S. No. 84

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON **13-05-2022** AT 10:30 A.M. THROUGH VIDEO CONFERENCE

CP (IB) No. 771/9/HDB/2019
U/s. 9 of IBC, 2016

IN THE MATTER OF:

Manish Fashion world Pvt Ltd **… Operational Creditor**

Vs

Maqdoom Moghny Enterprises Pvt Ltd **… Corporate Debtor**

CORAM

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order in CP (IB) No. 771/9/HDB/2019 pronounced. Recorded vide separate sheets. In the result the petition is allowed and the Corporate Debtor is put under CIRP as per the terms and conditions mentioned therein.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

CP (IB) No.771/9/HDB/2019

Under section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

M/s Manish Fashionworld Private Ltd
Paridhan Garment Park
SDF-11, Module No.B-303 & 304
Next Leather College, 19, Canal (S) Rd
Chingrihata, Kolkata – 700015
West Bengal, India

.. Petitioner/
Operational Creditor

VERSUS

M/s Maqdoom Moghny Enterprises Private Limited
H. No.18-2-479
Maqdoom Villa
Jangammet Falaknuma
Hyderabad – 500053.

.. Respondent/
Corporate Debtor

Date of order: 13th May 2022

<u>Coram</u>:
HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, MEMBER (JUDICIAL)

and

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI MEMBER (TECHNICAL)

<u>Parties / counsels present</u>:

For the Petitioner : Shri Sachin Sharma, Advocate.

For the Respondent : Shri K.V. Raman, Advocate.

PER BENCH

<u>ORDER</u>

This petition is filed by M/s Manish Fashionworld Private Ltd/ Operational Creditor, stating that the following amount is due and payable as on 14.06.2019 by the Corporate Debtor :

- Principal amount .. Rs.24,75,740
- Interest amount .. Rs.23,18,644
- TOTAL .. **Rs.47,94,384**

(Rupees forty seven lacs ninety four thousand three hundred and eighty four only),

Hence this petition is filed under section 9 of Insolvency and Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments made in the petition are as follows:

(i) The Corporate Debtor approached the Operational Creditor for supply of readymade garments. The Operational Creditor supplied the same during 11.06.2015 to 06.08.2015. The Corporate Debtor received the goods. The Operational Creditor received invoices on the Corporate Debtor and the same were accepted by the Corporate Debtor without objection.

(ii) The Corporate Debtor paid Rs. 2 lacs and failed to make remainder of Rs.24,75,740/-, for which a cheque dated 24.02.2016 (page 81 and page 95 of the petition) was issued. The cheque got dishonoured when presented.

(iii) The Operational Creditor filed a petition under section 138 of the Negotiable Instruments Act, 1881. The Operational Creditor has not stated about its status or outcome.

(iv) The Operational Creditor issued Demand Notice dated 19.06.2019 in Form-3 by Registered Post AD. It was delivered on the Corporate Debtor.

3. The respondent-corporate debtor has filed counter dated 18.11.2020, and Written Arguments dated 19.04.2022, the contentions of which are summarised hereunder:

(i) The petition is barred by limitation.

(ii) The petitioner has substantiated neither the alleged deliveries nor existence of any contract between the parties.

(iii) The alleged invoices are fabricated ones. They have never been delivered to the Corporate Debtor.

(iv) The Corporate Debtor gave reply dated 24.07.2019 (page 5 of the Counter) to Demand Notice dated 19.06.2019 issued by the Operational Creditor. The fact of having received such reply dated 24.07.2019 has been suppressed by the Operational Creditor.

(v) The Corporate Debtor stoutly refutes the claim of the Operational Creditor that the Corporate Debtor had issued a cheque for Rs.24,75,740/-. However, the Corporate Debtor fairly admits that the Corporate Debtor has issued the said cheque dated 24.02.2016 on 04.06.2015, viz. prior to the alleged supply of goods on 08.08.2015 as security for a different transaction. It is a case of misuse of cheque.

(vi) The Operational Creditor has made material alterations on the cheque.

(vii) The petition is barred by limitation under Section 238A of the Code and Article 137 of the Limitation Act, 1963.

(viii) The Corporate Debtor states that proceedings under section 138 are still on and Corporate Debtor is contesting the same.

(ix) The Corporate Debtor relied on case laws in M/s Shruti Impex Vs. NR Commercials Pvt Ltd – CA (AT) (Ins) No.566 of 2020 – Hon'ble NCLAT; Ramco Systems Ltd Vs. Spicejet Ltd – CA (AT) No.31 of 2018 – Hon'ble NCLAT; and CVS Infrastructure Pvt Ltd Vs. Maari Multi Trading Pvt Ltd – CP (IB) No.1764/ MB// C-V/ 2018- NCLAT, Mumbai. Said case laws were cited to lay emphasis that the Operational Creditor has not established supply of goods and has not made out case under section 9 of the I&B Code, 2016.

