

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
CP(IB) 127 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Karan Monomers Pvt Ltd
V/s
Bloom Dekor Ltd

.....Applicant

.....Respondent

Order delivered on: 11/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT – I**

CP (IB)-127 2020

*(Application for initiation of Corporate Insolvency Resolution Process
U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

In the matter of M/s. Bloom Dekor Limited

Karan Monomers Pvt. Ltd.

204, Navkar Commercial Complex,
Opp. Andheri Railway Station,
Andheri East, Mumbai-400069.

... Applicant/Operational Creditor

VERSUS

Bloom Dekor Limited

Block No. 267, Village Orantal Prantiji,
Sabarkantha, Gujarat.

... Respondent/Corporate Debtor

Order Pronounced on 11.10.2023

CORAM:

Sh. Shammi Khan, Hon'ble Member (Judicial)

Sh. Sameer Kakar, Hon'ble Member (Technical)

Appearance:

For the Applicant :- Mr. Vijay H. Patel, Adv.

For the Respondent :- Mr. Jamin Dave, Adv.

ORDER

1. This an application filed on 05.02.2020 by the Applicant-Karan Monomers Pvt. Ltd. (hereinafter referred to as '**Operational Creditor**') against the Respondent- Bloom Dekor Ltd. (hereinafter referred to as '**Corporate Debtor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a request to admit the application, commence Corporate Insolvency Resolution Process (**CIRP**), appoint IRP and declare moratorium for having defaulted payment of its outstanding dues **Rs.1,85,93,389/-**.

2. On perusal of Part-I of the Form-V reveals that application is filed by M/s Karan Monomers Pvt. Ltd. through its director Mr. Bharat Shah who has been authorised by Board Resolution dated 18.01.2020 which is annexed at page 233 with the application. Further an affidavit in support of application is affirmed by one Mr. Bharat Shah in his capacity as director of the Applicant/Operational Creditor.

3. A perusal of the Part II of the Form-V reveals that the Respondent/Corporate Debtor is one M/s Bloom Dekor Ltd. is a company

incorporated on 23/03/1992 with CIN No. L20210GJ1992PLC017341 and is having its registered office at Block No. 267, Village Orantal Prantij, Sabarkantha, Gujarat.

4. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not nominated any IRP in the matter and has requested that IRP may be appointed form the panel.

5. A perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs. 1,85,93,389/- consisting of Rs. 1,38,20,999/- being principle and amount and Rs. 40,44,398/- as the interest calculated @ 21% p.a.

6. It is stated that the Applicant/Operational Creditor has received orders form the Respondent/Corporate Debtor during the period July, 2017 to December, 2018 for supply of goods. The goods were supplied during the period 29.07.2017 to 21.12.2018 and for which invoices were issued. Annexure 1 to 31 are invoices, e way bills, purchase orders, delivery challans, terminal gate pass, lorry receipts etc.

7. It is stated that post supply of goods, the Applicant/Operational Creditor has written several emails to the Respondent/Corporate Debtor demanding

payment; certain cheques were issued by the Respondent/Corporate Debtor which were dishonoured. The details of such cheques are :-

- a. dated 16.09.2019 of Rs. 2,83,500/-,
- b. dated 12.09.2019 of Rs. 3,00,000/-,
- c. dated 30.07.2019 of Rs. 2,12,400/-
- d. dated 08.08.2019 of Rs. 2,12,400/-.

All the said cheques have been returned for funds insufficient.

8. It is stated that the Respondent/Corporate Debtor kept failing in paying off the outstanding debt and the Applicant/Operational Creditor as a last resort, served a Demand Notice to the Respondent/Corporate Debtor on 27.07.2019 calling upon the Respondent/Corporate Debtor to clear the outstanding debt of Rs. 1,85,93,389/- (Rupees One Crore Eighty-Five Lakhs Ninety-Three Thousand Three Hundred and eighty-Nine only). The Demand Notice was duly served upon the Respondent/Corporate Debtor on 01.08.2019. However, the Respondent/Corporate Debtor did not reply to the said demand Notice and hence this petition.

