

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP (IB) 283/MB/2021

Under Section 9 of the I&B Code, 2016

In the matter of

Mrs. Gutta Anuradha

Being proprietor of

MAK Enviro Technologies

c/o Yash Jariwala, 4th floor, Cambatta
Building, East wing, above Eros
Cinemas. 42, M. K. Marg, Churchgate,
Mumbai – 400 020

...Petitioner

v/s

Unity Appliances Limited

171-C, 17th floor, Mittal Court C Wing,
Nariman Point, Mumbai – 400 021

...Corporate Debtor

Order Delivered on: 06.05.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Kunal Kanungo, Advocate.

For the Corporate Debtor: Miss. Geeta Lundwani, Advocate.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This is an application being CP(IB)283/MB/2021 filed by **Mrs. Gutta Anuradha**, proprietor of MAK Enviro Technologies,

Operational Creditor/Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in the capacity of "Operational Creditor" by invoking the provisions of section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against **Unity Appliances Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. In the requisite Form, under the head "Particulars of Operational Debt" the total amount in default is stated to be Rs. 1,01,12,793/- (Rs. 46,27,984/- as a principal sum + Rs. 54,84,809/- as an interest), The date of default is stated to be 08.06.2018.

SUBMISSIONS BY THE PETITIONER

3. A brief history of the transaction between the Petitioner and the Corporate Debtor is as follows. The MAK Enviro Technologies is engaged in the business of trading in hardware, stainless steel and aluminium products such as pipes and fittings, insulation material etc.

4. The Corporate Debtor had placed 2 purchase orders with MAK Enviro Technologies being PO No. UAL/R/6/005/15-16 and PO No. UAL/S/6/001/15-16 on 01.06.2015 for supply of material for clean room.

5. Accordingly, MAK Enviro Technologies from time to time supplied various goods to the Corporate Debtor and raised Invoices.

6. MAK Enviro Technologies maintained a running ledger account with respect to the Corporate Debtor since there was regular supply of goods.

7. The said supply and installation of pipes, valves, ducting, insulation and diffusers activity was completed on 15.09.2016 and was also duly certified by the project department of the Corporate Debtor.

8. However, the Corporate Debtor has failed to discharge its liabilities and has defaulted in the clearance of the invoices raised under the above-mentioned purchase orders.

9. It was only on the basis of representation of the Corporate Debtor vis-à-vis immediate clearance of the invoices that MAK Enviro Technologies did not include an interest clause in its invoices.

10. However, upon default on part of the Corporate Debtor, MAK Enviro Technologies was constrained to issue a reminder letter dated 15.10.2016 calling upon the Corporate Debtor to immediately clear the outstanding dues of Rs. 91,42,350.40/-. Failing which MAK Enviro Technologies would be constrained to initiate appropriate legal proceedings against the Corporate Debtor.

11. Since the Corporate Debtor was not in any position to clear the aforesaid dues, they replied to the said letter/notice on 05.01.2017 seeking one year time period for clearing the said dues along with certain payments in tranches as and when possible. Looking into the past conduct and the existing relations between the Petitioner and the Corporate Debtor, the above request for clearing the dues within a period of one year was accepted by the Petitioner.

12. The said period of extended one year came to an end on 05.01.2018. till this date, certain payments were made by the Corporate Debtor. Last payment of Rs. 5,00,000/- was received from the Corporate Debtor on 15.11.2017. however, still a principal sum of Rs. 46,27,984.40/- was outstanding in the books of MAK Enviro Technologies. Accordingly, a notice dated 30.01.2018 was addressed

to the Corporate Debtor calling upon it to immediately clear all the outstanding dues failing which MAK Enviro would be constrained to initiate appropriate legal proceedings against the Corporate Debtor.

13. Upon receipt of said legal notice dated 31.01.2018, the management of Corporate Debtor immediately approached the management of MAK Enviro Technologies seeking an amicable resolution of the above issue.

14. Accordingly, a meeting of both parties was held at the office of MAK Enviro Technologies on 12.03.2018. Wherein, the Corporate Debtor pleaded MAK Enviro Technologies to grant some more time for clearing the outstanding dues since the Corporate Debtor was facing severe financial crunch and was unable to keep the operations of the company going.

15. At the same meeting dated 12.03.2018, the following terms were agreed between the Petitioner and the Corporate Debtor;

- i. Compound interest @18% to be paid on the outstanding dues as well as delayed payments from 15.09.2016 until realization.
- ii. The entire outstanding amount was to be cleared on or before 31.05.2018.

The aforesaid arrangements were reduced to writing in the minutes of meeting dated 12.03.2018.

16. On the basis of the aforesaid arrangement, the Corporate Debtor was required to clear entire outstanding dues before 31.05.2018. However, the Corporate Debtor failed to do so and therefore another notice dated 01.06.2018 was addresses to the Corporate Debtor calling upon it to forthwith within seven days clear the outstanding dues with interest failing which MAK Enviro Technologies would constrained to initiate appropriate proceedings against the Corporate Debtor.

17. In addition to the above, the Corporate Debtor has not even issued Form C and as such the Sales Tax Authorities have sent notices to MAK Enviro Technologies for recovery of Commercial Tax dues to the tune of Rs. 34,08,522/- as on 11.12.2020. however, the same is not claimed under the present demand notice. The petitioner has annexed the ledger account showing the invoices raised, payments made by corporate Debtor and amounts outstanding as payable by Corporate Debtor.

18. The Petitioner issued Demand notice under Sec. 8 IBC dated 12.02.2021 calling upon the Corporate Debtor make the requisite payments which are as follows;

- i. Rs. 46,27,984.40/- towards outstanding amount.
- ii. Rs. 54,94,809/- towards interest on the outstanding amount as well as delayed payments.

