

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

C.P. No. 3346/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

Anish Trading and Mercantile Private Limited

Having registered office at: Shop No. 6,
Kanakia Park, A Wing, Opp. Avenue
Hotel, Thakur Complex, Kandivali East,
Mumbai – 400101.

...Operational Creditor

Vs

Jawaria Enterprises Private Limited

Having Registered Office at: 402, Corporate
Annex, Next to Udyog Bhavan, Sonawala
Lane, Goregaon East, Mumbai – 400063.

.....Corporate Debtor

Order delivered on: - 30.11.2021

Coram:

Hon'ble Member (Judicial) : Justice P.N. Deshmukh
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances (through Video conference):

For the Operational Creditor : Ms. Bindu Bhatia, Advocate

For the Corporate Debtor : None Appeared

ORDER

Per: - Justice P.N. Deshmukh, Member Judicial

1. This Company Petition is filed by Anish *Trading and Mercantile Private Limited* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Jawaria Enterprises Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs. 17,47,300/- (Rupees Seventeen Lakhs Forty-Seven Thousand and Three Hundred Only) together on the outstanding balance calculated from the due date i.e. 27.04.2019 to 20.08.2019 along with interest @ 5.5@ p.a. from 21.08.2019 till the date of realization towards materials supplied by the Operational Creditor to the Corporate Debtor. The Date of Default occurred from 27.04.2019 and continued thereafter.
3. **The Submissions of the Operational Creditor are as follows:**
 - a. The Corporate Debtor Company is engaged in the business as traders, merchants, commission Agents, Selling Agents, buyers, sellers, importers, exporters etc.

- b. The Authorized Share Capital of the Corporate Debtor Company is Rs. 1,00,000/- and Paid up Share Capital is Rs. 1,00,000/-.
- c. The Operational Creditor states that the Corporate Debtor placed Purchase Order dated 09.04.2019 amounting to Rs. 17,47,300/- (Rupees Seventeen Lakhs Forty-Seven Thousand and Three Hundred Only) in respect of the materials supplied by the Operational Creditor.
- d. The Operational Creditor further submits that Letter dated 02.05.2019 was issued by the Operational Creditor reminding the Corporate Debtor for payment of an outstanding amount for the month April, 2019.
- e. In reply to the said Letter, the Corporate Debtor vide its Letter dated 06.05.2019, sought 30 days in order to make arrangement for the repayment of outstanding balance pursuant to the Purchase Order dated 09.04.2019.
- f. The Operational Creditor further again vide its Letter dated 25.05.2019 reminded/demanded from the Corporate Debtor for the outstanding payment along with interest @ 5.5% p.a. as the Corporate Debtor failed to pay the amount also after granting 15 days credit period.
- g. Again, the Corporate Debtor vide its Letter dated 03.06.2019, requested for further time to pay the amount due as they were still in process to arrange the funds.
- h. Thereafter, inspite of several reminders and letters issued by the Operational Creditor and constant failure on the part of the Corporate Debtor to pay the outstanding amount, the Operational Creditor again issued another letter on 10.06.2019

demanding a sum of Rs. 17,58,885/- (Rupees Seventeen Lakhs Fifty-Eight Thousand Eight Hundred and Eighty Five Only).

- i. The Operational Creditor sent a Demand Notice under section 8 in Form 4 of the Code dated 20.08.2019 for payment in respect of unpaid Operational Debt due from the Corporate Debtor. The said Notice was Hand Delivered to the Corporate Debtor and the same was acknowledged on the same day i.e. on 20.08.2019. The Corporate Debtor did not file any Reply to the Demand Notice and no dispute was raised by the Corporate Debtor under section 5(6) of the Code.
- j. The Operational Creditor has also submitted the ledger account of the Corporate Debtor in the books of the Operational Creditor which corroborates the amount claimed.

4. No Submissions of the Corporate Debtor: -

- k. The Corporate Debtor has not appeared before this Bench. The Affidavit of Service dated 22.07.2021 intimating the next date of hearing is placed on record. None attended. The correspondences between the Operational Creditor and the Corporate debtor reveal that the debt is an admitted debt.
1. Since the Corporate Debtor has not appeared before this Bench, it is presumed that there is nothing much to say in defence.

FINDINGS

5. We have heard the submissions of the Counsel appearing for the Operational Creditor. It is seen from the records that this Tribunal had

given sufficient chances to the Corporate Debtor to file its Reply. However, None appeared.

6. Further, on the basis of the evidences on record the Operational Creditor has established that he has supplied materials to the Corporate Debtor in the year 2019 for which an amount of 17,77,579/- inclusive of interest is due and a default has also occurred. Considering these facts and circumstances, the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. There is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor.
7. The reply of Corporate Debtor to the letters sent by Operational Creditor on 06.05.2019 and 03.06.2019 is evident of the fact that the Corporate Debtor has admitted its liability and is only lingering on the payments in the garb of financial difficulty and thus asking for more time. Further, the Operational Creditor extended the time for repayment and directed the Corporate debtor to clear its dues, but the Corporate Debtor did not pay the outstanding dues.
8. The Bench has also perused the notice sent under Section 8 (2) of the Code and it is noticed that the Corporate Debtor has received the same but has not paid the amount of unpaid dues nor replied to the said Notice. Further, if the Corporate Debtor wanted to place on record evidence of 'Dispute' then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no 'Dispute' in respect of the outstanding Debt. Instead, debtor never appeared before the Bench during the entire proceedings in this matter.

9. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. Hence this Bench is left with no option except to admit the above Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.
10. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB) - 3346(MB)/2019 is hereby allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against “Jawaria Enterprises Private Limited”.
- b. This Bench hereby appoints **Mr. Prakash Shenoy** **Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00946/2019-20/13010** as the Interim Resolution Professional, email: - shenoyprakash@gmail 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 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 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.

Accordingly, this Petition is admitted.

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

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**JUSTICE P.N. DESHMUKH
(MEMBER JUDICIAL)**