

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**CP/IB/162(CHE)/2022**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of **Golden Shopping Mall & Hotels Private Limited***

**Femina Shopping Mall Private Limited**

Rep by its Director  
No. 107/A, Williams Road,  
Cantonment,  
Trichy – 620 001.

*... Applicant / Operational Creditor*

-Vs-

**Golden Shopping Mall & Hotels Private Limited,**

Reg Office at:  
No. 4, Mandapam Road,  
Kumaraiah Kovil,  
Ramanathapuram – 623 501.

*... Respondent / Corporate Debtor*

*Order Pronounced on 23<sup>rd</sup> December, 2022*

**CORAM:**

**DR. DEEPTI MUKESH, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor: E. Sathish Kumar, Advocate*

*For Corporate Debtor: Cibi Vishnu, Advocate*

*Avinash Krishnan Ravi, Advocate*

*Jerin Asher Sojan, Advocate*

**ORDER**

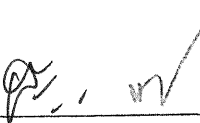
**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

Under Adjudication is CP/IB/162(CHE)/2022 which has been  
filed by **Femina Shopping Mall Private Limited** (hereinafter

referred to as '**Operational Creditor**') through its Director Mr. J. Kalandhar Naina Mohamed who is duly authorised by Board Resolution dated 05.05.2022 under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Golden Shopping Mall & Hotels Private Limited** (hereinafter referred to as '**Corporate Debtor**'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP). It can be seen that the Affidavit verifying the application was sworn by the Director (Mr. J. Kalandhar Naina Mohamed) on 18.06.2022 and is filed with the Application.

2. From Part – I of the Application, the Operational Creditor is a Private Limited Company registered under the Companies Act, 1956 having CIN: U51219TN1999PTC042732. As per the 'MCA – Masterdata', the Operational Creditor has its registered office at No.2, Old Good Shed Road Near Holy Cross College Tiruchirappalli Tiruchirappalli TN 620002. The address for correspondence Operational Creditor is at No. 107/A, Williams Road, Cantonment, Trichy – 620 001.

3. Part - II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a



Company incorporated under the Companies Act, 1956 on 25.11.2013 with CIN: U74999TN2013PTC093873. The registered office of the Corporate Debtor is situated at No. 4, Mandapam Road, Kumaraiah Kovil, Ramanathapuram - 623 501. The Authorised Share Capital of the Corporate Debtor and Paid-up Share Capital is stated to be Rs.1,00,00,000/-. From Part - III of the Application It is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional".

4. From Part-IV of the Application, it is seen that a total sum of Rs.1,04,62,218/- (Rupees One Crore Four lakh Sixty-Two Thousand Two Hundred and Eighteen Only) is being claimed by the Operational Creditor as the Operational Debt. Out of the said dues, a sum of Rs. 49,54,366/- is stated to be the interest portion and a sum of Rs. 55,07,846/- is towards the principal. The dated of default as per the Applicant is 10.08.2018.

5. Part - V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt', which are extracted as follows:

1. Form 3 with acknowledgement card.
2. Invoices issued by Femina Shopping Mall Private Limited with delivery acknowledgements given by Golden Shopping Mall & Hotels Private Limited between April 2016 and August 2018 on various dates.

3. Ledger Account Statement of Femina Shopping Mall Private Limited for the period from 01.04.2016 to till 18.04.2022.
4. Demand notice dated 18.03.2019 issued by Femina Shopping Mall Private Limited to Golden Shopping Mall & Hotels Private Limited.
5. Demand notice dated 30.03.2019 issued by Femina Shopping Mall Private Limited to Golden Shopping Mall & Hotels Private Limited. ,
6. Demand notice dated 27.02.2020 issued by Femina Shopping Mall Private Limited to Golden Shopping Mall & Hotels Private Limited.
7. Email dated 02.03.2020 along with Demand Notice issued by Femina Shopping Mall Private Limited to Golden Shopping Mall & Hotels Private Limited.
8. Reply dated 17.03.2020 issued by Golden Shopping Mall & Hotels Private Limited to Femina Shopping Mall Private Limited.
9. Demand notice dated 05.07.2020 issued by Femina Shopping Mall Private Limited to Golden Shopping Mall & Hotels Private Limited.
10. Reply dated 17.08.2020 issued by Golden Shopping Mall & Hotels Private Limited to Femina Shopping Mall Private Limited by acknowledging the above debts.

6. The Operational Creditor states that it has supplied large volume / wholesale supply of Grocery and other fast-moving items like Dry Fruits, Cosmetics, FMCG Items, Dress Materials, Fancy Ornaments, Gift Articles, Toys, School Bags, Travel Bags, Stationeries, Household Plastic Items and other Shopping Mall Products etc to the Corporate Debtor during the period starting from April, 2016 to August, 2018. It is stated that a total sum of Rs. 55,07,876/- became outstanding as unpaid operational debt

after necessary adjustments in the books of the Operational Creditor.

7. Prior to the issuance of the Statutory Demand Notice under Section 8 of the Code, the Operational Creditor has issued three Demand Notice(s) which are dated 18.03.2019, 30.03.2019 and 27.02.2020 respectively. Finally, the Operational Creditor served the Demand Notice dated 20.04.2022 under Section 8 of the Code. The proof of service of the Section 8 Notice being the Acknowledgement Card is annexed which reflects that the notice is served on Corporate Debtor at the address as per the 'MCA - Masterdata'. The Corporate Debtor has not replied to the said notice. Thereafter, the present Application came to be filed on 17.06.2022 before this Tribunal.