4. The Operational Creditor has filed Rejoinder dated 23.03.2021 and Witten Submissions dated 18.04.2022 contending that:

(i) On the point of limitation the Operational Creditor there was acknowledgement of debt in para 6 at page 105 of the Appeal dated 10.01.2017 filed before the Hon'ble High Court of Calcutta. That amounts fresh period of limitation, viz. another three years reckoned from 10.01.2017 valid upto 10.01.2020. Whereas the instant application is filed on 10.01.2020/ 02.12.2019.

(ii) The Operational Creditor cited decision dated 08.09.2020 of the Hon'ble Supreme Court in SREI Equipment Finance Ltd Vs. Rajeev Anand & others in Civil Appeal No.9425 of 2019, and decision of the Hon'ble

NCLAT in Rupesh Kumar Gupta Vs. PNB & another in Company Appeal (AT) (Insolvency) No.1119 of 2019.

5 In the light of the contest as mentioned above, the following point is framed for consideration by this Adjudicating Authority:

POINT FRAMED :

- Whether the documentary evidence furnished with application shows that the aforesaid debt is due and payable and has not yet been paid by the Corporate Debtor?

6. We have heard Shri Y. Suryanarayana, learned counsel assisted by Shri Sachin Sharma, learned counsel for the Operational Creditor and Shri K.V. Raman, learned counsel for the Corporate Debtor. Perused the counter, rejoinder, written submissions and the case laws cited by the parties.

7. According to the learned counsel for the Operational Creditor, the Operational Creditor had supplied garments to the Corporate Debtor under various invoices during the period between 11.06.2015 to 06.08.2015, in all valued at Rs.24,75,740/-, as ordered by the Corporate Debtor. The goods were duly delivered through Patel Carriers Private Limited, to the Corporate Debtor, which were duly accepted by the Corporate Debtor. Learned counsel further submitted that as agreed,

the Corporate Debtor shall make payment within 30 days from the date of receipt of goods. However, the Corporate Debtor has delayed as most of the payments were made beyond the stipulated time of 30 days. The learned counsel stated that the Corporate Debtor had paid a sum of Rs.24,75,740/- by way of cheque bearing No.345098 dated 24.02.2016 drawn on Indian Overseas Bank leaving balance of Rs. 47,94,384/- as on 14.06.2019. The Corporate Debtor had issued the said cheque in partial discharge of the above operational debt. However, the said cheque has been dishonoured with a remark 'exceeds arrangement', which prompted the applicant to initiate action under section 138 of the Negotiable Instruments Act before a competent court at Alipore, Kolkata. The Operational Creditor also got issued Demand Notice dated 19.06.2019 calling upon the Corporate Debtor to pay the then outstanding amount of Rs. 47,94,384/-. The Corporate Debtor having received the said Demand Notice not only failed to discharge the operational debt but also raised false and baseless contentions.

8. Insofar as the plea of limitation put forth by the Corporate Debtor is concerned, learned counsel for the Operational Creditor would submit that, the operational debt as claimed is well within the period of limitation. In support of this plea the learned counsel submitted that the last supply was made on 26.02.2016, and as per the terms of invoice the same was payable within 30 days from the date of receipt of the goods. It is stated that since the Corporate Debtor had issued a cheque

bearing No. 345098 dated 24.02.2016 in partial discharge of the outstanding amount the same amounts to acknowledgement of debt within the meaning of section 18 of the Limitation Act. Thus, a fresh period of limitation of three years has accrued effective from 24.02.2016. Learned counsel further submitted that the Corporate Debtor had once again acknowledged the subject debt in the proceedings filed by the Corporate Debtor, before the Hon'ble High Court of Calcutta, challenging the action taken by the Operational Creditor/ applicant under the Negotiable Instruments Act, against the Corporate Debtor for dishonour of cheque issued in partial discharge of the operational debt by the Corporate Debtor. In this context, the learned counsel invited attention the Tribunal to the pleadings of the Corporate Debtor made before the Hon'ble High Court of Calcutta, wherein he has stated that:

> "*6. Your petitioners state that the petitioners in course of business had procured certain goods from the opposite part (sic., party) in respect of which a cheque amount to Rs.24,75,740/- was handed over to the opposite party.*"

Therefore, according to the learned counsel the said statement amounts to acknowledgement of debt and therefore, fresh period of limitation of three years accrued in favour of the applicant, effective from 10.01.2017, the date on which the said acknowledgement of debt was made. The present suit since filed on 02.12.2019 is therefore, well within the period of limitation.

