



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.459/Chd/Hry/2019

**Under Section 9 of the
Insolvency and Bankruptcy
Code, 2016.**

In the matter of:

M/S ARTSANA INDIA PRIVATE LIMITED

having its registered office at
7th Floor, Paras Twin Tower Golf Course Road,
Sector-54, Gurgaon-122002
E-mail- Amit.Pasricha@artsana.com

...Applicant-Operational Creditor

Vs.

M/S VIBGYOR RETAIL PRIVATE LIMITED

having its registered office at
Plot No. 853, Phase-V, Udyog Vihar
Gurgaon, Haryana-122016
E-mail: rajesh@kidsberry.co.in

...Respondent-Corporate Debtor

Judgment delivered on: 31.08.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Applicant-Operational Creditor : Mr. Deepankur Sharma, Advocate

For the respondent-Corporate Debtor : Respondent ex-parte vide
Order dated 16.03.2022.

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by M/s Artsana India



Private Limited (for brevity '**Operational Creditor**'/ '**Applicant**'), represented by its Authorised Representative, Mr. Amit Parischa, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Vibgyor Retail Private Limited (for brevity '**Corporate Debtor**'/ '**Respondent**').

2. The Corporate Debtor namely, M/s Vibgyor Retail Private Limited, is a Company incorporated on 14.11.2012 under the provisions of Companies Act, 1956 with CIN No.U52100HR2012PTC047664 with its registered office at Plot No. 853, Phase-V, Udyog Vihar Gurgaon, Haryana-122016. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-14.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is deeming into the business of manufacturing of baby products under the name and style of M/s Artsana India Private Limited at Gurgaon, Haryana. The corporate debtor is an exclusive trader of such goods in this field. The corporate debtor approached the operational creditor for the supply of baby products. The operational creditor started supplying baby products to the corporate debtor from 13.10.2016 to 25.07.2017. The operational creditor supplied baby products amounting to Rs. 1,04,73,720/-. The corporate debtor made part payment to the operational creditor amounting to Rs. 20,60,903/- against the invoices raised by the operational creditor, an amount of Rs. 22,58,134/- has been adjusted on account of sale returns, an amount of Rs.22,13,548/- has been adjusted on the account of claim received and an amount of Rs.19,330/- has been adjusted on the account of contral. Copies of invoice, copies of Lorry Receipts and copy of



ledger are attached with the petition as Annexure-A-2, A-5 & A-6 respectively.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.45,61,327/- (Rupees Forty-Five Lakh Sixty-One Thousand Three Hundred and Twenty-Seven Only) and the date on which default occurred is 10.11.2017.

5. A demand notice in Form 3 dated 23.04.2019 is stated to be issued to the Corporate Debtor through speed post and also served through their registered e-mail ID of the corporate debtor as per master data i.e. rajesh@kidsberry.co.in and the same has been duly served. The copy of the registered postal receipts, proof of email and copy of notice are appended with this application as Annexure A-7. However, no reply to the demand notice has been stated to be filed.

6. In Part-III of Form No. 5, Mr. Alok Kumar Agarwal, Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Alok Kumar Agarwal, Insolvency Resolution Professional.

7. Notice of this petition was issued to the corporate debtor vide order dated 10.10.2019 to show cause as to why this petition be not admitted. None appeared on behalf of the corporate-debtor. Thereafter as per order dated 16.03.2022 of this Adjudicating Authority, compliance affidavits of service has been filed bearing diary No.662/1 dated 18.02.2022. However, despite service, there was no representation from the respondent-corporate debtor and even no reply is filed. In these circumstances, this Adjudication



Authority was constrained to proceed with the matter and the respondent has been set *ex parte*.

8. We have heard the learned counsel for the petitioner and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 23.04.2019 was properly served. The petitioner has placed a copy of the registered postal receipts, proof of email which was delivered to the corporate debtor.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of the corporate debtor despite repeated service and has been set *ex parte* vide order dated 16.03.2022. Moreover, the petitioner has appended affidavit u/s 9(3)(b) stating that there is no reply to the demand notice, the corporate debtor has not cleared the outstanding dues and the corporate debtor has not raised any dispute regarding the amount due. Thus, there is no pre-existing dispute between the parties.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 21.08.2019 vide Diary No.4242. Whereas the date of default is 10.11.2017, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹45,61,327/- The operational creditor has provided baby products to the corporate debtor and raised invoices attached as Annexure A-2. Accordingly, the petitioner proved the CP (IB) No.459/Chd/Hry/2019



debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default which is above threshold limit.

14. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s Vibgyor Retail Private Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below:

- a) 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;



- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

15. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till 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 as the case may be.



17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Alok Kumar Agarwal and there is nothing adverse against him. In view of the above, we appoint Mr. Alok Kumar Agarwal, Registration No.IBBI/IPA-001/IP-P00059/2017-2018/10137, E-mail:alok@insolvencyservices.in Mobile No.9810488525 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Alok Kumar Agarwal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed



to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;



- vi.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The RP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.
- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.



18. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. This petition is accordingly allowed and admitted.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

August 31, 2022
AV/ASH