8. Reply is filed by the Corporate Debtor on 06.09.2022 wherein it is primarily contended by the Corporate Debtor that the quantum of the Operational Debt as claimed by the Operational Creditor is disputed and does not pass the threshold prescribed under the Code. It is further contended that the alleged Operational Debt is not in default and that the Operational Creditor has not furnished any evidence establishing the same. The Operational Creditor has chosen not to file rejoinder and the same is recorded vide order dated 04.11.2022.

9. The Corporate Debtor submits the Operational Creditor has placed on record certain communications between the parties wherein there was a clear indication of quality dispute as well as intercompany transactions which was raised as a dispute by the Corporate Debtor prior to the issuance of the Demand Notice viz. 20.04.2022.

10. Heard the submissions of both sides and perused the pleadings and the documents on record. At the outset, perusal of the invoices filed in the application shows that there is no agreement with respect to the interest component as claimed by the Operational Creditor. Learned Counsel for the Corporate Debtor had drawn our attention to the letter dated 17.08.2020 which was addressed to the Operational Creditor much prior to the statutory demand notice which reads as under:

*"Considering the above after settling the disputed supplier's payment during your management period, the company will give the priority to settle your dues as per our books of accounts without any interest"*

A perusal of above would demonstrate that the interest component as stated under the Application does not correlate and that Corporate Debtor has specifically shown that there is no interest component involved in the business transactions between the Operational Creditor and the Corporate Debtor. The

Operational Creditor had not produced any cogent proof for the playability of interest.

11. In addition, the Learned Counsel for the Corporate Debtor demonstrates that the stand as to the interest component taken by the Operational Creditor is squarely contradictory to its own communication dated 30.07.2020 which was addressed to the Corporate Debtor wherein interest of 12% p.a is claimed. The same is extracted as under:

16

**FEMINA SHOPPING MALL Pvt. Ltd.** 

Registered Office: # 2 / Old Goods Shed Road, (Near Holy Cross College), Trichy - 620002 | Email: feminamall@fsmgroup.co  
Ph: 0431-2712766 / 866 / 966 | GSTIN: 33AAACF7010E1Z9 | CIN NO. U51219TN1999PTC042732

To

Date:

Dated : 30.07.2020

**Golden Shopping Mall & Hotels Pvt. Ltd.,**  
4, Mandapam Road,  
Kumarlah Kovil,  
Ramanathapuram - 623501.

Dear Sir,

**Sub : Stocks Supplied for Rs.55,07,845/- Reg.**

With regard to supply of stocks to you company, you have to pay Rs.55,07,845.83 to us (Not as per your letter dated 17.03.2020 to Rs. 50,09,678.53). These stocks were supplied to you on various dates and lastly on 10.08.2018. Now more than 720 days have completed from the date of last supply and still the payment is pending. We already informed you through various communication methods like letters, telephone and e-mail, (I.e letter dated : 18/03/2019, 30/03/2019, 27/02/2020, 02/05/2020) still we not yet received any outstanding Payment. We have been borrowing funds from bank and running the business. We inform you to pay the entire amount of **Rs.55,07,845.83 with interest of Rs.13,12,000/- ( I.e @ 12% p.a) immediately.**

You have not notified us of any reason for non-payment of this amount which is now seriously overdue. If you have any questions please contact our Accounts Department to discuss your doubts which may include arranging a payment plan.

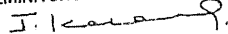
As per the directions of the Ministry of Corporate affairs that every company who get supplies of services from Micro small and Medium Enterprise, suppliers payment shall not be pending for a period exceeding 45 days from the date of acceptance or the date of deemed acceptance of the goods or services as per provisions of the Micro Small and Medium Enterprises Development Act 2006. We are a falling under MSME category and we enclose a copy of MSME registration Certificate for you information.

We regret to note that despite previous letters the above balance is still pending. Unless you contact us within 30 days from the date of this letter, we will commence our legal Debt collection procedure against you and place the matter in the hands of our legal adviser to issue legal proceeding against you for the full amount overdue including interest and legal costs.

Please treat this matter as most urgent and settle the amount immediately,

Yours faithfully,

For FEMINA SHOPPING MALL (P) LTD.




Director

A perusal of the above letter would show that the Operational Creditor has claimed interest at 12% p.a., whereas, the interest component as per the present Application is stated to be fixed at 18% p.a.

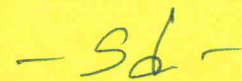
12. As regards interest, it is clear to us that there was no written agreement regarding the interest. In letter dated 30.07.2020, the Operational Creditor claim interest @ 12% which was denied by the Corporate Debtor vide letter dated 17.08.2020. Hence, it is clear that both the parties were not ad idem on interest.

13. Thus, by taking into consideration the discussed supra, *prima-facie* it is seen that the debt in question does not fall within the threshold prescribed under the Code as the principal outstanding is only Rs. 55,07,876/-. Therefore we are of the view that present application is not maintainable and deserves to be rejected. Therefore we reject the application as not maintainable.

14. The Application is disposed of in terms of the above order.  
The copy of order be supplied to parties concerned.



**SAMEER KAKAR**  
MEMBER (TECHNICAL)



**DR. DEEPTI MUKESH**  
MEMBER (JUDICIAL)

V.Shreekumar