

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH

C.P. No. 665/I&B/2021

Under section 8 & 9 of the IBC, 2016

In the matter of

Devadattam Multitrade Private Limited

UNIT No. 202, 2nd Floor, H Wing, Tax
Center Premises CHL Ltd, Saki Vihar
Road, Andheri (E), Mumbai-400072.

.... Petitioner/ Operational Creditor

V/s.

Hrishikesha Tradewell Private Limited

Office 22, Part I 1st Floor Lalan Building,
Devidayal Road, Mulund West- 400080.

.... Corporate Debtor

Order delivered on: 14.02.2022

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Adv. Manoj Mishra, Adv. Shyam Kapadia

For the Corporate Debtor: Adv. Aniket Sharma

Per: - Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This company Petition is filed by Devadattam Multitrade Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Hrishikesh Tradewell Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed a default in making payment to the extent of Rs. 6,53,64,421/- with interest @ 18% per annum, as on 20.03.2017, by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition states that the Petitioner had made supplies of fabrics of various descriptions, based on the purchase orders issued by the Corporate Debtor.

3. The Corporate Debtor had issued purchase order, dated 04.03.2017, on the Petitioner, for supply of fabrics of various descriptions. On the basis of the purchase orders, supply of the materials was made by the Petitioner to the Corporate Debtor. The supplies were made in the huge quantities from 20.02.2017, till 13.03.2017. Copy of the Purchase order and the Invoices are annexed to the Petition.

4. In the books of the Petitioner, opening balance as on 01.04.2016 was Rs. 4,95,43,280/-. Total sales of Rs. 13,85,81,117/- were made from 01.04.2016 till 31.03.2017, to the Corporate Debtor. Bank Reversal for the cheques not being cleared amounts to Rs. 6,03,34,657/-.

5. Out of the total amount i.e. Rs. 24,84,59,054/- (Opening balance+ Sales+ Bank Reversal) an amount of Rs. 21,14,29,204/- has been paid by Corporate Debtor.
6. The Corporate Debtor had stopped making further payments in spite of the repeated reminders.
7. The, principal amount of Rs. 3,70,29,850/- stood outstanding till date. The outstanding interest was on Rs. 2,83,34,571/-.
8. Despite several requests made by the Petitioner, the Corporate Debtor failed to clear its dues. Thus, on account of non-payment of outstanding dues, on 09.06.2021, the Petitioner issued a Demand Notice, under Section 8 of the Code, demanding a sum of ₹ 6,53,64,421/- which includes interest @ 18% per annum.
9. A notice was sent on 09.06.2021 by speed post on the registered office address of the Corporate Debtor, available on the MCA website, but the same was returned with the remark "*item in hold DOOR LOCKED*" and "*item on hold Addressee Absent*". Thereafter, the Petitioner has sent the notice in Form 3 via, email on 30.06.2021.
10. The Corporate Debtor failed to reply to the demand notice and the Petitioner filed an affidavit under Section 9(3)(b) of the Code. Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filled on 20.07.2021.
11. The Corporate Debtor filed its reply to the Petition and following are the contentions:

- (I) The Corporate Debtor submits that the Petitioner had supplied the fabrics of various descriptions to the Corporate Debtor. There is no denial of the fact that the supply was complete, and the terms of payment was 7 days.
- (II) The Corporate Debtor denied the fact that the Petitioner had issued demand notice under Form 3, as the Corporate Debtor had never received the Demand Notice.
- (III) The Corporate Debtor accepted that he is unable to pay the principal amounting to Rs. 3,70,29,850/- as the business of the Corporate Debtor got severely affected due to pandemic.
- (IV) That except for payment of interest, it is true that the amount is due for payment from Corporate Debtor and they are trying to make the payment. However, the Corporate Debtor is facing lot of financial difficulties which is making it difficult to pay off its dues.
- (V) The Corporate Debtor is trying its best to settle the dues of Operational Creditor as early as possible for which they have also initiated Settlement talks.
- (VI) The Hon'ble Adjudicating Authority we requested to direct the Petitioner to agree to the terms of the Respondent, by accepting the Principal amount, in instalments as given in the below table:

Sr. No.	Month/Year	Amount
1	Monthly Instalment beginning from July 2023 till June 2026 (36 instalments @ Rs. 10,00,000/- totaling to Rs. 3,60,00,000/-)	10,00,000/-
2.	Final instalment during the month of July 2026	10,29,850/-
	Total	3,70,29,850/-

12. During the course of hearing, the parties attempted settling the matter amicably. However, the dispute was not settled, and the matter was heard by this Bench on 07.01.2022.

13. The counsel for the Petitioner claimed the amount of Rs. 6,53,64,421/- vide several invoices, which remain unpaid including interest @18% per annum and also enclosed statement of accounts, showing the outstanding balance. There is clear evidence of debt, which can be seen from the invoices & admission of the liability by the Corporate Debtor. Hence, the Petition is admitted.

14. One Mr. Rakesh Kumar Relan, residing at B1/701, Ganga Satellite, Wanowarie, Near Kedari Petrol Pump, Pune, Maharashtra 411040; having Registration No. IBBI/IPA-001/IP-P-02009/2020-2021/13119 having email id rakeshkrelan@gmail.com has given his consent in Form No. 2 to act as an Interim Resolution Professional.

15. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & 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 judgement, decree or other in any court of law; 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 today till the completion of the CIRP 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 CIRP shall be made immediately as specified under Section 13 of the Code.

(f) that this Bench hereby Mr. Rakesh Kumar Relan, , residing at B1/701, Ganga Satelite, Wanowarie, Near Kedari Petrol Pump, Pune, Maharashtra 411040; having Registration No. IBBI/IPA-001/IP-P-02009/2020-2021/13119 having email id rakeshkrelan@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the Code.

16. Accordingly, this Petition is admitted.

17. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)