SUBMISSIONS BY THE CORPORATE DEBTOR IN REPLY

19. The working relationship between the Petitioner was that the Corporate Debtor always had a long-standing business relationship.

20. The Petitioner is well aware that the business activities of the Corporate Debtor have taken a hit since 2016 and are facing severe financial difficulties. The Corporate Debtor further submit that the business of the Corporate Debtor has come to a complete standstill since the year 2018, due to market conditions. However, the Corporate Debtor is making every attempt to revive its business operations despite the unfavourable market conditions.

21. The Corporate Debtor have tried to resolve the issues with the present Petitioner which is evident from the minutes of the meeting held between the Parties, however, the consistent losses and day to

day losses has broken the backbone of the Corporate Debtor very seriously not only the present Petitioner is suffered but there are various other Creditors to whom the payments are due.

22. The Petitioner is well aware that the Corporate Debtor is mostly deriving its income by supplying goods to various Companies themselves have entered into the insolvency resolution process under the provisions of the IBC as a result of which the business activities of the Corporate Debtor have also taken a hit. It is for this reason that the Corporate Debtor Company has been facing severe financial difficulties.

23. The Petitioner despite the knowledge of the circumstances the Corporate Debtor fell into, has unfairly filed the present Petition against the Corporate Debtor seeking payment of the entire outstanding. It is noteworthy that the Corporate Debtor had assured the Petitioner Company and had informed of every intention to clear the outstanding dues by somehow recovering from its debtors or by selling some assets so that the Petitioner's liability could be cleared, but the Petitioner did not pay any heed to it.

24. During meetings between the director of the Petitioner's and the Corporate Debtor, it was even assured that the Corporate Debtor would not only pay back the entire amount outstanding, but would also pay interest. However, this would only be done after the activities of the Corporate Debtor commence the business and Corporate Debtor is profitable again.

25. Therefore, the present petition ought not to be entertained as the Petitioner has been well aware of the financial distress the Corporate Debtor has been facing since the past many years. While it is true that the Corporate Debtor has admitted its liability in the past,

the fact remains that the first default committed by the Corporate Debtor was more than three years' prior to the date of the filing of the present petition. Therefore, this Hon'ble Tribunal ought not to permit the Corporate Debtor to bring up this issue at such a belated stage.

26. It is true that the Corporate Debtor purchased goods from the Petitioner, it is also of an admitted fact that the Corporate Debtor has tried its best to make payments. However, the situation worsened due to the ongoing Covid - 19 pandemic and the Corporate Debtor had to suffer irretrievable losses.

FINDINGS

27. This Petition has filed u/s 9 by the Petitioner i.e. Mrs. Gutta Anuradha, proprietor of MAK Enviro Technologies for providing goods to the Corporate Debtor i.e. Unity Appliances Limited. The Corporate Debtor had placed 2 purchase orders with MAK Enviro Technologies being PO No. UAL/R/6/005/15-16 and PO No. UAL/S/6/001/15-16 on 01.06.2015 for supply of material for clean room. The goods were delivered and invoices were raised by the Petitioner upon the Corporate Debtor for the goods provided.

28. On going through the submissions made by the Counsel from the both the sides and on perusing the documents produced on record, the Bench notes that the Petitioner has supplied goods as per the purchase orders issued by the Corporate Debtor from time to time. The ledger account shows the details of invoices, monies paid by Corporate Debtor and monies outstanding to be paid by Corporate Debtor.

29. The Bench also notes that appropriate invoices in respect of the same has been placed by the Petitioner upon the Corporate Debtor

wherein the goods supplied and the amount mentioned in the invoices has been admitted in all cases by the Corporate Debtor.

30. The Bench notes that the supply and installation of pipes, valves, ducting, insulation and diffusers activity was completed and duly certified by the project department of the Corporate Debtor.

31. The minutes of meeting dated 12.03.2018, further demonstrate that Corporate Debtor agreed to pay the outstanding sum including interest within a definite time frame. The terms that were captured in the Minutes of Meetings are as follows:

- iii. Compound interest @18% to be paid on the outstanding dues as well as delayed payments from 15.09.2016 until realization.
- iv. The entire outstanding amount was to be cleared on or before 31.05.2018.

32. Upon perusal of the facts and reply filed by both sides, this bench is of the considered view that the Corporate Debtor is liable to pay the total amount of Rs. 1,01,12,793/- which includes principal of Rs. 46,27,984/- Plus Rs. 54,84,809/- as a compounded interest.

33. The outstanding debt of more than Rs. 1,00,000/- is due and payable against the Corporate Debtor and Corporate Debtor has committed default in making the payment. Hence the petition is admitted.

34. The application filed by the Petitioner is on proper Form 5, as prescribed under the Adjudicating Authority Rules and is complete.

35. The Applicant has proposed name of Mr. Girish Krishna Hingorani, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00842/2019-20/12695] as Interim Resolution Professional, to carry the functions of Interim Resolution Professional as mentioned under I&B Code.

36. The Application under sub-section (2) of Section 9 of I&B Code, 2016 filed by the Petitioner for initiation of CIRP in prescribed Form 5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing operational debt of more than rupees one lakh against the Corporate Debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

37. This application is filed under Section 9 of I&B Code, 2016, filed by **Mrs. Gutta Anuradha**, Proprietor of MKA Enviro Technologies, against **Unity Appliances Limited**, for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity under the Securitization and Reconstruction of Financial 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr. Girish Krishna Hingorani, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00842/2019-20/12695] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- VII. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of

essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

- VIII. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
- IX. The appointed IRP shall also comply the other provisions of the Code including Section 15 and Section 18 of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.

38. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)