

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

1. C.P.(IB)-3802(MB)/2019

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **12.05.2022**

NAME OF THE PARTIES: Mirah Dekor Pvt Ltd

V/s

Promozone India Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Ms. Fatema Kachwalla a/w Mr. Virgil Braganza i/b J. Sagar Associates for Corporate Debtor is present through virtual hearing. order pronounced in the open court vide separate order. In the result, the above Company Petition is admitted.

Mr. Rakesh Maganlal Nathwani, IBBI Registration No. IBBI/IPA-001/IP-P02058/2020-2021/13190 (rakesh@carmn.in) and Mobile No. 9503006408 is hereby appointed as Interim Resolution Professional.

Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)

/RKS/

Sd/-
H.V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3802/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Mirah Dekor Private Limited

A Company Registered under the Indian Companies Act, 1956 and having its office at 208, Parvati Industries Estate, Sun Mill Compound, Lower Parel (West), Mumbai – 400013, Maharashtra

**.....Operational Creditor
Vs**

M/s Promozone (India) Private Limited

A company registered under The Indian Companies Act, 1956 having CIN:

U74994MH2005PTC156264

and its registered office at:

Office No. 7, Ground Floor, Truck Terminal Near AMPC, Sector 19/C, Vashi, Navi Mumbai – 400703, Maharashtra

.....Corporate Debtor

Order delivered on: 12.05.2022**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Sharan Jagtiani, Advocate

For the Respondent: Mr. Malcom Siganporia, Advocate

Per: Shri H.V. Subba Rao, Member (Judicial)

1. This Company petition is filed by *Mirah Dekor Private Limited* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Promozone (India) Private Limited* (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for an unresolved Operational Debt of Rs. 77,36,496/- to the Operational Creditor.
2. The brief facts of the case as follows:-
 - i. The Operational Creditor is a private company who is into the business of supplying goods.
 - ii. The Corporate Debtor entered into an oral agreement with Maharashtra State Co-operative Consumer Federation Limited (**MSCCFL**) for supply of Food Grain items viz. Rice, Mirchi Powder, Haldi Powder, Sunflower Oil & Masala Powder (hereinafter collectively called "Goods") to MSCCFL. Thereafter the Operational Creditor was approached by the Corporate Debtor for supply of the

Goods disclosing that the Corporate Debtor has entered into an agreement with MSCCFL for supply of the same.

- iii. The Operational Creditor further submits that, on 02.05.2012 purchase order was issued by the Corporate Debtor. The Operational Creditor from time to time would supply Goods to the Corporate Debtor and raise invoices which were duly acknowledged by the Corporate Debtor. The material supplied by the Operational Creditor has supplied materials amounting to Rs. 37,52,70,380.80 to the Corporate Debtor.
- iv. The Operational Creditor further submits that the Corporate Debtor has cleared all the due amount expect for the claim amount of Rs. 77,36,496/-.
- v. The Operational Creditor further submits that after strenuous follow up with the Corporate Debtor for due payment an email dated 29.05.2015 was received from the Corporate Debtor containing the ledger account of the Corporate Debtor wherein the Corporate Debtor has admitted the Principal Amount due in its books.
- vi. The Operational Creditor submits that even after admitting the dues and despite repeated reminders, the Corporate Debtor has not made any further payments to the Operational Creditor. The Corporate Debtor continuously made the same excuse for non-payment i.e. that the Corporate Debtor is yet to receive payments from MSCCFL. I say that the Corporate Debtor has received balance payments from MSCCFL on the following dated:

<u>Date of Receipt</u>	<u>Amount (Rs.)</u>
08.12.2016	73,53,716.00
15.04.2017	3,82,780.00

Total	77,36,496.00

- vii. Further, on 29.10.2018 the Operational Creditor issued a Statutory Demand Notice in Form 3 to the Corporate Debtor demanding the payment. The same was responded by the Corporate Debtor through its advocate via letter dated 26.12.2018, which was duly responded by the Operational Creditor via a letter dated 12.03.2019 which was further responded by the Corporate Debtor on 03.06.2019.
- viii. The Operational Creditor states that even though the claim has been continuously denied by the Corporate Debtor in its various responses, it has also admitted the claim in its Balance Sheets for A.Y. 2016-2017, for A.Y. 2017-2018 and for A.Y. 2018-2019. It is further stated as for A.Y. 2018-2019, the Corporate Debtor has mentioned a consolidated figure under heading "Trade Payables" but the same was declared in the name of dues of the Operational Creditor in the A.Y. 2017-2018.
- ix. The Operational Creditor further states that the application is well within limitation, even though the principal amount became due on 31.03.2013, it was admitted by the Corporate Debtor in its books of accounts multiple times in A.Y. 2016-2017, A.Y. 2017-2018 and A.Y. 2018-2019. The Corporate Debtor has to pay to the Operational Creditor an amount of Rs. 77,36,496/- (Rupees Seventy Seven Lakhs Thirty Six Thousand Four Hundred and Ninety Six Only)]. The Operational Creditor is filed the present petitioner under Section 9 of the code

