

IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"  
(Exercising powers of Adjudicating Authority  
under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.354/Chd/Chd/2018

Under Section 9 of the  
Insolvency and Bankruptcy  
Code 2016.

**In the matter of:**

**M/s Pret Study by Janak Fashions Pvt. Ltd.**

having its registered office at  
N-9, South Extension-I,  
New Delhi-110049

...Petitioner-Operational Creditor

Versus

**M/s Mars Hospitality and Retail Pvt. Ltd.**

having its registered office at  
Showroom No. 3, Ground Floor,  
Madhya Marg, Sector 7, Chandigarh-160018

...Respondent-Corporate Debtor

Judgment delivered on 3<sup>09</sup>.08.2019  
*free copy*

**Coram: Hon'ble Mr. M.K. Shrawat, Member (Judicial)**  
**Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Petitioner : Mr. Vaibhav Sharma, Advocate

For the Respondent : Mr. Amit Kaith, Advocate

**Per: M.K. Shrawat, Member (Judicial)**

**JUDGMENT**

This petition has been filed by Pret Study By Janak Fashions Pvt. Ltd. (Operational Creditor), a company incorporated under the Companies Act, 1956 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating the Corporate Insolvency Resolution Process (CIRP) against the respondent-corporate debtor. The application has been filed on Form-5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'the Rules') through Mr. Kishore Kumar, Authorized Signatory of the

provisions of the Code authorising Mr. Kishore Kumar, Authorized Signatory to file the petition, sign and verify the petition under Section 9 of the Code and to do all the necessary acts during the progress of the case.

2. The respondent-company was incorporated on 21.12.2016 under the Companies Act, 2013 with authorised share capital of ₹1,25,00,000/- and paid up share capital of ₹1,11,26,840/-. The master data of the respondent-company is at Annexure P-3 of the Petition. As per the master data at Page 43 of the Petition the registered office of the Corporate Debtor is at Showroom No. 3, Ground Floor, Madhya Marg, Sector 7, Chandigarh-160018 and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The facts of the case, briefly stated, are that the petitioner-'operational creditor' entered into an agreement with Mars Enterprises (the proprietorship concern of the sole proprietor Mr. Satbir Singh Saini, who is one of the directors of the respondent-'Corporate Debtor') to supply all the products, stock to the Corporate Debtor and received the payments due from the Corporate Debtor instead of Mars Enterprises (sister concern of respondent-Corporate Debtor). It is stated that the petitioner-Operational Creditor supplied products/stock to the respondent-Corporate Debtor on a credit basis and upon the sale of any of the products/stock from the designated outlet, the petitioner-Operational Creditor was entitled to the 60% of the sale collection from the customer on daily basis. The petitioner-Operational Creditor supplied stocks equivalent to ₹3,75,52,037/- for the period 02.06.2016 to 30.04.2018. The products/stock in possession of the respondent as on 30.04.2018 was equivalent to ₹2,01,75,639/-. The respondent-Corporate Debtor issued three cheques bearing Nos. 006801, 006802 & 006803 dated 27.01.2018, 27.02.2018 and 27.03.2018 respectively for an amount of ₹9 lacs each along with another cheque bearing No. 004100 dated 10.01.2018 for ₹38 lacs issued on behalf of Mars Enterprises.

Debtor which had been misused by the respondent-Corporate Debtor. It is also submitted that the petitioner-Operational Creditor filed a **criminal complaint** against the respondent-Corporate Debtor vide Reference No. PW201806774 dated 01.05.2018 for unlawful possession of the products/stock owned by the petitioner-Operational Creditor. The present case pertains to the default committed by the respondent-corporate debtor in respect of **purchase of products/stock** vide Invoice No. SAL7071600492 dated 10.02.2012 which is for sum of **₹2,01,75,639/-**.

4. The petitioner-operational creditor issued a demand notice dated 09.06.2018 in Form-3 as prescribed in Rule 5 (1)(a) of the Rules giving all the required particulars of the transactions along with copy of the sale invoices, statement of account/ledger of the Corporate Debtor, copy of 3 cheques and copy of 3 returning memos against dishonoured cheques. The Demand Notice is at Annexure P-10. The demand notice was sent by DTDC Courier vide receipt dated 09.06.2018 and the same is stated to have been delivered to the respondent-corporate debtor on 11.06.2018 as per the tracking report at page 1425 of the paper book respectively. It is further stated that the demand notice was also sent at the e-mail address of respondent-corporate debtor available on the master data. Copy of the e-mail is at page 1426 of the paper book. The respondent-corporate debtor did not respond to the notice and this petition was filed after the expiry of 10 days period from the delivery of the demand notice.

5. On filing of this petition, copy of the same was dispatched to the respondent-corporate debtor on 11.06.2018 as per the postal receipt at page 1425 of the paper book in order to comply with the requirement of Rule 6(2) of the Rules.

