IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 658/IBC/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

Infilux Illuminations Private Limited.

Having registered office at: M-29 Himalaya Vishwa, Nagpur Road, Wardha (M.S). 442001

……**Operationa Creditor**

Vs

Purple Buddha Venture Private Limited

C/o M/s. Power Links, 77, Sadoday Complex, Central Avenue, Darodkar Square Nagpur MH 440002

…….Corporate Debtor

Order delivered on: 10.08.2021

Coram:

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

For the Applicant: Mr. P.S. Thakre, Practicing Company Secretary

For the Respondent: None Present

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

ORDER

1. This Company petition is filed by *Infilux Illuminations Private Limited* (hereinafter called "Operational Creditor") seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against *Purple Buddha Venture Limited* (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 5,99,638/- to the Operational Creditor.

3. **The submissions of the Financial Creditor are as follows**:-

   i. The Operational Creditor is an unsecured Operational Creditor of Corporate Debtor (BVPL) to whom the Corporate Debtor is admittedly and /or undisputedly indebted a principal amount as Operational Debt of Rs. 5,99,638/- (Rupees Five Lakhs Ninety Nine Thousand Six Hundred & Thirty Eight only).

   ii. Principal amount as Operation Debt of Rs. 5,99,638/-. The interest on this unpaid Operational Debt shall be payable as may be decided by the Adjudicating Authority as per normal banking rates.

   iii. The Operational Creditor has made supplied of "Downlight Ecoline" herein referred to as Goods to PBPL. PBPL has no point of time whatsoever raised any issues with respect to the quality and/or quantity of the aforesaid supplies.

   iv. Pursuant to the supplies made as requested and/or required by as per the Purchase Orders of supplied goods to the PBPL and raised Invoices (as more particularly set out in which were received, acknowledged and accepted by the latter without any demurrer whatsoever. Under each of the invoices, PBPL was liable to make payments. However, PBPL failed to make payment on the due dates and has since then, remained in default of the same.

v. The above debt has arisen since for supplies of the goods and remains outstanding and payable by PBPL. The payment due have not been made despite multiple reminders on the part of the Operational Creditor and the repeated assurances on the part of the Corporate Debtor on telephonic conversations.

vi. The Operational Creditor submits that it constantly followed up with Corporate Debtor for payment of dues. The Corporate Debtor has repeatedly asked for extension of time accommodation citing adverse market condition. On such assurances continues to grant additional time for payment of the balance amount due. The Operational Creditor states as per Section 9(3) (b) of the Code that it has not received any notice from Corporate Debtor relating to a dispute of the amount due an hereby classified as operational debt owned by the Corporate Debtor to Operational Creditor.

vii. The Operational Creditor has sent a Statutory Demand Notice to Corporate Debtor on 30.01.2019 under the code. It is submitted by the Operational Creditor that the Demand Notice was received by the Corporate Debtor.

viii. The Operational Creditor submitted that the operational debt arisen out of series of transactions and the last Invoices was due for payment on 31.03.2016. Considering the genuine transaction and the all other aspect of the case the Operational Debt is not time barred. The default occurred, inter alia, on the due date of the payment as per the invoices. Payment under the last invoices was due on 31.03.2016.

FINDINGS

1. The Corporate Debtor has put up appearance from time to time through their advocate and did not choose to file reply. On the other hand on 16.04.2021, Ms. Amita Chaware, counsel appearing for the respondent requested short time to take final call regarding settlement. However, no settlement has taken place in this matter. On 29.07.2021, when the matter was finally listed for arguments the counsel appearing for the Corporate Debtor purposefully remained absent from participating in the hearing. Therefore, this Tribunal was constrained to hear the argument of counsel appearing for the Operational Creditor and reserved the matter for order.
2. The above Company Petition is filed by the Operational Creditor praying for resolution of an unresolved debt of 5,99,638/- payable by the Corporate Debtor to the Operational Creditor. After hearing the submissions and upon perusing the material available on record, this Tribunal observed that the above claim is barred by limitation and is liable to be rejected for the following reasons:
   i. The Operational Creditor issued demand notice on 30.01.2019 (annexed at annexure 2 at page no. 12 to the company Petition under section 8 of the Code calling upon the Corporate Debtor to pay the above amount of Rs. 5,99,638/-. It was mentioned in the said notice that the date of default is 31.03.2016. The Operational Creditor also annexed the statement of account relating to the Corporate Debtor as per his

books of accounts annexed as Annexure No. 4 at Page 16 to the Company Petition covering from the period 29.07.2015 to 31.03.2016. The said statement of account is a mere printed out without any certification of the Income Tax Authority or the signature of the Corporate Debtor which is not legally enough to charge the Corporate Debtor with liability as it was hit under Section 34 of the Evidence Act.

ii. As per section 34 of the Evidence Act, mere entries in the books of accounts is not enough to charge the other persons with liability.

iii. Disregarding the legality of the above statement of account, if we examine the said statement of account, it shows only one credit payment through Punjab National Bank on 16.01.2016. The above Company Petition being filed on 11.02.2019 is beyond 3 years from the date of alleged last payment and is barred by limitation even if the statement of account is presumed to be true and is accepted as a running account for argument's sake without admitting. Even otherwise all the invoices annexed by the Operational Creditor to the Company Petition relates to the period July 2015 to February 2016. The amount covered under last invoices dated 10.02.2016 and 01.02.2016 for an amount of 10,000/- and 2,344/- respectively which are less than the threshold limit of Rs. 1 lakh. All the invoices annexed from page no. 17 to 30 to the Company Petition are beyond 3 years.

iv. It is well settled proposition of law that the Operational Creditor or a plaintiff is not entitled for automatic order of admission simply because the defendant did not file any reply nor advance any arguments.

3. Therefore, for the above reasons, this Tribunal is of the considered opinion that the above Company Petition is barred by limitation and is liable to be rejected. Accordingly, the above company petition is dismissed.

Sd/- **Sd/-**

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

H.V. SUBBA RAO
MEMBER (JUDICIAL)