IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No.1840/MB/2019

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

IN THE MATTER OF:

MAHASHAKTI PLASTO PRIVATE LIMITED

[CIN: 02520MH1991PTC287668]

Registered Office: F-201, Jagat Plaza

Law College Square, Nagpur-440010

Maharashtra

…Operational Creditor

VERSUS

ARCHIS ENTERPRISES (INDIA) PRIVATE LIMITED

[CIN: U93000PN2013PTC147256]

Registered Office: Plot No.54, Bhageshree

Bhise Colony, Vill Varale, Ambi Road

Tal Maval Talegaon, Pune-410507

Maharashtra

...Corporate Debtor

Pronounced: 12.03.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

For Operational Creditor : Adv. Arjun Rao

For Corporate Debtor : None

ORDER

[Per: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

1.1 This Application bearing C.P.(IB) No.1840/MB/2019 was filed by Mahashakti Plasto Private Limited, the Operational Creditor on 07.05.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Archis Enterprises (India) Private Limited, the Corporate Debtor.

1.2 The Operational Creditor is engaged in trading of Kraft paper. The Corporate Debtor is carrying on the business of manufacturing and supply of corrugated boxes and cartons.

1.3 The Operational Creditor supplied Kraft paper to the Corporate Debtor and raised invoices on various occasions. However, the invoices remained unpaid by the Corporate Debtor and a total sum of Rs.2,38,72,482.00/- (Two Crore Thirty-Eight Lakh Seventy-Two Thousand Four Hundred Eighty-Two Rupees) inclusive of interest of Rs.11,60,612/- fell due to the Operational creditor as on 31.03.2019.

1.4 Subsequently, the Operational Creditor issued a Demand Notice on 04.04.2019 to the Corporate Debtor, as required under Section 8 of the Code. The Corporate Debtor *vide* letter dated 15.04.2019 informed that due to market fluctuations and internal financial issues, it was unable to make regular payment. The Corporate Debtor sought time for clearing the dues of the Operational Creditor. As the Corporate Debtor failed to make payment of the aforementioned operational debt due and payable to the Operational Creditor, the latter has preferred the present Application seeking commencement of CIRP in respect of the former.

2. AVERMENTS OF OPERATIONAL CREDITOR

2.1 The Operational Creditor submits that it supplied Kraft paper to the Corporate Debtor on various dates between 18.01.2018 and 01.12.2018. It was agreed between the Operational Creditor and the Corporate Debtor that a credit period of 120 days from the date of the invoice would be allowed for the Corporate Debtor to make payment.

2.2 Further, it was agreed between the parties by a contract executed on 26.10.2018 that the Operational Creditor would charge interest at the rate of 16% per annum for any delay in payment of invoices beyond 120 days.

2.3 The Operational Creditor submits that the interest claimed on the outstanding dues amounts to Rs.11,60,612/- (Eleven Lakhs Sixty Thousand Six Hundred and Twelve Rupees) which was charged by way of Debit Notes and the principal outstanding amount claimed against invoices is Rs.2,27,11,870/- (Two Crore Twenty-Seven Lakhs Eleven Thousand Eight Hundred and Seventy Rupees), resulting in an aggregate operational debt of Rs.2,38,72,482/- due and payable by the Corporate Debtor.

2.4 The Operational Creditor has provided a general affidavit stating that the Demand Notice was duly served on the Corporate Debtor but neither any payment was made nor any dispute was raised by the Corporate Debtor.

3. CONTENTIONS OF CORPORATE DEBTOR

3.1 This Tribunal *vide* order dated 27.09.2023 granted a final opportunity to the Corporate Debtor to submit its reply before the next date of the hearing. It was ordered that failure to do so would result in forfeiture of its right to file a reply. On 17.10.2023, the Counsel representing the Corporate Debtor appeared and requested for time to file reply which was granted subject to payment of costs of Rs.1,00,000/- to the Operational Creditor. However, the Corporate Debtor neither paid the costs nor furnished any written reply.

3.2 Subsequently, a last opportunity to file reply was granted to the Corporate Debtor on 08.11.2023. On 23.11.2023, the Counsel, who had appeared for the Corporate Debtor on earlier occasions, withdrew their Vakalatnama citing the reason that there had been no instructions from the client. Later, when the matter was called out on that day, there was no representation for the Corporate Debtor. Hence, the Corporate Debtor was *set ex parte vide* order dated 23.11.2023.

3.3 In the absence of any pleadings or reply by the Corporate Debtor, the Application is disposed of based on the pleadings of the Operational Creditor and the materials available on record.

4. ANALYSIS AND FINDINGS

Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor, our findings in the matter are as under:-

4.1 It is observed that the Operational Creditor supplied goods to the Corporate Debtor based on various Purchase Orders and several invoices were issued from 18.01.2018 to 01.12.2018. We find that the Operational Creditor has placed on record copies of the said Purchase Orders, tax invoices along with transportation receipts which were duly acknowledged by the Corporate Debtor by stamping them. The Operational Creditor has also provided copy of its bank statement and Ledger Account of the Corporate Debtor from 01.04.2017 to 05.04.2019 in order to substantiate the claim of operational debt due and payable by the Corporate Debtor but remaining unpaid. On perusal of the Ledger Account, it is observed that the Operational Creditor had raised Debit Notes amounting to Rs.11,60,612/- towards interest at 16% on overdue bills as per the terms of the Agreement dated 26.10.2018. Hence, it is evident that an operational debt in respect of provision of goods has existed during the business transacted between the parties. Thus, the amount of Rs.2,27,11,870/- due and payable on account of supply of goods by the Operational Creditor to the Corporate Debtor clearly represents an 'operational debt' within the meaning of Section 5(21) of the Code.

