

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

C.P. (IB) No. 346/NCLT/MB/2019

Under Section 9 of the I&B Code, 2016

In the matter of:

M/s. Color Cartons

...Operational Creditor / Applicant
V/s

M/s. Fizzy Foodlabs Private Limited

...Corporate Debtor / Respondent

Order Dated: 18th September 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: CS Ulhas Shetty.

For the Respondent: Mr Mahi Lalka.

Per: V. P. Singh, Member (Judicial)

ORDER

1. This is an Application filed on 21.01.2019, being CP 346(IB)/MB/2019 filed by **M/s. Color Cartons**, the Operational Creditor /Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **M/s. Fizzy Foodlabs Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of ₹8,95,086/- (Rupees Eight Lakhs Ninety Five Thousand and Eighty-Six only) including interest @24% p.a. The Application is filed by Mr. Akash Dugar, Partner of the Operational Creditor duly authorised to file this Application vide Authority Letter dated 14.01.2019.
3. The Applicant submits that it supplied "3 ply Corrugated Boxes (PS-572 SRP 12 Tray Olive & Herb and PS-573 SRP 12 Tray Piri Piri)" vide two Tax Invoices dated 23.02.2017 and 16.03.2017 as per the purchase order raised by the Corporate Debtor. The total amount of the two invoices aggregated to ₹11,46,072/-. The Purchase Order and Invoices for the materials supplied are annexed to the Application. Further the Applicant submits that the Corporate debtor maintained a running account with the Applicant. The Ledger Account of the Applicant maintained by the Corporate Debtor reflects the same.

4. The Applicant submits that the Corporate Debtor made part payments of ₹5,10,761.78/- between the period from 03.07.2017 to 13.11.2017 against the total outstanding invoice amount. However, the Corporate Debtor did not make any further payments after 13.11.2017; thus, resulting in outstanding balance amount of ₹6,35,310/-.
5. The Applicant submits that the Corporate Debtor has admitted to its liability to repay any outstanding amount of ₹6,35,310/- as per the Ledger Account maintained by the Corporate Debtor. Copy of the Ledger Account / Statement of the Applicant as maintained by the Corporate Debtor for the period 01.04.2017 to 31.03.2018 is annexed to the Application.
6. The Applicant submits that despite being satisfied with the goods and admitting its liability to repay, the Corporate Debtor failed to pay the due amount under the invoices. Therefore, the Applicant issued Demand Notice to the Corporate Debtor under Section 8 of the I&B Code demanding payment of the outstanding amount. However, the Corporate Debtor failed to reply to the Demand Notice.
7. The Applicant submits that the Application has been filed within the period of limitation as the date of last payment made by the Corporate Debtor is 13.11.2017. Copy of the Ledger Account / Statement of the Corporate Debtor maintained by the Applicant reflecting payment of ₹75,000/- on 13.11.2017 is annexed to the Application.
8. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide Order dated 05.03.2019. The Applicant filed its affidavit of service dated 18.03.2019 on 26.03.2019 proving successful service of Application upon the Corporate Debtor.
9. The Corporate Debtor appeared on 11.04.2019 and sought time for filing Reply. Eventually, the Corporate Debtor filed its Reply and contended therein that the goods supplied by the Applicant were not as per the order and were defective. The Corporate Debtor also contended that it orally informed the Applicant about the supply of Defective goods. Another contention raised by the Corporate Debtor was that the interest claimed by the Applicant was illegal & erroneous and that the credit period of 30 days was not supported by the Tax Invoice issued by the Applicant. After that, on 27.08.2019 the Counsel for Corporate Debtor appeared and sought time for repaying the entire outstanding amount and

for filing consent terms. However, subsequently no consent terms were filed.

10. The Applicant in its Rejoinder has rebutted to all the contentions of the Corporate Debtor. The Applicant has submitted that the Corporate Debtor failed to bring to the notice of the Applicant any dispute within the stipulated 10 days period as provided under section 8 of I&B Code and not a single oral or written communication/correspondence was made by the Corporate Debtor complaining/disputing about the debt or the quality of goods till before the date of the Reply filed by the Corporate Debtor. The Applicant further submitted that the Invoices issued to the Corporate Debtor had clear specific provisions with regards to 30 days credit period, and interest @ 24% p.a. on overdue amount and three days for raising any written claim.
11. We have heard the parties and perused the records.
12. It is evident that the Corporate Debtor has admitted the debt by way of its e-mail dated 30.04.2018 wherein the Corporate Debtor has confirmed the Balance outstanding due towards the Applicant. The Corporate Debtor has failed to reply to the Demand Notice and has not raised any disputes before the filing of Reply to the present Application. It is also evident from the copies of invoices that provisions regarding credit period, interest and three day's claim period were mentioned therein. Therefore, the contentions of the Corporate Debtor are not tenable and hence rejected.
13. The Application is complete and has been filed under the proper form. Copy of the Demand Notice in Form 3, dated 31.12.2018 along with the postal track report reflecting the due receipt of the Notice by the Corporate Debtor, Bank Certificate dated 10.01.2018 in compliance of section 9(3)(c), Affidavit in compliance of section 9(3)(b) dated 19.01.2019 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed by the operational creditor in support of its claim.
14. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant until before its Reply to Application. To the contrary, the Corporate Debtor as acknowledged its liability to repay a sum of ₹6,35,310/- (Rupees Six Lakh Thirty-Five Thousand Three Hundred and Ten Only) in the Ledger Account of the Applicant

maintained by the Corporate Debtor for the period 01.04.2017 to 31.03.2018.

15. The Applicant has not proposed the name of an insolvency resolution professional to act as Interim Resolution Professional and carry out the functions as mentioned under I&B Code, 2016.
16. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has been established. The application 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.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **M/s. Color Cartons**, Operational Creditor / Applicant against **M/s. Fizzy Foodlabs Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **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 action 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. Suresh Chandra Jena**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P-01540/2019-2020/12473]** 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.
17. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

18th September 2019