

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

C.P. (I.B) No. 275/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)  
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 22.03.2021

Name of the Company:

BSE Ltd  
V/s  
Synergy Cosmetics Exim Ltd

Section:

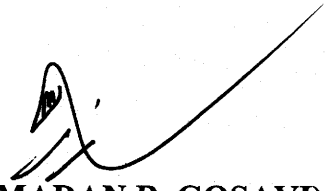
9 of the Insolvency and Bankruptcy Code, 2016

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

  
(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)

  
(MADAN B. GOSAVI)  
MEMBER (JUDICIAL)

Dated this the 22nd day of March, 2021

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**CP (IB) 275/9/NCLT/AHM/2019**

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

**In the matter of:**

**BSE Limited** (earlier known as Bombay Stock Exchange Ltd.)

Having its registered office at:

25<sup>th</sup> Floor, P.J. Towers,

Dalal Street, Fort,

Mumbai-400001

.....Operational Creditor.

Versus

**M/s. Synergy Cosmetics (Exim) Limited,**

Having its registered office at:

806, Saffron Building,

Panchwati to Abawadi Road,

Ambawadi, Ahmedabad,

Gujarat-380006

.....Corporate Debtor.

Order Reserved on: 16.03.2021

Order Pronounced on: 22.03.2021

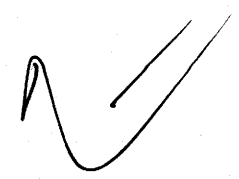
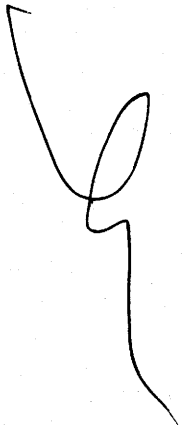
**Coram: MADAN B. GOSAVI, MEMBER (J)**

**VIRENDRA KUMAR GUPTA, MEMBER (T)**

**Appearance:**

For Operational Creditor: Learned Counsel Mr. Amit Laddha

For Corporate Debtor : Learned Counsel Mr. Jatin Kapadia



**ORDER**

**[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]**

1. This application has been filed by Operational Creditor, namely, B.S.E Limited under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against the Corporate Debtor, namely, M/s Synergy Cosmetics (Exim) 11,68,165/- (Rupees Eleven Lac Sixty Eight Thousand One Hundred and Sixty Five Only) plus interest thereon.

**Facts in Brief**

2. The Corporate Debtor is a listed company on BSE (earlier known as Bombay Stock Exchange Ltd.) The Stock Exchanges raised invoices for annual listing fees/stock exchange services on 01.04.2015, 30.06.2015, 01.04.2016 and 01.06.2016. The aggregate amount of these invoices is Rs. 11,68,165/-. The date of default has been claimed since 01.04.2015.

**Submissions of Operational Creditor**

3. Learned Counsel for the Operational Creditor appeared and narrated all these facts and drew our attention to relevant supporting materials produced on record. Our attention was also drawn to the fact that notice under Section 8 of IBC, 2016 dated 28.09.2018 had been delivered to the Corporate Debtor as efforts to realise the outstanding amount did not fructify. It was also claimed that as per the terms of listing agreement; the Corporate Debtor was liable to pay the listing fee. In this regard, our attention was drawn to Clause 38 of agreement dated 16.08.1995. Our attention was also drawn to Clause 3 of renewal of this agreement dated 05.04.2016 whereby the Corporate Debtor had undertaken to pay listing and such other fees/fines as may be specified/levied by the exchange from time to time within prescribed period. On this basis, it was claimed that application was liable to be admitted. In addition to this, it was also pointed out that the name of the Interim Resolution Professional had also been proposed whose consent was on record.

**Submissions of Corporate Debtor**

4. Learned Counsel for the Corporate Debtor, on the other hand, pleaded that the application was not maintainable for the reason that regulatory dues did not fall within the definition of operational debt. For this view, the learned counsel relied on the report of Insolvency Law Committee dated 26.03.2018 at first place. Thereafter, the Learned Counsel for the Corporate Debtor also relied on the decision of NCLT Mumbai Bench in the case of *Bombay Stock Exchange Limited vs. Asahi Infrastructure & Projects Limited in CP No. 1718/IBC/NCLT/MB/MAH/2017& MA 216/2018 dated 11.02.2019.*
  
5. Thereafter, it was claimed that application filed by Operational Creditor was in regard to recover the arrears of annual listing fee and for this proposition, he specifically drew our attention at page no. 68 of the paper book wherein authorisation to the application was given to recover arrears of annual listing fee, hence, this application was liable to be dismissed as IBC was not a recovery

mechanism. Another plea was taken that debt was barred by limitation.

