

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) 1636/MB/C-IV/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of
Aquarius Maritime Private Limited
... Operational Creditor

Versus

Synergy Fabrics Private Limited
[CIN: U17110MH2004PTC147712]
... Corporate Debtor

Order Delivered on 03.12.2019

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Operational Creditor : Mr. Ashish Verma, Advocate
For the Corporate Debtor : None Present

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Aquarius Maritime Private Limited ("the Operational Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Authorised Signatory, Mr. Rashesh Chhotubhai Desai, on the basis of a Board Resolution dated 01.10.2018,

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seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Synergy Fabrics Private Limited ("the Corporate Debtor").

2. The Corporate Debtor is a private company limited by shares and incorporated on 27.07.2004 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its CIN is U17110MH2004PTC147712. Its registered office is at 505, Savoy Chambers, Linking Road Extension, Near Juhu Garden, Santa Cruz (W), Mumbai 400 054. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 24.04.2019 before this Adjudicating Authority claiming the Corporate Debtor failed to make payment of a sum of ₹8,87,626/- (Rupees eight lakh eighty-seven thousand six hundred and twenty-six only) as on 22.09.2017, which is the date of default.
4. The case of the Operational Creditor is as follows: -
 - (a) The Operational Creditor is in the business of freight forwarding services by booking export cargo by air and sea.
 - (b) The Corporate Debtor requested the freight forwarding services by booking export cargo by air and sea upon the Operational Creditor. The services were provided from time to time and invoices were raised by the Operational Creditor towards the said services. The invoices are placed on record as

Annexure C' at pp.28-47. The invoices are also accompanied by copies of the Air Waybill.

(c) A running ledger account was maintained by the Operational Creditor in respect of the Corporate Debtor. The ledger copy is annexed as **Annexure 'D'** to the petition at pp.48-51.

(d) **Annexure 'F'** at pp.53-54 is a copy of the email exchanged between the Corporate Debtor and the Operational Creditor. The email dated 22.09.2017 forming part of the trailing mail indicates that the Corporate Debtor has committed to try and clear all the outstanding amounts within two months.

(e) The Operational Creditor had served a Demand Notice in Form 3 dated 21.08.2018 to the Corporate Debtor (**Annexure 'G'**, pp.62-67) in terms of section 8 of the IBC. The Corporate Debtor has not replied to the demand notice, for which the Operational Creditor has filed an affidavit under section 9(3)(b) to that effect which is placed on record at pp.21-23 of the petition.

5. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
6. It is seen from the record that the Copy of the Petition was served and delivered on the Corporate Debtor on 08.04.2019. Further, Court Notice dated 29.08.2019 has also been served and delivered on 30.08.2019 to the registered email ID of the Corporate Debtor. However, in spite of this, there was no representation on behalf of

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the Corporate Debtor. Necessary affidavits of services in this regard have been placed on record.

7. We have heard the submissions of the learned counsel for the Operational Creditor and perused the record. There was no representation on behalf of the Corporate Debtor.
8. It is noticed from the documents placed on record the shipment was undertaken by the Operational Creditor on the instructions of the Corporate Debtor from time to time. There is also an acknowledgement of liability at p.53. The debt is within limitation since the date of default is 22.09.2017. There is default of a debt due and payable and the default is in excess of the minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.
9. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB) 1636/MB-IV/2019** filed by **Aquarius Maritime Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Synergy Fabrics Private Limited [CIN: U17110MH2004PTC147712]**, the Corporate Debtor, is **admitted**.

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- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Operational Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) 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;

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- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

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

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her/his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in

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terms of section 17 of the IBC. 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.

- (h) The Operational Creditor shall deposit a sum of ₹1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
Ravikumar Duraisamy
Member (Technical)

03.12.2019

Sd/-
Rajasekhar V.K.
Member (Judicial)