4.2 On perusal of the record, it is observed that the Operational Creditor has shown the date of default as 01.04.2019 in Part-IV of the Application as well as the Demand Notice sent to the Corporate Debtor. The last invoice was raised on 01.12.2018 and considering the credit period of 120 days, it is stated that the amount of operational debt fell due on 31.03.2019 and hence the date of default is taken as 01.04.2019. It is observed from the record that no payments were made by the Operational Creditor against the said invoices till the date of filing of the present application. However, the Operational Creditor has in its Additional Affidavit filed on 16.08.2021 submitted that a part payment of Rs.3,00,000/- was received from the Corporate Debtor on 25.11.2020. Hence, we find that the Corporate Debtor defaulted in payment of the balance operational debt owed to the Operational Creditor.

4.3 On perusal of the materials available on record, we find that there is nothing to show that any dispute existed between the parties before the issuance of the Demand Notice. It is observed from record that the Corporate Debtor in its reply dated 15.04.2016 to the Demand Notice had not raised any dispute with regard to the amount of unpaid operational debt or the quality of goods supplied. The Corporate Debtor had only expressed its inability to release the payment to the Operational Creditor due to *"market fluctuations and our internal financial issues"*. This is nothing but admission of the operational debt. Further, we find that the Corporate Debtor during the pendency of this matter had also sent an email dated 05.07.2021 to the Operational Creditor again admitting its liability to pay the amount of operational debt in default. Hence, it is clear that the operational debt in question is an undisputed debt.

4.4 Inability to pay debt cannot be treated as a valid defence in proceedings under Section 9 of the Code. With the enactment of the Code, legislative policy has moved away from the concept of 'inability to pay' to 'determination of default' and one of the policy reasons for this shift was that the cause of default is not relevant. The Corporate Debtor cannot get away by merely claiming that it is unable to pay the operational debt but must be held to be liable for the inevitable consequence of committing default in discharge of an undisputed operational debt under Section 9 of the Code.

4.5 We find that the present Application filed by the Operational Creditor on 07.05.2019 is well within the period of limitation under Section 238A of the Code read with Article 137 of the Limitation Act, 1963.

4.6 From the above discussions, it is evident that there was a default on the part of the Corporate Debtor in the payment of undisputed operational debt to the Operational Creditor exceeding Rs.1,00,000/- (One Lakh Rupees), being the threshold monetary limit under Section 4 of the Code prevailing on the date of filing of the present Application. Thus, this Application under Section 9 of the Code preferred by the Operational Creditor is found to be maintainable. The Application is complete and has been filed in the prescribed form. The Demand Notice has been delivered by the Operational Creditor to the Corporate Debtor on 04.04.2019 and no notice of dispute regarding the unpaid operational debt has been received by the Operational Creditor *vide* reply of the Corporate Debtor dated 15.04.2019. There is only part payment of Rs.3,00,000/- made by the Corporate Debtor on 25.11.2020 while the balance amount of undisputed operational debt still remains unpaid. In view of the above, we find that all requisite conditions necessary to trigger CIRP in respect of the Corporate Debtor are satisfied and the matter is fit for admission under Section 9(5)(i) of the Code.

4.7 The Operational Creditor has proposed the name of Mr. Charudutt Pandhrinath Marathe, a registered Insolvency Professional with Registration Number IBBI/IPA-001/IP-P00350/2017-2018/10651 and email charuduttm@yahoo.co.in, as the Interim Resolution Professional (IRP). However, it is observed that the Authorisation for Assignment of the proposed IRP expired in January,2024.

ORDER

This Application bearing C.P.(IB) No.1840/MB/2019 filed under Section 9 of the Code by Mahashakti Plasto Private Limited, the Operational Creditor, for initiating CIRP in respect of Archis Enterprises (India) Private Limited, the Corporate Debtor is **admitted.**

We further declare moratorium under Section 14 of Code with consequential directions as follows:

I. We prohibit-

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 of 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 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 order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 of the Code or passes an order for the liquidation of the Corporate Debtor under section 33 of the Code, as the case may be.

IV. That the public announcement of the CIRP shall be made immediately in accordance with Section 13 of the Code and the relevant Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Rahul Drolia**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-001/IP-P-02834/2023-2024/14370** and Email ID- **rahuldrolia@gmail.com** as the Interim Resolution Professional (IRP) to carry out the functions under the Code. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of sections 17 and 25 respectively of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order in default of which coercive steps will follow.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the Operational Creditor to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) 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, etc. The amount so deposited shall be interim finance and paid back to the Operational Creditor on priority upon funds from the Committee of Creditors (CoC) becoming available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the 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 IRP including by way of email and WhatsApp.

X. Besides, a copy of this order shall also be forwarded by the Registry of this Tribunal to the IBBI for their record.

XI. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-	**Sd/-**
SANJIV DUTT	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER(JUDICIAL)**

Deepa/JNK