IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB) No. 2620/NCLT/MB/2019
Under Section 9 of the I&B Code, 2016

In the matter of:
GHCL Limited
…Operational Creditor / Applicant
V/s
Indian Home Variations & Distributions LLP
...Corporate Debtor / Respondent

Order Dated: 11th December 2019

Coram: Mr Rajesh Sharma, Hon'ble Member (Technical)
Mr Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

For the Applicant: Advocate Jaspreet & Advocate Sehniti Rai
For the Respondent: Advocate Samisksha Manek & Advocate Raghav Ganesh i/b. PRA Law Offices

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 2620/NCLT/MB/2019 filed by **GHCL Limited,** the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Indian Home Variations & Distributions LLP,** Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The application is filed claiming a total default of ₹1,04,08,180/- (Rupees One Crore Four Lakh Eight Thousand One Hundred and Eighty Only). The application is filed by Mr Manish Karnawat, Senior Manager (Finance & Accounts), of the Operational Creditor duly authorised to file this application vide Board Resolution dated 03.06.2019.

3. The Applicant submitted that it sold varied quantities of fabrics, textile articles and allied goods to the Corporate Debtor vide 38 (Thirty-Eight) Invoices from 27.07.2017 to 09.01.2018 as per the Purchase Orders placed by the Corporate Debtor. The Applicant submitted that payment of the goods so supplied was to be made on the basis of Open Account 30 days and the total value of the 38 invoices amounted to ₹1,19,08,080/- (Rupees One Crore Nineteen Lakh Eight Thousand and Eighty Only). Copy of the 38 Invoices and Purchase Orders raised by the Corporate Debtor are annexed to the application.

4. The Applicant submitted that despite accepting the goods without any dispute or demur the Corporate Debtor failed to make timely payments of the 38 invoices. The Applicant further submitted that, the Corporate Debtor acknowledged and confirmed its liability of ₹1,19,08,080/- towards the 38 invoices as on 20.01.2018, vide the Balance Confirmation Letter. Copy of Balance Confirmation letter is annexed to the Application.

5. The Applicant further submitted that, as the Corporate Debtor failed to make the timely payments of invoices, the Applicant through its Advocates, vide emails dated 06.04.2018 and 22.05.2018 demanded the payment of the outstanding amount from the Corporate Debtor. The Applicant submitted that, the Corporate Debtor vide its reply emails dated 07.05.2018 and 03.07.2018 again acknowledged its liability of ₹1,19,08,080/- and also proposed to pay ₹10,00,000/- (Rupees Ten Lakh Only) per month till the entire amount gets cleared. Copies of emails mentioned supra are annexed to the application.

6. The Applicant submitted that in furtherance of the abovesaid assurances made by the Corporate Debtor, the Applicant and the Corporate Debtor executed a Memorandum of Understanding (MOU) dated 17.07.2018. The said MOU recorded that, as on the date of MOU, the Corporate Debtor was liable to pay ₹1,19,08,080/- to the Applicant against the 38 invoices. Further, the MOU provided a payment schedule of 26 instalments, to be paid by the Corporate Debtor to the Applicant from 13.07.2018 till 25.01.2019 towards repayment of outstanding invoices amount. Copy of MOU dated 17.07.2018 is annexed to the application.

7. The Applicant submitted that, after making delayed payment of initial instalments, the Corporate Debtor failed and neglected to make further payment of the instalments as per the payment schedule agreed between the parties under the MOU. Therefore, the Applicant issued Demand Notice dated 07.02.2019 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of unpaid operational debt of ₹1,04,08,180/-. The Applicant submitted that, Corporate Debtor did not reply to the said Demand Notice.

8. The Applicant filed present application on 08.07.2019. The Corporate Debtor filed its Affidavit in Reply dated 31.10.2019 and contended that there existed multiple disputes between the parties prior to the service of the demand notice and therefore the application deserves to be rejected.

9. We have heard the parties at length and perused the records.

10. On perusal of the documents submitted by the parties, it is evident that the Applicant had supplied goods which the Corporate Debtor had duly received. Further, the Corporate Debtor has nowhere in its Reply denied the existence of debt. The Corporate Debtor has also time and again admitted its liability to repay the outstanding debt towards 38 invoices vide Balance Confirmation letter and emails dated 07.05.2018 and 03.07.2018 and also vide the MOU dated 17.07.2018.

11. This Bench also observed that the argument of the Counsel for Corporate Debtor that, Corporate Debtor vide its email sent to Applicant dated 31.07.2018 raised disputes with regards to quality of the goods, holds no water. It is pertinent to note that after admitting the liability on various occasions, the Corporate Debtor, as per the payment schedule agreed in the MOU, has paid part instalments on 19.07.2018, 10.08.2018, 08.09.2018, 15.09.2018 and 11.10.2018 which are evident from the ledger account of the Corporate Debtor annexed to the application, and after 11.10.2018 the Corporate Debtor has failed to pay the instalments. It is further observed that, the Applicant had sent demand notice on 28.08.2018 to the Corporate Debtor, in reply to which the Corporate Debtor vide its emails dated 03.09.2018, 26.09.2018 and 14.11.2018 assured to the Applicant, without raising

any disputes, to resume the payments. Copy of demand notice dated 28.08.2018 and corporate debtor's reply emails are annexed to the application. Hence, the contentions raised by the Corporate Debtor of pre-existing disputes are baseless and therefore rejected.

12. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payment, 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 amount to be paid to the Applicant. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.

13. The application is complete and has been filed under the proper form. Copy of the Demand Notice dated 07.02.2019 along with the postal track report reflecting the due receipt of the Notice by the Corporate Debtor, Affidavit in compliance of section 9(3)(b) dated 25.06.2019 stating that the Applicant has not received any notice of dispute from the Corporate Debtor and Affidavit in compliance of section 9(3)(d) have been filed by the operational creditor in support of its claim.

14. The Applicant has proposed the name of Mr Kairav Anil Trivedi, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00728/2018-2019/12332] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against her.

15. The application under sub-section (2) of Section 9 of I&B Code, 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.

ORDER

This application filed under Section 9 of I&B Code, 2016, presented by **GHCL Limited,** Operational Creditor / Applicant against **Indian Home Variations & Distributions LLP**, Corporate Debtor 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 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 appoints **Mr Kairav Anil Trivedi,** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-002/IP-N00728/2018-2019/12332]** 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.

16. The Registry is 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/-	**Sd/-**
RAJESH SHARMA	**BHASKARA PANTULA MOHAN**
Member (Technical)	Member (Judicial)

11th December 2019