Operational Creditor provided Logistics services to the Corporate Debtor, for various shipments exported pan India. The services were enjoyed without any complaint and/or dispute by the Corporate Debtor for a period from September, 2015 to October, 2017.
5. The total amounts for which the logistics services were provided was Rs. 37,00,000/- (Rupees Thirty-Seven Lakhs Only). Out of the said amount a sum of Rs. 17,92,477/- (Rupees Seventeen Lacs Ninety-Two Thousand Four Hundred and Seventy-Seven Only) is due and payable till date by the Corporate Debtor.
6. The Operational Creditor had at several occasions requested and called upon the Corporate Debtor to clear the outstanding dues. However, the Corporate Debtor at all occasions has failed and neglected to clear the outstanding amounts.

7. The Corporate Debtor by an email dated 31 July, 2018, proposed to clear only 50% of the amount from the total outstanding as and by way of a final settlement and vide its email dated 13th August, 2018, requested the Corporate Debtor to settle the amount @ 60% due to expenses and overheads already incurred by the Operational Creditor and once again by an email dated 17th September, 2018, requested the Corporate Debtor to settle the outstanding dues.
8. The Corporate Debtor once again expressed his willingness to settle the dues @50% of the outstanding amounts only.
9. The Operational Creditor by an email dated 20th September, 2018, conceded the proposal of the Corporate Debtor to settle the dues @50% of the outstanding value.
10. In spite of the above, the Corporate Debtor has till date failed and neglected to make any payment of the outstanding dues of the Operational Creditor.
11. The Operational Creditor by his letter dated 8th March, 2019 as and by way of the final reminder called upon the Corporate Debtor to clear the outstanding dues as agreed. However, no response from the Corporate Debtor was received.
12. The Operational Creditor ultimately issued a statutory Demand Notice dated 21st August, 2019, through their Advocate, under Rule 5 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules 2016, upon the Corporate Debtor.
13. The matter was listed on Board on various occasions and the Corporate Debtor was not represented by any of the Counsel on any dates. Considering that the matter is of the year 2020, the Bench on 11.05.2023, directed the Registry to issue Notice to the Corporate Debtor clearly intimating the next date of hearing. This said order has been duly complied with and the Registry has also placed on record Compliance Report. Thereafter, the matter



was adjourned to 26.06.2023, on which date, this Bench observed that the Notice issued through Registry has returned with an endorsement “Addressee Left without Instructions”. On that date, this Bench directed the Applicant to provide alternate/New address of the Corporate Debtor; subsequently, the Registry issued Notice on the New/Alternate Address of the Corporate Debtor. Thereafter, the matter was listed on Board on 04.09.2023, on which date, last and final opportunity was granted to the Corporate Debtor to appear before this Bench on the next date of hearing and advance their submissions, without fail. This Bench made it clear that if the Corporate Debtor failed to appear, this Bench will proceed further in the matter basing on the materials available on record and verbal arguments on that date and consequential orders shall be passed on the next date of hearing.


14. However, Corporate Debtor till date chose not to appear before the Bench and place on record Affidavit in Reply and chose not to advance their Submissions before the Bench, even after clear and categorical directions from this Bench as above. In that view of the matter, the present Company Petition against the Corporate Debtor is thus, proceeded ex parte.


Findings

15. We have heard the submissions of the learned Counsel of the Applicant and perused the records.
16. From the record, it is seen that the Corporate Debtor has neither transferred the amount towards the debt owed to the Applicant nor replied to the notice of payment dated 21.08.2019 issued by the Applicant, which has been duly delivered to the Corporate Debtor. The Corporate Debtor has not issued notice of any

dispute and the Applicant has placed on record the affidavit in this relation in terms of Section 9(3)(b) of the Code.

17. There is clear admission of liability by way of email dated 31.7.2018 proposing to settle the outstanding at 50% of the total amount. It is also undisputed that the settlement took place between the parties and was not honoured by the Corporate Debtor.
18. Considering the above facts and circumstances, the debt and default stands established and no dispute in relation to such debt in default has been brought on record.
19. The application made by the Applicant is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority **admits** this Petition and orders initiation of CIRP against the Corporate Debtor.
20. The Petition bearing **CP (IB) 128/MB/2020** filed by **Sparktime Logistics Pvt. Ltd.** [CIN: U63090MH2016PTC281057], the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **against MSH Sarees Pvt. Ltd.** [CIN: P51310MH2002PTC137332], the Corporate Debtor, is **admitted**.
21. There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
22. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
23. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
24. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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25. The Applicant has submitted in its Application that the Interim Resolution Professional (IRP) be appointed at the discretion of this Bench. We hence, hereby appoint **Mr. Ravi Prakash Ganti** having registration no. **IBBI/IPA-002/IP-N00102/2017-18/10245** and email ID **gantirp@gmail.com** as the IRP of the Corporate Debtor to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
 26. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
 27. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
 28. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
 29. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a

compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.

30. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)



Sd/-
Justice V. G. Bisht (Retd.)
Member (Judicial)