as the Corporate Debtor had defaulted in payment their dues to the Operational Creditor.

3. The Corporate Debtor filed affidavit in reply dated 05.02.2021 through Ms. Ruchita Shah, the authorized representative of the Corporate Debtor opposing the above Company Petition. The main contention of the Corporate Debtor is that the claim is barred by limitation. The Corporate Debtor apart from the plea of Limitation also raised certain issues with regard to the affairs of the group companies of the Petitioner etc., which are wholly irrelevant and uncalled for in deciding the present Company Petition.
4. The Corporate Debtor alleges that various invoices were raised by the Operational Creditor upon the Corporate Debtor from July, 2012 to May, 2013 and therefore, the cause of action for filing the above Company Petition arises between the year 2012-2013 and the right to sue is available till 08.05.2016 and the present Company Petition being filed on 15.10.2019 is beyond 3 years and is barred by limitation.
5. Before going into the merits of the plea raised by the Corporate Debtor, it is appropriate to mention here that the Learned Counsel for the Operational Creditor, Mr. Sharan Jagtiani fairly submitted before this bench on instructions from his client that his client is ready and willing to accept the principal amount of Rs. 77,36,496/- claimed in the Company Petition towards full and final settlement by foregoing the interest portion of Rs. 1,36,33,189/- which was not accepted by the Corporate Debtor. Therefore, this Bench was forced to decide the above Company Petition on merits.

6. Let us examine the issue of limitation raised by the Corporate Debtor.

The Petitioner has annexed a copy of the Email dated 29.05.2015 sent by the Corporate Debtor to the Operational Creditor along with a copy of the ledger account of the Operational Creditor in the books of the Corporate Debtor reflecting an amount of Rs. 77,14,911.80/- as outstanding for the Financial Year 01.04.2012 to 31.03.2013. The petitioner also annexed copy of the ledger account of the Operational Creditor in the books of account of the Corporate Debtor dated 01.04.2014 whereunder an amount of Rs. 75,39,284.80/- is shown as outstanding for the Financial Year 01.04.2013 to 31.03.2014. Similarly, the Operational Creditor filed copy of balance sheet as on 31.03.2016 and 31.03.2017 of the Corporate Debtor in which an amount of Rs. 75,39,285/- was shown as payable to the Operational Creditor under the head "Trade Payables for Goods". All the above Financial Statements of the Corporate Debtor are continuous and are within 3 years from time to time. The above Company Petition being filed on 24.10.2019 is well within limitation from the admission of liability in the balance sheet as on 31.03.2016 and 31.03.2017.

7. When the counsel appearing for the Petitioner demonstrated the plea of limitation by inviting the attention of this bench to the above documents, the counsel appearing for the Corporate Debtor on realizing that there is no merit in the plea of limitation raised by the Corporate Debtor, changed the tenor and tone and tried to build up an argument to the effect that the amounts shown from time to time in the above financial statements are not matching with each other which is totally

irrelevant as there is an admission of liability beyond the pecuniary limit of invoking Section 9 of IBC. Therefore, there is no merit in the above plea raised by the Corporate Debtor.

8. For the aforesaid reasons, this bench hereby observes that the above company petition satisfies all the legal requirements for its admission and accordingly the above Company Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) – 3802/MB/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Promozone (India) Private Limited.
- b. It is hereby declared that the Operational Creditor is entitled to claim interest also claimed in this Company Petition, as the claim originates from a commercial transaction that has taken place between the parties.
- c. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Rakesh Maganlal Nathwani**, Registration No.: IBBI/IPA-001/IP-P02058/2020-2021/13190, having E-mail Address: rakesh@carmn.in and having Phone No: (+91) 9503006408 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- d. The Operational Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- e. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

- h. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- i. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- j. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- k. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- l. Accordingly, this Petition is admitted.
- m. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)