6. Notice of this petition was issued to the respondent-corporate debtor. It was directed that the notice be sent along with copy of the petition and the entire paper book by speed post immediately as well as at the e-mail

receipt with tracking report are enclosed and the item sent by speed post was delivered unclaimed as mentioned at Page 6 of the said affidavit. In the affidavit, it was also stated that copy of the notice was also sent at e-mail address of the respondent-corporate debtor available on the master data and the copy of the e-mail is attached as Annexure P-2 of the affidavit.

7. The respondent-Corporate Debtor filed reply dated 20.05.2019 (Diary No. 2576 dated 21.05.2019) stating therein that agreement dated 02.06.2016 was amended and modified by a supplementary oral agreement dated 22.12.2017 which was confirmed vide a letter dated 27.12.2017 whereby, it was agreed that petitioner shall take over the business control with right to use the premises as licensee of Chandigarh store and he will pay to respondent 30% of the sale collection or ₹6 lacs whichever is more per month. The petitioner handed over 12 post-dated cheques of ₹6 lacs for each month. One cheque for the month of January, 2018 was cleared by petitioner but rest were dishonoured due to lack of funds, therefore, it is the petitioner who have breached the contract and owe money towards respondent. Copies of cheques and return memo are annexed as Annexure R-1 of the said affidavit. Also, under the same **amended contract dated 22.12.2017 the Respondent had accepted the past liabilities towards petitioner total amounting to ₹27 lacs, from commencement of business upto 31.12.2017 i.e. upto the period of taking over business by petitioner w.e.f. 01.01.2018.** The petitioner is liable to pay the use and occupation charges of the premises as per the supplementary/modified agreement dated 22.12.2017 as well as other Government dues which come to ₹54 lacs upto October, 2018. Copy of the lease deed is annexed as Annexure R-2. A counter allegation was that the Petitioner was liable to pay the damages for the breach of the contract because the Petitioner had stopped the business during the lock in period without any notice of two months as agreed in the agreement. Allegedly, the respondent

were allegedly claimed to be due towards the petitioner, however strongly contested by the Petitioner, stated to be as under :-

- i. Use and occupation charges of the premises of Chandigarh store from 01.01.2018 to 31.10.2018 amounting to ₹54 lacs along with interest at the rate of ₹9% per month.
- ii. Salary and perks of the staff of the Chandigarh store, which were to be paid by the petitioner but paid by respondent amounting at Rs. 4 lacs. Copies of the vouchers of payment of salary are files as Annexure R-4 (colly).
- iii. The share of the respondent towards sale collection for the month of February, March and April, 2018 amounting to ₹18 lacs.
- iv. Operational losses to be paid by the petitioner to the tune of ₹73 lakhs.
- v. Share of petitioner to be paid to the respondent for operational losses to the tune of ₹2,24,60,000/-.
- vi. For breach of contract and for harassment and mental agony petitioner is liable to pay ₹10 lakh to the respondents.

8. Rebutting the allegations, the Petitioner-Operational Creditor filed rejoinder to the reply of the respondent by Diary No. 3381 dated 12.07.2019 which is as follows:-

- a) The respondent corporate debtor mislead and concealed the facts that the cheques issued by the Petitioner were dishonoured not due to lack of funds but from the returning memo it is clear that the cheques were not allowed to be cleared due to being "stopped by the drawer", so the cheque bearing no 0068001 issued to the respondent was not honoured.

- b) The two agreements (agreement dated 02.06.2018 and oral

agreement as the pre-requisite of the oral agreement was the clearance of all the past liabilities payable to the Petitioner under separate agreement dated 02.06.2016.

- c) The respondent took illegal possession of the products/ stock of the Petitioner even after receipt of the termination notice dated 01.04.2018 issued by the Petitioner. When the authorised representative of the Petitioner visited the outlet of the Corporate Debtor he refused to cooperate and return the products/stock of the Petitioner. Further, the authorised representative of the Petitioner has also filed a criminal complaint against the directors of the Respondent with Chandigarh Police.
- d) The Petitioner–Operational Creditor has not received any demand notice dated 20.05.2018 and further Respondent–Corporate Debtor has not attached any proof of delivery.

9. We have carefully considered the submissions of the learned counsel for the operational creditor / Respondent Debtor and have also perused the records.

10. The first issue for consideration is whether the demand notice on Form No. 3 dated 09.06.2018 was properly served. As mentioned above the demand notice was sent by DTDC Courier vide receipt dated 09.06.2018 and the same is stated to have been delivered to the respondent-corporate debtor on 11.06.2018 as per the tracking report at page 1425 of the paper book respectively. Also the demand notice was sent at the e-mail address of respondent-corporate debtor available on the master data. Copy of the e-mail is at page 1426 of the paper book. The copy of the e-mail has been filed as Annexure P-12 of the petition<sup>1</sup>

discussed above in detail, the reply filed by the Authorized Representative of the creditor dated 20.05.2018.

