

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB) 287/KB/2022

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016, read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

Raftech Multitraders Private Limited [CIN: U74999WB2012PTC179901]

..... *Operational Creditor/ Petitioner*

-versus-

Mangalnayak Shoppers Private Limited [CIN: U74900WB2013PTC194754]

..... *Corporate Debtor/ Respondent*

Date of Pronouncement of the order: 10.04.2024

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

Ms. Sonu Jain, CA] *For the Operational Creditor*

Ms. A. Roy Chowdhury, Adv.] *For the Corporate Debtor*

ORDER

Per Coram:

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Raftech Multitraders Private Limited**, hereinafter referred to as “*Operational Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against

Mangalnayak Shoppers Private Limited, hereinafter referred to as “*Corporate Debtor*”.

3. The Corporate Debtor is a private limited company incorporated on 17.06.2013. The authorized share-capital of the company ₹10,00,000/- and the paid-up share capital of the company is ₹1,00,000/-.
4. The total amount claimed to be in default by the Financial Creditor, is Rs. 5,84,12,473/-. The date of default is mentioned as 18.03.2020.
5. The Operational Creditor has relied on the various documents in support of its claims, including:
 - a) Ledger Account maintained by the Operational Creditor in the name of the Corporate Debtor, annexed as Exhibit “**H**”;
 - b) Confirmation letter issued by the Corporate Debtor, annexed as Exhibit “**G**”;
 - c) Report from National E-Governance Services Ltd., annexed as **Exhibit “K**”;
 - d) Demand Notice dated 19.01.2022, annexed as **Exhibit “I**”;
 - e) Reply to the demand notice dated 04.03.2022, annexed as **Exhibit “J**”.

6. Submissions on behalf of the Operational Creditor:

6.1 The Operational Creditor, in the ordinary course of Business, used to place orders with the Corporate Debtor for supply of fabric on credit terms as per industry norms. As agreed between both the parties, the Operational Creditor used to make payment of invoices within a reasonable period of time. The Operational Creditor had also made advance payment against such supply to the Corporate Debtor, as per agreement between both parties.

6.2 However, the Corporate Debtor failed to supply the Fabric and the amount of Rs. 5,84,12,473/-, being the amount received against such supply as advance became outstanding as on 18.03.2020. In this regard the Corporate Debtor

issued a confirmation letter¹ dated 01.10.2020, thereby confirming the outstanding dues.

6.3 The Operational Creditor approached the Corporate Debtor for payment of outstanding amount on various occasions but not received any payment. As such, the Operational Creditor gave notice² u/s 8 of IBC for initiating insolvency proceedings against the Corporate Debtor on 16.05.2022 by sending notice 2016 in form 3. The said notice was delivered through email on the same date and through registered post on 24.05.2022 to corporate debtor. The Corporate Debtor neither paid the outstanding amount nor intimated the Operational Creditor regarding any pre-existing dispute within 10 days of receipt of notice i.e. till 03/06/2022.

6.4 The Corporate Debtor has not paid any amount till the date of this petition. In such circumstances, the instant petition for initiation of Corporate Insolvency Resolution Process against the corporate debtor has been filed by the Operational creditor.

7 Submissions on behalf of the Corporate Debtor:

7.1 The Corporate Debtor is engaged in the business of trading of fabric. The Corporate Debtor in the ordinary course of Business, sold fabric to the Operational Creditor on credit terms as accepted and agreed by both parties. The Corporate Debtor had received advance payment against the supply from the Operational Creditor.

7.2 Later on, the Corporate Debtor failed to supply the Fabric and the amount of Rs. 5,84,12,473/- being amount payable against the supply of fabrics became outstanding as on 18.03.2020. The Corporate Debtor was approached by the Operational Creditor for payment of outstanding amount on various occasions against which the Corporate Debtor requested for more time to make the balance payment.

¹Annexure "G"

²Annexure "I"

7.3 The Corporate Debtor received notice for initiating insolvency from the Operational Creditor on 20.05.2022 u/s 8 of IBC proceeding 2016 in form 3. The Corporate Debtor replied vide their letter dated 30.05.2022 stating that the Corporate Debtor is unable to pay outstanding amount and requested for more time for repayment.

7.4 The Corporate Debtor is into trading business, so the cashflows of company are linked with timely receipt from our buyers. In past few years company had faced liquidity crunch in the business, due to increase in the prices & due to market conditions. The company's shareholders & directors were also unable to contribute funds and has shown their inability to contribute capital. The networth of the company is negative for more than 5 years. In these circumstances, it is states that the company is unable to pay its obligations.