9. The Applicant/Operational Creditor relies upon the following documents:-

Sr. No.	List of Documents/ Annexures
1.	<p>ANNEXURE 1</p> <p>Copy of Invoice dated 9.3.2018 along with the following documents in relation thereof:</p> <p>Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt</p>
2.	<p>ANNEXURE 2</p> <p>Copy of Invoice dated 5.5.2018 along with the following documents in relation thereof:</p> <p>E-Way Bill, Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt</p>
3.	<p>ANNEXURE 3</p> <p>Copy of Invoice dated 17.5.2018 along with the following documents in relation thereof:</p> <p>E-Way Bill, Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt</p>
4.	<p>ANNEXURE 4</p> <p>Copy of Invoice dated 22.5.2018 along with the following documents in relation thereof:</p> <p>E-Way Bills, Purchase Orders.</p>
5.	<p>ANNEXURE 5</p> <p>Copy of Invoice dated 22.5.2018 along with the following documents in relation thereof:</p> <p>E-Way Bill, Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt</p>
6.	<p>ANNEXURE 6</p> <p>Copy of Invoice dated 30.5.2018 along with the following documents in relation thereof:</p> <p>E-Way Bill, Purchase Order, Delivery Order, Terminal</p>

	Gatepass, Lorry Receipt
7.	ANNEXURE 7 Copy of Invoice dated 30.5.2018 along with the following documents in relation thereof: E-Way Bill, Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt
8.	ANNEXURE 8 Copy of Invoice dated 6.6.2018 along with the following documents in relation thereof: E-Way Bill, Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt
9.	ANNEXURE 9 Copy of Invoice dated 6.6.2018 along with the following documents in relation thereof: E-Way Bill, Purchase Order, Delivery Order
10.	ANNEXURE 10 Copy of Invoice dated 13.6.2018 along with the following documents in relation thereof: E-Way Bill, Purchase Order, Delivery Order, Terminal Gatepass, Lorry Receipt
11.	ANNEXURE 11 Copy of Invoice dated 14.6.2018 along with the following documents in relation thereof: E-Way Bill, Purchase Order, Receipt of goods accepted
12.	ANNEXURE 12 Copy of Invoice dated 18.6.2018 along with the following documents in relation thereof: E-Way Bill, Purchase Order, Delivery Order, Delivery Challan, Lorry Receipt
13.	ANNEXURE 13 Copy of Invoice dated 7.7.2018 along with the following documents in relation thereof: E-Way Bill, Delivery Challan, Purchase Order
14.	ANNEXURE 14 Copy of Invoice dated 11.7.2018 along with the following documents in relation thereof: E-Way Bill, Delivery Challan, Purchase Order

10. Reply affidavit was filed by the Respondent/Corporate Debtor on the e-portal on 12.08.2021 the same is affirmed by the Managing Director of the Respondent/Corporate Debtor. The main contentions of the Respondent/Corporate Debtor are summarized below :-

- a) Applicant has not filed bank statements.
- b) Affidavit u/s 9 (3) (b) not filed.
- c) Claims are arising out of different purchase orders and are clubbed together to file the present application.
- d) Demand notice was not accompanied with any authority.
- e) Pre-existing dispute, goods supplied were not upto desired quality; there was gross delay in supplies, short supply of goods which lead to Respondent/Corporate Debtor suffering losses.
- f) Respondent is a viable going concern.

11. No rejoinder was filed, however both parties were permitted to file written submission which have since been filed and are being considered.

12. We have heard both the sides and perused the documents placed on record. It is not in dispute that the Applicant/Operational Creditor has supplied goods to the Respondent/Corporate Debtor. We have seen that the Applicant/Operational Creditor did serve a demand notice dated 27/07/2019 which was served on the Respondent/Corporate Debtor on 01/08/2019 and was

never replied by the Respondent/Corporate Debtor. In its reply the Respondent/Corporate Debtor in feeble voice raised pre-existing dispute. However, no document is attached along with the reply showing such dispute was raised before issue of demand notice.

13. As regards short supply of material bald statement is raised in the pleadings, which is not supported by any documentary evidence. Furthermore, no amount is quantified by the Respondent/Corporate Debtor of such short supplies.

14. As regards affidavit u/s 9 (3) (b), the same is placed on record as per page 15 of the application.

15. We have seen that a settlement was arrived between the parties which is dated 9/5/2022 whereby the Respondent/Corporate Debtor agreed to pay a sum of Rs. 1,35,22,640/- to the Applicant/Operational Creditor through supply of various finished goods manufactured by the Respondent/Corporate Debtor and GST of Rs. 24,34,075/- was to be paid by the Applicant/Operational Creditor. However, for the reasons best known to the parties, this settlement was not acted upon by the parties and the Applicant/Operational Creditor pressed for this application.

16. In our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite

service of notice under Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

17. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **M/s Bloom Dekor Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - 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.*
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be

specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.

- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint **Ms. Vineeta Maheshwari**, Registered Insolvency Professional having registration number as IBBI/IPA-001/IP-P00185/2017-18/10364 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). She shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating

the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

18. Accordingly, this Application **CP(IB)/127/AHM/2020** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)