IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

C.P. (IB) 1475/MB/2020

Under section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Excellous Commodities Pvt. Ltd.

Having its address at F-130, Ansa Industrial Estate Sakinaka, Saki Vihar Road, Andheri (East), Mumbai - 400 072

..... Petitioner/ Operational Creditor

Versus

VEMB Lifestyle Pvt. Ltd.

Having its address at Gala No. 13A, 1st Floor, Zakaria Industrial Estate Marol, Maroshi Road, Andheri (East), Mumbai- 400059

..... Respondent/Corporate Debtor

Order Delivered on :- 27/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : Adv. Shaila Taware

For the Corporate Debtor : Adv. Akash Warang

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Excellous Commodities Pvt. Ltd.** (hereinafter called "Operational Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s VEMB Lifestyle Pvt. Ltd** (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 1,94,46,619/-.

The submissions of the Operational Creditor are as follows:

2. It is submitted that the Operational Creditor had supplied goods more particularly garments of fine quality to the Corporate Debtor who is in the business of supply of several products in bulk and accordingly invoices were raised on 30.03.2019. The payment of the same was due within 90 days from the date of invoice. However, the Corporate Debtor admittedly failed to make payment of the same and kept assuring the Operational Creditor that the payment shall be made shortly. During the visits of the representative of the

Operational Creditor to the office of the Corporate Debtor and through written communications, the staff of the Corporate Debtor only made empty promises without any inclination to make the payment of the amount due.

3. It is further submitted that the Operational Creditor vide demand notice dated 20.12.2019 has asked Corporate Debtor to repay the outstanding amount. It has been informed by the Corporate Debtor in its reply dated 21.12.2019 to the demand notice of Operational Creditor that the Debtor Company is under liquidity crunch and will repay the dues in due course of time.

4. It is submitted that the Operational Creditor based on reply of Corporate Debtor and inability of debtor to repay outstanding dues believes that the Corporate Debtor is insolvent.

5. It is further submitted that in the circumstances mentioned above, the Corporate Debtor has committed default in making the payment of unpaid operational debt, as stated hereinabove and, therefore, the said Petition of the Petitioner is liable to be admitted for initiating corporate insolvency resolution process against the Corporate Debtor under the provisions of IBC. Hence the Petition.

6. No reply has been filed though ample opportunity was given to the Corporate Debtor. Counsel for the Corporate Debtor made a statement in a court on 01.11.2021 admitting the liability of the Corporate Debtor.

<u>Analysis and Findings:</u>

7. We have heard the Counsel for the parties and gone through the record.

8. Counsel for the Operational Creditor has argued that the Operational Creditor supplied goods to the Corporate Debtor invoices dated 30.03.2019 for a total sum of Rs. 1,94,46,619/-. Counsel for the Operational Creditor has further pointed out that no payment was made by the Corporate Debtor in respect of the said invoices. A demand notice was also issued to the Corporate Debtor on 20.12.2019. Despite the receipt of the demand notice, the Corporate Debtor has failed to make the payment. Counsel for the Operational Creditor has further argued that no substantive defence has been raised by the Counsel for the Corporate Debtor nor any dispute, much less any pre-existing dispute has been raised by the Corporate Debtor. Therefore, according to the Counsel for the Operational Creditor, it is a fit case for admission under Section 9 of Insolvency and Bankruptcy Code, 2016.

9. On the other hand, Counsel for the Corporate Debtor has simply stated at bar that the liability is not disputed but some more time may be granted.

10. Having heard the Counsel for the parties and after going through the record, we find that the case of the Operational Creditor is that goods worth Rs. 1,94,46,619/- were supplied by the Operational Creditor to the Corporate Debtor vide invoices annexed as Exhibit (c) dated 30.03.2019. Admittedly the Corporate Debtor has not made the payment. A demand notice dated 20.12.2019 was issued to the Corporate Debtor and in the reply dated 21.12.2019 annexed as Exhibit (F) to the said demand notice, the Corporate Debtor has admitted its liability to the tune of Rs. 2,11,15,230/- (including interest). It has further been stated in the reply that the company was presently going through tough time and was not in the position to make the payment. It is, therefore, evident from the record that the Corporate Debtor has committed a default of more than the threshold limit of Rs. 1 crore and

there is no pre-existing dispute between the parties. The invoices on the basis of which the claim has been made were issued on 30.03.2019 and the present Petition having been filed on 05.03.2020, therefore, the Petition is filed within the period of limitation. In the light of this, we deem it to be a fit case for admission under Section 9 of the Insolvency and Bankruptcy Code, 2016

11. As a result of above discussion, we hold that the petitioner has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

ORDER

a. **The above Company Petition No. (IB) 1475/(MB)/2020 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s VEMB Lifestyle Pvt. Ltd.**

b. This Bench hereby **appoints Mr. Devarajan Raman, Registration No: IBBI/IPA-002/IP-N00323/2017-2018/10928 as the Interim Resolution Professional having his address at 12, ICT SQ, R.A. Kidwai Road, Matunga, Mumbai- 400019 ; Email:-** **devarajan.raman@gmail.com** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

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 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 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 concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

12. **Accordingly, this Petition is admitted.**

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

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Sushil