

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH : C-IV

CP(IB)-1327/MB/2020

Under Section 9 of the IBC, 2016

*In the matter of*

**Makalu Trading Limited**

...Operational Creditor

v/s.

**Prarthna Private Limited**

...Corporate Debtor

**Order Pronounced on: 26.11.2021**

*Coram:*

Mr. Rajesh Sharma

Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner: Mr. Neerav Merchant, Advocate.

For the Respondent: Ms. Sonal Singh, Advocate.

**ORDER**

***Per: Suchitra Kanuparthi, Member (Judicial)***

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Makalu Trading Limited**, ("the Operational Creditor"), seeking to initiate Corporate Insolvency

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Resolution Process (CIRP) against **Prarthna Private Limited** (“the Corporate Debtor”), [CIN: U67120MH1981PTC294965].

2. The Corporate Debtor is a company incorporated on 07.04.1981 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U67120MH1981PTC294965. Its registered office is at Office No. 105, 1<sup>st</sup> Floor, Standard House, 83, Maharshi Karve Road, Mumbai – 400 002. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.32,34,16,663/- (Rupees thirty-two crore thirty-four lakh sixteen thousand six hundred and sixty-three only). The date of default is 29.02.2020 as per the statement showing receivables from the Corporate Debtor.
4. The case of the Operational Creditor is as under:
  - a) The Operational Creditor submits that the Operational Creditor has been supplying various steel & allied materials viz. C.R. Coils, Galvanised Sheets, H.R. Coils to the Corporate Debtor, for the last several years, as per instructions received from the management of the Corporate Debtor.
  - b) During the F.Y. 2016-17 (period from 21<sup>st</sup> December 2016 to 28<sup>th</sup> December 2016), invoices were raised by the Operational Creditor for

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goods supplied to the Corporate Debtor. In the month of December 2016 material amounting to Rs. 33,14,30,238/- was supplied to the Corporate Debtor against which an amount of Rs. 32,34,16,663/- is still outstanding and due to the Operational Creditor from the Corporate Debtor.

- c) Pursuant to the supply of goods by the Operational Creditor, the Corporate Debtor took delivery of the aforesaid goods, without raising any objection/dispute as to price, quantity, quality, specification or otherwise.
- d) A statement showing total amount of debt, details of transactions on account of which debt fell due, date from which debt fell due, interest, amount claimed to be in default and the date on which default occurred is shown in a table attached with the Petition as "Annexure III".
- e) The invoices against which the outstanding debt is due are attached with the Petition as "Annexure IV".
- f) The invoices give details of the goods supplied and VAT charged. The goods have been supplied "Ex-Taloja" from where the Corporate Debtor has lifted the material directly. It is pertinent to note that Transport charges has not been charged by the Operational Creditor as the same is to be arranged and borne by the Corporate Debtor.
- g) The outstanding amount due of Rs. 32,34,16,663/- was confirmed by the Corporate Debtor on 01.04.2018 and on 01.04.2019 vide "Balance

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Confirmation Certificates.”, the same are attached with the Petition as “Annexure V”.

- h) The last payment received against the goods supplied was on 31st December 2017 for Rs. 6,21,066/-.
  - i) The Ledger Account of the Corporate Debtor from 01<sup>st</sup> April 2013 till 29<sup>th</sup> February 2020, as maintained by the Operational Creditor are attached with the Petition as “Annexure VI”.
  - j) There is no clause for interest in the invoices. Accordingly, interest has not been charged on the outstanding amount.
  - k) Due to non-payment of outstanding dues, a Demand Notice was issued under Rule 5 of the Insolvency & Bankruptcy Rules 2016 dated 21<sup>st</sup> February 2020. Photocopy of the Demand Notice duly acknowledged by the Corporate Debtor is attached with the Petition as “Annexure VII”.
  - l) Despite receipt of Demand Notice, the Corporate Debtor failed to send any reply to the said Notice.
  - m) Even after the stipulated period there has been no payment made by the Corporate Debtor.
5. The Operational Creditor has attached (Annexure-V) with the Petition two Balance Confirmation Certificates dated 01.04.2018 and 01.04.2019 duly confirmed and acknowledged by the Corporate Debtor. Also, attached (Annexure-VI) Ledger Account of the Corporate Debtor from

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1<sup>st</sup>April 2013 till 29<sup>th</sup> February 2020, as maintained by the Operational Creditor. Demand Notice dated 21.02.2020 under Section 8 of the Insolvency & Bankruptcy Code 2016 issued by Operational Creditor to the Corporate Debtor is also attached with the Petition (Annexure-VII) by the Operational Creditor.

**Reply of the Corporate Debtor:**

6. The Corporate Debtor has filed reply and at para 3 admitted liability. Para 3 is reproduced below:

*“Prarthna Private Limited admits that an amount of Rs.32,34,16,663/- is due and outstanding to the Operational Creditor (Makalu Trading Limited)”.*

**FINDINGS:**

7. The Petitioner has claimed an amount of Rs.32,34,16,663.00 towards the outstanding operational debt for supply of steel and allied material such as C.R. Coils, Galvanized Sheets, H.R. Coils to the Corporate Debtor. The Petitioner has raised invoices and has enclosed statement of account showing the receivables as due from the corporate debtor as on 29.02.2020.
8. The Petitioner has also filed balance confirmation as of 31.03.2018 and 31.03.2019 wherein the Corporate Debtor has confirmed that an amount of Rs. 32,34,16,663.00 is due and outstanding payable to the Petitioner. The Petitioner also issued demand notice dated 21.02.2020. No reply has

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received from the Corporate Debtor and the Petitioner has filed affidavit u/s section 9(3)(b).

9. Further the Corporate in its reply categorically admitted the liability and hence the petition is admitted.

10. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB)-1327/MB/2020** filed by **Makalu Trading Limited**, the Operational Creditor, under Section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Prarthna Private Limited [CIN: U67120MH1981PTC294965]**, the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

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- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium-
- (i) 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;
  - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

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- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Ms. Dipti Atul Mehta, having registration No. IBBI/IPA-002/IP-N00134/2017-2018/10350, having address at 201-206, Shiv Smriti, 2<sup>nd</sup> Floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai – 400 018, is hereby appointed as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

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- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

**Rajesh Sharma  
Member (Technical)**

26.11.2021/pvs

Sd/-

**Suchitra Kanuparthi  
Member (Judicial)**