IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.995/MB-IV/2021
Under Section 9 of the IBC, 2016

In the matter of

ZENIL TRADERS PRIVATE LIMITED

[CIN: U51909MH2017PTC302657]

…Operational Creditor

v/s

DILSHAD TRADING CO PRIVATE LIMITED

[CIN: U51900MH1982PTC027434]

…Corporate Debtor

Order Delivered on: 02.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Ayush J Rajani, Ld. Authorised Representative a/w Ms. Khushboo Shah i/b AKR Advisors, Advocate.

For the Respondent: Mr.Neerav Merchant a/w Mr. Nadeem Shama i/b Thakordas & Madgavkar, Advocate.

ORDER

Per: Rajesh Sharma Member,(Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by ZENIL TRADERS PRIVATE LIMITED, ("the

Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against DILSHAD TRADING CO PRIVATE LIMITED, ("the Corporate Debtor"), [CIN: U51900MH1982PTC027434].

2. The Corporate Debtor is a company incorporated on 14/06/1982 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 1, 3rd Floor, 14 A, Sukhia Building, Cawasji Patel Road, Horniman Circle, Fort MUMBAI Mumbai City MH 400001. Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition is filed by the Operational Creditor before this Adjudicating Authority claiming the Corporate Debtor failed to make payment of a total sum of Rs.8,08,00,000/- (Rupees Eighty Crore Eight Lakhs only). The date of default is 31.01.2021. The Statement of Claim and Statement showing date of default and amount due by the Corporate Debtor to the Operational Creditor has been annexed as Annexure II (Statement of Claim) and Annexure III (Statement showing date of default) at Page No.15-16 of the Petition.

4. The case of the Operational Creditor is as under:

   a) The Operational Creditor submits that, a purchase order was placed dated 15.10.2020 for Rs.8,47,00,400/- inclusive of GST against 100% advance within a period of 60 days. The same is annexed as Annexure IV at Page No. 17 of the Petition.

   b) The Operational Creditor submits that, an advance payment of Rs.8,08,00,000/- (Rupees Eighty Crore Eight Lakhs only.) was remitted to the account of the Corporate Debtor and the same was confirmed by the Corporate Debtor vide its letters dated 01/10/2020, 21/10/2020 and 11/01/2021. The Ledger showing the payments made to the Corporate Debtor is annexed as Annexure V at Page No. 18 of the Petition.

c) The Operational Creditor submits that, the advanced received by the Corporate Debtor has been confirmed vide the "Balance Confirmation Certificate" issued by the Operational Creditor duly signed and accepted by the Corporate Debtor. The same is annexed as Annexure VI at Page No. 19 of the Petition.

d) Due the prevalent market conditions the Operational Creditor himself extended the period of supply to 31.01.2021 vide its letter dated 14.12.2020 and the same was confirmed by the Corporate Debtor vide letter dated 11.01.2021.

e) The Operational Creditor submits that, the Corporate Debtor through its letter dated 01.03.2021 stated that due to high volatility in the market the Corporate Debtor is not in a position to supply the said requisite material and therefore requested for extension of time till 31.08.2021 to refund the advance payment.

f) The Operational Creditor further stated that the time limit till 31.08.2021 to refund the advance amount was not acceptable and requested the Corporate Debtor to return the said advance immediately. The various correspondence between the Operational Creditor and Corporate Debtor listed above are annexes as Annexure VII at Page No. 20-28 of the Petition.

g) In spite of several opportunities given by the Operational Creditor to the Corporate Debtor, the Corporate Debtor failed to refund the advance payment.

h) The Operational Creditor had served a Demand Notice in Form 3 dated 09.09.2021 to the Corporate Debtor, as annexed as Annexure VIII at Page No. 29 of the Petition, in terms of section 8 of the IBC. The said Demand Notice was delivered to Corporate Debtor on 13.09.2021. The track record for the same is annexed as Annexure IX at Page No. 35-36 of the Petition.

There has been no reply received from the Corporate Debtor to the said Demand Notice.

i) Both the Operational Creditor and Corporate Debtor have submitted their Written Submissions and the same have been duly considered.

5. The Corporate Debtor has submitted its reply as follows:

a) The Corporate Debtor submits that the Company is not in a position to supply the material, due to high volatility in the Steel market because of which huge losses have incurred and hence is not able to fulfil its commitments and admits that an amount of Rs. 8,08,00,000/- is due and outstanding to the Operational Creditor.

Findings:

6. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
7. The date of filing of CP i.e. 12/10/2021 is well within the Limitation. This Bench has jurisdiction to deal with this Company Petition.
8. It is also noticed from the petition that-
    a) There is unequivocal admission of liability on the part of the Corporate Debtor in its letter dated 01.03.2021 sent to the Operational Creditor at Page No.27 of the Petition;
    b) The date of default is 31.01.2021, i.e. the date of payment of advance of Rs 8,08,00,000/- by the Operational Creditor to the Corporate Debtor.
9. It is also noticed from the petition that, the Corporate Debtor also admitted the amount of 8,08,00,000/- (Rupees eight crores and eight lakhs only) in para No. 3 of its reply.
10. As observed by the Bench, the default is occurred during the period which is attracted by Section 10A of IBC as follows:

> *"**Section 10A**: Notwithstanding anything contained in sections 7, 9 and 10, no application for Initiation of Corporate Insolvency Resolution Process of a Corporate Debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*
>
> *Provided that no application shall ever be filed for Initiation of Corporate Insolvency Resolution Process of a Corporate Debtor for the said default occurring during the said period. Explanation. —For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020."*

11. Although from the petition, pleadings made and arguments extended by the Counsel of both the sides, it is abundantly clear that there is a debt of Rs.8,08,00,000 which is owed by the Corporate Debtor to Operational Creditor and the same amount is in default due to non-supply of material against which the advance was given by the Operational Creditor to the Corporate Debtor. In the normal circumstances it is a fit case for Admission of the Corporate Debtor into Insolvency, because Debt and Default is established and the amount of Debt is more than threshold limit of Rs.1,00,00,000/-. However, in the view of insertion of Sec 10A in IBC as mentioned above, this case is clearly attracted by the provisions of Sec 10A as the date of default in this case is 31/01/2021. As per Sec 10A, no IBC proceedings can be initiated against the Corporate Debtor for the default which has occurred between the period from 25/03/2020 till 24/03/2021, keeping in view of the extended period of Sec 10A, the application filed by the Operational Creditor against the Corporate Debtor cannot succeed and is hereby dismissed with a liberty granted to the Operational Creditor to pursue his case before the appropriate forum.

ORDER

12. The petition bearing CP(IB) 995/MB-IV/2020 filed by ZENIL TRADERS PRIVATE LIMITED, [CIN: U51909MH2017PTC302657] ("the Operational

Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against DILSHAD TRADING CO PRIVATE LIMITED ("the Corporate Debtor"), [CIN: U51900MH1982PTC027434] is **Dismissed.**

13. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law, in view of insertion of Sec 10A of IBC 2016.

Sd/-

Kishore Vemulapalli
Member (Judicial)
02.06.2022.

Sd/-

Rajesh Sharma
Member (Technical)