

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 304/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Dashabahu Multitrade Private Limited

[CIN: U74999MH2014PTC253065]

...Operational Creditor/Applicant

V/s

Tanishi Tradewell Private Limited

[CIN: U74120MH2013PTC242324]

...Corporate Debtor/Corporate Debtor

Order Dated: 28.06.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Amir Arsiwala a/w
Mr. Manoj Kumar Mishra,
Advocates.

For the Corporate Debtor(s) : None Present.

ORDER

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 304/MB/C-IV/2021 filed on 20-03-2021 by Dashabahu Multitrade Private Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Tanishi Tradewell Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).
2. The Operational Creditor has filed Board Resolution dated 23.12.2020 in support of authorization in favour of Mr. Rajpal Singh Daudhar, Director of the Operational Creditor authorising him to file the present company application on behalf of the Operational Creditor.
 - 3.1 The total amount claimed by the Operational Creditor in the Part 4 of the Company Petition is Rs. 5,16,78,260/- pursuant to 6 invoices issued by it to the Corporate Debtor, consisting of Principal Amount of Rs. 4,43,80,403/-, alongwith interest of Rs.72,97,857/- as on 20.01.2020. The date of default as mentioned in the Part IV of the Application is 21.03.2020 i.e. 7 days from the date of issuance of last invoice.
 - 3.2 The Operational Creditor, made supplies of Linen Fabrics, based on the purchase order dated 07.03.2020 issued by the Corporate Debtor. The supplies were made from 11.03.2020 till 14.03.2020 for the purchase order dated 07.03.2020.
 - 3.3 The Operational Creditor had made total sales of Rs. 112,82,54,452/- during the period from 01.04.2019 till 14.03.2020. Out of the total sales for the period, payment of Rs.2,52,84,809/- has been received and Rs.105,85,89,240/- has been adjusted through Tri-Partite Agreement dated 31.03.2020 between Operational Creditor, Corporate Debtor and the

Vendors. The Operational Creditor has placed on record the said agreement, and the ledger accounts of all the parties to the said agreement vide Affidavit dated 06.05.2023.

- 3.4 The last payment received by the Corporate Debtor was on 18.03.2020 for an amount of Rs. 4,27,050/-. The Corporate Debtor had stopped making further payments in spite of repeated reminders, and thereafter, a principal amount of Rs. 4,43,80,403 / - stood outstanding.
 - 3.5 The Operational Creditor had issued Demand Notice in FORM 3 on corporate debtor, which was dispatched to the registered office of the corporate debtor on 17.02.2020, 02.03.2021 and 18.03.2021. Each time the Notice was returned back with the remark "No such person in the address".
 - 3.6 Since the registered office address of the corporate debtor as shown on the MCA website is the same on which the notice was served, the service is deemed to be complete as per the requirement of Section 12 of Companies Act.
 - 3.7 The Corporate debtor had also confirmed the outstanding of Rs. 4,43,80,403/- on 30/03/2020 by issuing the signed Statement/ Confirmation of Accounts as against the sale of materials.
3. The Corporate Debtor has filed a reply dated 21.07.2022 and stated therein that it is in the business of textiles and denied having received the demand notice for the said claim amount.
- 3.1 The Corporate Debtor states that the payment made by it to the Operational Creditor on 18.03.2020 clearly shows its bonafide

intention to make the outstanding payment to the Operational Creditor.

- 3.2 The Corporate Debtor further states that most of the material supplied by the Operational Creditor was defective which was clear from the fact that the Operational Creditor, Corporate Debtor and vendors of the Operational Creditor, M/s Krishna Company and M/s Greenshield Enterprises Private Limited had entered into an Tri-partite agreement to arrange for the return of the material back from the Corporate Debtor to the Operational Creditor for an amount of Rs. 105,85,89,240/- (Rs. One Hundred Five Crores Eighty Five Lacs Eighty Nine Thousand Two Hundred Forty only).
- 3.3 The Corporate Debtor state that in view of the inability of the Corporate Debtor in payment of the dues, the Corporate Debtor requested to pay off the dues of the Operational Creditor by way of the return of unsold material (to the extent of 60% of the material for which payment remained outstanding) back to the Operational Creditor.
- 3.4 The Corporate Debtor submits that the material consisting of 40% of the material from the patch for which outstanding are still there has been sold to the buyer for which payment has been received and which will be paid in due course and the said delay in payment is due to certain working capital issue. The Corporate Debtor in his reply has proposed a plan to settle the dues to the Operational Creditor which includes repaying the said outstanding amount pertaining to 40% of sold material within 5 months from the date of the said reply and return of unsold 60% of the material.
- 3.5 The Corporate Debtor states that once approval from Operational Creditor is received, the unsold material can immediately be handed over. The Corporate Debtor states that the remaining amount of Rs.

1,77,52,161/- (Rs. One Crore Seventy Seven Lacs Fifty Two Thousand One Hundred Sixty One only) shall then be paid back to the Operational Creditor within a maximum period of five months in an unconditional manner and the objective of the Petition by the Operational Creditor will be fully achieved in favour of the Operational Creditor.

4. We have perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no dispute as regards the existence of the debt and the Operational Creditor has annexed the ledger statement to the present petition in which the outstanding amount is reflected.

4.2 This Bench finds that there exists a debt and default of the said debt on the part of the Corporate Debtor as admitted by the Corporate Debtor itself vide letter dated 30/03/2020 confirming the outstanding of Rs. 4,43,80,403/- and issued the signed Statement/ Confirmation of Accounts as against the sale of materials. The Corporate Debtor in its reply as well has admitted its liability and asked for time to repay the outstanding amount.

4.3 We find that the debt against the goods supplied by the Operational Creditor falls within the definition of Operational Debt u/s. 5(21) of the Insolvency and Bankruptcy Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*”.

- 4.4 This Bench is of considered view that the there is no reason to deny the Petition under section 9 filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.
5. On perusal of the documents submitted by the Applicant, it is clear that an operational debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 9 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The Corporate Debtor has not notified the existence of any dispute. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 9(5)(i) of the Insolvency And Bankruptcy Code, 2016.
6. The Applicant has proposed the name of Mr. S. Gopalakrishnan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00151/2017-18/10398] and Email Id.- gopi63.ip@gmail.com; and has submitted his consent letter dated 15.02.2023 u/s. 9 (4) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

7. This Application being C.P. (IB) No. 304/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Dashabahu Multitrade Private Limited, Operational Creditor/ Applicant against Tanishi Tradewell Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further

declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any Operational sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

- IV. 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 subsection (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Mr. S. Gopalakrishnan, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00151/2017-18/10398] and Email Id.-gopi63.ip@gmail.com; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
/LRA-Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)