

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

C.P. No. 749/IBC/MB/2019

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

M/s. Laxmi Corporation

Having registered office at: Room No. 48,
Kapadia Chambers, Devji Rattansey
Marg, 51 Bharuch Street, Mumbai-400
009

.....Operational Creditor

Vs

Ambica Polad Private Limited

Having registered office at:Plot No. M-2,
MIDC Waluj, Aurangabad- 431136

.....Corporate Debtor

Order Reserved On:06.10.2022

Order pronounced on:17.10.2022

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

For the Applicant: Mr. Dipesh U. Siroya (Advocate).

For the Respondent: None appeared.

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above Company Petition is filed by M/s Laxmi Corporation, hereinafter called as **Operational Creditor**, seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s. Ambica Polad Private Limited called as **Corporate Debtor** by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 29,36,052/- including interest on delay of payment.
2. The Petitioner attached the following documents, to demonstrate the existence of Debt:
 - a. Invoices raised by the Operational Debtor along with delivery challans;
 - b. Post-dated cheques;
 - c. Memorandum of Understanding, dated 15.09.2017;
 - d. Financial Statements of the Corporate Debtor;
 - e. Demand Notice dated 31.12.2018.

Facts of the case:

3. The Petitioner submits that, for the period of September 2010 to March 2014, it had sold, supplied and delivered various kinds of steel bars and wire rods of various grades and sizes as per the requirement of the Corporate Debtor. Further, the Petitioner submits that, on supply of goods, Invoice was raised upon the Corporate Debtor, which were payable within 30 days from the date of respective invoices, after which the Petitioner became entitled to an interest at the rate of 18% per annum on outstanding amount, due as per the Invoices.
4. The Petitioner submits that, it had maintained a Running Account in respect of goods supplied to the Respondent, and when a payment was

made, a credit entry was made in the running account. The Petitioner further submits that in the year 2015, the Respondent issued 7 cheques towards discharge of its liability, which were returned as “**dishonoured**” on account of ‘**Funds insufficient**’. The particulars of the said cheques are as follows:

Cheque No.	Date	Amount
674184	20.10.2015	2,25,000
674185	20.10.2015	2,50,807
674186	20.10.2015	2,10,000
329604	20.10.2015	2,66,252
329605	20.10.2015	3,00,000
329606	20.10.2015	3,10,000
329607	20.10.2015	3,38,855

5. The Petitioner, upon the cheques being returned as “dishonoured”, initiated appropriate criminal proceedings under Section 138 of the Negotiable Instruments Act, against the Corporate Debtor. Thereafter the Petitioner and Respondent, with a view to settle the outstanding amount, executed a Memorandum of Understanding, dated 15.09.2017 (“**said MoU**”). The MoU was entered between V.K. Enterprises through its proprietor, Mr. Vithal K. Akkar and the Operation Creditor, M/s Laxmi Corporation. Mr. Vithal K. Akkar was one of the Director of the Corporate Debtor. Under the said MoU, the Director of Corporate Debtor agreed to make payment before or upto 31.03.2018, with interest 18%, from 30.06.2015 on the outstanding amount stated in the MoU. The MoU also revealed that if the Corporate Debtor fails to make the payments, then the Corporate Debtor will make registration of sale deed of a Property, of V.K. Enterprises, Plot No. W-8-B,

MIDC, Jalna in favour of Mr. Suresh M. Rungta the authorized person of the Operational Creditor, and hand over to him all the original documents.

6. The Petitioner annexed the Financial Statements of Corporate Debtor for the years 2016 and 2018 in which name of the Petitioner is being mentioned for the to the extent of sum of Rs.11,58,488/-. The Petitioner further annexed the Statement of running account, with Statement of interest calculation, of the Corporate Debtor, for the period from February 2013 to 30.06.2015.
7. The Petitioner thereby issued Demand Notice under Form 3 and 4, dated 31.12.2018, for the default amount of Rs.29,12,463/-, to which the Respondent has not filed any reply.
8. The Petitioner further submits that the Debt fell due on 20.10.2015 upon issuance of cheques from Operational Debtor. However, A fresh limitation period ought to be Computed from 15.09.2017 the date of MOU which was executed between Mr. Vithal K. Akkar, being one of the Directors of the Corporate Debtor, and the Operational Creditor. Further, it is pertinent to take note, that in computing the period of limitation, the Corporate Debtor has acknowledged the debt of the Operational Creditor, in its accounts for the year ending 31.03.2016 and 31.03.2018, to the extent of a sum of Rs. 11, 58, 488/- since the name of the Operational Creditor is appearing in the Annexure to “Notes on Financial Statements”, which have been duly submitted by the Corporate Debtor to the Registrar of Company. In view of the aforesaid MOU, dated 15.09.2017, and the Annexure to Notes in the Financial Statements, the current application is not barred by law of Limitation.

Findings

9. The Corporate Debtor did not choose to file any reply contesting the above Company Petition, and also has not complied with this Tribunal order dated

13.06.2022 in which the Corporate Debtor was directed to appear and if he failed to appear, then Corporate Debtor matter will be set ex-parte and the case would be heard on merits. However, the Corporate Debtor did not appear before this Bench on the appointed date i.e. 22.07.2022.

10. Heard the counsel appearing for the Operational Creditor. The Ld. Counsel appearing for the Operational Creditor invited the attention of this Bench to the various purchase orders, invoices annexed to the Company Petition basing on which the above Company Petition was filed. He has also invited the attention of this Bench to the Demand Notice dated 31.12.2018, and the proof of delivery of demand notice on the Corporate Debtor. The Corporate Debtor having received the Demand Notice, did not send any reply nor paid the amount to Operational Creditor.
11. Upon perusal of the Company Petition, this Bench expressed its view with regard to the bar of limitation, for filing the Petition. However, the Petitioner satisfied this Bench with a view that, a fresh computation of limitation period should begin from 15.09.2017, as the date of MOU which was executed between the Petitioner and the Respondent. Hence, the above Company Petition being filed on 19.02.2019, is well within the limitation. Thus, Company Petition satisfies all legal requirements for admission.
12. The Petitioner has also revealed the fact that the Corporate Debtor by filing its Financial Statements for Financial year ending 2016 and 2018, with the Registrar of Companies and through the said financial statements has acknowledged its liability and debt towards the Petitioner.
13. After hearing the submissions and upon perusing the material available on record and since the Corporate Debtor did not file any reply, the claim of Operational Creditor remained unchallenged. Hence, this Bench feels

that the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor in this case.

14. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- A. The above Company Petition No. (IB) 749 of 2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Ambica Polad Private limited**
- B. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Avil Jerome Menezes**, Insolvency Professional, Registration No : IBBI/IPA-001/IP-P00017/2016-2017/10041, having Email id avil@caavil.com and contact number- 9930061720 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. (2) Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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.

K. Accordingly, the **C.P.(IB) 749 of 2019** is admitted.

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

Sd/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)