### **Submissions of Operational Creditor in Rejoinder**

6. In the rejoinder, Learned Counsel for the Operational Creditor placed reliance on the decision of Hon'ble NCLAT in the case of *Anju Agrawal vs. Bombay Stock Exchange & Ors in Company Appeal (AT) (Insolvency) No. 734 of 2018 order dated 23.04.2019* against the order of NCLT, Allahabad Bench wherein it had been held that Regulatory Authorities were not covered under the moratorium, however, the Hon'ble NCLAT had modified this order of NCLT and held that statutory dues were of the nature of operational debt and for that reason Securities Exchange Board of India (SEBI) could realise the same as Operational Creditor by making the necessary claim during CIRP of the Corporate Debtor. Thus, even the regulatory dues were of the nature of operational debt. The Learned Counsel also relied on the decision of NCLT, New Delhi in the case of *BSE Limited vs. STG Lifecare Limited in Company Petition No. IB-1950/ND/2019 order dated 10.01.2020* to state that

such charges were of the nature of operational debt, hence, application was admitted. For the same proposition, reliance was also placed on the decision of NCLT, New Delhi Bench in the case of *BSE Limited vs. MFS Intercrop Limited* in IB-1936/(ND)/2019 order dated 07.01.2020. As regard to the nature of statutory dues being of the nature of operational debt, reliance was also placed on the decision of NCLAT in the case of *Pr. Director General of Income Tax Vs. Synergies Dooray Automotive Ltd. & Others*, 2019 SCC Online NCLAT 691.

### **Our Conclusion**

7. We have considered the submissions made by both the sides and material on record. It is not in dispute that the Corporate Debtor is listed on B.S.E. It is also not in dispute that it is liable to pay annual listing fees and other charges and, if any, delay occurs in payment thereof, the Corporate Debtor is also liable to pay penalty. Four invoices have been raised. Two invoices pertain to period which is beyond three years and remaining invoices are within the period of limitation. The outstanding amount of invoices which are

within the limitation period is more than Rs. 1,00,000/-.

We have also perused the relevant Clause 38 of the original agreement as well as Clause 3 of renewal agreement. As per these clauses, the liability of the Corporate Debtor has accrued and remains to be paid. As far as the nature of such dues is concerned, it has been established beyond doubt that these are of the nature of operational debt.

Further, B.S.E is not a Statutory Authority and it is a commercial entity established under a statute, hence, an entity of this nature, B.S.E can file an application under Section 9 of IBC, 2016. We are further of the view that merely because in the authorization, it has been mentioned that the person was authorized to recover the dues, such authorization does not alter the nature of application. At this point of time, we consider it pertinent to mention that if this logic is applied then all applications filed under Section 9 can be dismissed because such petitions are essentially filed for this purpose only irrespective of wordings of authorization. Even, applications under Section 7 of IBC, 2016 have got primary purpose of recovery. The design of IBC, 2016 is successful because of

two factors i.e., it is a regime where creditors take charge of the Corporate Debtor and stringent timelines have been provided so that timely resolution or liquidation can take place. It is because of this reason, we again emphasize that issues are being resolved but the nature and purpose of applications cannot be divorced totally from the intent of recovery. No specific guidelines either under statute or by judicial pronouncements have been provided in this regard and the criteria under IBC, 2016 is default and not inability to pay dues unlike earlier statutory legislations; hence, it is the need of the hour that some amendments/guidelines are provided as soon as possible although the legislature has increased the threshold limit of Rs. 1,00,000/- under Section 4 to Rs. 1,00,00,000/-. Further, this application has been filed by B.S.E and due to default of Corporate Debtor, many retail investors have got struck as they cannot exit/trade the shares of the Corporate Debtor held by them, hence, for this reason also application needs to be admitted.



8. The name of the IRP has also been proposed whose consent is on record. No disciplinary proceedings are pending against such person. The application is otherwise complete and defect free. Accordingly, we admit the application and order as under:

**ORDER**

1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (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 Securitisation 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 the possession of the corporate debtor.*

2. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

3. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Ms. Dipti Mehta, having Registration No. IBBI/IPA-002/IB-N00134/2017-18/10350, having address at: 201-206, Shiv Smriti Chambers, 2<sup>nd</sup> Floor, 49/A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai-400018, e-mail: [dipti@mehta-mehta.com](mailto:dipti@mehta-mehta.com)** to act as an IRP under Section 13(1) (c) of the CODE.
4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the

Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate. IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

5. This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.
6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of

smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

8. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
9. Accordingly, CP (IB) No. 275/9/NCLT/AHM/2019 is allowed.



**(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)**



**(MADAN B. GOSAVI)  
MEMBER (JUDICIAL)**

Signed on this, the 22<sup>nd</sup> March, 2021.

Rajeev Sen/Stenographer