8 Analysis and Findings:

8.1 Heard the Ld. Counsels on behalf of the parties and perused the records.

8.2 The claim of the Petitioner consists of the advance payment made to the Corporate Debtor for the future supply of fabric. A simple reading of the definitions envisaged in section 3 and 5 of the Code its proposition clear that a 'claim' must bear nexus with a provision of goods or services, without specifying whether such goods are for sale or for hire. Section 5(20) defines 'Operational Creditor' as a person to whom operational debt is owed. Sec 5(21) states that an 'Operational Debt' is a claim in respect of the provision of goods or services. And, sec 3(6) defines 'claim' as either a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; or a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

8.3 As such, the definition of ‘operational creditor’ under the code is not limited only to a vendor of goods, rather, it covers any person to whom a claim in respect of provision of goods or services is owed.

8.4 In this regard, we would like to refer to the decision of the Hon’ble Supreme Court in the matter of ***Consolidated Construction Consortium Limited v. Hitro Energy Solutions Private Limited***³, wherein the Hon’ble Apex Court has widened the ambit of the term ‘operational creditor’. The relevant paragraphs are provided hereinafter:

“30. It is thus clear that operational creditors are those whose debt arises from operational transactions, i.e., transactions which are undertaken in relation to the operation of an enterprise. As the examples in the BLRC Report suggest, these generally include transactions involving goods or services which are considered necessary for the operational functioning of an entity.

.....

43. First, Section 5(21) defines 'operational debt' as a "claim in respect of the provision of goods or services". The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. Such an interpretation is also supported by the observations in the BLRC Report, which specifies that operational debt is in relation to operational requirements of an entity.....”

8.5 As such, it is clear that the principal amount due from the Corporate Debtor to the Operational Creditor in this case will be covered under the aegis of “operational debt”.

6.1 Coming to the claims of the Operational Creditor, it is seen that the Corporate Debtor has provided a confirmation letter⁴ dated 01.10.2020, thereby confirming

³Civil Appeal No. 2839 of 2020

⁴Annexure “G”

the outstanding dues. The Corporate Debtor has also admitted in its reply affidavit that it had taken advance payment for supply of goods from the Operational Creditor and was unable to refund the same. Further, the Corporate Debtor's records maintained in National E-Governance Services Limited also indicate that an amount of Rs.5,84,32,473/- was outstanding payment to the Operational Creditor.

6.2 The Corporate Debtor has further confirmed in its reply affidavit that it has received a demand notice⁵ under section 8 of the Code on 24.05.2022 and issued a reply⁶ thereto on 30.05.2022 whereby the Corporate Debtor had requested for more time for repayment. No dispute as to the quality of the goods was raised by the Corporate debtor in the said reply. It is evident from the Reply-Affidavit that the Corporate Debtor is facing liquidity crunch and is unable to pay its dues to the Operational Creditor.

As such, it is clear to us that in the instant matter, 'debt' and 'default' exist and that there is no pre-existing dispute. The date of default being 18.03.2020 indicates that the instant petition filed on 13.1.2022, is within limitation. Further, the amount in default *i.e* Rs.5,84,12,473/- is above the minimum pecuniary threshold *i.e* One Crore Rupees, under section 4 of the Code. The instant petition is complete in all respects. In light of the same, we are of the considered opinion that the Corporate Debtor should be admitted into CIRP.

8.6 It is, accordingly, hereby ordered as follows:-

- i. The application bearing **CP (IB) No. 287/KB/2022** filed by **Raftech Multitraders Private Limited** (*Operational Creditor*), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against

⁵Annexure "I"

⁶Annexure "J"

Mangalnayak Shoppers Private Limited [CIN: U74900WB2013PTC194754], the Corporate Debtor, is *admitted*.

- ii. There shall be a moratorium under section 14 of the IBC.
- iii. 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.
- iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v. **Mr. Binay Kumar Singhania**, having registration number IBBI/IPA-001/IP-P00041/ 2017- 2018/10102, email: binay1@yahoo.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- vii. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- viii. The IRP/RP shall submit to this Adjudicating Authority, periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Operational Creditor shall initially deposit a sum of ₹ **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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this

**In the National Company Law Tribunal,
Kolkata Bench (Court- I)**

C.P (IB) 287/KB/2022

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

8.7 **CP (IB) No. 287/KB/2022** to come up on **17.05.2024** for filing the progress report.

8.8 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 10th day of April, 2024

SM(LRA)