IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.860/MB-IV/2023

Under Section 9 of the IBC, 2016

In the matter of

Nimbus Packaging LLP

…Operational Creditor

v/s.

M/s Supermax Personal Care Private Limited

[CIN: U27310MH2010PTC207411]

…Corporate Debtor

Order Delivered on: 11.01.2024

Coram:

Ms. Anu Jagmohan Singh Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:	. Mr. Ashish Pyasi a/w Ms. Anisha Salvi i/b Andri Legal.
For the Corporate Debtor:	. Mr. Tushar Agrawal i/b Mulani & Co.

ORDER

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Nimbus Packaging LLP ("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s Supermax Personal Care Private Limited, the Corporate Debtor.

2. The Corporate Debtor is a private company limited by shares incorporated on 03.09.2010 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is Mumbai Agra Road Naupada, P O Wagle INDL Estate, Thane, MH-4000604, India.Therefore, this Bench has jurisdiction to deal with this petition.

3. The Company Petition is filed on 18/09/2023 claiming an amount towards Principal of Rs. 1,73,52,033.70/- (One Crore Seventy-Three Lakhs Fifty-Two Thousand Thirty-Three Rupees and Seventy Paisa Only) and Interest @ 24 % p.a is Rs. 23,45,951.96/- (Twenty-Three Lakhs Forty-Five Thousand Nine Hundred Fifty-One Rupees and Ninety-Six Paisa Only) aggregating to Rs. 1,96,97,985/- (One Crore Ninety-Six Lakhs Ninety-Seven Thousand Nine Hundred and Eighty-Five Only) is due and payable by the Corporate Debtor. The date of default as specified in Part IV of the petition is 16.05.2022 and that the Petition is filed within the limitation period.

Submissions advanced by the Operational Creditor are as follows:

4. The Operational Creditor submits that the OC (Operational Creditor) is involved into packaging and printing industry. The Corporate Debtor is into razor blade manufacturing and for the purpose of packing its product required packaging material which was supplied by the Operational Creditor. The OC has been supplying blister cards and duplex boards mono cartoons and other packaging material since December 2016 to the Corporate Debtor.

5. The Operational Creditor submits that Corporate Debtor would place the Purchase Orders upon the Operational Creditor and the Operational Creditor would in turn supply the packaging material and would raise invoices in accordance with those purchase orders. The Operational Creditor had supplied cartons and other packaging material to the Corporate Debtor and same was accepted by the Corporate Debtor without any demur or protest. That no dispute was ever raised by the Corporate Debtor about the quality or the quantity of the goods so supplied. Accordingly, Operational Creditor issued

various Invoices to the Corporate Debtor against the supplies made. The Operational Creditor has been supplying the packaging material to the Corporate Debtor since 2016 however the default has been committed only in respect of few invoices (Total 52 Invoices) starting from 16.01.2022 till 30.09.2022. Further, the terms of payment were agreed to be 120 days and that the date of default is 16.05.2022 (120 days from the first unpaid Invoice dated 16.01.2022) as the Invoice became due and payable after the credit period and default would be immediate when the same is not repaid after the Credit period got over.

6. The Operational Creditor submits that when they experienced a delay in payment, they asked corporate debtor to give Letter of Credit from Bank. However, Corporate Debtor did not give LC against the said invoices which are due and were not paid. The Corporate Debtor, kept on promising for paying the amount in few months, but never paid. The Applicant has continuously sent reminders against various invoices to the corporate debtor for payment of amount due. However, neither any satisfactory reply nor any amount is being received by the Operational Creditor. The Corporate Debtor has also stopped responding to the various reminder emails and communication by the operational creditor for payment of unpaid invoices. Vide email dated 17th November 2022, the Corporate Debtor did not dispute the liability and proceeded to ask the Operational Creditor to have patience and to bear with the Corporate Debtor and further assured that the payment will be released.

7. The Operational Creditor submits that the Corporate Debtor vide its email dated January 04, 2023 sent an account confirmation thereby admitting the debt which is due and payable by it to the Applicant. It was further submitted that the Corporate Debtor never disputed either the quality of the goods or the quantity.

8. The Operational Creditor served a demand letter to Corporate Debtor dated 4th March, 2023 for the amount payable demanding the entire amount within a period of 10 (Ten) days from the date of issuance of the letter and the Corporate Debtor did not respond to the said demand notice.

