

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH, COURT - V**

**C.P. No. 1108/IBC/MB/2021**

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

*In the matter of*

**Shree Sainath Tradelink Private Limited**

Having address at: 505-506, 5<sup>th</sup> Floor, SNS Arista, Opp Happy Residency, Vesu Char Rasta, Udhna Magdalla Road, Surat Gujarat - 395007.

..... Applicant/Operational Creditor

Vs

**Nirbhay Rasayan Pvt. Ltd.**

N-96, MIDC, Tarapur, Boisar, Thane Maharashtra – 401506.

.....Corporate Debtor

**Order delivered on:- 20.10.2023**

*Coram:*

**Mrs. Anuradha Bhatia  
Member (Technical)**

**Kuldip Kumar Kareer  
Member (Judicial)**

*Appearances:*

For the Operational Creditor : Adv. Deep Dighe

For the Corporate Debtor : None Appeared

**ORDER**

***Per :- Kuldip Kumar Kareer, Member Judicial***

1. This Company petition is filed by **Shree Sainath Tradelink Private Limited** (hereinafter called “**the Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Nirbhay Rasayan Private Limited** (hereinafter called “**Corporate Debtor**”) alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and bankruptcy code (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 1,51,12,142/- (Rupees One Crore Fifty-One Lakhs, Twelve Thousand One Hundred and Forty Two Only) as on 17.03.2020.

**The submissions by the Operational Creditor: -**

2. It is submitted by the Operational Creditor that it is involved in the business of trading and supplying coal. The Corporate Debtor is a registered Company engaged in the business of manufacturing Copper Phthalocyanine Blue crude and pigments.
3. The Corporate Debtor approached the Operational Creditor and placed orders for supply of coal. Pursuant to the said purchase Orders, the Operational Creditor supplied coal to the Corporate Debtor vide invoices issued from the month of June 2019 to March 2020. In this manner, the Operational Creditor supplied coal to the Corporate Debtor worth Rs.

1,44,25,158/- . Even after receiving the goods from the Operational Creditor, the Corporate Debtor has failed and neglected to make any payment towards the balance amount of the invoices raised. No dispute was ever raised by the Corporate Debtor with regard to the goods received from the Operational Creditor. The Corporate Debtor is also liable to pay interest @ of 18% p.a. In all, the Corporate Debtor is liable to pay a sum of Rs. 1,44,25,158/- along with interest of Rs. 6,86,984/- aggregating to Rs. 1,51,12,142/-.

4. As the payment was not made by the Corporate Debtor despite persistent follow up, the Operational Creditor issued notice dated 17.06.2021 under Section 8 of the Code calling upon the Corporate Debtor to pay the outstanding dues of Rs. 1,51,12,142/-. However, despite notice, the Corporate Debtor has not made the payment. Hence the Petition.
5. Upon notice of the petition, none appeared on behalf of the Corporate Debtor with the result the Corporate Debtor was set ex-parte vide Order dated 24.11.2022.

### **FINDINGS**

6. We have heard the Counsel for the Operational Creditor and have gone through the record.
7. It is evident from the record that the Operational Creditor supplied coal to the Corporate Debtor on the basis of the purchase orders dated 19.09.2018, 16.10.2018, 21.11.2018 and 21.12.2018. The goods were supplied vide various invoices between 27.06.2019 and 17.03.2020. The total amount of the invoices comes to Rs. 1,44,25,158/-. As per the terms mentioned on the invoices, the Operational Creditor was entitled to claim interest @ of

18% p.a. if any amount remains unpaid after one week of the due date of payment. It is further pertinent to mention that as per the purchase orders, the payment was to be made within 90 days so far as 3 pay orders dated 16.10.2018, 21.11.2018 and 21.12.2018 are concerned. In the fourth purchase order dated 19.09.2018, the period of payment is mentioned as 120 days.

8. Since the goods were supplied from 27.06.2019 to 16.12.2019 if the period of payment is considered 90 days, no invoice falls within the period covered under Section 10A of the Code.
9. The present petition was filed on 26.10.2021 and therefore, the present petition is well within the period of limitation even if the first invoice is taken into consideration. The Operational Creditor has further proved that the demand notice dated 17.06.2021, was duly served on the Corporate Debtor but despite that the payment has not been made.
10. Since no reply has been filed on behalf of the Corporate Debtor which was set ex-parte, the averments made in the petition have gone uncontroverted and are thus deemed to have been admitted as correct by the Corporate Debtor. No pre-existing dispute has also been raised by the Corporate Debtor at any point of time.
11. As a sequel to the above discussion, we find it to be a fit case for admission under Section 9 of the Code. Accordingly, the Petition is admitted in the aforesaid terms:-

**ORDER**

- a. **The above Company Petition No. (IB) -1108 (MB)/2021 is hereby admitted** and initiation of Corporate Insolvency Resolution -Process (CIRP) is ordered against Nirbhay Rasayan Private Limited.
- b. This Bench hereby appoints **Mr. Kailash T Shah**, Insolvency Resolution Professional, having Registration No: **IBBI/IPA001/IP-P00267/2017- 2018/10511** as the Interim Resolution Professional having email id:- ipktshah@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.3 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to

foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
  
- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANURADHA BHATIA  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**