

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

CP No. 293/MB-V/2021

Under section 8 & 9 of the IBC, 2016

In the matter of

Mr. Mohan Bhatia As a Sole Proprietor of Allied
Enterprises

Registered Office at 2601 Anmol Prestige,
Village Pahad, Goregaon West, Mumbai-400062

...Petitioner/Operational Creditor

V/s

MSH Sarees Private Limited

Registered Office at 207 Crystal Centre Village
Raheja Vihar Andheri (East) Mumbai 400073

...Corporate Debtor

Order Pronounced On: 08.09.2021

Coram:

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

Shri Chandra Bhan Singh, Hon'ble Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Adv. Suyasha kakaria

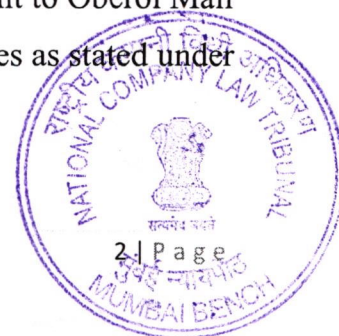
For the Respondent : Adv. Rajesh Nagary

Per: Chandra Bhan Singh, Member (Technical)



ORDER

1. This is a petition being CP No 293/MB-V/2020 filed by Central Investigation and Security Services Limited, the Operational Creditor / Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against MSH Sarees Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP). The Petition is filed claiming a total default of Rs. 1,01,71,457/-with interest as on 11.05.2019.
2. The Petition reveals that the Corporate Debtor is engaged in the business of manufacturing and selling of apparels, accessories, etc., and is the owner of the trade name and trademark "JASHN".
3. The Petitioner and the Corporate Debtor had entered into a Franchise Agreement on 01.04.2019. It was agreed between the Petitioner and the Corporate Debtor that the Petitioner is entitled to a commission equivalent to 30% of Net Sales if any of the apparels, accessories, etc. carrying the trademark of trade name "JASHN" of the Corporate Debtor is sold in Shop No. S-20 at Oberoi Mall, Second Floor, Goregaon, Mumbai 400063. The said premises were taken on lease by the Corporate Debtor to carry on the business under the trade name and trademark "JASHN".
4. The Corporate Debtor was supposed to pay costs relating to the interior, main signage, inside branding, rent cam & GST on rent to Oberoi Mall directly and was also supposed to perform all the duties as stated under clause B of the said agreement.



5. The Petitioner had given an amount of Rs. 54,00,000/- as an interest-free refundable deposit to the Corporate Debtor for inventory supplies, furniture, and fixture costs on the terms and conditions outlined in the Franchise Agreement.
6. The Corporate Debtor had agreed to pay the commission by the 10th of next month and if there was a delay on commission payment by the end of the Corporate Debtor, the Petitioner was entitled to charge interest @18% per annum.
7. The term of the Franchise Agreement was for a period of five years from 01.04.2019 and expired on 12.12.2019 as per the letter dated 12.12.2019 sent by Petitioner to the Corporate Debtor terminating the agreement for the default in payment of the commission since the beginning of the said agreement entered between Petitioner and Corporate Debtor. The letter of termination dated 12.12.2019 has been annexed to the Petition.
8. Despite several requests made by the Petitioner, the Corporate Debtor has failed to clear its dues. Thus, on account of non-payment of outstanding dues, on 06.03.2020, the Petitioner issued a Demand Notice, under Section 8 in Form 4 of the Code, demanding a sum of Rs. 1,01,71,457/- However, there was no reply from the Corporate Debtor for the demand notice issued by the Petitioner. A copy of the Demand Notice is reproduced as below:



Allied Enterprises

2601, Anmol Prestige, S.V. Road, Goregaon West.
Mumbai - 400 104
Phone: +91 9321233409



FORM 4

(See clause (b) of sub-rule (1) of rule 5)
**FORM OF NOTICE WITH WHICH INSOLVENCY DEMANDING PAYMENT IS
TO BE ATTACHED**
(Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)

06th March, 2020

To,

MSH Sarees Private Ltd
Having registered office at Office No.207
207, Crystal Centre, Raheja Vihar,
Powai, Mumbai - 400 072.

Madam/ Sir,

**Sub: Notice attached to Franchise Agreement dated 1st April 2019 in demanding
payment in respect of unpaid operational debt due from MSH Sarees Pvt Ltd.**

Madam/ Sir,

Mr Mohan Bhatia as a sole proprietor of Allied Enterprises hereby provides notice for repayment of the unpaid amount of Rs 1,01,71,457/- (Rupees One Crore One Lakh Seventy One Thousand Four Hundred and Fifty Seven Only) that is in default as reflected in Annexure I and the Franchise Agreement attached to this notice.

In event you do not repay the debt due to us within ten days of receipt of this notice we may file an application before the Adjudicating Authority for initiating a corporate insolvency process under Section 9 of the Code.

Yours sincerely,



9. The Petitioner has filed its Ledger Account for the period from 01.04.2019 to 31.03.2020 to show that no money is received from the Corporate Debtor.



10. On 25.08.2021 the matter was listed for hearing, the Corporate Debtor during the hearing of the matter mentions that they have not filed a reply and the Corporate Debtor company is not in a position to repay the amount. The Corporate Debtor admits the liability, as well as default. Hence this petition, deserves admission.

11. This Bench having been satisfied with the Petition filed by the Petitioner which complies 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 the 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 the 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 appoints Mr. Anshul Gupta residing at Flat No. 1501, Tower No.4, Spring Groove Towers, Lokhandwala Township, Kandiwali East, Mumbai City, Maharashtra,400101; having Registration No. IBBI/IPA-002/IP-N00310/2017-2018/10899; Email: contactanshulgupta@gmail.com as Interim Resolution Professional to carry the functions as mentioned under the Code.
- g) The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

12. Accordingly, this Petition is admitted.

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

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 28.03.2022

R. S. Sonawale
Deputy Registrar
NCLT Mumbai

National Company Law Tribunal
Government of India