9. Per contra, the learned counsel for the Corporate Debtor submitted that there is no operational debt as claimed by the applicant and the subject cheque was not issued in discharge of any operational debt between the Corporate Debtor and the Operational Creditor. According to the learned counsel the said cheque was issued to the agent of the applicant as security for the supply of garments and not towards discharge of any debt. The learned counsel further submitted that since the last consignment date being 26.02.2016, and the application having been filed on 02.12.2019, the application is hopelessly barred by limitation. As such the application is liable to be dismissed on the ground of limitation itself.

10. Having heard both the learned counsels and the on perusal of the record, it may be stated that this application being under section 9 of the I&B Code, 2016 the Operational Creditor shall establish that an operational debt is due and payable by the Corporate Debtor, exceeding Rs.1 lac besides default, in payment of the same by the Corporate Debtor. A perusal of the invoices, delivery challans and ledger accounts of the Corporate Debtor clearly disclose that the applicant had supplied garments to the Corporate Debtor for the value mentioned therein. The plea of the Corporate Debtor that it had not received supplies from the Operational Creditor cannot be accepted for the reason that the invoices contained TIN number of the Corporate Debtor besides GST has been paid on the goods supplied. That apart the ledger account of the Corporate Debtor has not been disputed by the Corporate

Debtor. Insofar as issuance of cheque bearing No.345098 dated 24.02.2016 drawn on Indian Overseas Bank in partial discharge of liability is concerned the plea of the Corporate Debtor that it was issued through the agent of the Operational Creditor, is not only unsubstantiated but the said plea is contrary to the own admission made by the Corporate Debtor in the pleadings filed before the Hon'ble High Court of Calcutta challenging the action initiated by the Operational Creditor against the Corporate Debtor under the Negotiable Instruments Act. Moreover, in reply to the Demand Notice there is no specific denial of these documents, viz. invoices, delivery challans and ledger. So much so we are fully satisfied that there exists an operational debt of a sum of Rs. 24,75,740/- due and payable by the Corporate Debtor to the Operational Creditor and the same was defaulted by the Corporate Debtor.

11. Insofar the plea of limitation is concerned we have carefully examined the material available before us and we are of the view that operational debt is not barred by limitation for the following reasons:

(a) The undisputed invoices, ledger accounts of the Corporate Debtor, clearly discloses that the last consignment was delivered on 26.02.2016.

(b) Cheque bearing No.345098 was issued on 24.02.2016 in partial discharge of the operational debt.

(c) In the pleadings before the Hon'ble High Court of Calcutta, the Corporate Debtor stated as under:

> “*6. Your petitioners state that the petitioners in course of business had procured certain goods from the opposite part (sic., party) in respect of which a cheque amount to Rs.24,75,740/- was handed over to the opposite party.”*

12. This statement of the Corporate Debtor, as rightly contended by the learned counsel for the Operational Creditor amounts to acknowledgement of debt within the meaning of section 18 of the Limitation Act. The learned counsel also placed reliance on the ruling of the Hon’ble Supreme Court of India in decision dated 08.09.2020 of the Hon’ble Supreme Court in SREI Equipment Finance Ltd Vs. Rajeev Anand & others in Civil Appeal No.9425 of 2019, wherein the Hon’ble Supreme Court upheld the order of the NCLT in the following words:

> “*8. For all these reasons, we set aside the NCLAT order and restore that of the NCLT. The resolution proceedings will continue from the stage at which they were interrupted. Accordingly, Civil Appeal No.9425 of 2019 is disposed of.*”

13. Therefore for the reasons aforestated and on careful consideration of submissions made by both the sides, we are of the considered view that the applicant had established operational debt due and payable by the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same. Therefore, it is a fit case to put the Corporate Debtor under CIRP.

14. Hence, the Adjudicating Authority admits this Petition under Section 9 of Insolvency & Bankruptcy Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(A) Corporate Debtor, M/s Maqdoom Moghny Enterprises Private Limited is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.

(B) The Bench hereby prohibits 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; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(C) 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.

(D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

(E) 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.

(F) That the order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process 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, whichever is earlier.

(G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(H) That this Bench hereby appoints **Shri Bhupatipalli Vijaya Kumar**, having IBBI Registration No.IBBI/ IPA-001/ IP-P01645/ 2019-2020/ 12579, email: bvijayakumarca@gmail.com having address at: 6-62/1, Sri Shailaja Nivas, Bhavani Nagar, Dilsukh Nagar, Telangana ,500060, as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy

Code. His Authorisation for Assignment is valid till 14.11.2022. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

(I) The petitioner is directed to pay a sum of Rs.1,00,000/- (Rupees one lac only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

(J) Proposed IRP shall file Form-2 within three days from the date of this order.

(K) The petitioner is directed to communicate this order to the proposed IRP forthwith.

15. Accordingly, this Petition is admitted.

16. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

Sd/-	**Sd/-**
VEERA BRAHMA RAO AREKAPUDI	DR. N.V. RAMAKRISHNA BADARINATH
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Karim