BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CP (IB) NO. 3615 OF 2019

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

(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
M/s Ayush Food Products
Registered office: Plot No. 34, City S. No. 17630, Jhulelal Compound Industrial Area, Ulhasnagar No. 04, Thane, Maharashtra- 421004
.....**Operational Creditor**

versus

Megdha Creative Merchant LLP.
4 Umiya Niwas, Near Telephone Exchange, L.B.S. Road, Ghatkopar West, Mumbai 400086
.....Corporate Debtor

Order delivered on: 05.03.2021

Coram:
Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Shyam Babu Gautam, Member (Technical)

Appearance:

For the Applicant: Ms. Madhavi Nalluri

Per: Shri Shyam Babu Gautam, Member

ORDER

1. This Company Petition is filed by M/s Ayush Food Products, (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Megdha Creative Merchant LLP (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The brief facts of the petition are stated hereinbelow:
    a. The petitioner is conducting his business under Proprietorship having identification no. PAN No; AAFPL9069D & GSTIN: 27AAFPL9069D1ZI and Corporate Debtor is LLP and having CIN No. AAC-7804 registered on dated 07.10.2014.
    b. The petitioner and promoters of Corporate Debtor are doing business approximately from last 3 years, whereas the petitioner does supply raw material for food processing as per demand of Corporate Debtor.
    c. The petitioner has supplied material as per demands of the Respondent/Corporate Debtor. The Respondent has defaulted the payment of such unpaid goods. Therefore, the Respondent is liable to pay a sum of Rs. 26,63,819/- (Rupees Twenty Six Lakhs Sixty Three Thousand Eight Hundred Nineteen Only) as on 30.05.2019 and petitioner, being Operational Creditor is liable to recover the same.
    d. The petitioner, being an Operational Creditor is eligible to recover aforesaid operational debt and thus sent a demand notice Under Section 8 of Code dated 30.07.2019 as per Form-3 thereby demanding the invoices raised against supply of said material/goods. The Respondent had received the copy of said demand notice on 02.08.2019. Thereafter the respondent had sent Email dated 05.08.2019 to Advocate of the Respondent and requested to not to take any strict action.
    e. The applicant/Operational Creditor had awaited for 10 days from the date of such Demand Notice, further awaited one month as per requests of the respondent. The respondent even after receiving said demand notice the respondent/corporate debtor has not paid any amount of operational debt and merely requested the advocate and petitioner to not to proceed with any legal action against the respondent. Therefore, the petitioner/Operational Creditor herein have filed the present application for initiation of Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor. Hence, the present

application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

3. The respondent filed affidavit in reply of Mr. Ruchis Patel, partner of respondent/corporate debtor. The respondent para 7 of the affidavit in reply clearly admitted the claim of the Operational Creditor and also admitted the receipt of demand notice. Subsequently after the filing the reply the respondent has neither appeared nor made any oral submissions before this Tribunal. The counsel appearing for the operational creditor submitted her arguments in the light of the pleadings and prayed for admission of the company petition since the corporate debtor has admitted the claim in the reply.

4. Heard the counsel appearing for the petitioner and perused the documents. As rightly contended by the petitioner the respondent/corporate debtor clearly admitted the debt and default and also receipt of the demand notice. The debt is within limitation. The operational creditor also proposed the name of the IRP along with his consent letter of the IRP annexed under Annexure 'I' at page 51 of the main company petition. In the light of the above facts and circumstances this tribunal has left no other option except to admit the main company petition. Accordingly, this tribunal passed the following:

ORDER

(a) The above Company Petition No. (IB) -3615(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Megdha Creative Merchant LLP.

(b) This Bench hereby appoints **Mr. Shyam Sunder Kasera,** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00594/2017-2018/11064 having office at B/402, La Chappelle CHS, Evershine Nagar, Near Ryan International School, Malad (West), Mumbai, Maharashtra 400064 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

(c) The Operational Creditor shall deposit an amount of Rs.1 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 or 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

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

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**