12. The provisions of Section 9(5)(i) of the Code are as follows:-

*“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no payment of the unpaid operational debt;*

*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”*

13. We have gone through the contents of the application filed on Form No. 5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹68,77,460/- **(excluding interest claimed by the Operational Creditor @24%)**. The extract of the ledger of the Corporate Debtor for the period 01.02.2017 to 30.04.2018 is at Annexure P-5 of the Petition. Affidavit verifying the total payment received in bank account of the Operational Creditor from the Corporate Debtor in cash as well as bank transfer/cheques is at page no 1617 of the petition, as per the audited Balance Sheet for Financial Year 2016-17, has also been filed. Moreover, demand notice in Form No. 4 was also sent on 13.03.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹68,77,460/- (excluding interest @ 24% claimed by the Operational Creditor) and despite service of the

No Interim Resolution Professional has been proposed by the Petitioner.

14. During the course of hearing on 18.07.2019, the learned counsel for the petitioner relied on the case *Sudhi Sachdev vs. APPL Industries Ltd.* in which it was held that the pendency of the case under Section 138/441 of the Negotiable Instrument Act, 1881 actually **amounts to admission of debt and not an existence of dispute**. Reliance was also placed on the decision of NCLT Kolkata held in the case of *M/s. Sumnax Mercantile Pvt. Ltd vs. M/s. Shirdi Plywood Pvt. Ltd.* in which it was held that proceedings under section 138 of the Negotiable Instrument Act is a different proceeding and liability occurs when a cheque is dishonoured.

15. List of evidences which have been considered by the Bench as submitted by the petitioner are:-

- (i) Copy of Statement of account/ledger of the respondent maintained by the petitioner for the period 01.02.2017 to 30.04.2018
- (ii) Copy of sale invoices raised to the customers by the Respondent of behalf of the Petitioner
- (iii) Copy of three Cheques of Rs.9 lac each dated 27.01.2018, 27.02.2018 & 27.03.2018
- (iv) Copy of 3 returning memos dated 30.04.2018 against dishonour of aforesaid cheques.

16. In the case of ***Mobilox Innovations Private Limited vs Kirusa software Private Limited***, a legal proposition has been laid down by the Hon'ble Court that the Adjudicating Authority is to see whether dispute is patently a feeble legal argument. Further the Hon'ble Court has given a view that an assertion of fact unsupported by evidence do not ascertain the existence of dispute.

17. To examine the events took place during course of business transaction are a guiding factors to segregate the grain from the chaff

of true dispute which is not hypothetical or illusory should be made a basis for rejection of petition under Section 9.

18. During the course of hearing on 04.12.2018, an observation was made by this Bench that the learned counsel for the petitioner had contended that the goods passed to the respondent on raising of the invoices and that was duly on account of the corporate debtor, thus unequivocally demonstrating the business transaction which was clearly recorded in the books of account maintained by the petitioner. Admittedly reflected in the accounts the outstanding amount on account of cheque issued but bounced.

19. This noting is referred for the reason that due opportunity is granted in the course of hearing to the respondent-corporate debtor to rebut the claim of the petitioner.

20. In view of the **satisfaction** of the conditions provided for in Section 9(5)(i) of the Code, we '**Admit**' the **petition** for initiation of the CIRP process against the Corporate Debtor M/s Mars Hospitality and Retail Pvt. Ltd. and pronounce moratorium by appointment of an Interim Resolution Professional, named hereunder.

21. We declare the 'Moratorium' in terms of sub-section (1) of Section 14 of the code, prohibiting as under:-

(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

(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.

22. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

23. The order of moratorium shall have effect from the date of this order till 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.

24. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but presently not obliged to do so. In the instant case the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

*“a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*

*b) xxxxx”*

Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.07.2019 to 31.12.2019. We select **Mr. Madan Gopal Jindal, Registration No.IBBI/IPA-002/IP-N00137/2017-2018/10352,email id: mgjindal@gmail.com Mobile No.9814170354, appearing at Serial No. 51 of the panel to be appointed as 'Interim Resolution Professional'.**

26. The Law Research Associate of this Tribunal has checked the credentials of the said IRP and there is nothing adverse against him.

27. In view of the above, the following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Madan Gopal Jindal, registered insolvency professional bearing Registration No. Registration No.IBBI/IPA-002/IP-N00137/2017-2018/10352, email id: mgjindal@gmail.com, Mobile No.9814170354.
- ii) The term of appointment of Mr. Madan Gopal Jindal shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which

Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';

- iv) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor';
- vi) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his

- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

*Pradyip*

(Pradeep R. Sethi)  
Member (Technical)

*Pradyip*  
September 03  
August, 2019  
Yashpal

*M. K. Shrawat*

(M.K. Shrawat)  
Member (Judicial)

*M. K. Shrawat  
is not available  
today. Pronounced in open  
court under Rule 151 of  
National Company Law Rules 2016.  
Pradyip.  
3-9-2019*