<u>Submissions advanced by the Corporate Debtor are as follows:</u>

9. The Corporate Debtor submits that on non-payment of the said Invoices, the Applicant, on 03 March 2023, issued a Demand Notice to the Respondent, wherein the Applicant claimed that an amount of INR 1,97,09,395 (Rupees One Crore Ninety-Seven Lakh Nine Thousand Thee Hundred and Ninety-Five Only) was due from the Respondent in respect of the said Invoices. This was followed by another Demand Notice dated 04 March 2023, wherein the Applicant revised the outstanding sum to INR 1,96,97,985 (Rupees One Crore Ninety-Six Lakh Ninety-Seven Thousand Nine Hundred and Eighty-Five Only), which it claimed as the pending Operational Debt as on 02 March 2023. The Operational Creditor thereafter filed the present Petition, claiming that the aforesaid sum of INR 1,96,97,985, which comprises of a principal sum of INR 1,73,522,033.70 and an interest amount of INR 23,45,951.96 (that has been calculated @ 24% p.a. till 02 March 2023), remains due and payable from the Respondent as Operational Debt.

10. The Corporate Debtor submits that due to certain unforeseen circumstances, it was unfortunately thrust into severe financial difficulties, involving inter alia the freezing of its bank accounts and a resultant cash flow crisis. Hence, even despite its best intentions, it has been unable to pay the sums that remain due and payable to the Applicant in respect of the said Invoices. The factum of cash-flow crisis being faced by the Corporate Debtor, was in fact duly conveyed to the Applicant vide the Respondent's emails dated 17 November 2022 and 29 December 2022.

11. The Corporate Debtor submits that the Applicant, seemingly in support of its case, has annexed statements for certain bank accounts maintained by the Applicant. A bare perusal of these bank statements reflects that monies on behalf of the Respondent were duly transferred to the Applicant's said bank accounts up till 25 November 2022.

12. The Corporate Debtor submits that the Petition also deserves to be dismissed as it fails to specify the date when the debt fell due / date of the default of the Operational Debt, in a clear and accurate manner, as required by well settled principles of law that have been laid down and reaffirmed by Indian courts in several instances from time to time. It was further submitted that the Applicant (under Part IV of the Petition) has claimed that the date when the debt fell due / date of default of the Operational Debt is 16 May 2022 (i.e., 120 days from the date of the earliest outstanding invoice dated 16 January 2022 and bearing no. NPL2450/2021-22). However, such an averment cannot be sustained since several of the aforementioned Invoices (which form a part of the Operational Debt) were issued only after the aforesaid date of 16 May 2022. Thus, the assertion that 16 May 2022 constitutes the date when the debt fell due/date of the default is clearly incorrect. Rather, the date when the entire debt fell due/date of default of the entire Operational Debt has not been specified by the Applicant.

<u>Findings</u>

13. The bench heard the arguments of Learned Counsel for Operational Creditor & Learned Counsel for Corporate Debtor and perused the record.

14. This Bench notes that amount of Rs. Rs. 1,96,97,985 was due on account of goods supplied to the Corporate Debtor. That the Corporate Debtor in its own reply has admitted its liability by stating that the Corporate Debtor is facing severe financial difficulties, involving inter alia the freezing of its bank

accounts and resultant cash flow crisis and currently on account of poor financial position, the Corporate Debtor is unable to pay the debt towards the Operational Creditor. That vide email dated 17th November,2022 the Respondent also informed the Applicant that it was looking at number of options to deal with the same and expressed its hope of a reasonable solution to this crisis in the near future.

15. In view of the admission by the Corporate Debtor of the liability, the bench observes that Operational Debt amounting to more than Rs. 1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought out by the Corporate Debtor, it is a fit case for admission under section 9 of Insolvency and Bankruptcy Code,2016.

16. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing CP (IB) 860/MB/2023 filed by Nimbus Packaging LLP, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Supermax Personal Care Private Limited [CIN: U27310MH2010PTC207411], the Corporate Debtor, is Admitted. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.

(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;

(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 Adjudicating Authority 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. Kshitiz Gupta, having Registration No: IBBI/IPA-002/IP-N00721/2018-2019/12140, having address at F-52, First Floor, Centrium , Lokhandwala Township , Akurli Road, Kandivali East ,Mumbai Suburban, Maharashtra ,400101, email- kshitiz.ca@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 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 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. 2,00,000/- 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) IRP is directed to send a copy of this Order 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)