

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 372/Chd/Hry/2019

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Grow Max India Private Limited
with its registered office at
C-50, Rohit Kunj, Pitam Pura
New Delhi-110034

Factory: Plot No. 355 and 356,
Sector 57, HSIIDC Kundli,
District Sonapat, Haryana-131028

...Petitioner-Operational Creditor

Vs.

Mallard Inks Private Limited
with its registered office at
Gali No. 2, Shed No. 5,
Parvesh Marg, New Friends Colony,
Faridabad, Haryana-121001

...Respondent-Corporate Debtor

Judgement delivered on: 07.01.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor : 1). Mr. Abhishek Grover, Advocate
2). Mr. Praveen Kumar, Advocate

For the respondent-Corporate Debtor : Proceeded *ex parte* vide order dated
20.10.2021

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by M/s Grow Max India Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its authorized signatory Mr. Ankit Aggarwal, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Mallard Inks Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**). The Board Resolution dated 22-04.2019 authorising Mr. Ankit Aggarwal to represent the company in the present application is attached as Annexure A-10 of the petition.

2. The Corporate Debtor namely, Mallard Inks Private Limited, is a Company incorporated on 24.06.2016 under the provisions of Companies Act, 2013 with CIN No. U74999HR2016PTC064759 with its registered office at Gali No. 2, Shed No. 5, Parvesh Marg, New Friends Colony, Faridabad, Haryana-121001. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor deals in plastic pails, drums and pet bottles etc. During the month of February 2018, the corporate debtor purchased material worth Rs. 1,71,094/- from the operational creditor. The corporate debtor failed to make payments against the goods purchased. As such, an amount of Rs. 1,71,094/- is outstanding towards the price of goods sold. As per the terms of sale and practice prevalent in the market, the corporate debtor is liable to pay

interest at the rate of 18% per annum. The interest so calculated @ 18% per annum till 07.02.2019 is Rs. 30,713/-. As such, the total amount due and payable by the corporate debtor to the operational creditor is Rs. 2,01,807/- with further interest @ 18% per annum from 08.02.2019 till realization. A copy of the workings in Tabular Form for computation of the amount of interest is attached as Annexure A-6 of the petition. As per Part IV of Form 5, the total debt amount payable is ₹2,01,807/-. Copy of the ledger account has been attached as Annexure A-6 of the petition.

4. A demand notice in Form 3 dated 15.02.2019 is stated to be issued to the operational creditor by registered post on 16.02.2019 but the same has been returned back and attached as Annexure A-9 (Colly) page 13.

5. In Part-III of Form No. 5, Mr. Anurag Nirbhaya, Registration No. IBBI/IPA-001/IP-P00870/2017-18/11468 has been proposed as Interim Resolution Professional (IRP) by the petitioner. Fresh Form No. 2 dated 24.11.2021 submitted by the proposed IRP is filed vide Diary No. 01245/2 dated 30.11.2021 of the petition, in which he has stated that he is currently serving as a IRP/RP/Liquidator in other proceedings also. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professionals of ICAI.

6. Petitioner filed an affidavit of service with clippings of newspaper wherein substituted service by way of publication has been done on 03.03.2020 in two newspapers, but there was no representation on behalf of respondent-corporate debtor. Finally, the Adjudicating Authority set the respondent-corporate debtor *ex parte* on 20.10.2021.

7. We have heard the learned counsel for the petitioner and have perused the records.

8. The first issue for consideration is whether the demand notice in Form 3 dated 15.02.2019 was properly served. The demand notice was received back undelivered. The same is delivered via e-mail and attached in the main petition at Page Nos. 38-40. Also the service has been done through publication (vide Diary No. 01245/01 dated 08.03.2021). In view of the same, it is held that the demand notice has been duly served.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It could be seen that the corporate debtor has chosen not to file reply to the petition despite being granted three weeks to do so nor has corporate debtor entered into appearance. It is pleaded by the operational creditor that no reply has been received to the demand notice dated 15.02.2019 from the corporate debtor. It is also pleaded that there is no dispute of unpaid operational debt pending between the parties in any court of law or any other authority. It implies that there is no dispute in relation to the debt claimed as per Part IV of Form 5.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice in Form 3 attached as Annexure A-9 (Colly) was duly served on the corporate debtor on e-mail and through publication vide Diary No. 01245/01 dated 08.03.2021. It is observed that neither any reply from the corporate debtor has been filed in lieu of the above stated demand notice nor any payment has been made. Therefore, the period of limitation would begin from the date of default mentioned in Part IV, Form V i.e. 08.02.2018. This application was filed on 21.05.2019 vide Diary No. 2573.

Therefore, this Adjudicating Authority finds that this application was filed within limitation.

11. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,01,807/-. The operational creditor has supplied goods to the corporate debtor and raised invoices dated 08.02.2018 attached as Annexure A-3. Ledger accounts maintained by the operational creditor have been attached at Annexure A-6 and the interest calculation is shown at Annexure A-7. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. We have gone through the contents of the petition filed in Form No.5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,01,807/-. Based on documents on record, as we have held above that the demand notice in Form No.3 was properly delivered by the petitioner and no pre-existing dispute is proved.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the abovementioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by petitioner is complete in all

respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Mallard Inks Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 the possession of the corporate debtor.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till 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.

18. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anurag Nirbhaya and there is nothing adverse against him. In view of the above, we appoint Mr. Anurag Nirbhaya, Registration No. IBBI/IPA-001/IP-P00870/2017-18/11468, E-mail: -anurag@canirbhaya.com, as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Anurag Nirbhaya shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be

enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of

Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

19. The petitioner is directed to deposit an amount of ₹20,000/- (Rupees Twenty Thousand) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be

fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

January 07 , 2022
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