

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

CP(IB)-900/MB/2021

Under Section 9 of the IBC, 2016

In the matter of

Opensky Shopping LLP

...Operational Creditor

v/s.

Sagar E-Shop Private Limited

...Corporate Debtor

Order Pronounced on: **03.03.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Rishi Sood, Advocate.

For the Respondent: Mr. Harshit Agarwal, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Opensky Shopping LLP**, ("the Operational Creditor") on 21.08.2021 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Sagar E-Shop Private**

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

CP(IB)-900/MB/2021

Limited (“Corporate Debtor”) for the amount due and payable to the Operational Creditor.

1.1 The Corporate Debtor is a company incorporated on 17.01.2014 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 U74999MH2014PTC252191. Its registered office is at D-201, Chandresh Chhaya CHS Ltd., Kalyan Shil Road, Nilje Village, Dombivali East, Thane Dist., Maharashtra - 421204. Therefore, this Bench has jurisdiction to deal with the present petition.

1.3 The present petition was filed by the Operational Creditor before this Tribunal on the ground that the Corporate Debtor failed to make payment of a sum of ₹1,20,62,686/- (Rupees One crore twenty lakh sixty-two thousand six hundred and eighty-six only) including interest. The date of default is 01.04.2021 as per Part-IV of the Petition submitted by the Operational Creditor.

2. The case of the Operational Creditor:

2.1 The Operational Creditor submits that it is a company registered under Limited Liability Partnership Act, 2008, engaged in the business of E-commerce having registered office at 26 Owners Court, Fourth Floor, Behind Fariyas Hotel, Colaba, Mumbai – 400 005.

2.2 It further submits that the Corporate Debtor vide Purchase Order dated 15.02.2021 asked the Operational Creditor to supply certain quantity of Vitamins and Beauty products at a predetermined price. The Operational

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

CP(IB)-900/MB/2021

Creditor supplied goods to the Corporate Debtor and raised invoice dated 28.02.2021 for a sum of ₹1,19,16,820/- with 30 days credit. The invoice also contained a condition that if invoice is not paid in 30 days, an interest @ 18% will be charged extra. However, the Corporate Debtor failed to pay the invoice on due date. Even after repeated reminders, the Corporate Debtor did not make the payment. On 12.07.2021, the Operational Creditor sent a reminder letter asking to make payment of Rs. 1,13,56,996/- along with interest @18% till the date of payment, for which, the Corporate Debtor replied on 23.07.2021 requesting the Operational Creditor to grant some time as the Corporate Debtor is going through financial crunch.

2.3 However, since the payment is not forthcoming, the Operational Creditor sent a Demand Notice on 04.08.2021 for which, the Corporate Debtor replied on 13.08.2021 wherein the Corporate Debtor informed its inability to pay the due amount instantly, however, endeavour to clear the outstanding at the earliest.

2.4 As the Corporate Debtor is not ready to pay the outstanding amount, the Operational Creditor opted for initiation of insolvency proceedings against the Corporate Debtor. Hence, this Petition.

3. Reply of the Corporate Debtor:

3.1 The Corporate Debtor in its reply dated 28.01.2022 submits that there is no debt due and payable to the Applicant. Further submits that the claim of the Applicant is disputed debt and therefore, it cannot be adjudicated

under IBC. The Corporate Debtor further submits that the Operational Creditor did not supply the goods in time and the goods supplied were of inferior quality. Due to delay in delivery of goods, the sale of the Corporate Debtor is badly affected which incurred heavy loss to the Corporate Debtor. However, the Corporate Debtor has not filed any communication to substantiate this statement.

- 3.2 The Corporate Debtor further submits that it requested the Operational Creditor to give some time to pay the amount and also re-iterated in the reply that it is willing to pay the amount in instalments. The Corporate Debtor contends that as it is in the operational crisis, unable to pay the amount and sought time to pay in instalments. Therefore, the Corporate Debtor cannot be termed as defaulter.
- 3.3 The Corporate Debtor pleads that since its conduct is bonafide, it cannot be termed as defaulter. Consequently, the present petition is not maintainable and sought dismissal thereof.
4. The Bench heard both Counsel and perused the material available on records.
 - 4.1 Upon perusal of the material on record we are of the view that there exists a debt of an amount of ₹1,13,56,996/- against supply of goods, which was due for payment on 30.03.2021, and was not paid. Accordingly, there exists a default in payment of the operational debt. The ground of prior dispute has no merit as no communication pertaining to issue(s) of dispute raised by the Corporate debtor has been

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

CP(IB)-900/MB/2021

filed and the corporate debtor has sought time for payment of the amount due on few occasions. Also, the Corporate Debtor has pleaded his bonafide as ground by stating that he is willing to pay but constrained by financial crunch. This ground is not admissible under the Code as Code seeks to resolve the insolvency of a Corporate Debtor and persistent existence of financial crunch makes it a fit case for admission under Section 9 of the Code.

4.2 The Operational Creditor has proposed name of the Resolution Professional; Mr. Arunava Sikdar having IBBI Reg. No.: IBBI/IPA-001/IP-P00022/2016-17/10047 to conduct the resolution process of the Corporate Debtor. Mr. Arunava Sikdar has given his consent to act as Resolution Professional.

4.3 In view of the facts narrated as above, this Bench is of the opinion that the Petition deserves to be admitted.

5 It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP(IB)-900/MB/2021** filed by **Opensky Shopping LLP**, 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 **Sagar E-Shop Private Limited [CIN: U74999MH2014PTC252191]**, the Corporate Debtor, is hereby **admitted**.

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

CP(IB)-900/MB/2021

- (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;
 - (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;

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

CP(IB)-900/MB/2021

- (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.
- (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) Mr. Arunava Sikdar having registration No. IBBI/IPA-001/IP-P00022/2016-2017/10047, having address at C-10, LGF, Lajpat Nagar-III, New Delhi – 110 024, email: asikdar1990@gmail.com, is hereby appointed as Interim Resolution Professional to carry out 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

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

CP(IB)-900/MB/2021

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).
- (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/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

03.03.2023/pvs

Sd/-

**KISHORE VEMILAPALLI
MEMBER (JUDICIAL)**